

KERALA CASUAL, TEMPORARY AND BADLI WORKERS (WAGES) ACT, 1990

THE KERALA CASUAL, TEMPORARY AND BADLI WORKERS (WAGES) ACT, 1989 (Act I of 1990) CONTENTS Preamble Sections 1 2. 3. 4 5. 6 7. 8. 9 'IO

11. Short title, extenl, conunencement and application Definitions Wages payable to casual, lonporary or badh orkens. Powe) of Government to appomt auth01 Ities fol heat Ing and deciding clanns and complaints. Duty of emiloyers 10 maintam registcls I nspectors Penalties Offences Compames Cogmzance and trial of offences Burden of proof Power to make rules THE KERALA CASUAL, TEMPORAIQY ANI) BADLI WORKERS (WAGES) ACT, 1989* (Act I of 1990) An Act to provide for the fixatzön of the wages payable Io casual, tcmporay and badli workers an certam establishments and employments and fo' matters connected therewith. Beamblc.—WHEREAS It IS expedient to provide fol the fixation Of the wages payable to casual, temporary and badh workas in certam establish- ments and employments and for matters connected therewith , BE it enacted in the Fortieth Year of the Republic of India as follows:— (1) This Act may be l. Short title, extent, commu'ncement and apphcatzon. called the Kerala Casual, Temporary and Badli Workers (Wages) Act, 1989. It extends to the whole of tho State of Kerala. (2) It shall come into f0lce on such date 'as the Government may, (3) by notification in the Gazette, appoint. (4) It shall apply to (a) eve: y factory, plantation and motor transpolt . undertaking; (b) every establishment to which any of the provisions of the Kerala Shops and Com.mercial Establishments Act, 1960 (34 of 1960), ?pphes, which is specified by the Govenment by notificaUon in the Gazette and which is situate in such area or areas as may be specified In the notification , (c) such other 'establishment or undertakmg as the Government may, by notification in the Garmtlc, specify xn this behalf : Provided that no notification under clause (b) or clause (c) shall be issued by the Government, unless ndt less than two months' notice of their mtention so to do has been given and any objection or suggestion received in response to the notice has been' considered by the Government (5) It shall not apply to iny establishment; factory, plantation, motor transport undertakmg or other undertakings belonging to or under the control of the Central Government 2. Defrutton,s —In this Act, unless the context othcnvise I equu•es,— (a) "badli workex" means a worker who is appointed In the place of a penrnanent worker who IS tempol only absent; *Received the assent of the President on the 1 4th day of January, 1990 and published in the KCI ala Gazette Extraordinary No. 57 dated the 22nd January, 19.90. 34115131911MC, 4 'casual worker" means a worker whose employment is OJ a (b) ca,uö} -l,uure; (c) "employer" means, in relation to any establishment, factory, plantation, motor ti anspolt uncle taking or Other undertaking, (1) (li) belongrng to, or under the control of any State Government, a pel son or authority api)0lnted by that Government for the supervision and conuol of workers, or, where no peson or authority has been so appointed, the head of the Ministry or the Depa tment concerned, belongmg to, or under the control of, any local auth0i lty, the person appointed by such authority for the supervision and control of workers, or, where no person has been so appomted, the chief executive officer of the local authority ; In any other case, the person who or the authorit'y which has the ultimate control O'éer the affairs of the establishment, factory, plantation or undertaking, and where the said affairs are entrusted to any other person, whether called manager, n-lanagng director or by any other name, such person, "factory" has the meaning assigned to It in clause (m) of section 2 of the Fqctorzes Act, 1948 (Central -Act 63 of 1948) ; "Inspector" means an Inspector appointed under section 6; (f) "motor transport undertaking" has the rneamng assigned to that expression m clause (g) of section 2 of the Motor Transport Workefs Act, 1961 (Central Act 27 of 1961); •permanent worker ' means a worker who is employed on a (g) permanent basis; (h) the meaning assigned to it In clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act 69 of 1951); (i) "State" Incans the State Of Kerala; (J) "temporary worker" means a worker who has been engaged for work which of an essentially temporary nature likely to be finished within a limited period ; •v..rages" has the meanmg assigned to that term In clause (vi) (k) of section 2 of the Payment of Wage: Act, 1936 (Central Act 4 of 1936) ; (l} "worker" means any person who is employed for or reward to do any work, skilled or unskilled, manual Or clerical, m any establishment or employment to which this Act applies and includes an out worker to whom any articles or matm lals are given out by another person to be made up,- cleaned, washed, alta ed, ornamented, furnshed, prepared, adopted or otherwise processed. i 5 3 Wages payable to casual, temporary or badli workers —Notwithstanding anything contained In any law for the time being in

force, or in any judgment, decree or order of any court or other authority, or in any contract or other agreement, no employer shall pay to any casual, temporary or badli worker employed by him in an establishment, factory, plantation, motor transport undertaking or other undertaking, wages, whether payable in cash or in kind, at rates less than the minimum of the wages payable by him to a permanent worker for performing the same work or work of a similar nature.

4 Power of Government to appoint authorities for hearing and deciding claims—The Government may, by notification in the Gazette, appoint such officers not below the rank of a District Labour Officer, as they think fit, to be the authorities for the purpose of hearing and deciding—

- (a) complaints with regard to the contravention of section 3, (b) claims arising out of non-payment of wages at the rates referred to in the said section; and may by the same or a subsequent notification define the local limits within which each such authority shall exercise its jurisdiction.

(2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed.

(3) If any question arises as to whether any of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).

(4) Where a complaint or claim is made to the authority appointed under sub-section (1), it may, after giving the applicant and the employer, an opportunity of being heard, and after such inquiry as it may consider necessary, direct,—

- (a) In the case of a claim arising out of non-payment of wages at the rates referred to in section 3, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid; in the case of a complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of section 3.
- (b) Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

6 Every employer or worker aggrieved by any order made by an authority appointed under sub-section (1) on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the Government may, by notification in the Gazette specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6); allow the appeal to be preferred within a further period of thirty days but not thereafter.

The provisions of sub-section (1) of section 33C of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), shall apply for the recovery of monies due from an employer arising out of the decision of an authority appointed under this section.

5 Duty of employers to maintain registers.—On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the casual, temporary and badli workers employed by him, as may be prescribed.

6 Inspectors—

- (1) The Government may, by notification in the Gazette, appoint such persons as they may think fit to be inspectors for the purpose of making an investigation as to whether the provisions of this Act or the rules made thereunder are being complied with by employers, and may define the local limits within which each inspector may make such investigation.
- (2) Every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).
- (3) An inspector may, at any place within the local limits of his jurisdiction,—
 - (a) enter, at any reasonable time, with such assistance as he thinks fit, any building, premises, vehicle or vessel;
 - (b) require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents;
 - (c) take, on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act or the rules made thereunder are being or have been complied with;
 - (d) examine the employer, his agent or servant or any other person found in charge of the establishment, factory, plantation, motor transport undertaking or other undertaking or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be, or to have been, a worker in the establishment, factory, plantation or undertaking;
 - (e) make copies of, or take extracts from, any register or other document maintained under this Act in relation to the establishment, factory, plantation, motor transport undertaking or other undertaking.
- (4) Any person required by an inspector to produce any register or other document or to give any information shall comply with such requirement.
- (5) Every employer shall afford the inspector all facilities for making any entry,

inspection, examination or investigation under this Act. • —Q) If any employer contravenes the provisions of section 7. Penalties. 3, he shall be punishable With fine which may extend to five thousand rupees. (2) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine which may extent to one thousand rupees. '(3) If any employer or other person obstructs any Inspector jn the discharge •of his duties under this ActQ he shall be punishable with fine which may extend to two thousand rupees. (4) If any employer refuses or wilfully neglects to afford an Inspector reasonable facilities for making an entry, inspection,' examination or investi- gation under this Act, he shall be punishable with fine which may extend to two thousand rypees. If any employer, bemg required by or under this Act so to do, (5) refuses to give any evidence or prevents his agent, servant or any other person m charge of the establishment, factory, plantation, motor transport under- taking, or other undertaking, as the case may be, or any worker, from giving evidence, he shall be punishable with fine which may extend to one thousand rupees. (6) If any person makes default In complying With the provisions of any rule or order made under this Act, he shall if no other penalty IS pro- vided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees 8. Offences by Compames. Where an offence under this Act has been committed by a company every person who, at the time the offence was com- mitted, was in charge of, and was responsible to, the company for the conduct bf 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 duc delläence to prevent the commission of such offence. 8 (2) Notwithstanding,anythmg contained m sul)-section (1), where any offence under tlds Act has•abeen commuted by a company and it proved that the offence has been committed With the consent or connivance of, or is attributable to any neglect on the part of, anj dlrector, manager, secretary or other officer of the company, such director, manager secretary or other office shall be deemed to be guilty of that offence•and shall be liable to be proceeded against and punished accordingly. Explanateon.—For the purposes Of this section,— (a) "company" means •any body corporate and includes a firra or Othel association of Individuals; and (b) "director", in relation to a film, means a pal tner m the firm Cognizance and tnal if offences No court inferior to thatofaJudioal Magistrate of the first class shall try any offence punysbale under this Act. (2) NO court shall take cognizance of an offence punis_hable under this Act. except upon a complaint made With the sanction of the Government or an officer authorised by them In 1Kis behalf (3) No court shall take cogmzance of an offence punishable under Ilus Act unless complaint thereof IS made within thtec months from the dalc on which sanction IS granted under this section IO Burden of Proof —Notwithstanding anything contained In any law for the time being In force, In any proceeding under this Act, the lburden of proving that a work formed by a casual, temporary or badli worko IS not the same work or work of a smilal nature as that formed by a permanent worker shall be on the employer. The Government may, by notification 11. Power to make rules in the Gazette, make rules for cmrymg out the provisi0fis of this Act. (2) In particular, and without prejudice to the generality of the fore- going powel. namely (a) (b) (c) such rules may provide for all or anyr of the following mattms, the manno In which complaint oi (lann leferl ed to in sub-section (1) of section 4 shall be made \egstos and other documents which ah employer required' under section 5 to maintain in lelauon to the casual, temporary and badll workers ernploved by him , any Otho matte which IS required to be, or may, prescribed 9 (3) Every rule made under this Act shall be laid, as soon as may be after It 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 expil Y 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 thereafte 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 anyt hing previously done under that