

WEST BENGAL EMPLOYEES' PAYMENT OF COMPULSORY GRATUITY ACT, 1971

Registered No. C207 BHADRA 6] Extraordinary Published by Authority SATURDAY, AUGUST 28, 1971 No. 410C(V) [SAKA 1893 'ART V.—Acts of the Parliament of India assented to by the and enacted and promulgated by the Government of India MINISTRY OF LAW AND JUSTICE (Legislative Department) New Delhi, the 28th August, 1971 / Bhadra 6, 1893 (Saka). The following President's Act enacted on the 28th August, is published for general information : THE WEST BENGAL EMPLOYEES' PAYMENT OF COMPULSORY GRATUITY ACT, 1971. No. 7 OF 1971 Enacted by the President. in the Twenty-second Year of the Republic of India. An Act to provide for a uniform scheme of retirement benefit for employees engaged in factories, plantations or shops and establishments and for matters connected therewith or incidental thereto. In exercise of the powers conferred by section 3 of the West Bengal State Legislature (Delegation of Powers) Act, of 1971, the President is pleased to enact as follows:

(1) This Act may be called the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971. extent and 63 of 1948. 69 of 1051. West Bengal Act No. 1632(h) of 1971. It extends to the whole of the State of West Bengal. (2) It shall apply to— (a) any factory as defined in clause (n) of section 2 of the Factories Act, 1948 ; (b) any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951; (c) any shop or establishment as defined in the West Bengal Shops and Establishments Act, 1963, in which one or more persons are employed. (3) Definitions.— (a) "Collector" means the Collector of the district in which the factory, plantation, shop or establishment is situated and in the case of a factory, plantation, shop or establishment situated in Calcutta means the Collector of the district of 24 Parganas. Explanation.—For the purposes of this Act, "Calcutta" (b) (d) (e) (f) means the town of Calcutta as defined in the Calcutta Police Act, 1866, and includes the suburbs of IV of 1866. (g) "the town of Calcutta as defined by notification made under section 1 of the Calcutta Suburban Police Act, Bengal Act No. 866 of 1866 ; 11 of 1866. "completed year of service" means continuous service for one year ; "continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, strike which is not illegal or a lock out or cessation of work not due to any fault of the employee concerned , "controlling authority" means an authority appointed by the State Government under section 3 ; "employee" means any person (other than an apprentice) employed on wages, not exceeding rupees seven hundred and fifty per mensem, in any factory, plantation, shop or establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central or State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957; "employer" means— (i) in relation to any factory, plantation, shop or establishment which is owned or managed by the Central or the State Government, a person or authority appointed by such Government for the supervision and control of employees or where no person or authority has been so appointed, the head of the Ministry or the Department concerned ; (ii) in relation to any factory, plantation, shop or establishment owned or managed by any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority ; (iii) in any other case, the person, or the authority which has the ultimate control over the affairs of the factory, plantation, shop or establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person (g) "family", in relation to an employee, shall be deemed to consist of— (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of her predeceased son, if any ; (ii) in the case of a female employee, herself, her husband and his dependent parents and the widow and children of her predeceased son, if any ; (iii) provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire to exclude her husband from her family, shall no longer be deemed, for the purposes of this Act, to be included in the family of such:

female employee unless the said notice is subsequently withdrawn by such female employee. Explanation.—In either of the above two cases if the child of an employee has been adopted by another person and if under the personal law of the adopter, adoption is legally recognized, such child shall be considered as excluded from the family of the employee ; (h) "notification" means a notification published in the Official Gazette ; (i) "prescribed" means prescribed by rules made under this Act ; (j) "retirement" means termination of the service of an employee for any cause, but does not include superannuation ; (k) "superannuation" means the termination of the service of an employee by the employer,— (i) when the employee attains such age as is fixed in the contract or conditions of service as the age of superannuation ; and (ii) in any other case, when the employee attains the age of fifty-eight years ; (l) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house and night rent allowance, overtime wages allowance

3. The State Government may, by notification, appoint Controlling authority, not below the rank of a Deputy Labour Commissioner, to be a controlling authority who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

4. (1) Gratuity shall be payable to an employee— (a) on his superannuation, (b) on his retirement or resignation, (c) on his death or disease, after completion of service : Provided that the total disablement due to accident or not less than five years of continuous completion of continuous service of five years. (2) THE CALCUTTA GAZETTE, EXTRAORDINARY, AUGUST 28, 1971 [PART V Power to exempt. No minimum. The purposes of this section, total disablement means such disablement as permanently incapacitates an employee for all work which he was capable of performing before the accident or disease resulting in such disablement. (3) Notwithstanding anything contained in sub-section (1), no gratuity shall be payable to an employee whose employment has been terminated for his gross misconduct. (4) The purpose of sub-section (2), "gross misconduct" means,— (a) any act or omission on the part of the employee resulting in loss or damage to, or destruction of, property belonging to or owned by the employer ; or (b) any serious act of violence on the part of the employee ; or (c) any act on the part of the employee which constitutes an offence involving moral turpitude punishable under the Indian Penal Code, 46 of 1860. (5) In the case of death of an employee, the gratuity shall be payable to the nominee of the employee or in the absence of a nominee to his heirs. (6) The employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned, for every completed year of service or part thereof in excess of six months: Provided that the amount of gratuity payable to an employee shall not exceed fifteen months' wages: Provided further that nothing in this section shall affect the right to any better terms of gratuity or retirement benefits under any award or agreement or contract with the employer

5. The State Government may, by notification and subject to such conditions as may be specified in the notification, exempt any factory, plantation, shop or establishment to which this Act applies from the operation of the provisions of this Act if, in the opinion of the State Government, the employees in such factory, plantation, shop or establishment are in receipt of benefits not less favourable than the benefits conferred under this Act.

6. (1) Each employee who has completed one year of service shall make, within such time as may be prescribed, nomination for the purpose of sub-section (3) of section 4 in such form and in such manner as may be prescribed. (2) An employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst more than one nominee. (3) If an employee has a family at the time of making a nomination, the nomination shall be in favour of one or more members belonging to his family, and any nomination made by such employee in favour of a person not belonging to his family shall be void. (4) If at the time of making a nomination the employee has no family, he may be in favour of any person or persons but if he subsequently acquires a family, become invalid and the such nomination shall such time as may be prescribed, employee shall make a fresh nomination in favour of one or more members belonging to his family. (5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving a written notice of his intention to do so in such form and in such manner as may be prescribed. (6) If a nominee predeceases the employee, the interest of the nominee shall revert to the

employee who shall make a fresh nomination in respect of such interest. (1) Any employee who is eligible for payment of gratuity on superannuation, under this Act or any person authorised in writing to do so on his behalf shall send a written application to the employer within such time and in such form as may be prescribed. (2) As soon as the amount of gratuity becomes payable, the employer shall give in writing to the person to whom the gratuity is payable and to the controlling authority, specifying the amount of gratuity and the employer shall arrange to pay such amount within such time as may be prescribed to that person. (3) If there is any dispute as to the amount of gratuity payable or as to the admissibility of the claim, the controlling authority, on an application made to it in this behalf such manner as may be prescribed, shall determine the amount after due inquiry and if any amount is found to be due, the controlling officer shall direct the employer to pay the same to the person referred to in sub-section (2) within such time as may be prescribed. (4) No order shall be made under subsection (3) unless the parties to the dispute have been given a reasonable opportunity of being heard. (5) For the purpose of conducting an inquiry under sub-section (3), the controlling authority shall have the same powers as are vested in a court while 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 affidavits; (d) issuing commissions for the examination of witnesses. (6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code. (7) Any person aggrieved by an order under sub-section (3) may prefer an appeal, to the State Government or such other authority as may be specified by the State Government in this behalf, within sixty days from the date of the receipt of the order, and the decision of the State Government or other authority on such appeal shall be final.

8. If the amount of gratuity under this Act is not paid by the employer, within the time prescribed to the person. Determination of the amount of gratuity. Recovery of amount due, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same as arrears of land revenue under the provisions of the Bengal Public Demands Recovery Act, 1913, and pay the same to the person entitled thereto. 2632(1) THE CALCUTTA GAZETTE, 9. (1) Whoever, for the purpose of avoiding any payment under this Act or of enabling any 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) An employer who contravenes, or makes default in complying with any of the provisions of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. 10. (1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the State Government. (2) No court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence punishable under this Act. 11. No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rules made thereunder. 12. (1) The State Government may, by notification, 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 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 shall 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. 13. (1) The West Bengal Employees' Payment of Compulsory Gratuity Ordinance, 1971, is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had come into force on the 14th day of June, 1971. N. V. V. GIRI, President. D. p. NAMBOODIRIPAD. PART THE CALCUTTA GAZETTE, EXTRAORDINARY,

AUGUST 28, 1971 REASONS FOR THE ENACTMENT On the 3rd June, 1971, the Governor of West Bengal promulgated an Ordinance entitled the West Bengal Employees' Payment of Compulsory Gratuity Ordinance, 1971. The said Ordinance provides for payment of gratuity to all employees employed in West Bengal in establishments governed by the Factories Act, 1948, Plantations Labour Act, 1951 or the West Bengal Shops and Establishments Act, 1963. Under the Ordinance, gratuity is payable to every employee who has rendered not less than five years of continuous service on his superannuation, retirement or resignation or death or total disablement due to accident or disease. The gratuity is payable at the rate of fifteen days' wages for every completed year of service subject to a maximum of fifteen months' wages. The Ordinance, however, empowers the State Government to exempt any factory, plantation or establishment from the provisions of the Ordinance if in the opinion of that Government the employees or any class of employees in such factory, plantation or establishment are in receipt of benefits better than the benefits conferred under the Ordinance.

2. The present enactment seeks to replace the said Ordinance with certain modifications mentioned below : —(i) the operation of the enactment has been limited in relation to shops or establishments as defined in the West Bengal Shops and Establishments Act, 1963, in which ten or more persons are employed, (ii) the benefit of gratuity under the proposed enactment has been restricted to those employees whose wages do not exceed seven hundred and fifty rupees per mensem or who do not hold a civil post under the Central or State Government, (iii) the age of superannuation of an employee for the purpose of entitlement to gratuity has been fixed as fifty-eight years in cases where the age of superannuation is not stipulated in the contract or conditions of service of that employee or where no such contract subsists or no conditions of service have been specified, (iv) wages have been so defined as to include dearness allowance but not house rent allowance, (v) the qualifying period of five years of continuous service for entitlement to gratuity will not be applicable in the case of death or total disablement due to accident or disease of the employee, an employee shall be disentitled to gratuity if his employment is terminated for gross misconduct, (vi) a factory, plantation, shop or establishment would now be eligible for exemption if the employees therein are in receipt of benefits which are not less favourable than those provided under the present enactment.

3. The Committee constituted under the proviso to section (2) of section 3 of the West Bengal State Legislature (Delegation of Powers) Act, 1971 (31 of 1971), has been consulted before enactment of this measure as a President's Act. P. M. NAYAK, Secy. to the Govt. of India, Department of Labour and Employment. 1632(m)