

WEST BENGAL MATERNITY BENEFIT (TEA ESTATES) ACT, 1948

XXV of 1934. west Act XXXIII of 1948 THE WEST BENGAL MATERNITY BENEFIT (TEA ESTATES) ACT, 1948. [Passed by the West Bengal Legislature.] [Assent of the Governor was first published in the Calcutta Gazette, of the 28th October, 1948.] An act to regulate the employment of women in tea, factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them. WHEREAS it is expedient to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them ; It is hereby enacted as follows : *1, (1) 'This Act may be called the West Bengal Short title, extent and Maternity Benefit (Tea Estates) Act, 1948. commencement. (2) It extends to the whole of West Bengal. (3) It shall come into force on such date as the Provincial Government may, by notification in the Official Gazette, direct

2. In this Act, unless there is anything repugnant Definitions.in the subject or context, (a) "child" includes a still-born child ; includes the occupier and the (b) "employer' manager of a plantation or a factory ; expected day of her delivery" means the expected day of delivery of a woman as determined by the medical practitioner referred to in sub-section (1) of section 6; (d) "factory" means (i) a factory as defined in clause (i) of section 2 of the Factories Act, 1934, or (ii) a place declared to be a factory under sub- (e) (f) (g) section (1) of section 5 of that Act, in which any process is carried on for the manufacture of tea or in which any process is carried on incidental to or connected with such manufacture ; "maternity benefit" means the sum of money payable under the provisions of this Act to a woman employed in a plantation or a factory ; "nurse" includes a midwife or a trained dhai; "plantation" means any estate which is maintained for the purpose of growing tea [the plant *Camellia Thea* (Linn)] and in which twenty or more women are employed, or were employed on any day of the preceding twelve months, for that purpose ; Employment of, or work by, women in factories prohibited during certain period. Right to, liability for, payment of •maternity benefit. 2 The West Bengal Maternity Benefit (Tea Estates) Act, 1948. [West Ben. Act (Sections 3, 4.) (h) "prescribed" means prescribed by rules made under this Act ; (i) "woman" means a woman worker; and (i) expressions used, but not defined in this Act, have, where they have been defined in the Factories Act, 1934, the same meaning as in XXV of 1934. that Act

3. After this Act comes into force—(1) no employer shall knowingly employ a woman in any factory or plantation during the six weeks immediately following the day of her delivery; and (2) no woman shall work in any factory or plantation during the six weeks immediately following the day of her delivery

4. Subject to the provisions of this Act, every woman employed in a factory or a plantation shall be entitled to, and her employer shall be liable for, the payment of maternity benefit in respect of the period of six weeks preceding the expected day of her delivery .and six weeks immediately following the day of her delivery : Provided that a woman shall not be entitled to such maternity benefit unless she has worked in any factory or plantation of the employer from whom she claims maternity benefit for not less than one hundred and fifty days in the twelve months immediately preceding the expected day of her delivery : Provided further that a woman shall not be entitled to such maternity benefit if she has not— (a) permitted herself to be medically examined as required in sub-section (1) of section 6, or (b) during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery attended or permitted herself to be treated in any clinic or hospital, or permitted herself to be treated by any medical practitioner or nurse as required in sub-section (2) of section 6 : Provided further that non-compliance by the woman with the provisions of sub-section (2) of section 6 before the day of her delivery shall not disentitle her to maternity benefit if the medical practitioner referred to in sub-section (3) of section 6 certifies that in his opinion such non-compliance was due to premature delivery or to a bona fide miscalculation on the part of the woman as to the state of advancement of her pregnancy'. The West Bengal Maternity Benefit Act, 1948. XXXIII of 1948.1 (Sections 5—7.) 51 The maternity benefit which (Tea Estates) 3 is compulsorily payable under section 4 shall be payable at the rate of five rupees and four annas a week for every week during the period of twelve weeks referred to in that section and such payment shall be made either wholly in cash or partly in cash and partly in kind. 6. (1) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall permit herself to be

medically examined by, or under the direction of, the medical practitioner referred to in sub-section (3) for the purpose of enabling him to determine the expected day of her delivery and such medical practitioner shall after such examination furnish her with a certificate as to the expected day of her delivery. (2) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery,— (a) where free ante-natal and post-natal treatment is provided for her in any hospital or clinic approved in this behalf by the prescribed medical authority, attend such hospital or clinic as required by the medical officer-in-charge thereof and permit herself to be treated therein, or (b) where there is no such hospital or clinic, permit herself to be treated by such medical practitioner or nurse as is provided by her employer under sub-section (3). (3) Every employer shall arrange that the services of a medical practitioner and a nurse approved in this behalf by the prescribed medical authority are always available in his factory or plantation for the purpose of giving free ante-natal and post-natal treatment or advice to the women of his factory or plantation

7. Notwithstanding that a woman has given notice under sub-section (1) of section 8 that she expects to work which be confined within one month and a half next following, can be undertaken she may, during the period which extends from the by a woman commencement of the six weeks immediately preceding during the expected day of her delivery to the day of her ante-natal delivery, undertake light work in the factory or planta- period of the employer from whom she claims maternity benefit if and for so long as the medical practitioner referred to in sub-section (3) of section 6 certifies that she is physically fit so to do, and for the days that she does such work she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under this Act.

Procedure regarding payment of maternity benefit. Payment of 4 The West Bengal Maternity Benefit (Tea Estates) Act, 1948. [West Ben. Act (Sections 8, 9.) 8• (1) Any woman who claims or intends to claim maternity benefit under the provisions of this Act shall, on any day, give notice either orally in person or in writing to the employer of the factory or the plantation that she expects to be confined within one month and a half next following and submit at the same time to such employer the certificate referred to in sub-section (1) of section 6 and may nominate in the prescribed form a person for purposes of section 9. (2) When the notice and the certificate referred to in sub-section (1) are received the employer shall permit the woman has given the notice to absent herself from work in the factory or plantation on and from the day following that on which such notice and certificate are received until the expiration of six weeks after the day of her delivery. (3) An employer shall pay the maternity benefit as provided in section 5 to a woman entitled to under this Act in twelve equal weekly instalments and the payment of the first instalment thereof shall be made within seven days of the giving of the notice together with the certificate referred to in sub-section (1) by such woman. (4) If an employer is satisfied on the report of a medical practitioner or medical officer-in-charge of the clinic or hospital referred to in sub-section (2) of section 6 that a woman has ceased according to the provisions of section 4 to be entitled to maternity benefit such employer may discontinue the payment of maternity benefit payable to such woman under sub-section (3). (5) Any woman who considers herself aggrieved at any cessation of payment of maternity benefit under sub-section (4) may, within thirty days of the date of payment of the last instalment of maternity benefit to her under sub-section (3), apply in the prescribed manner to the Inspector of Factories, West Bengal, who after giving both parties an opportunity of being heard may reject the application, or direct the employer to pay to the woman the remaining portion of the maternity benefit, as he deems fit. An appeal from the decision of the Inspector of Factories, West Bengal, shall, within thirty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final. 9. (1) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the in case of the death of a woman period thereafter in respect of which she is entitled to the maternity benefit, the liability of the employer under section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child; and, if the child does not survive her, to the person nominated by her under sub-section (1) of

section 8 or, if she has made no such nomination, to her next of kin as determined by the employer whose decision shall be final. (2) If a woman dies during the period in respect of which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the payment of half the amount of maternity benefit due under section 5. Any amount due at the death of the woman shall be paid to the person nominated by her under sub-section (1) of section 8, or, if she has made no such nomination, to her next of kin as may be determined by the employer whose decision shall be final. 10, (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence. (2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before her delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act. (b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred for decision to the Inspector of Factories, West Bengal, in the prescribed manner. An appeal from the decision of the Inspector shall, within sixty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final. *11. If a woman— (a) after she has been permitted by her employer under sub-section (2) of section 8 to absent herself from work in a factory or plantation, does any work, other than that provided for under section 7, before the day of her delivery, or (b) works in a factory or plantation or elsewhere during the four weeks immediately following the day of her delivery, she shall be liable, on conviction, to a fine not exceeding ten rupees. 12. (1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable to a fine which may extend to five hundred rupees. (2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be paid to the woman in certain cases. Tenalty to woman for doing work in contravention of the Act. Penalty for contravention of the Act by an employer and application of fine in payment of compensation. Cognizance of offences. Appeal against refusal to prosecute or grant sanction thereto. Limitation of prosecution. Rules. 6 The West Bengal „Maternity Benefit (Tea Estates) Act, 1948. [West Ben. Act (Sections 13—16.) applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed. 13. (1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, West Bengal, and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, West Bengal, by his order thereon sanctions a prosecution. (2) Where the Inspector of Factories, West Bengal, decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such decision. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final. (3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules made thereunder

14. Where on an application by an employer or a woman in such behalf, the Inspector of Factories, West Bengal, refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal and an employer or a woman aggrieved by such order may, within thirty days of the date thereof, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such order. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final

15. No Court shall take cognizance of any offence against this Act or any rule made thereunder unless complaint thereof has been made to the Inspector of Factories, West Bengal, within six months of the date on which the offence is alleged to have been committed. 168 (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for— (a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the XXV of 1934. The West Bengal Maternity Benefit (Tea Estates) Act, 1948. XXXIII of 1948.1 (Section

17.) register kept or deemed to have been kept under section 41 of the Factories Act, 1934; (b) the inspection of factories for the purposes of this Act by the of Factories, West Bengal ; (c) the exercise of powers and the performance of duties by Inspector of Factories, West Bengal, or the medical authority referred to in section 6 for the purposes of this •Act; (d) the method of payment of maternity benefit in so far as provision has not been made in this Act ; (e) the medical authority referred to in section 6; (f) the form of nomination referred to in sub-sectionh (1) of section 8; and (g) the procedure to be observed— (i) in submitting applications to the Inspector of Factories, West Bengal, and the disposal of appeals under sub-section (5) of section 8, (ii) in referring questions for decision to the Inspector of Factories, West Bengal, and the disposal of appeals under clause (b) of sub-section (2) of section 10, and (iii) in the disposal of appeals under sub-section (2) of section 13 or section 14. (3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees. (4) The power to make rules under this Act shall be subject to the condition of previous publication

17. An abstract of the provisions of this Act and Abstract of this the rules thereunder in the local vernaculars shall be Act and the exhibited in a conspicuous manner by the employer in ru10B thereunder every part of a tea factory or a plantation in which to be exhibited• women are employed.WBGP-48/9-7531A-2M

