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Employees' Provident Fund (Amendment) Act, No. 8 of 1971

Date of Assent : February 12, 1971

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*Employees' Provident Fund (Amendment)
Act, No. 8 of 1971*

L. D.—O. 47/70.

AN ACT TO AMEND THE EMPLOYEES' PROVIDENT FUND
ACT, NO. 15 OF 1958.

[Date of Assent: February 12, 1971]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Employees' Provident Fund (Amendment) Act, No. 8 of 1971, and shall be deemed to have come into operation on the 1st day of January, 1971.

Short title and
date of
operation.

2. Section 5 of the Employees' Provident Fund Act, No. 15 of 1958 (hereinafter referred to as the "principal Act") as amended by Act No. 16 of 1970, is hereby further amended as follows:—

Amendment of
section 5 of
Act No. 15
of 1958.

(1) by the renumbering of that section as sub-section (1) of section 5;

(2) in sub-section (1) as so renumbered—

(a) in paragraph (b), by the substitution for the words "contribution and surcharges", of the words "contributions, surcharges and fees,";

(b) by the substitution, for paragraph (j), of the following new paragraph:—

" (j) shall notify—

(i) the employer of each member of the Fund who is employed in a covered employment, and

(ii) each member of the Fund who has ceased to be employed in a covered employment,

within nine months after the thirty-first day of December in each year, of the amount lying to the credit of the individual account of such member on that day;"; and

(c) in paragraph (k), by the substitution for the words "this Act; and", of the words "this Act;";

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(d) by the insertion, immediately after paragraph (k), of the following new paragraph:—

“(kk) may establish such reserves out of the income of the Fund as the Monetary Board may determine, to meet any contingencies or any depreciation in the market value of the assets of the Fund; and ”; and

(3) by the insertion, immediately after sub-section (1), of the following new sub-sections:—

(2) Every officer or servant appointed under paragraph (a) of sub-section (1) shall be deemed to be employed for the performance of duties under the Monetary Law Act, for the purpose of the application of the provisions of the said Act relating to officers and servants.

(3) For the purposes of paragraph (k) of sub-section (1), “ expenses ” shall include—

(i) any loss of moneys on account of theft, misappropriation or over-payment;

(ii) any loss of articles of furniture, office equipment or stationery used in or purchased for the administration of the Fund the cost of which cannot be recovered from the persons responsible for such loss; and

(iii) the value of any article of furniture, office equipment or stationery written off on grounds of unserviceability. ’

3. The following new section is hereby inserted immediately after section 5, and shall have effect as section 5A, of the principal Act:—

“ Employer to communicate to member the information notified by the Monetary Board.

5A. Where an employer is notified by the Monetary Board under section 5 (1) (j), of the amount lying to the credit of the individual account of a member of the Fund, such employer shall forthwith communicate to such member the information so notified. ”

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Insertion of new section 5A in the principal Act.

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4. Section 7 of the principal Act is hereby repealed and the following new section substituted therefor:—

Replacement of section 7 of the principal Act.

“Repayments to Government.”

7. Every sum paid out of the Consolidated Fund of Ceylon—

(1) to the Commissioner prior to the date of enactment of this Act, for defraying the expenditure incurred in making preliminary arrangements for the establishment of the Fund;

(2) to the Monetary Board, for defraying all expenditure, including capital expenditure incurred by such Board and the Commissioner in carrying out the provisions of this Act during the period commencing on the date of enactment of this Act and ending on the thirtieth day of September, 1966,

shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister of Finance.”

5. Section 8 of the principal Act is hereby amended in sub-section (2) (b) of that section as follows:—

Amendment of section 8 of the principal Act.

- (1) by the omission of clause (ii) thereof; and
- (2) by the renumbering of clause (iii) as clause (ii) thereof.

6. Section 10 of the principal Act is hereby amended as follows:—

Amendment of section 10 of the principal Act.

- (1) in sub-section (1) of that section, by the substitution for the words “four per centum”, of the words “six per centum”; and
- (2) in sub-section (2) of that section, by the substitution for the words “six per centum”, of the words “nine per centum”.

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Replacement of
section 16 of
the principal
Act.

7. Section 16 of the principal Act is hereby repealed and the following new section substituted therefor:—

" Imposition
of surcharge
on employers
on failure
to pay
contributions
on due date.

16. Where contributions payable under this Act in respect of any month have not been made to the Fund before the last day of the succeeding month and the employer is unable to explain to the satisfaction of the Commissioner that the failure to pay such contributions was due to circumstances beyond his control, he shall be liable to pay to the Fund, in addition to the amount of the contributions due, a surcharge on such amount calculated in the following manner:—

- (a) where the contributions are in arrears for a period not exceeding one month, a surcharge of ten *per centum* of the amount of the contributions due;
- (b) where the contributions are in arrears for a period exceeding one month but not exceeding three months, a surcharge of fifteen *per centum* of the amount of the contributions due;
- (c) where the contributions are in arrears for a period exceeding three months but not exceeding six months, a surcharge of twenty *per centum* of the amount of the contributions due;
- (d) where the contributions are in arrears for a period exceeding six months, a surcharge of twenty-five *per centum* of the amount of the contributions due."

Amendment of
section 23 of
the principal
Act.

8. Section 23 of the principal Act is hereby amended as follows:—

- (a) by the substitution for the words " A member of the Fund shall ", of the words " Save as hereinafter provided in this section, a member of the Fund shall ";

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(b) by the substitution in paragraph (d) for the word "Ceylon:", of the words "Ceylon, or"; and

(c) by the insertion, immediately after paragraph (d) of that section, of the following new paragraph:—

"(e) after such member ceases to be employed in a covered employment and takes up pensionable employment in the public service or in the Local Government Service constituted by the Local Government Service Act, No. 18 of 1969:"; and

(d) by the addition, immediately after the proviso to that section, of the following new proviso:—

"Provided further that a member of the Fund shall not be entitled to withdraw any sum standing to his credit in his individual account more than once in a period of five years."

9. Section 24 of the principal Act is hereby amended as follows:—

Amendment of
section 24 of
the principal
Act.

(1) by the renumbering of that section as sub-section (1) of section 24;

(2) in sub-section (1) as so renumbered—

(a) by the substitution for the words "such amount or where no nominee", of the words "such amount and where no nominee"; and

(b) by the substitution for all the words from "where one nominee has been appointed" to "then such amount", of the words "where the nominee or nominees appointed under regulations made under this Act is or are dead, then such amount"; and

(3) by the insertion, immediately after sub-section (1), of the following new sub-section:—

"(2) Where a member of the Fund has appointed under regulations made under this Act two or more nominees to whom the amount lying to the credit of such member's

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individual account shall be paid in the event of his death and where one or more than one nominee dies before such member, then, upon the death of such member without such member having made a fresh appointment under the aforesaid regulations, such amount shall—

- (a) be paid to the sole surviving nominee, if there is one; or
- (b) if there is more than one nominee, be divided among such nominees in equal shares.”.

Replacement of section 33 of the principal Act.

10. Section 33 of the principal Act is hereby repealed and the following new section substituted therefor:—

“ Employers to keep records.

33. Every employer of employees in a covered employment shall maintain such records as may be determined by the Commissioner and notified in the *Gazette*.”.

Amendment of section 37 of the principal Act.

11. Section 37 of the principal Act is hereby amended as follows:—

- (a) by the renumbering of sub-section (1) of that section as section 37; and
- (b) by the repeal of sub-section (2) of that section.

Replacement of section 38 of the principal Act.

12. Section 38 of the principal Act is hereby repealed and the following new section substituted therefor:—

“ Recovery of arrears of payments due in certain cases.

38. (1) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of opinion that recovery under section 17 of the Act is impracticable or inexpedient, he may issue a certificate to the District Court having jurisdiction in any district where the defaulting employer resides or in which any property, movable or immovable, owned by such employer is situate, containing particulars of the sum due and the name and place of residence of such

employer, and the court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell all the property, movable and immovable, of the defaulting employer, or such part thereof as he may deem necessary for the recovery of the amount so due, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to such seizure and sale.

Cap. 101.

(2) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of opinion that it is impracticable or inexpedient to recover that sum under section 17 or under sub-section (1) of this section or where the full amount due has not been recovered by seizure and sale, then, he may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer, to the Magistrate having jurisdiction in the division in which such place is situated. The Magistrate shall, thereupon, summon such employer before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of section 312 (except paragraphs (a), (c), and (h) of sub-section (1) thereof) of the Criminal Procedure Code, relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction which, by the provisions of that sub-section, he could have made at the time of imposing such sentence.

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(3) The correctness of any statement in a certificate issued by the Commissioner for the purposes of this section

shall not be called in question or examined by the court in any proceedings under this section, and accordingly nothing in this section shall authorize the court to consider or decide the correctness of any statement in such certificate, and the Commissioner's certificate shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

(4) The provisions of this section shall have effect notwithstanding anything in section 17 of this Act."

Replacement of
section 39 of
the principal
Act.

13. Section 39 of the principal Act is hereby repealed and the following new section substituted therefor:—

" Burden
of proof.

39. In any proceedings against any employer under section 17 of this Act for failure to pay any sum due from him under this Act, the burden of proving that the sum was paid shall lie on the employer."

Amendment of
section 46 of
the principal
Act.

14. Section 46 of the principal Act is hereby amended in sub-section (1) of that section by the insertion immediately after paragraph (p) of the following new paragraph:—

" (pp) for the recovery of fees to be charged from employers and the writing off of losses which may be incurred, in connection with the administration of this Act,".