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Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971

Date of Assent : October 28, 1971

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*Termination of Employment of Workmen
(Special Provisions) Act, No. 45 of 1971*

L. D.—O. 62/70.

AN ACT TO MAKE SPECIAL PROVISIONS IN RESPECT OF
THE TERMINATION OF THE SERVICES OF WORKMEN IN
CERTAIN EMPLOYMENTS BY THEIR EMPLOYERS.

[Date of Assent: October 28, 1971]

BE it enacted by the Queen's Most Excellent Majesty,
by and with the advice and consent of 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 Termination of
Employment of Workmen (Special Provisions) Act,
No. 45 of 1971.

Short title

2. (1) No employer shall terminate the scheduled
employment of any workman without—

Regulation of
the termination
by employers
of the
scheduled
employments
of workmen.

- (a) the prior consent in writing of the workman; or
- (b) the prior written approval of the Commissioner.

(2) The following provisions shall apply in the case
of the exercise of the powers conferred on the Commis-
sioner to grant or refuse his approval to an employer
to terminate the scheduled employment of any
workman:—

- (a) such approval may be granted or refused on
application in that behalf made by such
employer;
- (b) the Commissioner may, in his absolute discre-
tion, decide to grant or refuse such approval;
- (c) the Commissioner shall grant or refuse such
approval within three months from the date
of receipt of an application in that behalf
made by such employer;
- (d) the Commissioner shall give notice in writing
of his decision on the application to both the
employer and the workman;
- (e) the Commissioner may, in his absolute
discretion, decide the terms and conditions
subject to which his approval should be
granted, including any particular terms and
conditions relating to the payment by such
employer to the workman of a gratuity or
compensation for the termination of such
employment; and

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(f) any decision made by the Commissioner under the preceding provisions of this sub-section shall be final and conclusive, and shall not be called in question in any court, whether by way of writ or otherwise.

(3) For the purposes of this Act, the scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are terminated by his employer, and such termination shall be deemed to include non-employment of the workman in such employment by his employer, whether temporarily or permanently.

The provisions of this Act, other than this section, not to apply in certain cases or circumstances.

3. (1) The provisions of this Act, other than this section, shall not apply—

- (a) to an employer by whom less than fifteen workmen on an average have been employed during the period of six months preceding the month in which the employer seeks to terminate the employment of a workman; or
- (b) to the termination of employment of any workman who has been employed by an employer for a period of less than one year; or
- (c) to the Government in its capacity as an employer; or
- (d) to the Local Government Service Commission in its capacity as an employer; or
- (e) to any local authority in its capacity as an employer; or
- (f) to any co-operative society in its capacity as an employer; or
- (g) to any body (whether corporate or unincorporate) whose capital is wholly provided by Government, in its capacity as an employer; or
- (h) to the termination of employment of any workman who has been employed by an employer in contravention of the provisions of any law for the time being in force.

(2) The other provisions of this Act shall be read and construed subject to the provisions of sub-section (1), and in particular, but without prejudice to the generality of the preceding provisions of this sub-section, the terms "employer", "employers", "workman" and "workmen" occurring in such other provisions shall be so read and construed.

4. The provisions of Part IVB of the Industrial Disputes Act shall not apply to any workman within the meaning of this Act.

Part IVB of the Industrial Disputes Act not to apply to any workman.

5. Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, such termination shall be illegal, null and void, and accordingly shall be of no effect whatsoever.

Termination of scheduled employment of a workman in contravention of this Act to be null and void,

6. Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, the Commissioner may order such employer to continue to employ the workman, with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination, and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated; and it shall be the duty of the employer to comply with such order. The Commissioner shall cause notice of such order to be served on both such employer and the workman.

Power of Commissioner to issue orders and, duty of employers to comply with such orders.

7. (1) Where an employer fails to comply with the provisions of section 6, such employer shall be guilty of an offence under this Act, and shall be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term of not less than six months and not exceeding two years.

Failure to comply with the provisions of section 6 to be an offence.

(2) In any prosecution for an offence under sub-section (1), the burden of proving that the employer has complied with the provisions of section 6 shall lie on the accused.

8. (1) On the conviction of an employer for an offence under section 7 in respect of any workman, such employer shall be liable—

Additional punishment for an offence under section 7.

(a) to pay, in addition to any punishment that may be imposed on such employer under that

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section, a fine of fifty rupees for each day on which the failure is continued after conviction thereof; and

- (b) to pay such workman the remuneration and such other benefits which would have been payable to him if he had been in employment on such day and on each day of the period commencing on the date on which he should have been employed according to the provisions of section 6 and ending on the date of conviction of such employer.

(2) Any sum which an employer is liable to pay under paragraph (b) of sub-section (1) may be recovered on the order of the court by which the employer was convicted as if it were a fine imposed on him by that court, and the amount recovered shall be paid to the workman.

Special provisions in respect of offences committed by bodies of persons.

9. Where any offence under this Act is committed by a body of persons, then,—

- (a) if the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence;
- (b) if the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence;
- (c) if the body of persons is a trade union, every officer of that union shall be deemed to be guilty of that offence; and
- (d) if the body of persons is a body, unincorporate other than a firm or a trade union, the president, manager, secretary and every officer of that body shall each be deemed to be guilty of that offence:

Provided, however, that no such person shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

Special defence open to a person charged with an offence under this Act.

10. Where a person (hereinafter in this section referred to as "the accused") is charged with an offence under this Act, the accused shall, upon complaint duly made by him in accordance with the

provisions of section 148 of the Criminal Procedure Code and on giving to the prosecution not less than three days' notice of his intention, be entitled, subject to the provisions of Chapter XV of that Code, to have any other person whom he charges as the actual offender, brought before the court; and if, after the commission of the offence has been proved, the accused proves to the satisfaction of the court, that he has used due diligence to enforce the provisions of this Act and that such other person has committed the offence without his knowledge, consent or connivance, such other person shall be convicted of the offence and the accused shall be acquitted of the offence.

11. (1) The Commissioner shall be in charge of the general administration of this Act.

Administration
of this Act
vested in the
Commissioner.

(2) The Commissioner may delegate to any officer of the Labour Department any power, function or duty conferred or imposed on him under this Act.

12. (1) The Commissioner shall have power—

Powers of
inspection, &c.,
of the
Commissioner.

- (a) to enter and inspect at all reasonable hours of the day or night any place in which workmen are employed in scheduled employments for the purpose of examining any register or record of wages, or of ascertaining whether the provisions of this Act are being complied with; or
- (b) where any such record or register is not available for examination when he is inspecting such place, to require the production of such register or record on a specified later date for examination at such place or at the office of the Commissioner; or
- (c) to take copies of the whole or any part of any such register or record; or
- (d) to interrogate any person whom he finds in such place and whom the Commissioner has reasonable cause to believe is an employer or a workman engaged or employed in any scheduled employment carried on in such place, or is an employer or a workman in the establishment or institution in such place; or
- (e) to hold such inquiries as he may consider necessary for the purposes of this Act.

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(2) The Commissioner shall, for the purposes of any inquiry under this Act, have all the powers of a District Court—

- (a) to summon and compel the attendance of witnesses;
- (b) to compel the production of documents; and
- (c) to administer any oath or affirmation to witnesses.

Powers of
Commissioner
to call for
returns, &c.

13. (1) The Commissioner may direct any employer to furnish to him before a date specified in the direction—

- (a) a return relating to all his employees or any class or description of such employees as may be so specified and containing such particulars as the Commissioner may require for the purposes of this Act; or
- (b) such information or explanations as the Commissioner may require in respect of any particulars stated in any return furnished by such employer; or
- (c) a true copy of the whole or any part of any register or record maintained by such employer.

(2) A direction under sub-section (1) may be given to any employer by notice in writing served on him.

General
offences
under this Act.

14. Every person who—

- (a) fails to furnish the means required by the Commissioner as necessary for any entry or inspection under this Act, or the exercise of his powers under section 12; or
- (b) hinders or molests the Commissioner in the exercise of the powers conferred by section 12; or
- (c) refuses to produce any register or record of wages, or give any information which the Commissioner requires him to produce or give under the powers conferred by section 12; or
- (d) makes or causes to be made any register or record of wages which is false in any material particular, or produces or causes or

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knowingly allows to be produced any such register or record to the Commissioner acting under the powers conferred by section 12, knowing the same to be false; or

- (e) furnishes any information to the Commissioner acting under the powers conferred by section 12, knowing the same to be false; or
- (f) makes default in complying with any direction given by the Commissioner under section 13, or who, when called upon to furnish a return under the said section 13; knowingly makes or furnishes, or causes to be made or furnished, a false return or a return containing any false statement,

shall be guilty of an offence and shall be liable on conviction thereof after summary trial before a Magistrate to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

15. All offences under this Act shall be triable summarily before a Magistrate.

Offences under this Act to be triable summarily before a Magistrate.

16. (1) The Minister may, by notification published in the *Gazette*, amend the Schedule to this Act, and on any such notification coming into force, that Schedule shall be deemed to be amended accordingly. No such notification shall come into force until it has been approved by the House of Representatives nor until notification of such approval has been published in the *Gazette*.

Amendment of the Schedule to this Act.

(2) Every notification approved under sub-section (1) shall, upon publication of such approval in the *Gazette*, be deemed, for all purposes, to be as valid and effectual as though it were in an Act for the amendment of this Act.

17. The proceedings at any inquiry held by the Commissioner for the purposes of this Act may be conducted by the Commissioner in any manner, not inconsistent with the principles of natural justice, which to the Commissioner may seem best adapted to elicit proof or information concerning matters that arise at such inquiry.

Conduct of proceedings of inquiries held by the Commissioner for the purposes of this Act.

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Service of
notices.

18. Any notice which is required by this Act to be served on, or given to, any person shall, if it is not served on, or given personally to, such person, be deemed to have been duly served or given—

- (a) if it is left at the usual or last known place of abode or business of such person; or
- (b) if it is sent to him by post in a registered letter addressed to the usual or last known place of abode or of business of such person.

Interpretation.

19. In this Act, unless the context otherwise requires,—

“ amend ”, in relation to the Schedule to this Act, means to alter, replace, add to, or omit, any item in that Schedule;

“ Commissioner ” means the person for the time being holding the office of the Commissioner of Labour;

“ co-operative society ” means a co-operative society registered as such under the Co-operative Societies Ordinance;

“ employer ” means any person who employs, or on whose behalf any other person employs, any workman and includes a body of employers (whether such body is a firm, company, corporation, trade union or other body unincorporate), and any person who on behalf of any other person employs any workman, but does not include any such other person or such body to whom, by virtue of the operation of the provisions of sub-section (1) of section 3, the provisions of this Act, other than section 3, do not apply;

“ local authority ” means any Municipal Council, Urban Council, Town Council or Village Council;

“ Local Government Service Commission ” means the Local Government Service Commission established under the Local Government Service Act, No. 18 of 1969;

“ scheduled employment ” means employment in any trade, industry or business for the time being specified in the Schedule to this Act;

“workman” has the same meaning as in the Industrial Disputes Act, but does not include a workman to whom, by virtue of the operation of the provisions of sub-section (1) of section 3, the provisions of this Act, other than section 3, do not apply.

20. In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail over the provisions of such other written law.

The provisions of this Act to prevail over other written law.

21. The provisions of this Act shall be deemed to have come into operation on May 21, 1971.

Date of operation of Act.

SCHEDULE

Employments

A. The following trades for which Wages Boards have been established under the Wages Boards Ordinance:—

- (1) Tea growing and manufacturing trade
- (2) Engineering trade
- (3) Plumbago trade
- (4) Printing trade
- (5) Rubber export trade
- (6) Tea export trade
- (7) Cigar manufacturing trade
- (8) Liquor and vinegar trade
- (9) Cocoa, Cardamom and Pepper trade
- (10) Match manufacturing trade
- (11) Motor transport trade
- (12) Cinema trade
- (13) Dock, Harbour and Port transport trade
- (14) Coconut growing trade
- (15) Coconut manufacturing trade
- (16) Rubber growing and manufacturing trade
- (17) Beedi manufacturing trade
- (18) Baking trade
- (19) Brick and tile manufacturing trade
- (20) Cinnamon trade
- (21) Ice and aerated waters manufacturing trade
- (22) Coir, mattress and bristle fibre export trade
- (23) Garments manufacturing trade
- (24) Hosiery manufacturing trade
- (25) Tobacco trade
- (26) Biscuit and confectionery trade
- (27) Paddy hulling trade

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(28) Textile manufacturing trade

(29) Tyre and tube manufacturing, tyre re-building and rubber and plastic goods manufacturing trade

(30) Tanning, footwear and leather goods manufacturing trade

(31) Building trade

(32) Soap and perfumery trade.

B. Every shop and every office within the meaning of the Shop and Office Employees (Regulation of Employment and Remuneration) Act.

C. Every factory within the meaning of the Factories Ordinance.