



The Kerala Industrial Employees Payment of Gratuity Act, 1970

Act 6 of 1970

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**THE KERALA INDUSTRIAL EMPLOYEES' PAYMENT OF GRATUITY ACT,
1970 [1]**

ACT 6 OF 1970 [1]

An Act to provide for the payment of gratuity to the employees in factories, plantations and other establishments in the State of Kerala

Preamble.- WHEREAS it is expedient to provide for the payment of gratuity to the employees in factories, plantations and other establishments in the State of Kerala;

BE it enacted in the Twenty-first Year of the Republic of India as follows:-

I. Short title , extent and application.- (1) This Act may be called The Kerala Industrial Employees' Payment of Gratuity Act, 1970.

(2) It extends to the whole of the State of Kerala.

(3) It shall apply in the first instance to -

(a) any factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act 63 of 1948);

(b) any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) which admeasures 10.125 hectares or more or in which ten or more persons are employed on the date of the commencement of this Act;

(c) any establishment as defined in clause (8) of section 2 of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960);

(d) any establishment as defined in clause (h) of section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966) where ten or more persons are employed;

(e) any motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961):

Provided that the Government may, after giving not less than two months' notice of its intention so to do, by notification in the Gazette, apply the provisions of this Act to any other factory, plantation, establishment or undertaking to which the provisions of this Act as such do not apply.

2. Definitions. In this Act, unless the context otherwise requires _

(a) "completed year of service" means uninterrupted service for one year and includes service which may be interrupted by sickness, accident, leave, strike, lock-out or cessation of work not due to employee's fault;

(b) "continuous service" means uninterrupted service and includes service which may be interrupted by sickness, accident, leave, strike, lock-out or cessation of work not due to employee's fault;

(c) "controlling authority" means the authority appointed by the Government under section 3;

(d) "employee" means any person employed in any factory, plantation, establishment or undertaking to do any skilled or unskilled, manual or clerical or supervisory work for hire or reward but does not include any such person-

(i) whose monthly wages exceed rupees seven hundred and fifty; or

(ii) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957 or the Toddy Workers' Welfare Fund Act, 1969 (Kerala Act 22 of 1969); or

(iii) who is employed in the police service or as an officer or other employee of a prison;

(e) "employer" means-

(i) in relation to any factory, plantation, establishment or undertaking which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the Department;

(ii) in relation to any factory, plantation, establishment or undertaking under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person, who or the authority which has the ultimate control over the affairs of the factory, plantation, establishment or undertaking and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, superintendent or by any other name, such person;

(f) "family" means-

(i) in the case of a male employee, the wife, children whether married or unmarried, dependant parents of the employee and the widow and children of a deceased son of the employee;

(ii) in the case of a female employee, the husband and children of the employee, dependant parents of the employee or of the husband and the widow and children of a deceased son of the employee;

Provided that if a female employee by notice in writing to the controlling authority expresses her desire to exclude her husband from the family, the husband and his dependant parents shall no longer be deemed to be part of the employee's family for the purposes of this Act unless the employee subsequently cancels in writing any such notice;

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;

(g) "prescribed" means prescribed by the Government by rules made under this Act;

(h) "retirement" means termination of the services of an employee for any cause, but does not include superannuation;

(i) "superannuation" means termination of the services of an employee by the employer when the employee reaches the age of sixty years or such other age, if any, fixed in the contract of service;

(j) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment expressed or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and includes-

(i) such allowances (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

but does not include bonus, commission, overtime wages and night allowance.

3. Controlling Authority.- The Government may appoint, by notification in the Gazette, any person to be the controlling authority who shall be responsible for the administration of this Act.

4. Payment of gratuity.- (1) Gratuity shall be payable to an employee-

(a) on his superannuation;

(b) on his retirement, resignation, retrenchment, discharge or dismissal from service after completion of a minimum period of five years of continuous service;

(c) on his death or total disablement due to accident or disease.

Explanation.-For the purpose of this section, total disablement means such disablement, whether of temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement.

(2) In 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 the family of the employee.

(3) In the cases referred to in clauses (a), (b) and (c) of sub-section (1), the employer shall pay gratuity to each of his employees at the rate of fifteen days' wages based on the last drawn wages for every completed year of service or part thereof in excess of six months:

Provided that the maximum amount of gratuity payable to an employee shall not exceed fifteen months' wages:

Provided further that nothing in this section shall affect the right of any better terms of gratuity or retirement benefits under any award or agreement or contract with the employer:

Provided also that in the case of voluntary retirement or resignation from service in any particular year, not more than five percent of the total number of employees in the factory, plantation, establishment or undertaking shall be entitled to payment of gratuity and if the number of employees who voluntarily retire or resign from service exceeds five percent of the total number of employees, the eligibility of an employee for payment of gratuity shall be determined on the basis of the length of the service of the employee in the factory, plantation, establishment or undertaking:

Provided further that an employee who voluntarily retires or resigns from service shall be eligible to claim gratuity only if one month's notice in writing of his intention so to retire or resign had been given to the employer.

5. Power to exempt.- The Government may, by notification in the Gazette, and subject to such conditions as may be specified in the notification, exempt any factory, plantation, establishment or undertaking to which this Act applies from the operation of the provisions of this Act, if in the opinion of the Government, the employees or class of employees in any such factory, plantation, establishment or undertaking are in receipt of benefits superior to the benefits conferred under this Act.

6. Nomination.- (1) Each employee who has completed one year of service shall make a nomination in the prescribed form to the employer conferring the right to receive the amount payable to him under this Act in the event of his death before the amount

becomes payable, or where the amount has become payable but payment has not been made.

(2) An employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst his nominees at his own discretion.

(3) If an employee has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such employee in favour of a person not belonging to his family shall be invalid.

(4) If at the time of making a nomination the employee has no family, the nomination may be in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith be deemed to be invalid and the employee shall make a fresh nomination in favour of one or more persons belonging to his family .

(5) A nomination made under sub-section (1) may, at any time, be modified by an employee after giving a written notice of his intention of doing so in the prescribed form to the employer. If the 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.

(6) A nomination or its modification shall take effect to the extent it is valid on the date on which it is received by the employer.

7. Application for gratuity and procedure for payment.- (1) Any employee who is eligible for payment of gratuity under this Act 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 notice in writing to the employee and the controlling authority specifying the amount and the employer shall arrange to pay the amount to the employee within such time as may be prescribed.

(3) In case an employee who is eligible to get gratuity under this Act dies before receiving the amount of gratuity due to him, the gratuity amount shall be paid to his nominee or in the absence of a nominee to his family.

8. Recovery of gratuity amount.- (1) If the amount of gratuity due to an employee from an employer under this Act is not paid by the employer within the time prescribed, the controlling authority may, after due enquiry, by order determine the amount and shall issue a certificate for that amount to the Collector who shall recover the same as arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force.

(2) For the purposes of conducting an enquiry under sub-section (1) the controlling authority shall have the same powers as are vested in a court for 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 affidavit;

(d) issuing commissions for the examination of witnesses.

(3) Any enquiry 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.

(4) No order determining the amount of gratuity under sub-section (1) shall be made unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may, prefer an appeal to the Government or any other authority as may be specified by the Government, within sixty days from the date of the receipt of the order and the decision of the Government or of such authority on such appeal shall be final.

9. Penalties.- (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other 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) Whoever contravenes, or makes default in complying with, any of the provisions of this Act or any rules 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. Protection for acts done in good faith. No suit, or other legal proceeding shall lie against the controlling authority or any other authority in respect of anything which is in good faith done or intended to be done under this Act or any rules made thereunder.

11. Delegation of powers.-The Government may, by notification in the Gazette, direct that any power exercisable by them under this Act or the rules made thereunder shall be exercisable also by such other authority as they deem fit.

12. Power to make rules.- (1) The Government may, by notification in the Gazette, make rules for the purposes 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 duties, functions and powers of the controlling authority;

(b) the forms to be prescribed under this Act;

(c) any other matter which is to be prescribed.

(3) 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. Repeal and Saving.- (1) The Kerala Industrial Employees' Payment of Gratuity Ordinance, 1969 (7 of 1969), 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 10th day of December, 1969.