

TERMINATION OF EMPLOYMENT OF WORKMEN
(SPECIAL PROVISIONS)

Act
No. 45 of 1971.
Law
No. 4 1976.
Act
No. 51 of 1988.

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

[21st May, 1971]

Short title.

1. This Act may be cited as the Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971.

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

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

- (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 Commissioner 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 discretion, 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
- (f) any decision made by the Commissioner under the preceding provisions of this subsections shall be final and conclusive, and shall not be called in question whether by way of writ or otherwise -
 - (i) in any court, or
 - (ii) in any court, tribunal or other institution established under the Industrial Disputes Act.

[§2, Law 4
of 1976]

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(3) Any person who fails to comply with any decision made by the Commissioner under subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable 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.

[§2, Law 4
of 1976.]

(4) 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 -

- (a) non-employment of the workman in such employment by his employer, whether temporarily or permanently, or
- (b) non-employment of the workman in such employment in consequence of the closure by his employer of any trade, industry or business.

[§ 2, 51
of 1988]

(5) Where any employer terminates the scheduled employment of any workman by reason of punishment imposed by way of disciplinary action the employer shall notify such workman in writing the reasons for the termination of employment before the expiry of the second working day after the date of such termination.

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 hundred and eighty days inclusive of-
 - (i) every day of absence on any ground approved by the employer;
 - (ii) every day of absence due to any injury to the workman caused by an accident arising out of, and in the course of his employment;
 - (iii) every day of absence due to anthrax or any occupational disease specified in Schedule III of the Workman's Compensation Ordinance (Chapter 139);
 - (iv) every day on which the employer fails to provide work for the workman;
 - (v) every day of absence due to a lockout, or strike that is not illegal, if such days do not in the aggregate exceed thirty days; and
 - (vi) every holiday or day of absence from work to which a workman is entitled, by or under, the provisions of any written law,

[§3, 51
of 1988]

in the continuous period of twelve months commencing from the date of employment if such termination takes place within that period of twelve months; or

[§3, Law 4 of 1976]

- (c) to the termination of employment of any workman who has been employed by an employer where such termination was effected by way of retirement in accordance with the provisions of -
 - (i) any collective agreement in force at the time of such retirement; and
 - (ii) any contract of employment wherein the age of retirement of such workman is expressly stipulated; or
- (d) to the Government in its capacity as an employer; or
- (e) to the Local Government Service Commission in its capacity as an employer; or
- (f) to any local authority in its capacity as an employer; or
- (g) to any co-operative society in its capacity as an employer; or
- (h) to any public corporation in its capacity as an employer; or
- (i) 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.

[§3, Law 4 of 1976]

(2) The other provisions of this Act shall be read and construed subject to the provisions of subsection (1), and in particular, but without prejudice to the generality of the preceding provisions

of this subsection, the terms “employer”, “employers”, “workman” and “workmen” occurring in such other provisions shall be so read and construed.

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

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

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

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.

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

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.

Provisions relating to termination of scheduled employment by closure of any trade, industry or business. [§4, Law 4 of 1976]

6A. (1) Where the scheduled employment of any workman is terminated in contravention of the provisions of this Act in consequence of the closure by his employer of any trade, industry or business, the Commissioner may order such employer to pay to such workman on or before a specified date any sum of money as compensation as an alternative to the reinstatement of such workman and any gratuity or any other benefit payable to such workman by such employer.

(2) Where the Commissioner orders any sum of money to be paid to a workman under subsection (1) the Magistrate's Court having jurisdiction in the area where such workman is or was employed by his employer shall, if satisfied on the written petition of such workman that payment of such money has not been made within the time specified in that behalf by the Commissioner, make order that the amount of such money shall be paid by such employer to such workman and that such amount if not paid in compliance with the order, be recovered in like manner as a fine imposed by the Court, and the amount so recovered shall be paid to such workman.

No order to be made after six months of making the application and rights of workman to seek other legal remedy. [§4, 51 of 1988]

6B. (1) No order shall be made by the Commissioner under section 6 or section 6A in pursuance of an application made by a workman unless such application was made within six months of the termination to which such application related.

(2) Nothing in this Act shall be read and construed as effecting section 2 or section 5 of this Act or the rights of a workman whose employment has been terminated to apply for any other legal remedy in respect of such termination or as effecting the jurisdiction of any court, tribunal or institution to grant relief in respect of such termination.

Failure to comply with the provisions of section 6 to be an offence. [§5, 51 of 1988]

7. (1) Where an employer fails to comply with an order made under section 6 or section 6A 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.

(2) In any prosecution for an offence under subsection (1), the burden of proving that the employer has complied with an order made under section 6 or section 6A shall lie on the accused.

Additional
punishment for
an offence
under section 7.

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

(a) to pay, in addition to any punishment that may be imposed on such employer under that section, a fine of fifty rupees for each day on which the failure is continued after conviction thereof; and

[§6.51 of 1988]

(b) (i) to pay the workman, in any case where the offence relates to non-compliance with an order made under section 6, the wages and benefits specified in that order and wages and benefits which would have been payable to him, if he had been in employment for the period commencing on the date specified in the order made under section 6 and ending on the date of conviction of such employer; or

(ii) to pay the workman, in any case where the offence relates to non-compliance with an order made under section 6A, the sum of money specified in such order.

(2) Any sum which an employer is liable to pay under paragraph (b) of subsection (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 136 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.

Administration
of this Act
vested in the
Commissioner.

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

(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.

Powers of inspection
& c. of the
Commissioner.

12. (1) The Commissioner shall have power -

(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;
- (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.

(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 subsection (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) hinder 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 produce or causes or 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

[§5, Law 4 of 1976]

- (f) (i) fails without cause, which in the opinion of the Commissioner is reasonable, to appear before the Commissioner at the time and place mentioned in any summons issued under subsection (2) of section 12 of this Act; or
- (ii) refuses or fails without cause, which in the opinion of the Commissioner is reasonable, to produce and show to the Commissioner any document or other thing which is in his possession or power and which is in the opinion of the Commissioner necessary for arriving at the truth of the matters being inquired into by the Commissioner; or
- (iii) refuses to be affirmed or sworn as a witness before the Commissioner; or
- (g) 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.

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

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

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

Appearance before the Commissioner.
[§7, Law 4 of 1976]

17A. In any proceedings at any inquiry held by the Commissioner, the employer or the workman may be represented by an officer of a trade union of which such employer or workman is a member.

Offence of contempt against or in disrespect of the Commissioner.
[§7, Law 4 of 1976]

17B. (1) Where any person -

- (a) insults or intimidates the Commissioner during the progress of any inquiry conducted by such Commissioner;
- (b) interferes with the lawful process of such Commissioner,

such person shall be deemed to commit the offence of contempt against or in disrespect of the authority of such Commissioner.

(2) Every offence of contempt committed against or in disrespect of the authority of such Commissioner shall be punishable by the Court of Appeal under Article 105 (3) of the Constitution.

(3) Every complaint of contempt committed against or in disrespect of the authority of such Commissioner shall be communicated to the Court of Appeal by letter signed by such Commissioner.

(4) The Court of Appeal may, upon receiving a communication referred to in subsection (3), take cognizance of and try in a summary manner such offence of contempt committed against or in disrespect of the authority of such Commissioner.

* Section 16 is repealed by Law No.4 of 1976.

(5) In any proceedings against any person for the offence of contempt committed against or in disrespect of the authority of such Commissioner, such Commissioner shall not be liable to be summoned as a witness by the first mentioned person but the Court of Appeal may, if it considers it necessary to do so, examine such Commissioner.

Service of
Notice.

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.
[§8, Law 4 of 1976]

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

“collective agreement” has the same meaning as in the Industrial Disputes Act;

“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 Law;

“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 subsection (1) of section 3, the provisions of this Act, other than section 3, do not apply;

“local authority” includes 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.

[§8, Law 4 of 1976]

“public corporation” means any corporation, board or other body which was or is established by or under any written law, other than the Companies Ordinance,* with capital wholly or partly provided by the Government by way of grant, loan or other form;

[§9, Law 4 of 1976]

“scheduled employment” means employment in -

(a) any trade, in respect of which a notification has been published in the Gazette under subsection (2) of section 6 of the Wages Boards Ordinance of an order made under subsection (1) of that section and shall include the work of any worker referred to therein but excluded from the provisions of such order;

(b) every shop and every office within the meaning of the Shop and Office Employees (Regulation of Employment and Remuneration) Act; or

(c) every factory within the meaning of the Factories Ordinance;

[§8, Law 4 of 1976]

[§8, Law 4 of 1976]

“trade union” means any trade union (whether of employer or of workman) registered under the Trade Unions Ordinance;

“worker” has the same meaning as in the Wages Boards Ordinance;

“workman” has the same meaning as in the Industrial Dispute Act, but does not

* Repealed and replaced by the Companies Act, No.17 of 1982.

= See Pradeshiya Sebhass Act, No. 15 of 1987 which repealed and replaced both the Town Councils Ordinance and the Village Councils Ordinance.

include a workman to whom, by virtue of the operation of the provisions of subsection (1) of section 3, the provisions of this Act, other than section 3, do not apply.

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

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.

Date of
operation of Act.

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