

CHAPTER 635

CO-OPERATIVE EMPLOYEES COMMISSION

Act AN ACT TO ESTABLISH AND INCORPORATE A COMMISSION TO BE KNOWN AS THE
No. 12 of 1972. CO-OPERATIVE EMPLOYEES COMMISSION, TO MAKE SPECIAL PROVISION IN
RESPECT OF EMPLOYEES OF CO-OPERATIVE SOCIETIES, AND TO PROVIDE FOR
MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[21st March, 1972.]

Short title. **1.** This Act may be cited as the Co-operative Employees Commission Act. (3) A person shall not be qualified for appointment as a member of the Commission, if he is—

Power of Minister to exempt co-operative societies from the succeeding provisions of this Act. **2.** The Minister may, by Order published in the Gazette, exempt from the succeeding provisions of this Act— (a) an employee or a past employee of a co-operative society; or

(a) any such class of co-operative societies as shall be specified therein; or (b) a person who is a member of any body of persons which, in the opinion of the Minister, is a staff association, or trade union, which has as its objects, or one of its objects, the regulation of salaries, wages or conditions of service of any category of persons employed by co-operative societies; or

(b) any such co-operative society as shall be so specified, (c) a person who is an officer of a co-operative society according to the law relating to co-operative societies; or

and accordingly the expression "co-operative society", wherever it occurs in such provisions, shall be read and construed to mean a co-operative society in respect of which any such Order is not for the time being in force. (d) a person who is for the time being a Member of Parliament.

PART I

CONSTITUTION, POWERS AND FUNCTIONS OF THE CO-OPERATIVE EMPLOYEES COMMISSION

Establishment of Co-operative Employees Commission. **3.** For the purposes of this Act, an authority to be called and known as the Co-operative Employees Commission shall be established. **5.** The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate capacity. *Incorporation of the Commission.*

Constitution of the Commission. **4.** (1) The Commission shall be constituted in accordance with the succeeding provisions of this section. **6.** Each member of the Commission shall hold office for a period of three years from the date of his appointment: *Term of office of members.* Provided that notwithstanding the term of any such appointment—

(2) The Commission shall consist of three members appointed by the Minister. (a) any such member may at any time resign his office or be removed from office by the Minister; and

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(b) any such member shall, upon his becoming disqualified in terms of section 4 (3), ipso facto, vacate his office;

Provided, further, that any person who is appointed to fill any vacancy caused by the death, resignation or removal from or vacation of office, of any such member shall, unless he vacates office earlier, hold office during a period equal to the unexpired portion of the term of office of the member in whose place he is appointed and no longer.

Chairman,
and conduct
of business.

7. (1) The Minister shall appoint one of the members of the Commission to be its Chairman. The Chairman shall preside at all meetings of the Commission at which he is present. In the absence of the Chairman from any meeting of the Commission any member chosen by those present may preside thereat.

(2) Two members shall constitute the quorum for a meeting of the Commission.

(3) If at any meeting only two members of the Commission are present and such members are divided in opinion as to the decision to be taken on any question, such question shall be referred to a meeting at which the three members of the Commission are present.

(4) If at any meeting, at which the three members of the Commission are present, the members of the Commission are divided in opinion as to the decision to be given on any question, such question shall be decided according to the opinion of the majority of the members present, but if the members are equally divided, then, the Chairman shall have a casting vote.

(5) The Commission may regulate its own procedure in any matter not provided for in this Act or any regulation made thereunder.

(6) Any act or proceeding of the Commission shall not be invalid by reason only of the existence of a vacancy among its members or any defect in the appointment of any of its members.

Remuneration
of members.

8. The Chairman and members of the Commission shall be paid such

remuneration and such allowances as may be determined by the Minister, in consultation with the Minister in charge of the subject of Finance.

9. (1) There shall be a Secretary of the Commission who shall be a member of the Ceylon Administrative Service.

Secretary and
other officers.

(2) The other members of the staff of the Commission shall be appointed from the transferable services of the Government.

10. (1) The members of the Commission shall, on first appointment, take an oath or make an affirmation in the form set out in the Schedule to this Act.

Taking of
oaths by
members and
officers of the
Commission.

(2) The Secretary to the Commission, and such of the other officers of the Commission as may be required so to do by the Chairman thereof, shall, on first appointment, take an oath or make an affirmation in the form set out in the Schedule to this Act.

11. (1) The Commission shall have the following powers:—

Powers of the
Commission.

(a) to determine all matters relating to methods of recruitment to, and conditions of employment of, employees of, co-operative societies, and the principles to be followed by such societies in making appointments and in making promotions from one post in a co-operative society to another post in the same society;

(b) to conduct examinations for recruitment as employees of co-operative societies or to appoint boards of examiners for the purpose of conducting such examinations and to charge fees from candidates presenting themselves for examinations;

(c) to determine the qualifications necessary for appointment to any such post, to fix the scales of salaries to be attached to any such post or posts in any class or grade, to revise or adjust such scales of salaries, from time to time, in

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- consultation with the Commissioner and to establish such consultative machinery as the Commission may deem necessary to assist it in determining the remuneration and conditions of service of co-operative employees;
- (d) to require co-operative societies to pay salaries in accordance with the salary scales fixed by the Commission for any post or posts in any class or grade;
- (e) to determine the procedure or procedures to be followed by any co-operative society in exercising its rights of disciplinary action against its employees, to call upon any co-operative society to complete disciplinary inquiries against its employees within a time stipulated by the Commission, and to hear appeals arising out of any disciplinary orders made by any co-operative society;
- (f) to call upon any co-operative society to keep the prescribed records relating to employees of that society;
- (g) to call upon any co-operative society to furnish before a specified date such files, other documents or information as the Commission may require in respect of any employee of that society ;
- (h) to nominate a panel or panels of officers to make such inquiries as are necessary on appeals that are referred by the Commission to such panel or panels and to report thereon to the Commission;
- (i) to require any co-operative society to carry out such instructions, including instructions relating to reinstatement, as may be given by the Commission in regard to any employee of such society, where the conduct of the employee has been the subject of an inquiry and the employee had appealed to the Commission against the decision of the society;
- (j) to determine the general principles in accordance with which gratuity or other benefits may be granted to employees on the termination of their services;
- (k) to advise the Minister, in consultation with the Commissioner, in regard to the exemption of any co-operative society or class of co-operative societies from the operation of this Act;
- (l) to exercise such other powers in relation to co-operative societies and their employees as may be vested in the Commission by Order made by the Minister and published in the Gazette.
- (2) In the exercise of the powers vested in the Commission by subsection (1), the Commission may modify, vary or revise or set aside any decisions or determinations made by the Commission.
- 12.** The expenses of the Commission shall be paid out of the moneys provided for the purpose by Parliament under the Annual Appropriation Act.

Financial provisions.

PART II

CO-OPERATIVE SOCIETIES AND THEIR EMPLOYEES

- 13.** A co-operative society which for the time being pays out of its funds the salary and other emoluments of any employee shall be deemed to be the employer of such employee.
- 14.** Any co-operative society, and any employee of such society, shall be subject to such directions as may be given by the Commission under this Act, and all decisions of the Commission in the discharge and exercise of its functions and powers under this Act, subject to the provisions of section 11 (2), shall be final, and shall be binding on all such co-operative societies as are not exempted from the operation of this Act by Order made under section 2 by the Minister and on the employees of such societies-

Co-operative society to be an employer.

Co-operative societies and their employees to be subject to directions of the Commission.

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Directions of Commission to be binding upon employees of co-operative societies.

15. All directions given by the Commission in regard to any employee of any co-operative society, subject to the provisions of section 11 (2), shall be final and binding upon such employee as-if such directions were given by such society.

Introduction of terms and conditions of service and options as to their acceptance.

16. (1) The first terms or conditions of service to be introduced by the Commission shall be effective from the appointed date or, in the case of the first salary scales to be introduced, such later date or dates as the Commission may prescribe.

(2) Every employee employed prior to September 2, 1970, shall be given the option to remain in service, if he so wishes, on the terms and conditions of service which applied to him immediately prior to such date.

(3) Any employee who opts to remain in service on the terms and conditions of service which applied to him immediately prior to the appointed date shall, within sixty days after the appointed date, in writing notify the co-operative society in which he is employed of such option, and an employee who fails to give such notice within that period shall be deemed to have accepted the terms and conditions of service prescribed by the Commission.

(4) Any employee who opts to remain in service on the terms and conditions of service which applied to him immediately prior to the appointed date shall be required to accept the terms and conditions of service prescribed by the Commission in the event of his accepting an offer of promotion at any time after the appointed date.

(5) All appointments, made to posts in any co-operative society, on or after the appointed date, shall be on the terms and conditions of service prescribed by the Commission, and all promotions made prior to the appointed date, which are to take effect on or after that date, shall be subject to the approval of the Commission and shall be regarded as appointments on or after the appointed date.

(6) All options exercised under this section whereby the terms and conditions of service prescribed by the Commission are accepted, shall be irrevocable.

17. (1) The Commission may, in its absolute discretion, require any employee to satisfy the Commission, by examination or otherwise, of his proficiency and fitness to hold that office:

Examination of serving officers and restriction on application of new terms and conditions of service.

Provided that the preceding provisions of this subsection shall apply only to such category or categories of employees as may be prescribed.

(2) Where the holder of an office to which subsection (1) applies fails to satisfy the Commission of his proficiency and fitness to hold such office, the Commission shall endeavour to place him, with his consent, in an office which, in the opinion of the Commission, is commensurate with his abilities, and in default of such placement, the Commission may, in its absolute discretion, require that his employment be terminated by his co-operative society in accordance with the terms and conditions of service then applicable to him or where no such terms exist, after giving reasonable notice.

(3) Where the holder of an office to which subsection (1) applies opts to accept the terms and conditions of service prescribed by the Commission, he shall not be entitled to such terms and conditions of service, unless and until he has satisfied the Commission in accordance with the provisions of subsection (1).

18. No person shall be appointed to any post in a co-operative society in any district unless that person has been resident within that district for a period of at least two years:

Residential qualifications.

Provided, however, that where in the opinion of the Commission, no suitable candidate is available in any district for any post in any co-operative society in that district, the Commission may permit that society to fill that post by appointing a suitable person who may not have resided for two years within that district,

19. Any person appointed to a post in a co-operative society shall be assigned the scale of salary pertaining to that post in accordance with the grading of such society and the grade or class of employees as determined under section 29 (1).

Scales of salary of employees to be determined according to grading of a co-operative society and grade or class of employees.

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Secondment of Government servants.

20. Notwithstanding any other provisions of this Act, the Commission may, with the approval of the Minister and with the consent of the person and the co-operative society concerned, appoint to any office in the co-operative society, a person in the service of the Government seconded for service in that society for that purpose, for such period and on such terms and conditions as the Commission may approve.

For the purposes of this section, "Minister" means the Minister in charge of the Government department where the person is employed.

Salaries of employees of co-operative societies.

21. Every co-operative society shall out of its funds pay the salary and other allowances, if any, of its employees.

Transfer of employees of co-operative societies.

22. (1) A co-operative society shall have the power to transfer any employee of such society from any one of its work places to any other of its work places, and where such transfer is made for any reason other than on disciplinary grounds, such transfer shall not adversely affect the emoluments of any such employee.

(2) The Commission shall have the power to transfer any employee of a co-operative society to another co-operative society as an employee of the latter society at the joint request of two employees holding posts of similar status, provided that the concurrence of the respective employers has been previously obtained.

Dismissal and punishment of employees of co-operative societies.

23. (1) No employee of a co-operative society shall be dismissed or otherwise punished by any co-operative society except in accordance with the provisions of this Act or any regulations made thereunder.

(2) Nothing in the preceding provisions of this section shall be deemed to render it unlawful for any co-operative society to commence proceedings in accordance with such provisions, or to continue and complete as far as possible in accordance with such provisions any proceedings pending on the appointed date against any of its employees in respect of any misconduct or breach of discipline or other cause of complaint which may have occurred or arisen before such date.

24. (1) A co-operative society shall not require any employee to furnish by way of security an amount in excess of such sum as the Commission may prescribe.

Security furnished by employees of co-operative societies.

(2) Any cash security furnished by any employee of a co-operative society shall be invested in a bank in the name of the society, and any interest accruing thereon shall be paid to that employee.

25. (1) Regulations may be made—

Regulations relating to employees.

(a) in respect of the recruitment, appointment, promotion, transfer, resignation and termination of services of employees of co-operative societies;

(b) prescribing such terms and conditions of employment of such employees and providing for salary scales, the payment of allowances and gratuities, the grant of advances, promotion, leave, the interdiction of officers, the termination of appointments, dismissals or the imposition of any other form of punishment to such employees and any appeal therefrom; and

(c) in respect of such other matters relating to the terms of employment, or the conditions of service, of such employees as are deemed necessary.

(2) Every regulation made in respect of any matter referred to in subsection (1) shall be binding on all co-operative societies and their employees.

26. Every co-operative society shall—

Duties of co-operative society in respect of its employees.

(a) keep and maintain in respect of every one of its employees the prescribed registers or records, and enter therein all such particulars relating to each such employee as may be prescribed;

(b) furnish to the Commission such returns or reports relating to its employees as may be prescribed or such information as the Commission may, from time to time, require; and

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(c) permit any member or servant of the Commission authorized in that behalf to enter any of its offices and to inspect and take copies of any books, accounts, records or other documents kept therein.

Provident Fund.

27. Every co-operative society which is an employer and every employee of such society shall contribute periodically to the Employees' Provident Fund such amounts as may be required by law.

Co-operative employees to be employees of the society and not of the Commission.

28. For the avoidance of doubt, it is hereby declared that all employees whether employed prior to the appointed date or after, are servants of, employed by and owe their loyalty to the society by which they are employed.

PART III

POWERS OF THE COMMISSIONER

Commissioner to grade societies and determine staff.

29. (1) The Commissioner shall have the power to grade each co-operative society for the purpose of fixing scales of salaries for posts in co-operative societies and to determine the grades or classes of employees and the number of employees in each such grade or class of any co-operative society and vary it as he may deem necessary from time to time.

(2) No co-operative society shall employ any person in contravention of the determination made by the Commissioner under subsection (1).

The Commission to secure the concurrence of the Commissioner regarding qualifications, salary scales, &c.

30. The Commission shall, with the concurrence of the Commissioner, determine the qualifications necessary for appointment to any post in co-operative societies, fix the scales of salary to be attached to any such post or posts in any class or grade and revise such scales of salaries from time to time.

PART IV

MISCELLANEOUS

Removal of difficulties.

31. If in giving effect to the provisions of this Act any doubt or difficulty arises in

respect of any matter or question for which no provision or no effective provision is made by this Act, the Minister may, by Order, remove or determine such doubt or difficulty. Every such Order shall be published in the Gazette, and upon such publication shall have the force of law and be as valid and effectual as if it were herein enacted.

32. (1) Unless otherwise expressly provided, the Commission may make all such regulations as may seem to the Commission to be necessary for carrying out the provisions of this Act or giving effect to the principles thereof, including regulations for all matters for or in respect of which regulations are authorized or required to be made under this Act, and all matters stated or required by this Act to be prescribed.

Commission to make regulations.

(2) No such regulation shall have effect until it has been approved by the Minister and notification of such approval has been published in the Gazette.

(3) Upon the publication in the Gazette of any notification under subsection (2), the regulation to which the notification relates shall be as valid and effectual as though it were herein enacted.

33. No action, prosecution or other proceeding, whether civil or criminal, shall be instituted or maintained against any individual member of the Commission in respect of any decision taken or act done or omitted to be done by him in his capacity as such member or by the Commission in its corporate capacity.

Immunity of individual members of the Commission.

34. Notwithstanding the provisions of this Act, a co-operative society may in the interests of its efficient operation—

Engagement of contractual, casual or daily-paid employees.

(a) engage the services of an expert or any specialist for any defined term on a contractual basis with the prior approval of the Commission ; or

(b) engage casual or daily-paid employees, or employees paid on a piece rate basis;

Provided, however, that no permanency of tenure of the office shall be granted to

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such employees without the concurrence of the Commission.

Offences. **35.** (1) Any co-operative society or any officer or employee thereof—

(a) which or who contravenes the provisions of this Act, or

(b) which or who wilfully neglects or refuses or fails to do any act required by the Commission to be done, or to furnish any information required for the purposes of this Act by the Commission or other duly authorized person, or

(c) which or who wilfully makes a false return or furnishes false information,

shall be guilty of an offence under this Act.

(2) Every co-operative society or person which or who commits any offence referred to in subsection (1) shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees.

(3) Where any offence under this Act is committed by a co-operative society, every officer of that society shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(4) On the conviction of any co-operative society for failure to carry out any such instructions given by the Commission as requires the reinstatement of any employee, such co-operative society shall be liable—

(i) to pay, in addition to any punishment that may be imposed on such co-operative society under subsection (2), a fine of fifty rupees for each day on which the failure is continued after conviction thereof; and

(ii) to pay such employee the remuneration which would have been payable to him if he had been in such service on each such day

and on each day of the period commencing on the date on which he should have been reinstated in service according to the instructions of the Commission and ending on the date of the conviction of such co-operative society, computed at the rate of salary or wages to which he would have been entitled if his services had not been terminated.

Any sum which a co-operative society is liable to pay under paragraph (ii) of this subsection may be recovered on the order of the court by which it was convicted as if it were a fine imposed on it by that court and the amount so recovered shall be paid to the employee.

36. Every person who, otherwise than in the course of his duty, directly or indirectly, by himself or by any other person, in any manner whatsoever influences or attempts to influence any decision of the Commission or any member thereof shall be guilty of an offence, and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

Interference with the Commission.

37. No member of the Commission, nor the Secretary of the Commission, nor any member of the staff of the Commission, nor any other person shall publish or disclose to any person, otherwise than in the exercise of his official functions, the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.

Unauthorized disclosure of information prohibited.

38. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member, or officer thereof, and any co-operative society or any member of the committee of management of such society or officer thereof, or between any member or officer of the Commission in the exercise of, or in connexion with the exercise of, any of the functions of the Commission, unless the Chairman shall consent in writing to such production or disclosure.

Communications of the Commission to be privileged.

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Certain enactments not to apply to co-operative societies and their employees.

39. Nothing in the Industrial Disputes Act shall apply, or be construed or deemed to apply, to or in relation to the Commission or any co-operative society in its capacity as employer or in relation to any employee in the employment of any co-operative society:

Provided, however, that the preceding provisions of this section shall not be deemed to affect any industrial dispute pending, on the day immediately preceding the appointed date, before an Industrial Court, or a Labour Tribunal, or an Arbitrator appointed under the Industrial Disputes Act.

Interpretation.

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

"appointed date " means the 21st day of March, 1972;

" Commission " means the Co-operative Employees Commission;

" Commissioner" means the Commissioner of Co-operative Development and Registrar of Co-operative Societies;

"co-operative society" means a society registered under the law relating to co-operative societies;

"district" means an administrative district established under the Administrative Districts Act;

"employee" means an employee of a co-operative society within the meaning of this Act;

" Minister " means the Minister to whom the subject or function of co-operative development has been assigned by the President;

"prescribed" means prescribed by regulation made by the Commission.

SCHEDULE

(Section 10)

Oath or affirmation of member of the Commission

I,..... having been appointed the Chairman/a member of the Co-operative Employees Commission do swear/solemnly and sincerely affirm that I will, without fear or favour, affection or ill-will, discharge the functions of the office of Chairman/Member of the Co-operative Employees Commission and that I will not, directly or indirectly, reveal any matters relating to such functions to any person otherwise than in the course of duty.

Sworn/ Affirmed before me this , day of. 19.

Judge of the Court of Appeal.

Oath or affirmation of officer of the Commission

I,..... having been called upon to exercise the functions of the Secretary of/an Officer of the Co-operative Employees Commission do swear/solemnly and sincerely affirm that [will not, directly or indirectly, reveal to any person otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as the Secretary of/an Officer of the Co-operative Employees Commission.

Sworn/Affirmed before me this day of, 19.

Chairman of the Co-operative Employees Commission.