

CHAPTER 162

PAYMENT OF GRATUITIES ETC. TO INDIAN REPATRIATES

Law No. 34 of 1978. A LAW TO PROVIDE FOR THE PAYMENT OF GRATUITIES AND OTHER MONETARY BENEFITS TO INDIAN REPATRIATES, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[31 st July, 1978.]

Short title. 1. This Law may be cited as the Payment of Gratuities and other Monetary Benefits to Indian Repatriates (Special Provisions) Law.

Employer's liability to pay gratuity to Indian repatriates, 2. (1) Every employer who has employed an Indian repatriate—

- (a) as a labourer, or
- (b) as a member of the staff,

on any estate for a period of not less than five years, shall pay such repatriate in respect of his services under that employer as a labourer or as a member of the staff, as the case may be, a gratuity computed in accordance with the rates set out in the Schedule hereto.

(2) The provisions of subsection (1), shall not apply to, or in relation to, an Indian repatriate who has been paid a gratuity in respect of such services by such employer on or before the date of commencement of this Law.

(3) Any payment of gratuity due to an Indian repatriate under subsection (1), shall, in the event of the death of such repatriate before receiving such payment, be paid to such person or persons as would have been entitled under section 24 of the Employees' Provident Fund Act to receive the amount referred to in that section, had such repatriate been a contributor to the Employees' Provident Fund.

Section 31B (1) (fc) of the Industrial Disputes Act not to apply to Indian repatriates.

3. An Indian repatriate who is a labourer or a member of the staff employed on any estate, or on his behalf, a trade union of which he is a member shall not be entitled to make an application for relief or

redress in respect of the payment of gratuity or other benefits under section 31B (1) (b) of the Industrial Disputes Act.

4. (1) Every application made to a labour tribunal under section 31B (1)(b) of the Industrial Disputes Act, on or before the date of commencement of this Law, by an Indian repatriate who is a labourer or a member of the staff employed on any estate or, on his behalf, by a trade union of which he is a member in respect of the payment of gratuity or other monetary benefits may, by motion at any time before a determination is made on that application, be withdrawn by such repatriate or such trade union and such tribunal shall make order allowing such motion.

Pending applications under section 31B (1)(b) of the Industrial Disputes Act.

(2) Where an order allowing a motion to withdraw an application has been made under subsection (1), the provisions of this Law relating to the payment of gratuity and other monetary benefits shall apply to the Indian repatriate in respect of whom such application was made to the labour tribunal, and accordingly the employer shall, within two weeks of the date of the said order, notify such repatriate the amount of gratuity and other monetary benefits due to him.

5. Every employer of an Indian repatriate to whom the provisions of section 2 apply shall—

Employer to notify the amount due and time limit within which payment is to be made.

- (a) notify such repatriate the amounts of gratuity and other monetary benefits due to him within two weeks of the date on which such employer certifies a claim under section 23 of the Employees' Provident Fund Act for the

payment of benefits under that Act due to such repatriate or, where such repatriate has made such claim or has received such benefits on or before the date of commencement of this Law, within two weeks of the date of commencement of this Law; and

- (b) pay such repatriate the amount of gratuity and other monetary benefits due to such repatriate within two weeks of the date on which such repatriate produces a permit from the Controller of Exchange for the transfer of his assets or the assets of his family.

Advance Account Fund.

6. (1) For the purposes of this Law there shall be established a fund to be known as the "Advance Account Fund" into which shall be paid—

- (a) any such sums of money as may be paid into the fund, for the purposes of this Law, out of the Consolidated Fund; and
- (b) any such sum of money as may be received by the Commissioner from the Tea Commissioner and the Rubber Controller under the provisions of this Law.

(2) The Commissioner shall be responsible for the administration of the Advance Account Fund.

Certificate of the Commissioner.

7. (1) Where on an application made for the payment of gratuity or other monetary benefits by an Indian repatriate or on his behalf by a trade union, the Commissioner is satisfied after such inquiry as he deems necessary that any employer has failed or refused to notify an Indian repatriate of the amount of gratuity or other monetary benefits due to such repatriate as required by this Law, or has notified an incorrect amount, the Commissioner shall issue a certificate specifying the amount of gratuity and other monetary benefits due to such repatriate from such employer. A copy of such certificate shall be sent by post to such repatriate and his employer.

(2) The correctness of any statement in the certificate issued by the Commissioner

under subsection (1) or the authority of the Commissioner to issue such certificate shall not be called in question in any court or tribunal by writ or otherwise.

(3) Where an employer fails or refuses to pay the amount of gratuity and other monetary benefits due to any Indian repatriate under or as required by this Law, the Commissioner shall have the power to make the payment of such amount of gratuity and other monetary benefits to such repatriate from the Advance Account Fund and notify such payment to the employer of such repatriate and to the Tea Commissioner or the Rubber Controller, as the case may be.

(4) Where the Commissioner makes any payment to any Indian repatriate from the Advance Account Fund under subsection (3), the employer of such repatriate shall be liable to pay to the Commissioner a surcharge on such payment in a sum, not exceeding fifty *per centum* of the amount as paid by the Commissioner to such repatriate, as the Commissioner may determine.

(5) Where the Commissioner makes any payment to any Indian repatriate under subsection (3), he shall notify such payment and the amount of surcharge payable thereon by the employer of such repatriate to such employer and the Tea Commissioner or the Rubber Controller, as the case may be.

(6) Where a notification under subsection (5) is received from the Commissioner, the Tea Commissioner or the Rubber Controller, as the case may be, shall have the power to pay to the Commissioner the amounts specified in such notification as payment of gratuity made to an Indian repatriate and surcharge payable thereon, from any monies payable to the employer of such repatriate under the Capital Fund or the Rubber Replanting Subsidy Fund, as the case may be.

Payments due to Indian repatriates employed on estates vested in the Land Reform Commission or acquired under the Land Acquisition Act.

8. (1) Where an estate on which an Indian repatriate was employed has been vested in the Land Reform Commission under the Land Reform Law, or has been acquired under the Land Acquisition Act, the Commissioner shall, after such inquiry as he may deem necessary, issue a certificate specifying the amount of gratuity and other monetary benefits due to such repatriate from the employer in respect of his services under such employer prior to the date of such vesting or acquisition.

(2) The correctness of any statement in the certificate issued by the Commissioner under subsection (1) or the authority of the Commissioner to issue such certificate shall not be called in question in any court or tribunal by writ or otherwise.

(3) Where the Commissioner issues a certificate under subsection (1) specifying the sum due to an Indian repatriate from his employer, the Land Reform Commission or the acquiring officer, as the case may be, shall make payment to such repatriate through the Commissioner, of such sum as may be certified, after such repatriate produces a permit from the Controller of Exchange for the transfer of his assets or the assets of his family.

(4) A copy of the certificate referred to in subsection (1) shall be sent by the Commissioner to the employer of the repatriate in respect of whom such certificate is issued.

(5) The sum paid by the Land Reform Commission or the acquiring officer to an Indian repatriate under the provisions of this Law, shall be a first charge on the compensation payable to the employer of such repatriate under sections 32 and 42J of the Land Reform Law or section 17 of the Land Acquisition Act, as the case may be, and such sum shall be deducted from the amount of compensation awarded to such employer.

Commissioner's power of entry and inspection.

9. (1) The Commissioner shall have power—

- (a) to enter and inspect at all reasonable hours of the day or night, any estate in which Indian repatriates are

employed, for the purpose of examining any register or record relating to them, or of ascertaining whether the provisions of this Law are being complied with;

- (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 as may be notified by the Commissioner;
- (c) to take copies of the whole or any part of any such register or record ;
- (d) to direct the employer to furnish all such information as he may require for the purpose of the exercise of the powers and the performance of the duties under this Law and it shall be the duty of such person to comply with such direction; and
- (e) to make such inquiries as he may consider necessary for the purposes of this Law.

(2) The Commissioner shall, for the purposes of any inquiry under this Law, have all the powers of a Magistrate's Court—

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

10. (1) Every person who—

- (a) hinders or obstructs the Commissioner in the exercise of the powers conferred by section 9 ; or
- (b) makes or causes to be made any register or record which is false in any material particular, or produces or causes or knowingly allows to be produced any such register or record to the Commissioner acting

under the powers conferred by section 9 knowing the same to be false; or

- (c) furnishes any information to the Commissioner knowing the same to be false; or
- (d) fails to comply with any direction given by the Commissioner; or
- (e) contravenes any provision of this Law,

shall be guilty of an offence and shall be liable on conviction before a Magistrate to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(2) Where an offence under this Law is committed by a body of persons then—

- (a) if the body of persons is a body corporate every director or officer of that body; or
- (b) if the body of persons is other than a body corporate every member of that body,

shall be deemed to be guilty of such offence:

Provided, however, that no such director, officer or member shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

11. The proceedings at any inquiry held by the Commissioner for the purposes of this Law, 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 may arise at such inquiry.

12. Any notice which is required by this Law 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 residence or business of such person; or
- (b) if it is sent to him by registered post addressed to the usual or last known place of residence or business of such person.

13. The provisions of this Law shall have force and effect notwithstanding anything in any other written law or in any contract of employment whether oral, written, express or implied ; and accordingly in the event of any conflict or inconsistency between the provisions of this Law and such other law or contract, the provisions of this Law shall prevail over any such law or contract.

Provisions of this Law to prevail over any other law.

14. In this Law, unless the context otherwise requires,—

Interpretation.

"acquiring officer" shall have the same meaning as in the Land Acquisition Act;

"Capital Fund" means the Capital Fund established under the Sri Lanka Tea Board Law;

"Commissioner" means the person for the time being holding the office of the Commissioner of Labour and includes—

(a) in respect of any power, duty or function of the Commissioner under this Law, other than sections 7 and 8, any person authorized in writing by the Commissioner to exercise such power, perform such duty or discharge such function;

(b) in respect of any power conferred on the Commissioner by sections 7 and 8 of this Law, any person for the time being holding the office of Deputy or Senior

Conduct of proceedings by Commissioner for purposes of this Law.

Service of notice.

- Assistant or Assistant Commissioner of Labour, or any labour officer;
- " date of commencement of this Law " shall mean the 31st day of July, 1978;
- " Employees' Provident Fund " shall have the same meaning as in the Employees' Provident Fund Act;
- " employer " means—
- (a) any person who employs or on whose behalf any other person employs any labourer or any member of the staff, or
 - (b) any person who on behalf of any other person employs any labourer or any member of the staff and includes a body of employers (whether such body is a firm, company, corporation or trade union) and any person or body of employers who or which has ceased to be an employer;
- " estate " shall have the same meaning as in the Estate Labour (Indian) Ordinance •
- " Indian repatriate " means a person recognized as a citizen of India by the Government of India under the Indo-Ceylon Agreement of 1964;
- " labourer " means any labourer and kangany (commonly known as Indian coolies) whose name is borne on an estate register, and includes the Muslims commonly known as Tulicans and includes any person who has ceased to be a labourer;
- " Land Reform Commission " shall have the same meaning as in the Land Reform Law;
- " member of the staff " means any person employed on an estate in any capacity other than as a labourer and includes any person who has ceased to be a member of the staff;
- " other monetary benefits " shall include arrears of wages, provident fund contributions and annual holiday wages; and
- "Rubber Replanting Subsidy Fund" means the Rubber Replanting Subsidy Fund established under the Rubber Replanting Subsidy Act.

[Section 2.]

SCHEDULE

The gratuity payable under section 2 of this Law to an Indian repatriate shall be computed at the following rates:—

(1) Rates applicable to labourers—

- (a) for each year of employment prior to the commencement of liability to make contributions to the Employees' Provident Fund—

(i) for a male	Rs. 35.00
(ii) for a female	Rs. 30.00

- (b) for each year of employment from the date of commencement of liability to make contributions to the Employees' Provident Fund up to December 31, 1970—

(i) for a male	Rs. 17.50
(ii) for a female	Rs. 15.00

(2) Rates applicable to members of the staff-

One month's gross salary for each year of employment based on the terminal salary less employer's contribution to any provident fund.