

THE KERALA INDUSTRIAL ESTABLISHMENTS NATIONAL AND FESTIVAL HOLIDAYS ACT, 1958

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¹THE KERALA INDUSTRIAL ESTABLISHMENTS NATIONAL AND FESTIVAL HOLIDAYS ACT, 1958

(Act 47 of 1958)

(As amended by Act 8 of 1959, 35 of 1979 and 24 of 1990)

An Act to provide for the grant of National and Festival holidays to persons employed in industrial establishments in the State of Kerala.

Whereas it is expedient to provide for the grant of National and festival holidays to persons employed in industrial establishments in the State of Kerala;

Be it enacted in the Ninth year of the Republic of India as follows:-

1. Short title, extent and commencement

- (1) This Act may be called the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958.
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force at once.

2. Definitions

In this Act, unless the context otherwise requires,

(a) "day" means a period of twenty-four hours beginning at midnight; (b) "employee" means

- (i) any person (including an apprentice) employed in any industrial establishment to do skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied;
- (ii) any other person employed in any industrial establishment whom the Government may, by notification in the Gazette, declare to be an employee for the purpose of this Act;

(c) "employer" when used in relation to an industrial establishment means a person who has the ultimate control over the affairs of the industrial establishment, and where the affairs of any industrial establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person;

(d) "holiday" means holiday as provided in this Act;

(e) "industrial establishment" means,-

- (i) any establishment, industrial, commercial or otherwise, where²[twenty] or more persons are employed, or were employed on any day of the preceding twelve months and includes

- (a) a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948); and

- (b) a plantation;

- (ii) any other establishment which the Government may, by notification in the Gazette, declare to be an industrial establishment for the purposes of this Act;

(f) "Inspector" means an Inspector appointed under sub-section (1) of section 6;

(g) "plantation" means any estate maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, which is ³[twelve hectares] or more in extent, or in which ⁴[Twenty or more persons] are employed, or were employed on any day of the preceding twelve months, for that purpose;

(h) "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 the work done by him in such employment and includes,

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

- (ii) the value of any house accommodation of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
but does not include-
 - (a) any bonus;
 - (b) any contribution paid or payable by the employer to any pension fund or provident fund, or for the benefit of the employee under any law for
the time being in force;
 - (c) any gratuity payable on the termination of the service;
 - (d) any sum paid to the employee to defray special expenses entailed on him by the nature of his employment;
 - (e) any travelling concession.

3. Grant of National and Festival Holidays

Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 15th August⁵[the 1st May and 2nd October and nine] other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees specify in respect of any industrial establishment.

⁶[Provided that in the case of an industrial establishment which commences work for the first time after the commencement of a calendar year, the number of holidays for festivals allowable to an employee under this section during the remainder of that calendar year shall be fixed by inspector, so however that the numbers^o fixed shall not be less than the number calculated at the rate of one day for every three months or part thereof of the remainder of such calendar year.]

4. Employer to display statement of holidays

Every employer shall display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed.

4A.⁷[Power of employer to require employee to work on holidays

- (1) Notwithstanding anything contained in Section. 3, an employer may, by notice in writing require any employee to work on any holiday allowed under that section.
- (2) The notice under sub-section (1) shall be served on the employee in the prescribed manner. One copy of the notice shall be sent to the Inspector and another copy thereof shall be displayed in the premises of the industrial establishment, not less than twenty four hours before such holiday.]

5. Wages

- (1) ⁸[Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under Section 3, whether or not the employer has not required, or could not require, him under sub-section (1) of Section 4A to work on that holiday or whether that holiday falls or does not fall during the period of a strike or illegal lock-out:

Provided that if such holiday falls during the period of a lay off, the employee shall be paid fifty per cent of the total of the basic wages and dearness allowance that he would have been entitled to, had he not been so laid off:

Provided further that no such employee shall be entitled to be paid any wages for any of the holidays if such holiday falls during the period of a strike which is illegal under section 24 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and such employee has participated in the strike.

Explanation: — For the purpose of this sub-section, the expression "strike", "lock-out" and "lay off" shall have the meanings respectively assigned to them in the Industrial Disputes Act, 1947 (Central Act of 1947)]

- (2) ⁹[Where an employee works on any holiday allowed under section 3, he shall be entitled to twice the wages and to avail himself of a substituted holiday on any other day.]
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3,
- (i) only at a rate equivalent to the daily average of his wages for the days on which he actually worked during ¹⁰[the thirty working days] immediately preceding such holiday;
 - (ii) ¹¹[where he works on any such holiday only at twice the rate mentioned in clause (i) and to avail himself of a substituted holiday with wages at that rate on any other day:

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under section 3, other than the 26th January, the 15th August and ¹²[the 1st May, and the 2nd October] unless he has been in the service under the employer for a total period of thirty days within a continuous period of ninety days immediately preceding such holiday.

Explanation:—A weekly or other holiday or authorised leave availed of by an employee shall be included in computing the period of thirty days mentioned in the preceding proviso].

- (4) Any amount due to an employee under this Act shall be recoverable as arrears of land revenue under the Revenue Recovery Act for the time being in force.

6. Inspectors

- (1) The Government may, by notification in the Gazette, appoint such person or such class of persons as they think fit to be Inspectors, for the purposes of this Act for limits as the Government may specify.
- (2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 n Penal Code (Central Act XLV of 1860).

7. Powers of Inspectors

Subject to any rules made by the Government in this behalf, an inspector may, within the local limits for which he is appointed,-

- (a) enter at all reasonable times and with such assistance, if any, who are persons in the Government or of any local authority as he thinks fit, to take with him, any place which he has reason to believe is, an industrial establishment;
- (b) make such, examination of the premises and of any prescribed registers, records and i take on the spot or otherwise the evidence of such person as he may deem necessary g out the purpose of this Act.
- (c) exercise such other powers as may be necessary for carrying out purposes of this Act;

Provided that no one shall be required under this section to answer any question or give any ending to incriminate himself.

8. Penalties

Any employer who contravenes any of the provisions of section 3 or section 5 punishable with fine which may extend to two hundred and fifty rupees.

9. Penalty for obstructing Inspector

Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand in an writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act, or of any rule made thereunder, shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

10. Exemptions

- (1) Nothing contained in this Act shall apply to
 - (a) any employee in a position of management;
 - (b) any employee whose work involves travelling;
 - (c) any industrial establishment under the control of the Central Government, the Reserve Bank of India, a railway administration operating any railway as defined in clause (2) of Article 366 of the constitution or a cantonment

authority;

(d) any mine or oil field.

- (2) The Government may, by notification in the Gazette exempt either permanently or for any specified period any establishment or class of establishments, or persons or class of persons from all or any of the provisions of this Act, subject to such conditions as the Government may deem fit.

11. Rights and privileges under other laws, etc., not affected

Nothing contained in this Act shall adversely affect any rights or privileges which any employee is entitled to With respect to national and festival holidays on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

12. Power to make rules

- (1) The Government may, by notification in the Gazette, make rules for purpose of carrying into effect the pro-Visions of this Act.
- (2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.
- (3) ¹³[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 agrees in making any modification in the rule or the Legislative Assembly agrees that the rule should not be made, the rule 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.]

1 Published in Kerala Gazeete Ex. No.145 dt. 29-12-1958.

2 Substituted for "fifty" by Act 8 of 1969, w.e.f. 1-1-1970.

3 Substituted for the words "fifty acres" by Act 8 of 1969, w.e.f. 1-1-1970

4 Substituted for the words "fifty or more persons" by Act 8 of 1969, w.e.f. 1-1-1970.

5 Substituted for "and the 1st May and four" by Act 24 of 1990, w.e.f. 15-9-1990.

6 Proviso added by Act 8 of 1969, w.e.f. 1-1-1970.

7 Inserted by Act 8 of 1969, w.e.f. 1-1-1970.

8 Substituted by Act 24 of 1990.

9 Substituted by Act 8 of 1969, w.e.f. 1-1-1970.

10 Substituted for "the month" by Act 35 of 1979, w.e.f. 8-11-1979.

11 Substituted by Act 8 of 1969, w.e.f. 1-1-1970.

12 Substituted for "and the 1st May" by Act 24 of 1990, w.e.f. 15-9-1990.

13 Subs-section (3) substituted by Act 8 of 1969, w.e.f. 1-1-1970.