

CHAPTER 168

SUPPLEMENTARY ALLOWANCE OF WORKERS

Act
No. 65 of 1979.

AN ACT TO PROVIDE FOR THE PAYMENT OF A SUPPLEMENTARY ALLOWANCE BY EMPLOYERS TO CERTAIN CATEGORIES OF WORKERS IN THE PRIVATE SECTOR AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[1st September, 1979.]

Short title.

1. This Act may be cited as the Supplementary Allowance of Workers Act.

total allowance payable for that month shall not exceed fifty-five rupees ; and

Competent authority.

2. (1) The Commissioner shall be the competent authority for the purposes of this Act.

(c) in the case of a worker who is employed on a piece-rate basis, the allowance payable shall be a sum not less than ten *per centum* of the wages due to him at such piece-rate during the month, so however that the allowance payable for that month shall not exceed fifty-five rupees.

(2) The competent authority may delegate to any officer of the Department of Labour any power, function or duty conferred or imposed on, or assigned to, such authority by this Act.

Payment of supplementary allowance.

3. (1) With effect from the 1st day of September, 1979, every employer, in any trade, of a worker whose total earnings for the month do not exceed one thousand five hundred rupees shall in respect of each month, pay to every such worker employed by him an allowance (in this Act referred to as the "supplementary allowance") calculated on the following basis :—

(2) Every employer of a worker whose total earnings for the month exceed one thousand five hundred rupees but are less than one thousand five hundred and fifty-five rupees, shall, in respect of each month, pay to such worker as allowance, an amount equivalent to the difference between one thousand five hundred and fifty-five rupees, and the amount drawn by such worker as salary or wages for that month.

(a) in the case of a worker remunerated at a monthly rate, the allowance payable shall be a sum of fifty-five rupees :

Provided, however, that in the case of a worker who does not work for the requisite number of days as prescribed by any written law or contract for any reason other than the failure of the employer to provide work for such worker, the allowance payable to such worker shall be in proportion to the number of days he has worked for the month, so however that such allowance shall not exceed fifty-five rupees ;

(3) Every worker who is entitled to the Supplementary Allowance and is also entitled to a Cost of Living Allowance determined in accordance with the Colombo Consumers' Price Index or to a special allowance payable under the Wages Boards Ordinance shall, as long as this Act is in force, not be entitled to any Cost of Living Allowance in excess of the amount determined in accordance with the Cost of Living Index figure of 245.9 or to such special allowance in excess of the amount paid for the month of September, 1979, unless such Cost of Living Allowance or such special allowance in respect of any month exceeds the aggregate of the Cost of Living Allowance determined in accordance with the aforesaid Cost of Living Index figure or the special allowance paid for the said month of September and the supplementary allowance, in which case such worker shall in respect of that month be entitled, in addition to the supplementary allowance, to be paid the amount of such excess.

(b) in the case of a worker paid at a daily rate, the allowance payable shall be a sum of two rupees and fifty cents per day for each day he has worked during the month, so however that the

SUPPLEMENTARY ALLOWANCE OF WORKERS [Cap.168

(4) Where a worker who is entitled to the Supplementary Allowance is also entitled to a Non-Recurring Cost of Living Gratuity in accordance with, or on the basis of, the provisions of any Collective Agreement or in terms of any Order made by the Minister under section 10 (2) of the Industrial Disputes Act or by reason of his employer voluntarily agreeing to pay such gratuity, such worker shall, as long as this Act is in force and notwithstanding anything to the contrary in such Agreement or Order, not be entitled to a Non-Recurring Cost of Living Gratuity in excess of the following amounts :—

- (a) where the Cost of Living Index is at a figure not exceeding 245.9, the amount determined in accordance with such figure ;
- (b) where the Cost of Living Index is at a figure exceeding 245.9 but not exceeding 273.4, the amount determined in accordance with the Cost of Living Index figure of 245.9 ; and
- (c) where the Cost of Living Index is at a figure exceeding 273.4, the aggregate of—
 - (i) the amount determined in accordance with the difference between such figure and the Cost of Living Index figure of 273.4 ; and
 - (ii) the amount determined in accordance with the Cost of Living Index figure of 245.9.

4. The provisions of this Act shall have force and effect notwithstanding anything in any other written law or in any Collective Agreement or other agreement or in any contract of employment whether oral, written, expressed or implied ; and accordingly in the event of any conflict or inconsistency between such provisions and any such other law, Collective Agreement or other agreement or contract, such provisions shall to the extent of such inconsistency prevail over such other law, Collective Agreement, other agreement or contract.

5. Subject to the provisions of subsections (3) and (4) of section 3, every worker who has been employed by any employer in any trade on the day immediately prior to the 1st day of September, 1979, shall, for so long as he continues to be a worker of such employer, continue to be so employed on such terms and conditions relating to salary, allowances or other payments in money by whatsoever name or designation called (excluding the supplementary allowance payable under this Act) as are not less favourable than those which such worker had enjoyed on the day immediately prior to the 1st day of September, 1979.

Special provisions regarding continuation of employment.

6. (1) The employer of a worker in any trade shall maintain and keep in the premises in which that trade is carried on, a register setting out—

Duty of employer to maintain register.

- (a) the name of each worker employed by him ;
- (b) the class of work performed by each worker employed by him ; and
- (c) the amount paid to each such worker in accordance with the provisions of this Act.

(2) Every employer who maintains or has maintained a register under subsection (1), shall preserve such register for a period of six years commencing on the 1st day of September, 1979, and shall, when required to do so by the competent authority, produce such register for inspection or furnish a true copy of such register or permit such a copy to be made.

7. The competent authority shall have the power—

Powers of competent authority.

- (a) to enter and inspect at all reasonable hours of the day or night any place in which workers in any trade are employed, for the purpose of examining any register or of ascertaining whether the provisions of this Act are being complied with ; or
- (b) if any such register is not available for examination when he is inspecting such place, to require the production of such register on a specified later date for examination

This Act to have force and effect notwithstanding anything in any other written law, &c.

at such place or at the office of such authority ; or

- (c) to take copies of the whole or any part of any such register ; or
- (d) to interrogate any person whom he finds in such place and whom he has reasonable cause to believe is an employer of workers employed in any trade carried on in such place ; or
- (e) to direct, in writing, any employer of workers in any trade to furnish to him on or before a specified date—
 - (i) a return relating to all workers employed by any such employer or any specified class or description of such workers and containing such other particulars as he may require for the purposes of this Act ;
 - (ii) such information or explanation as he may require in respect of any particulars stated in any return furnished by any such employer ; or
 - (iii) a true copy of the whole or any part of any register maintained by any such employer.

Offences and penalties.

8. Every person who—

- (a) fails to comply with the provisions of section 6 ; or
- (b) fails to furnish such means as are necessary for any entry or inspection by the competent authority for the exercise of his powers under section 7 ; or
- (c) hinders or obstructs such authority in the exercise of the powers conferred by that section ; or
- (d) refuses to produce any register or furnish any information which such authority requires him to produce or furnish ; or
- (e) makes or causes to be made in any register, any statement which is

false in any material particular, or produces, or causes or knowingly allows to be produced, any register containing a false statement to such authority, knowing the same to be false ; or

- (f) furnishes any information to such authority acting under the powers conferred by that section, knowing the same to be false ; or
- (g) makes default in complying with any directions given by such authority under section 7, or who, when called upon to furnish a return under that section, knowingly makes or furnishes or causes to be made or furnished, a return containing any false statement,

shall be guilty of an offence and shall be liable on conviction 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.

9. The supplementary allowance payable to a worker under this Act shall be deemed for all purposes of written law, including—

Payment due under this Act to constitute part of a worker's wages.

- (a) contributions to Employees' Provident Fund and pension ;
- (b) annual holiday remuneration ;
- (c) overtime remuneration ;
- (d) maternity benefits payments ; and
- (e) bonuses and gratuities,

to constitute part of his wages, and accordingly every employer of such worker shall pay such supplementary allowance within the period within which such employer is required by any written law to pay the wages or salary of such worker.

10. (1) Any employer who fails to pay a sum required to be paid to a worker of such employer under this Act or fails to comply with the provisions of section 5 or section 9 shall be guilty of an offence and shall be liable on conviction 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.

Failure to pay sum due to workers.

SUPPLEMENTARY ALLOWANCE OF WORKERS [Cap.168]

(2) Upon conviction by the Magistrate of an employer for failure to pay any sum required to be paid to a worker of such employer under this Act, the court shall, in addition to any other penalty which it may impose for such offence, order such employer to pay such sum to such worker within a period specified in the order, and if such sum is not so paid, such sum shall be recovered and paid to such worker on the order of the court, as if it were a fine imposed by the court.

Recovery of sums due to workers in certain cases.

11. (1) Where an employer has been convicted for failure to pay any sum required to be paid to a worker of such employer under this Act, then, if a notice in the prescribed form of intention so to do has been served on the employer at any time before the date of commencement of the trial, evidence may be given of any failure on the part of the employer to pay any sum in accordance with the provisions of this Act to that worker or any other worker or workers at any time during the six years preceding the date on which the complaint was made to court of the offence of which the employer has been so convicted and, on proof of the failure, the court may order the employer to pay such sum as it may be found by the court to be due from him to such worker or workers. Any sum ordered to be paid under this subsection may be recovered in the same manner as a fine.

(2) In this section "prescribed" means prescribed by regulation made under section 12.

Regulations.

12. (1) The Minister may make regulations in respect of matters for which regulations are authorized or required to be made under this Act.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any

regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the Gazette.

13. In this Act, unless the context Interpretation. otherwise requires—

"Collective Agreement" shall have the same meaning as in the Industrial Disputes Act ;

"Commissioner" means the person for the time being holding the office of Commissioner of Labour and includes any person for the time being holding office as a Deputy Commissioner of Labour or as a Senior Assistant Commissioner of Labour or as Assistant Commissioner of Labour or as a labour officer ;

"earnings" shall have the same meaning as in the Employees' Provident Fund Act ;

"employer" means any person who on his own behalf employs, or on whose behalf any other person employs, any worker in any trade and includes any person who on behalf of any other person employs any worker in any trade ;

"trade" includes any industry, business, undertaking, occupation, profession or calling carried on, performed or exercised by an employer or worker, and any branch of, or any function or process in, any trade, but does not include any industry, business or undertaking which is carried on by any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance*, with funds

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

or capital wholly or partly provided by the Government by way of grant, loan or otherwise ;

wages " or " salary " shall mean the aggregate of—

- (a) the contractual wage or salary of the worker or the wage prescribed by the relevant Wages Board for the trade to which the worker belongs ;
- (b) any amount payable to the worker under the Interim Devaluation Allowance of Employees Act ;
- (c) any amount payable to the worker under the Budgetary Relief Allowance of Workers (No. 1) Law;
- (d) any amount payable to the

worker under the Special Allowances of Workers Law ;

- (e) any amount payable to the worker under the Budgetary Relief Allowance of Workers (No.2) Law ; and

- (f) any amount payable to the worker in accordance with the provisions of or on the basis of any Collective Agreement ;

" worker " means a person employed in any capacity by any employer under a contract whether oral, written, expressed or implied to perform any work in any trade and includes a worker whose salary or wages are regulated by any written law or otherwise and a worker employed on a piece-rate basis but does not include a domestic servant or an employer's personal chauffeur.