

CHAPTER 171

SERVICE CONTRACTS

Ordinances Nos. 11 of 1865, 16 of 1884, 16 of 1905, 23 of 1912, 41 of 1916, 43 of 1921, 27 of 1927.

AN ORDINANCE TO AMEND AND CONSOLIDATE THE LAW RELATING TO SERVANTS, LABOURERS, AND JOURNEYMEN ARTIFICERS UNDER CONTRACTS OF HIRE AND SERVICE.

[1 st July, 1866.]

Short title. 1. This Ordinance may be cited as the Service Contracts Ordinance.

Interpretation. 2. The word "servant" shall, unless otherwise expressly qualified, extend to and include menial, domestic, and other like servants, pioneers, kanganies, and other labourers, whether employed in agricultural, road, railway, or other like work.

Verbal contract of service to be a contract of service for one month. 3. Every verbal contract for the hire of any servant, except for work usually performed by the day, or by the job, or by the journey, shall (unless otherwise expressly stipulated, and notwithstanding that the wages under such contract shall be payable at a daily rate) be deemed and taken in law to be a contract for hire and service for the period of one month, and to be renewable from month to month, and shall be deemed and taken in law to be so renewed, unless one month's previous notice or warning be given by either party to the other of his intention to determine the same at the expiry of a month from the day of giving such notice.

Wages when payable. 4. (1) The wages of such servant shall be payable monthly, except where the service shall have been determined by notice on a day other than the last day of the month, in which case the wages for the broken period shall be payable to the day the service is so determined, and such wages, where the same shall not be payable at a monthly rate, shall be computed according to the number of days on which such servant shall have been able and willing to work ; or, if payable at a monthly

rate, shall be in proportion to the number of days on which he shall have been so able and willing as aforesaid. Any employer shall be entitled to discharge any such servant from his service under any such contract, without previous notice, provided such servant be instantly paid his wages for the time he has served, and also for one month from the time of such discharge:

Provided always that any such contract may at any time be determined by the misconduct of either party in their relative capacity of master and servant, which may be proved by either party against the other.

(2) Where any contract is so determined by misconduct on the part of the master, he shall pay to a servant, justly demanding discharge on account of such misconduct, wages up to the date of discharge and in addition, in the case of a servant employed on a contract for hire and service for a period of time, a sum equivalent to the wages which would be earned by such servant during the period of his engagement, such period however not exceeding one month for the purpose of this section.

(3) Where a master summarily discharges a servant employed and paid by the day on account of misconduct on the part of the servant, he shall pay to such servant wages earned by him up to the date of discharge, and in the case of a servant employed on a contract for hire and service for a period of time longer than one day, it shall be lawful for the master in his discretion to decline to pay any wages claimed by such servant subsequent to the last day of the last

preceding period for which such servant was employed, provided that payment of wages earned shall not be so refused for any period exceeding one month reckoned from and immediately prior to the date of discharge.

(4) Any master failing to pay, on the day when the contract of service is determined, the wages of any servant which may be due to such servant under this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty rupees.

Term of verbal contract for journeyman artificer.

5. Every verbal contract for the hire, according to time, of any journeyman artificer (where no special contract or agreement shall have been made and duly proved) shall be deemed and taken in law to be a contract for the hire of such artificer for one day, and no longer.

Proviso, if service be continued after the time agreed upon.

6. Provided always that nothing in the preceding sections of this Ordinance shall be construed to prevent any servant or journeyman artificer, who may continue in the service of his employer beyond the period for which any verbal contract entered into by him is respectively declared binding only in law, as aforesaid, from recovering his wages according to the full period of time of his being in such service; nor to prevent any similar subsequent verbal contract being respectively implied in law from the continuance of such service or otherwise.

Written contracts with servants and journeymen artificers for terms of service exceeding one month, but not exceeding three years.

7. No contract entered into in Sri Lanka for the hire and service of any servant or journeyman artificer for any period of time longer than one month shall be valid in law, so as to subject any party thereto to the provisions of this Ordinance for not performing the same, unless such contract shall be in writing and shall clearly express the terms and conditions thereof, and shall be signed or acknowledged by the parties thereto in the presence of a Magistrate, or a Justice of the Peace, or other person expressly authorized by the Minister in charge of the subject of Justice, such Justice or other person not being himself the employer of such servant or journeyman artificer or the agent of such employer. And it shall be the duty of such Magistrate, Justice of the Peace, or other authorized person to see that the contract is fully

explained to the parties, and to certify on the contract that they fully understand the terms thereof and are desirous to fulfil the same. And such contract, when produced in evidence and bearing the certificate of the Magistrate, Justice of the Peace, or duly authorized person as aforesaid shall be prima facie evidence of the matters and things contained therein. And every such contract shall be executed in triplicate; and it shall be the duty of such Magistrate or Justice of the Peace, or other authorized person as aforesaid, to give or to cause to be given one copy thereof to the servant, and to send or to cause to be sent, within ten days of the execution thereof, another copy thereof to the Magistrate of the district wherein such contract shall have been executed, and in default thereof such Magistrate or Justice shall be liable to a penalty of fifty rupees. And the said Magistrate is hereby required to preserve the said counterpart, and to allow any person who may be interested in the said contract to inspect the same:

Provided always that no contract (excepting contracts made under section 8 of this Ordinance) for the hire and service of any servant or journeyman artificer (whether made in Sri Lanka or in India, as provided by section 9) shall be valid under the provisions of this Ordinance if made for a longer period of hire or service than three years.

8. It shall be lawful for the Director of Buildings or of Highways or the Surveyor-General, or any other person expressly authorized thereunto by a Minister, to enter into any contract on behalf of the Republic of Sri Lanka, for the hire and service of any person to be employed as a servant or artificer for any period not exceeding five years:

Contracts for the hire of persons to be employed in the service of Government.

Provided that such contract, if made for a period of hire or service exceeding one month, shall (if entered into in Sri Lanka) be in writing, and shall be executed in the same manner and be subject to the same rules as are prescribed in the preceding section as respects contracts in the case of persons to be employed in service other than that of the Government.

Contracts entered into in India for hire and service in Sri Lanka.

9. Every contract entered into in India for the hire and service in Sri Lanka of any servant or journeyman artificer shall be valid and binding so as to subject the parties thereto to the provisions of this Ordinance, notwithstanding that the same be not executed in the manner prescribed by sections 7 and 8 of this Ordinance :

Provided that such contract be in writing and signed or acknowledged by the parties thereto or their agents respectively, and clearly express the terms and conditions thereof; and provided also that such contract be valid and binding according to the laws of India in force at the time of the entering into such contract; and every such contract as aforesaid when produced in any court of Sri Lanka shall be deemed valid and binding according to such laws as aforesaid, unless the contrary be proved. It shall be the duty of such employer or his agent with whom any such contract shall be entered into to give, at the time of entering into such contract, a copy thereof to the servant or journeyman artificer with whom such contract shall have been entered into.

Written contracts how determinable.

10. Unless provision to the contrary be expressly made therein, no contract entered into and required to be in writing under the provisions of this Ordinance shall be determinable before the expiration of the period specified therein, except by the mutual consent of the contracting parties, expressed in writing, signed or acknowledged by them in the presence of two witnesses, or except when the party contracting to be employed shall have been convicted of an offence, or have become a prisoner, or permanently disabled from completing his contract, and his employer shall elect to determine the contract, or except for some reason sufficient in law to set it aside:

Provided that, in case of such disability to serve, the employer shall be bound to furnish the immigrant from India who shall have contracted in India for any period of service in Sri Lanka, or who shall have contracted in Sri Lanka for any period of service not less than one year, with adequate means of returning to his own country.

11. Upon any complaint by any servant or journeyman artificer for non-payment of wages, or damages for breach of contract or misconduct by his employer, before a court having jurisdiction in that behalf, it shall be lawful for such court, at its discretion, to make a proportional abatement out of any sum to be awarded as the wages or damages due to any such servant or artificer, for such days or time as he shall have been proved to have been, without the consent of his employer, absent from or neglecting his service or work, and also for the value of any breakages or damage done to any of the property of his employer by or through the misconduct or gross negligence or carelessness of such servant or journeyman artificer.

Court may make abatement of wages or damages in case of misconduct.

12. If any person shall knowingly and wilfully pretend or falsely assert in writing that any servant or journeyman artificer has been hired or retained in his service or employment, or in the service or employment of any other person or persons, for any period of time whatsoever or in any station or capacity whatsoever, other than that for which such servant or artificer shall have been so employed, hired, or retained, or if any person shall otherwise knowingly and wilfully write, sign, or give any untrue, false, forged, or counterfeit certificate or writing in favour of the character of such servant or artificer, then in every such case such person or persons so offending shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour not exceeding twelve months, or to such fine together with such imprisonment, at the discretion of the court.

Persons giving false character.

13. If any person shall offer himself as a servant or journeyman artificer, asserting or pretending that he hath served in any service or employment in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his character or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing contained or referred to in any certificate given to him by his last or any former actual employer, or by any other person or persons duly authorized by such employer to give the same, then in any of the said cases such person or persons so offending shall be liable on conviction to a

Servant, &c., making false statement of former employment or altering character.

fine not exceeding thirty rupees, or to imprisonment, with or without hard labour, not exceeding three months, or to such fine together with such imprisonment, at the discretion of the court.

thereupon be entitled to determine such contract, if he shall so elect, and give notice of such being his intention to the person in whom the estate shall have become vested or to whom it shall have been transferred, and shall receive all wages then due to him under or by virtue of such contract:

Servant, &c., denying former employment.

14. If any person, having been before in service or employment as a servant or artificer, shall, when offering to hire himself in any employment, capacity, or service, falsely and wilfully pretend not to have been hired or retained in any such previous employment, capacity, or service, then and in such case every such person so offending shall be liable on conviction to a fine not exceeding thirty rupees, or to imprisonment, with or without hard labour not exceeding three months, or to such fine together with such imprisonment, at the discretion of the court.

Provided, however, that the last-mentioned proviso shall not be held to apply to cases where estates are held in partnership by several persons, and where one or more of the partners retire from the partnership, or when, on such retirement, other partner or partners shall take the place of the retiring partner or partners, one or more of the original partners who were parties to the contract continuing in the partnership.

Transfer of contract of service to new proprietor or manager of estate.

15. If the estate upon which any agricultural servant or journeyman artificer is employed under any contract to serve for a period exceeding one month shall, during the pendency of such contract, become vested in or be transferred to or placed under the superintendence or management of any person other than the person with or by whom such contract was entered into, such contract and all the rights and liabilities incidental thereto shall be deemed in law to be transferred to the person in or to whom the said estate shall become vested or transferred as aforesaid, or under whose superintendence or management the said estate shall be placed as aforesaid, and such last-mentioned person and such servant or artificer shall be respectively bound to perform all the terms and conditions of the contract in the same manner, or as near thereto as the nature of the case will admit, as if the contract had been originally entered into between such person and such servant or artificer:

16. Neither the alleged commission of any crime or offence by any person or persons under the provisions of this Ordinance, nor the conviction nor acquittal of any person or persons of any crime or offence under this Ordinance, shall be a bar to any civil action for damages against such person or persons at the instance of any person or persons who may have suffered any injury, or who may allege that he or they has or have suffered any injury from or by reason of the commission of any such crime or offence.

Penal provisions of this Ordinance not to affect civil actions.

17. Any servant who shall be incapacitated by sickness from labour whilst in the service of any employer shall be entitled to lodging, food, as well as medical care, at the expense of such employer during such incapacity:

Employer bound to find lodging, food, and medical care to sick servant.

Provided that the employer shall not be bound to pay to the servant during such period his wages in addition;

Provided always that in case such estate shall become vested in or transferred to any person other than the person with whom such contract shall have been entered into, such servant or journeyman artificer shall

Provided further, that nothing herein contained shall prevent the employer from determining the contract under section 10 of this Ordinance in case the servant shall become permanently disabled from completing his contract.