

BUDGETARY RELIEF ALLOWANCE OF WORKERS (NO. 2)

Law
No. 18 of 1978.

A LAW TO PROVIDE FOR THE PAYMENT OF A BUDGETARY RELIEF ALLOWANCE BY EMPLOYERS TO CERTAIN CATEGORIES OF WORKERS, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[17th February , 1977.]

Short title.

1. This Law may be cited as the Budgetary Relief Allowance of Workers (No. 2) Law.

Competent authority.

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

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

Budgetary relief allowance.

3. (1) With effect from the 17th day of February, 1977, every employer in any trade who employs not less than twenty-five workers shall, in respect of each month, pay to each worker whose total earnings for the month do not exceed eight hundred rupees, an allowance, in this Law referred to as the “ budgetary relief allowance “, which is not less than fifteen rupees :

Provided that -

- (a) where the employer is an employer in the tea growing and manufacturing trade, or the rubber growing and manufacturing trade, or the cocoa, cardamom and pepper growing and manufacturing trade, or the coconut growing trade, or the cinnamon or the tobacco trade, the budgetary relief allowance payable to each worker shall be six *per centum* of the amount payable to such worker as wages for the number of days he has worked during the month, or fifteen rupees, whichever is less, and such allowance shall be payable irrespective of the number of workers employed by such employer ; and
- (b) where the employer is a co-operative society, the budgetary relief allowance shall be payable irrespective of the number of workers employed by such co-operative society, and in the case of a casual worker, such allowance shall be in proportion to the number of days he has worked for the month.

(2) Where a worker is employed on a piece-rate basis, or a daily-rate basis, the budgetary relief allowance payable under this Law shall be a sum not less than six *per centum* of the wages payable to him on a piece-rate basis or a daily-rate basis, as the case may be, so however, that the amount payable under this subsection shall not exceed fifteen rupees per month.

(3) Every employer of a worker whose total earnings for the month exceed eight hundred rupees, but are less than eight hundred and ninety rupees, shall, in respect of each month, pay to such worker as the budgetary relief allowance, an amount equivalent to the difference between eight hundred and ninety rupees and the amount drawn by such worker as salary or wages for that month.

(4) Notwithstanding the preceding provisions of this section, the budgetary relief allowance shall not be payable to a worker :-

- (a) to whom Collective Agreement No. 5 of 1967 applies ;
- (b) to whom the employer, voluntarily or otherwise, pays wages and a non-recurring Cost of Living Gratuity which are not less favourable than the amount payable under the Collective Agreement referred to in paragraph (a);

- (c) to whom the employer pays a Cost of Living Allowance determined in accordance with the Colombo Consumers' Price Index ;
- (d) who is employed in an institution declared to be an approved charity under section 16A of the Inland Revenue Act, No. 4 of 1963, or under section 31 (9) (a) of the Inland Revenue Act (No. 28 of 1979), as the case may be ;
- (e) whose employer is bound by an Order under section 10 (2) of the Industrial Disputes Act, in respect of any Collective Agreement published in *Gazette* No. 14,975 of September 10, 1971, and pays wages and a non-recurring Cost of Living Gratuity in terms of any such agreement, where the total number of workers employed by such employer is less than twenty-five.

This Law to have force and effect not with standing anything in any other written law.

4. The provisions of this Law shall have force and effect not with standing 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 any such other law or such contract, the provisions of this Law shall, to the extent of such inconsistency, prevail over any such other law or such contract.

Special provisions regarding continuation of employment.

5. Every worker including an unskilled worker who has been employed in any of the trades specified in this Law on the day immediately prior to the 17th day of February, 1977, shall, for so long as he continues to be a worker of such employer, continue to be so employed by such employer on such terms and conditions relating to salary, allowances or other payments in money by whatsoever name or designation called, as are not less favourable than those which such worker had enjoyed on the day immediately prior to the 17th day of February, 1977, other than any such allowances as were paid to him under Emergency Regulations made under section 5 of the Public Security Ordinance, and the allowance payable under the preceding provisions of this Law shall be in addition to such salary, allowances or other payments.

Maintenance of records by employers.

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, in respect of the workers employed in that trade, showing:-

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

(2) Every person who, as an employer, maintains or has maintained under subsection (1) any record shall preserve such record for a period of four years commencing on the date on which the record was required to be maintained under this Law and shall, when required to do so by the Commissioner, produce such record for inspection and furnish a true copy of such record or permit such copy to be made.

Powers of competent authority.

7. The competent authority shall have the power : -

- (a) to enter and inspect at all reasonable hours of the day or night any place in which workers referred to in this Law are employed, for the purpose of examining any register or record of wages, or of ascertaining whether the provisions of this Law are being complied with ; or
- (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 or at his office ; or
- (c) to take copies of the whole or any part of any such register or record ; or

(d) to interrogate any person whom he finds in such place and whom he has reasonable cause to believe is an employer or a worker engaged or employed in any trade carried on in such place ; or

(e) to direct in writing any employer to whom this Law applies 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 particulars as he may require for the purposes of this Law ;

(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 or record maintained by any such employer.

offences and penalties.

8. Every person who, on or after the 17th day February 1977 : -

(a) fails to comply with the provisions of section 6 ; or

(b) fails to furnish the means required by the competent authority as necessary for any entry or inspection or the exercise of his powers under section 7 ; or

(c) hinders or molests such authority in the exercise of the powers conferred by section 7 ; or

(d) refuses to produce any register or record of wages, or give any information which such authority requires him to produce or give under the powers conferred by section 7 ; or

(e) makes or causes to be made any register or record of wages which is false in any material particular, or produces or causes or knowingly allows to be produced any register or record to such authority acting under the powers conferred by section 7, knowing the same to be false ; or

(f) makes default in complying with any direction given by such authority under section 7 or who, when called upon to furnish a return under the said section 7, knowingly makes or furnishes or causes to be made or furnished, a false return or 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 both to such fine and imprisonment.

Payments due under this Law to constitute part of a worker's wages.

9. Any sum due to a worker under section 3 shall, for all Purposes of any written law or otherwise, be deemed to constitute part of his wages and accordingly every employer of such worker shall pay such sum within the period of his liability to pay the wages of such employee.

Failure to pay sum due to workers.

10. (1) Any employer who fails to pay a sum a required to be paid to a worker of such employer under this Law 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.

(2) Upon conviction by the Magistrate's Court of an employer for an offence by reason of the failure of such employer to pay any sum required to be paid to a worker of such employer under this Law, the court may, in addition to any other penalty which it may have imposed 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 may be recovered and paid to such worker on the order of the court as if it were a fine imposed by the court.

Regulations.

11. (1) The Minister may make Regulations for the purpose of carrying out or giving effect to the principles and provisions of this Law.

(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. Every regulation which is not so approved shall be deemed to be rescinded as from the date of 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*.

Interpretation.

12. In this Law, unless the context otherwise requires :-

“Collective Agreement” has 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 an Assistant Commissioner of Labour or as a labour officer ;

“co-operative society” means a co-operative society registered or deemed to be registered under the Co-operative Societies Law ;

“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 body corporate or unincorporate whose capital is wholly provided by the Government in its capacity as an employer or which is carried on mainly for the purpose of giving an industrial training to juvenile offenders or orphans or persons who are destitute, dumb, deaf or blind ; and

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