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NOTIFICATIONS

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THE BOMBAY LABOUR WELFARE FUND ACT, 1953 (BOMBAY ACT XL OF 1953)

*As Extended to The Union Territory of Delhi*¹

An Act to provide for the constitution of a Fund for the financing of activities to promote welfare of labour in the State of Maharashtra for conducting such activities and for certain other purposes.

Whereas it is expedient to constitute a Fund for the financing of activities to promote, welfare of labour in the State of Maharashtra for conducting such activities and for certain other purposes. It is hereby enacted as follows:-

1. Short title, extent and commencement

- (1) This Act may be called the Bombay Labour Welfare Fund Act, 1953.
- (2) It extends to the whole of the Union territory of Delhi.
- (3) It shall come into force on such date² as the Administrator may, by notification in the Delhi Gazette, appoint in this behalf.

2. In this Act, unless the context otherwise requires:-

- (1) "Administrator" means the Administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution.
- (1A) "Board" means for Delhi Labour Welfare Board constituted under section 4;
- (1AA) "contribution" means the sum of money payable to the Board in accordance with the provisions of section 6BB;
- (2) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual, clerical, supervisory, or technical in an establishment but does not include any person-
 - (a) who is employed mainly in a managerial capacity, or
 - (b) who, being employed in a supervisory capacity draw as wages exceeding one thousand and six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office, or by reason of the powers vested in him, functions mainly of a managerial nature;
- (3) "employer" means any person who employs either directly or through another person either on behalf of himself or any other person, one or more employees in an establishment and includes-

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1. *Vide* GSR 1286(E) dt. 15.12.1986 as published in GOI Part II 3(i) (E) d t. 15.12.1987.
 2. In exercise of the powers conferred by sub-rule (3) of rule 1 of the Delhi Labour Welfare Fund Rules, 1997 the Government of National Capital Territory of Delhi is pleased to notify August 15th, 1998 as the date on which the Delhi Labour Welfare Fund Rules, 1997 shall come into force vide notification No. F. 9(1) /89-DLC (W)/LC/ (i) /677dt. 14.8.98.

- (i) in a factory, any person named under section 7(1)(f) of the Factories-Act, 1948 (LXIII of 1948) as the manager;
- (ii) in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

(4) "establishment" means-

- (i) a factory;
- (ii) a tramway or motor omni bus service or a motor transport undertaking to which the Motor Transport Workers Act, 1961 applies; and .
- (iii) any establishment within the meaning of the Delhi Shops and Establishments Act, 1954, which employs, or on any working day during the preceding twelve months, employed five or more persons:

Provided that any such establishment shall continue to be an establishment for the purposes of this Act notwithstanding a reduction in the number of persons to less than five at any subsequent time:

Provided further that, where for a continuous period of not less than three months the number of persons employed therein has been less than such establishment shall cease to be an establishment for the purposes of this Act with- effect from the beginning of the month following the expiry of the said period of three months, but the employer shall within one-month from the date of such cessation, intimate by registered post the fact thereof to such authority as the Administrator may specify in this behalf:

Explanation. -For the removal of doubt, it is hereby declared that where an establishment has different branches or departments, all such branches or departments whether situated in the same premises or different premises, shall be treated as parts of the same establishment;

(5) "Factory" means a factory as defined in section 2(m) of the Factories Act, 1948, (LXIII of 1948) and includes any place wherein five or more persons are employed or working, and-

- (i) where in any manufacturing process is being carried on with the aid of power or is ordinarily so carried on;
- (ii) which is deemed to be a factory under section 85 of the said Act;

(6) "Fund" means the Labour Welfare Fund constituted under section 3;

(7) "independent member" means a member of the Board who is not connected with the management of any establishment or who is not an employee and includes an officer of Government nominated as a members;

(8) "Inspector" means an Inspector appointed under section 12;

(9) "Prescribed" means prescribed by rules made under this Act;

(10) "unpaid accumulation" means all payments due to the employees but not made to them within a period of three years from the date on which they became the whether before or after the commencement of this Act including the wages, and gratuity legally payable but not including the amount of contribution, if any, paid by an employer to a provident fund established under the Employees' Provident Funds Act, 1952 (XIV of 1952);

(11) "wages" means wages as defined in section 2(vi) of the Payment of Wages Act, 1936 (4 of 1936) and includes bonus payment under the Payment-of Bonus Act, 1965 (21 of 1965);

(12) "Welfare Commissioner" means the Welfare Commissioner appointed under section 11.

2A. Deleted by Maharashtra Act 36 of (1961)

3. Welfare Fund

(1) The Administrator shall constitute a fund called the Labour Welfare Fund, and notwithstanding anything contained in any other law for the time being in force or in any contract or instrument; all unpaid accumulations shall be paid at such intervals as may be prescribed to the Board, which shall keep a separate account therefor until claims thereto have been decided in the manner provided in section 6A, and the other sums specified in sub-section (2) shall be paid into 'the Fund.

(2) The Fund shall consist of-

- (a) all fines realised from the employees;
- (b) unpaid accumulations transferred to the Fund under section 6A;
- (bb) any penal interest paid under section 6B;
- (bbb) any contribution paid under section 6BB;
- (c) any voluntary donations;
- (d) any fund transferred under sub-section (5) of section 7;
- (e) any sum borrowed under section 8;
- (f) any loan, grant-in-aid or subsidy paid by the Government.

(3) The sums specified in sub-section (2) shall be paid, or collected by such agencies, at such intervals and in such manner and the accounts of the Fund shall be maintained and audited in such manner as may be prescribed.

4. (1) The Administrator shall, by notification, in the Delhi Gazette constitute the Board for the whole of the Union territory of Delhi for the purpose of administering the Fund, and to carry on such other functions assigned to the Board by or under this Act. The Board shall consist to the following members of exceeding twenty-six in number, namely. -

- (a) such number as may be prescribed of representatives of employers and employees to be nominated by the Administrator:

Provided that both employers and employees shall have equal representation on the Board;

- (b) such number of independent members as may be prescribed, nominated by the Administrator; and
- (c) such number of independent members as may be prescribed, nominated by the Administrator to represent women.

(2) The members of the Board shall elect one of its independent members as the Chairman of the Board.

(3) Save as otherwise expressly provided by this Act, the term of office of the members of the Board shall be three years commencing on the date on which the names are notified in the Delhi Gazette.

(4) The allowances, if any, payable to the members of the Boards shall be such as may be prescribed.

(5) The Board shall be a body corporate by the name of the 'Delhi Labour Welfare Board having perpetual succession and a common seal with power to acquire property both moveable and immovable, and shall by the said name sue and be sued. .

(6) Deleted by Maharashtra Act 36 of 1961.

5. Disqualifications and removal

(1) No person shall be chosen as, or continue to be a member of the Board, who: -

- (a) is a salaried official of the Board; or
- (b) is or at any time has been adjudged, insolvent or has suspended payment of his debts or has compounded with his creditors; or
- (c) is found to be a lunatic or becomes of unsound mind; or
- (d) is or has been convicted of any offence involving moral turpitude.

(2) The Administrator may remove from office any member who:-

- (a) is or has become subject to any of the disqualifications mentioned in sub-section (1); or
- (b) is absent without leave of the Board for more than three consecutive meetings of the Board.

6. Resignation of office by member and filling up casual vacancies

(1) A member may resign his office by giving notice thereof in writing, to the Administrator, and on such resignation being accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of a member shall be filled up, as soon as conveniently may be, by the authority concerned and a member so nominated shall hold office for the unexpired portion of the term of the office of his predecessor.

(3) No act or proceedings of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in constitution of the Board.

6AA. Power to appoint Committees

For the purpose of advising the Board in the discharge of its functions and also for carrying into effect any of the matters specified in sub-section (2) of section 7, the Board may constitute one or more Committees, of which at least one on each Committee shall be a member of the Board.

6A. Unpaid accumulations and claims thereto

(1) All unpaid accumulations shall be deemed to be abandoned property.

(2) Any unpaid accumulations paid to the Board in accordance with the provision of section 3 shall on such payment, discharge an employer of the liability to make payment to an employee in respect thereof but to the extent only of the amount paid to the Board, and the liability to make payment to the employee to the extent aforesaid shall subject to the succeeding provisions of this section be deemed to be transferred to the Board.

(3) As soon as possible after the payment of any unpaid accumulations is made to the Board, the Board shall by notice (containing such particulars as may be prescribed)-

- (a) exhibited on the notice-board of the factory or establishment in which the unpaid accumulation was earned and
- (b) deleted by Maharashtra 22 of 1964
- (c) also published in any two newspapers circulating and in the language commonly understood in the area in which the factory or establishment in which the unpaid accumulation was earned is situate, or in such other manner as may be prescribed, regard being had to the amount of the claim, invite claims by employees for any payment due to them. The notice shall be inserted in the manner aforesaid in June and December of every year, for a period of three years from the date of the payment of the unpaid accumulation to the Board.

(4) If any question arises whether the notice referred to in sub-section (3) was, given as required by that sub-section, a certificate of the Board that it was so given shall be conclusive.

(5) If a claim is received whether in answer to the notices or otherwise, within a period of four years from the date of first publication of the notice in respect of such claim, the Board shall transfer such claim to the Authority appointed under section 15 of the Payment of Wages Act, 1936 (IV of 1936), having jurisdiction in the area in which the factory or establishment is situated, and the Authority shall proceed to adjudicate upon and decide, such claim. In hearing such claim, the Authority shall have the powers conferred by, and follow the procedure (in so far as it is applicable) for laid down in giving effect to the provisions of that Act.

(6) If the Authority aforesaid is satisfied that any such claim is valid so that the right to receive payment is established, it shall decide that the unpaid accumulation in relation to which the claim is made shall cease to be deemed to be abandoned property, and shall order the Board to pay the whole of the dues claimed, or such part thereof as the Authority decides are properly due; to the employees; and the Board shall make payment accordingly:

Provided that, the Board shall not be liable to pay any sum in excess of that paid under sub-section (1) of section 3 to the Board as unpaid accumulations, in respect of the claim

(7) If a claim for payment is refused, the employee shall have a right of appeal to the District Court, and the Board shall comply with any order made in appeal. An appeal shall lie within sixty days of the decision of the Authority.

(8) The decision of the Authority, subject to appeal aforesaid, and the decision in appeal of the District Court, shall be final and conclusive as to the right to receive payment, the liability of the Board to pay and also as to the amount, if any

(9) If no claim is made within the time specified in sub-section (5), or a claim has been duly refused aforesaid by the Authority, or on appeal by the Court, then the unpaid accumulations in respect of such claim shall accrue to, and vest in, the State as bona vacantia and shall thereafter, without further assurance be deemed to be transferred to, form part of, the Fund.

6BB. Contributions

(1) The contribution payable under this Act in respect of an employee in an establishment shall comprise contribution, payable by the employers (here-in-after referred to as 'the employers contribution') contribution payable by such employee (here-in-after referred to as 'the employee's contribution') and the contribution payable by the Administrator and shall be paid to the Board and form part of the Fund.

(2) The amount of contribution payable every six months in respect of every employee shall be 75 paise, only if the name of such employee stands on the register of an establishment on 30th June and 31st December, respectively; and in respect of an employer for each such employee shall be 225 paise payable every six months.

(3) Every employer shall pay to the Board both the employer's contribution of 225 paise and the employee's contribution of 75 paise, before the 15th day of July and 15th day of January,

(4) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and any rules, the employer shall in the case of any such employee be entitled to recover from the employee that employee's contribution by deduction from his wages, and not otherwise; and such deduction shall be deemed to be a deduction 'authorised by or under the Payment of Wages Act, 1936 (4 of 1936),

Provided that, no such deduction shall be made in excess of the amount of the contribution payable by such employee, not shall be made from any wages other than the wages for the months of June and December

Provided further that, if through inadvertance or otherwise, no deduction has been made from the wages of an employee for the months aforesaid, such deduction may be made from the wages of such employee for any subsequent months or months with the permission in writing of the Inspector appointed under this Act,

(5) Notwithstanding any contract to the contrary, no employer shall deduct the employer's contribution from any wages payable to an employee or otherwise recover it from the employee,

(6) Any sum duly deducted by an employer from the wages of an employee under this section shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(7) An employer shall may the employer's and the employee's contribution to the Board by check, money order or in cash, and he shall bear the expenses of remitting to the Board such contributions.

(8) The Welfare Commissioner shall submit to the Administrator as soon as possible after the end of July and January every year in the prescribed form a statement showing the total amount of the employee's contribution and the employees' contribution in respect of employees in each establishment. On receipt of the statement from the Welfare Commissioner the Administrator shall pay to the Board, a contribution of an amount equal to twice the employees contribution in respect of that establishment,

6B. Interest on unpaid accumulations or fines after notice of demand

(1) If an employer does not pay to the Board any amount of unpaid accumulations, or fines realised from the employees or the amount of the employer's and employee's contributions under section 6BB within the time he is required by or under the provisions of this Act to pay it, the Welfare Commissioner may cause to be served a notice on Such employer to pay the amount within the period specified therein, which shall not be less than thirty days from the date of service of such notice.

(2) If the employer fails, without sufficient cause, to pay any such amount within the period specified in the notice, he shall, in addition to that amount, pay in the Board simple interest-

(a) in the case of a failure to pay any amount of unpaid accumulations or fines realised from the employees:-

(i) for the first three months, at one per cent, of the said amount for each completed months, after the last date by which he should have paid it according to the notice; and

(ii) thereafter;, at one and a half per cent of that amount for each completed month, during the time he continues to make default in the payment of that amount;

- (b) in the case of a failure to pay any amount of the employer's and employees' contributions under section 6BB,-
- (i) for the first three months, at one per cent of the said amount for each completed month, after the last date by which he should have paid it in accordance with the provisions of sub-section (3) of section 6BB; and
 - (ii) thereafter, at one and a half percent of that amount for each completed month, during the time he continues to make default in the payment of that amount;

Provided that, the Welfare Commissioner may, subject to such conditions as may be prescribed, remit the whole or any part of the penalty in respect of any period.

7. Vesting and application of fund

(1) The fund shall vest in and be held and applied by the Board as Trustees subject to the provisions and for the purpose of this Act. The moneys therein shall be utilized by the Board to defray the cost of carrying out measures which may be specified by the Administrator from time to time to promote the welfare of labour and of their dependents.

(2) Without prejudice to the generally of sub-section (1) the moneys in the Fund may be utilized by the Board to defray expenditure on the following:

- (a) community, and social education centre including reading rooms and libraries;
- (b) community necessities;
- (c) games and sports;
- (d) excursions, tours and holiday home;
- (e) entertainment and other forms of recreations;
- (f) home industries and subsidiary occupations for women and unemployed persons;
- (g) corporate activities of a social nature;
- (h) cost of administering the Act including the salaries and allowances pension, provident fund and gratuity and any other fringe benefits of the staff appointed for the purposes of the Act; and .
- (i) such other object as would in the opinion of the Administrator improve the standard of living and ameliorate the social conditions of labour;

Provided that the Fund shall not be utilised in financing any measure which the employer is required under any law for the time being in force to carry out;

Provided further that, unpaid accumulations and fines shall be paid to the Board and be expended by it under this Act notwithstanding anything contained in the Payment of Wages Act, 1936 (4 of 1936), or the other law for the time being in force.

(3) The Board may, with the approval of the Administrator, make a grant of the Fund to any employer, any local authority or any other body in aid of any activity for the welfare of labour approved by the Administrator.

(4) If any question arises whether any particular expenditure is or is not debitable to the Fund, the matter shall be referred to the Administrator and the decision given by the Administrator shall be final.

(5) It shall be lawful for the Board to continue any activity financed from the labour welfare fund of any establishment, if the said fund is duly transferred to the Board.

8. Power of Board to borrow.

The Board may from time to time with the previous sanction of the Administrator and subject to the provisions of this Act and to such conditions as may be specified in this behalf borrow any sum required for the purpose of this Act.

9. Investment of Fund (11 of 1882)

Where the Fund or any portion thereof cannot be applied at any early date for fulfilling the objects of the Act, the Board shall invest the same in any of the securities specified in clauses (a) to (d) and (f) of section 20 of the Indian Trusts Act, 1882.

10. Directions by Administrator to Board

The Administrator may give the Board such directions as in his opinion are necessary or expedient in connection with expenditure from the Fund or for carrying out the other purposes of the Act. It shall be the duty of the Board to comply with such directions.

11. Appointment and power of Welfare Commissioner

- (1)
- (i) The Welfare Commissioner shall be appointed by the Board with the previous approval of the Administrator;
 - (ii) The Welfare Commissioner shall be the principal executive officer of the Board;
 - (iii) It shall be the duty of the Welfare Commissioner to ensure that the provisions of this Act and the rules made thereunder are duly carried out and for this purpose he is shall have the power to issue such orders not inconsistent with the provisions of the Act and rules made thereunder as he deems fit including, my order implementing the decisions taken by the Board under the Act or rules made thereunder.

(2) *Delete by Maharashtra Act 36 of 1961.*

(1) The Administrator may appoint inspectors to inspect records in connection with the sums payable into the Fund. Inspectors appointed under the Delhi Shops and Establishments Act, 1954, in relation to any area, shall be deemed to be also Inspectors for the purposes of this Act, in respect of establishments to which this Act applies, and the local limits within which such Inspector shall exercise his functions under this Act shall be the area for which he is appointed under the said Act.

(2) Any Inspector may-

- (a) with such assistance, if any as he thinks fit, enter at any reasonable time any premises for carrying out the purposes of this Act;
- (b) exercise such other powers as may be prescribed.

13. Absorption of the existing staff under Commissioner of Labour

(1) The Board shall take over and employ such of the existing staff under the control of the Labour Commissioner, Delhi, as the Administrator may direct and every person so taken over and employed shall be subject to the provisions of this Act and the rules made thereunder: -

Provided that –

- (a) during the period of such employment all matters relating to pay, leave, retirement, allowances, pensions, provident fund and other conditions of service of the said staff shall be regulated by the rules for the time being applicable to persons employed in connection with the affairs of the Union territory of Delhi or such other rules as may be from time to time be made by the Administrator;
- (b) every such member shall have a right of appeal to the Administrator against any order of reduction, dismissal or removal from service, .fine or any other punishment:

Provided further that person so taken over may elect within the prescribed period that he desires to be governed by the rules made under this Act in respect of conditions of service of the staff appointed by the Board under this Act and on his electing to do so the provisions of the first proviso shall cease to apply to him.

(2) *Omitted.*

14. Appointment of clerical and other staff by Board

(1) The Board shall have power to appoint the necessary clerical and executive staff to carry out and supervise the activities financed from the Fund:

Provided that the expenses of the staff thus appointed and other administrative expenses shall not exceed a prescribed percentage of the annual income of the Fund.

(2) The Board shall, with the approval of the Administrator, make regulations regarding the method of recruitment, pay and allowances, and other conditions of service of the members of its staff (other than the Welfare Commissioner and the Inspectors):

Provided that, until the regulations are so made, the conditions of service of such staff shall be governed by the rules made by the Administrator in this behalf.

15. Power of Administrator to remove any person on staff of Board

The Administrator shall have the power to remove any person whom he may deem unsuitable, from the service of the Board and to make an appointment in respect of whom more than one-third of the members of the Board have not agreed.

16. Power of Administrator or authorised officer to call for records, etc.

The Administrator or any officer authorised by the Administrator may call for the records of the Board, inspect the same and may supervise the working of the Board.

17. Mode of recovery of sums payable to Board, etc.

Any sum payable to the Board or into the Fund under this Act shall, without prejudice to any other mode of recovery, be recoverable on behalf of the Board as an arrear of land revenue.

17 A. Penalty for obstructing inspection in discharge of inspector's duties or failure to produce documents, etc.

Any person who wilfully obstructs an Inspector in the exercise of his powers or discharge of his duties under this Act or fails to produce for inspection on demand by an inspector any registers, records or other documents maintained in pursuance of the provisions of this Act or the rules made thereunder or to supply to him on demand true copies of any such documents, shall, on conviction, be punished.

- (a) for the first offence, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and
- (b) for a second or subsequent offences, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, in any case where the offender is sentenced to a fine only, the amount of fine shall not be less than fifty rupees.

17B, Provisions relating to jurisdiction

- (1) No Court inferior to that of a Metropolitan shall try any offence punishable under section 17A.
- (2) No prosecution for such offence shall be instituted, except by an inspector with the previous sanction of the Welfare Commissioner.
- (3) No Court shall take cognizance of such offence, unless, complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

18, Supersession of Board

(1) If the Administrator is satisfied that the Board has made default in performing any duties imposed on it by or under this Act or has abused its power, the Administrator may by notification in the Delhi Gazette supersede and reconstitute the Board in the manner prescribed for constitution of the Board:

Provided that before issuing the notification under this sub-section, the Administrator will give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and, objections, if any, of the Board.

(2) After the supersession of the Board and until it is reconstituted the powers, duties and functions of the Board under this Act shall be exercised or performed by the Board or by such officer or officers as the Administrator may appoint for this purpose.

19, (1) The Administrator may, by notification, in the Delhi Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made for all or any of the following matters, namely: -

- (a) the intervals at which or the period within which any of the sums referred to in section 3 shall be paid to the Board or into the Fund, the manner of making such payment and the agency for and manner of, collection of any such sum;
- (b) the manner in which the accounts of the Fund shall be maintained and audited under sub-section (3) of Section 3;
- (c) the procedure for making grants from the Fund under section 7;
- (d) the procedure for defraying the expenditure incurred in administering the Fund;

- (e) the number of representatives of employers and employees, independent members and representatives of women on the Board, and the allowances, if any, payable to them, under section 4;
- (f) the manner in which the Board shall conduct their business;
- (g) the duties and powers of the inspectors and the conditions of service of the Welfare Commissioner and Inspectors appointed under this Act;
- (ga) the delegation of the powers and functions of the Board to the Welfare Commissioner and the conditions and limitations subject to which the powers maybe: exercised or functions discharged;
- (h) the percentage of the annual income of the Fund beyond which the Board may not spend on the staff and on other administrative members;
- (i) the Registers and records to he maintained and returns to be sent to the Board under this Act;
- (j) the publication of the report of the activities financed from the Fund together with a statement of receipts and expenditures of the Fund and statement of accounts;
- (k) any other matter which under this Act is or may be prescribed.

(3) *Omitted.*

20. Members of Board Welfare Commissioner, Inspectors and all officers and servants of Board to be public servants (XL V of 1960)

The members of the Board, the Welfare Commissioner, inspectors and all officers and servants of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

21. Protection to person acting in good faith

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

22. Exemptions

The Administrator may by notification in the Delhi Gazette exempt any class of establishment from all or any of the provisions of this Act subject to such conditions as may be specified in the notification.

23. Amendment of section 8 of Act IV of 1936 (IV of 1936)

In section 68 of the Payment of Wages Act, 1936 in is application to the Union Territory of Delhi, to sub-section (8) to the following shall be added, before the explanation, namely: -

" but in the case of any factory or establishment to which the Bombay Labour Welfare Fund Act, 1953, as extended to the Union territory of Delhi, applies all such realisations shall be paid into the Fund constituted under the said Act."