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The Assam Gazette

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EXTRAORDINARY

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT: LEGISLATIVE BRANCH

NOTIFICATION

The 30th June 1993

No LGL. 48/90/71.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT NO XIII OF 1993.

(Received the assent of the President on 24th June, 1993)

THE ASSAM GRATUITY ACT, 1992

AN
ACT

to provide for framing of a gratuity fund scheme for employees employed in the tea factories, tea plantations and for the works connected therein or incidental thereto.

Preamble Whereas it is necessary to provide for framing of a gratuity fund scheme for the employees employed in the tea factories, tea plantations and for the works connected therein or incidental thereto;

It is hereby enacted in the Forty-third Year of the Republic of India in the manner hereinafter appearing;

**Short title,
extent and
commence-
ment.**

1. (1) This Act may be called the Assam Gratuity Act, 1992.
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such date as the State Government may by notification, appoint.
- (4) It shall apply to tea plantations and tea factories:

Provided that tea factory or tea plantation to which this Act has become applicable shall continue to be so applied notwithstanding that number of persons employed therein at any time after it has become so applicable falls below ten.

Definitions

2. In this Act, unless the context otherwise requires:—
 - (a) "Government" means "the State Government of Assam".
 - (b) "Completed year of Service" means continuous service for one year.
 - (c) "Continuous service" means the period of service during which an employee is in service without interruption including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence or break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off strike or a lock-out or cessation of work not due to any fault of the employees whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(d) 'Controlling authority' means an authority appointed by the State Government under Section-3 of this Act.

(e) 'Employee' means any person (other than apprentice) employed on wages not exceeding two thousand and five hundred rupees per month or such higher amount as the State Government may, having regard to the general level of wages, by notification, specify to do skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical works whether the terms of such employment are expressed or implied and whether or not such person is employed in a managerial or administrative capacity.

EXPLANATION :—In the case of an employee, who, having been employed for a period of not less than five years on wages not exceeding two thousand five hundred rupees per mensem is employed at any time thereafter on wages exceeding that amount, gratuity, in respect of the period during which such employee was employed on wages not exceeding two thousand five hundred rupees per mensem shall be determined on the basis of the wages received by him during that period.

(f) 'Employer' means any person who is the proprietor of a tea plantation and tea factory and includes a Managing Agent, Manager, Superintendent, Managing Director, Director Leasee or any other person who is, for the time being, in charge of any tea plantation or tea factory.

Central Act,
69 of 1951

(g) 'Tea plantation' has the meaning assigned to it in Clause (f) of Section 2 of the plantation Labour Act, 1951 where ten or more employees are employed.

(h) 'Tea Factory' means any factory manufacturing tea and employing ten or more persons.

(i) 'Family' means (1) In the case of male employees, himself, his wife, his children whether married or unmarried including adopted children and his dependent parents and the widow and children of the deceased son of the employee and dependent parents of the wife of the employee, PROVIDED that if an employee proves that his wife has ceased to be entitled to maintenance under the personal law governing him or the customary law of the community to which the spouse belongs she shall no longer be deemed to be a member of the employee's family, unless the employee subsequently intimates by express notice in writing to the Controlling Authority or such other Officer as may be appointed in this behalf, that she shall continue to be so regarded, and

- (ii) in the case of female employee, herself, her husband and children of the employee, the dependent parents of the husband and the widow and children of the deceased son of the employee and her dependent parents, PROVIDED that if an employee by notice in writing to the Controlling authority or such other Officer as may be appointed on his behalf, expresses her desire to exclude her husband from the family the husband shall no longer be deemed to be a member of the employee's family unless the employee subsequently cancels in writing any such notice.

EXPLANATION: In either of the above two cases if the child of an employee has been adopted by another person and if, under the personal law of the adopter adoption is legally recognised, such a child shall be considered as excluded from the family of the employee.

- (j) 'Superannuation'—in relation to an employee means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.
- (k) 'Wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowances but does not include any bonus, Commission, Houser Rent Allowance, overtime wages and any other allowances.
- (l) 'Gratuity' means the wage as defined in clause (k) above payable on the date prior to the date of exit of the employee, except seasonal and daily workers, in which case it would be the average of the last 3 months wages prior to the date of exit, provided that Gratuity wage shall not exceed two thousand five hundred rupees per mensem in any case.
- (m) 'Board of Trustees' means Board of Trustees constituted under para 3 of the Assam Tea Plantations Provident Fund and Pension Fund Scheme, 1968.
- (n) 'Scheme' means The Scheme framed under this Act.
- (o) 'Gratuity Fund' means Gratuity Fund established under the scheme framed under this Act.
- (p) 'Contribution' means a contribution payable by the employer in respect of his employee covered under this Act.

(q) 'Gratuity Service' means The aggregate of service rendered by the employee rounded to the nearest year. Any interrupted service on account of sickness, accident, leave and cessation of work arising out of lock-out, strike, or lay-off not due to the fault of the employee before or after the commencement of the Act shall also be taken into account.

3. CONTROLLING AUTHORITY

(1) The State Government may, by notification, on the recommendation of the Board, appoint an officer to be the Controlling Authority for administration of this Act and the Scheme framed thereunder.

(2) The Controlling Authority shall work subject to the control of the Board.

4. GRATUITY FUND SCHEME :

(1) The State Government may, by notification, in the Official Gazette, and subject to previous publication framed a scheme to be called 'Assam Gratuity Fund Scheme' for the establishment of a Gratuity Fund for the employees employed in tea plantations and in tea factories.

(2) A Scheme framed under Sub-section (1) of this Section may provide for all or any of the matter specified in the Schedule appended to this Act.

(3) The Scheme may also provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the scheme.

(4) The Scheme shall have effect notwithstanding anything contained in any other law for the time being in force other than this Act or any instrument having effect by virtue of any law other than this Act.

(5) The Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

5. ADMINISTRATION OF THE GRATUITY FUND :

The Gratuity Fund shall be administered by the Board of Trustees through the Controlling Authority as provided under section 3 of the Act.

6. CONTRIBUTION :

(1) Every employer shall pay every month into the Gratuity Fund in respect of every employee in relation to whom he is the employer, such amount not exceeding five percent of the wage as the State Government may by notification in the Official Gazette specify.

(2) Every employer shall also pay into the Gratuity Fund contributions at the rate of 60.36 per cent of the wages received by the employees during the preceding 12 months at the commencement of the Act to cover up past Gratuity liabilities.

PROVIDED that the Controlling Authority may grant instalment to liquidate the past liabilities in such manner and on such conditions and at such rate of interest as may be provided in the Scheme.

(3) Every employer shall further be liable to pay to the Gratuity Fund the amount due to any employee during the pendency of full liquidation of the past liabilities on termination of service. The amount so paid shall be adjusted against the past liabilities as mentioned under sub-section 2 of this Section.

7. POWER TO EXEMPT :

(1) If any employer has already created Gratuity Fund or obtained an insurance from the Life Insurance Corporation of India under the Payment of Gratuity Act, 1972, he may be exempted from the purview of this Act, if the Controlling Authority is satisfied that such Fund or the insurance from the Life Insurance Corporation of India covers the full Gratuity liability in respect of this employees covered under this Act.

(2) In case of any complaint about non-payment of gratuity or non-payment of premium to the insurance by the exempted employer, the Controlling Authority shall serve such employer with a notice to pay the same within such period, in such manner as may be specified on the notice and in case the employer fails to do so the exemption granted under sub-section (1) of this section shall be revoked.

8. TRANSFER OF FUND :

(1) Where the exemption granted under sub-section (1) is revoked under sub-section (2) of section 7 of this Act the employer shall transfer the Gratuity Fund already created or assigned in favour of the Controlling Authority the Insurance of Life Insurance Corporation of India obtained under the payment of Gratuity Act, 1972 in such manner as may be provided in the Scheme.

(2) If any amount transferred under sub-section (1) is found short, the employer shall pay the balance amount within such time as may be directed by the Controlling Authority.

(3) If the sum assured in the policy assigned is found short of as per provision of the Scheme, the employer shall pay the balance amount within such time as may be directed by the Controlling Authority.

9. PAYMENT OF GRATUITY BENEFIT AND TO WHOM PAYABLE :

Gratuity shall be payable to an employee on the termination of his employment on superannuation, retirement or resignation after he has rendered continuous services of not less than five years.

PROVIDED that completion of five years service shall not be necessary where termination of employment is due to death and disablement. In case of termination of employment due to death, gratuity shall be paid to the nominee and in absence of nominee, to the legal heir.

10. QUANTUM OF GRATUITY :

The gratuity payable under section 9 shall be computed as follows :—

$\frac{15}{26}$ X Gratuity Service X Gratuity Wage subject to maximum of Rs. 50,000/- and minimum of Rs. 1,000/- as Gratuity.

11. FORFEITURE OF GRATUITY :

(1) Notwithstanding anything contained in section 9 the gratuity payable to an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of property belonging to the employers, shall be forfeited to the extent of the damage or loss so caused.

(2) The Gratuity payable to an employee shall be wholly forfeited, (a) if the services of such employee have been terminated for his riotous or disorderly conduct or any act of violence on his part.

(b) If the services of such employee have been terminated for any act which constituted an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

(3) Where the employee resigns after commencement of an enquiry on his behaviour, the gratuity payable shall remain unpaid till such time the enquiry is completed.

12. NOMINATION :

Each employee who has completed one year of service, shall make, within such time, in such form and in such manner as provided in the Scheme, nomination for the purpose of the proviso to Section 9 of this Act.

13. PRIORITY OF PAYMENT OF CONTRIBUTIONS OVER OTHER DEBTS :—

(1) The amount due in respect of any Contribution under this Act or any charges incurred in respect of the administration of any such Scheme shall, where the liability has accrued before the person has been adjudicated as insolvent or in the case of a company ordered to be wound up before the date of such order, be deemed to be included among the debt under Section 61 of the Provincial Insolvency Act, 1920 (Act, V of 1920) or Section 530 of the Companies Act, 1956 and are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the Company being wound up, as the case may be.

(2) Without Prejudice to the provisions of sub-section (1) of this Section any amount due from an employer under the provision of this Act or the scheme framed thereunder shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

14. FUND DEEMED TO BE RECOGNISED GRATUITY FUND UNDER INCOME-TAX ACT, 1961 :—

For the purpose of the Income-tax Act, 1961 the Gratuity Fund shall be deemed to be recognised Gratuity Fund within the meaning of Section 43 of that Act.

15. PROTECTION AGAINST ATTACHMENT :—

The gratuity payable under this Act to an employee shall not be liable to attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

16. MODE OF RECOVERY OF MONEY DUE FROM THE EMPLOYERS :—

Any amount due from any employer in respect of any contribution payable the Fund or any charges payable by him under any other provisions of this Act or under any provisions of the Scheme, may be recovered as an arrear of land revenue.

17. EMPLOYER NOT TO REDUCE WAGE :—

No employer shall, by reason only of his liability for any contribution payable under this Act, reduce, whether directly or indirectly the wages of any employee to which the employee is entitled under the terms of his employment.

18. PENALTY :

Whoever makes default in deposit of any contributions or transfer the Fund created or fails to assign Policy obtained from Life Insurance Corporation of India or fails to deposit the instalment allowed under this Act and the scheme or contravenes any of the provisions of the Act and the scheme or fails to comply with the direction of Controlling Authority, he shall be punishable with imprisonment for a term which shall not be less than six months but which may be extended to two years or with fine which shall not be less than ten thousand rupees but which may be extended to twenty thousand rupees or with both and in case of a continuing offence with a further fine which may extend upto one thousand rupees for each day during which the offence continues.

Cognizance
of offence

19. (1) No Court shall take cognizance of offence punishable under the Act and Scheme save on a complaint made by or under the authority of the Controlling Authority.

(2) No Court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act.

20. PROVISION FOR IMPOSITION OF DAMAGE :—

When an employer makes default in payment of any contribution or instalment or in the transfer of any accumulation required to be transferred under this Act and Scheme or in the payment of any charges payable under any other provision of this Act or Scheme or in the assignment of the Policies obtained from Life Insurance Corporation of India, he shall be liable to pay damage not exceeding the amount in arrear. Provided that no order for payment of damages shall be passed unless reasonable opportunities of being heard is given to the defaulter.

21. POWER OF RECOVERY:—

The Controlling Authority shall issue recovery certificate to the Collector who shall recover the certificated dues as an arrear of Land Revenue.

22. APPEAL:—

(1) Any employer aggrieved by the order of Controlling Authority imposing damage under section-20 of this Act, may file appeal with the Chairman of the Board within 30 days of the order of the Controlling Authority.

(2) The Chairman of the Board after giving the employer a reasonable opportunity of being heard may approve the damage imposed by the Controlling Authority under section 20 or may pass such orders, as may deem fit and proper.

23. INSPECTORS :—

(1) The Government may, by notification in the Official Gazette, appoint such employee of the Board, as the Government thinks fit, to be the inspectors for the purposes of this Act and the Scheme and may define their jurisdiction.

(2) Every Inspector appointed under sub-section (1) may, for the purposes of inquiring into the correctness of any information furnished in connection with this Act or the Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Scheme have been complied with—

(a) require an employer to furnish such information as he may consider necessary in relation to the Scheme;

(b) enter any office or tea plantation or tea factory at any reasonable time and with such assistance, if any, as he may think fit, and search the same and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents in relation to the employment of employee or the payment of wages of employee;

(c) examine the employer, his agent or servant or any other person found in charge of the office or plantation or factory or whom the Inspector has reasonable cause to believe to be, or to have been an employee in the office or plantation or factory ;

(d) make copies of, or take extracts from any book, register or other document maintained in connection with the Gratuity Fund and, where he has reason to believe that any offence under the Act and the Scheme has been committed by an employer, seize, with such assistance, as he may think fit, such books, registers or other documents as he may consider relevant;

(e) exercise such other powers as the Scheme may provide.

(3) The provisions of the Code of Criminal Procedure, 1973 shall, as far as may be, apply to any search or seizure, under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under Section-93 of the said Code.

24. PUBLIC SERVANT :—

Every Inspector shall be deemed to be a public servant within the meaning of Section-21 of the Indian Penal Code.

25. PROTECTION FOR ACTS DONE IN GOOD FAITH :—

No suit or other legal proceeding shall lie against the Government or the Board or any officer or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or the Scheme.

26. POWER TO REMOVE DIFFICULTIES :—

If any difficulty arises in giving effect to the provisions of the Act, the Government may make such order or give such direction, not inconsistent with the provisions of the Act, as appears to it to be necessary or expedient for the removal of the difficulty, and such order shall be final.

27. ACT TO OVERRIDE OTHER ENACTMENTS :—

The provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

28. POWER TO MAKE RULES :—

The State Government may, subject to previous publication in the official gazette make rules, for carrying out the purposes of this Act.

THE SCHEDULE

[(See Section 4(2)]

Matter for which provision may be made in the Scheme :—

1. Employees who shall join the Fund.
2. The time and manner in which contributions shall be made to the Fund by employers on behalf of employees including past Gratuity Liability.
3. The payment by the employer of such sums of money as may be necessary to meet the cost of Inspection and the rate at which and the manner in which the payment shall be made.
4. Functions of the Board of Trustees, including the Constitution of any committee for assisting the Board.
5. The opening of regional and other offices of the Board of trustees.

6. The manner in which accounts shall be kept, the investment of money belonging to the Fund in accordance with the directions issued or conditions specified by the Government the preparation of the budget, the audit of accounts and the submission of reports to the Government.

7. The procedure of collection of all or any sum of moneys due from employers.

8. The forms in which employee shall furnish particulars about himself and his family whenever required.

9. The nomination of a person by a member to receive the Gratuity amount after his death and the cancellation or variation of such nomination.

10. The Registers and records to be maintained in respect of the employees and the returns to be furnished by employers.

11. Determination and manner of payment of Gratuity.

12. The cost of actual valuation to be paid by the employer.

13. Any other matter which may be necessary or proper for the purpose of implementation of the Scheme.

K. LASKAR,
Secretary to the Govt. of Assam
Legislative Department.