

Payment Of Gratuity

Act No 12 of 1983

AN ACT TO PROVIDE FOR THE PAYMENT OF A GRATUITY BY EMPLOYERS TO THEIR WORKMEN, FOR THE AMENDMENT OF THE LAND ACQUISITION ACT, THE LAND REFORM LAW AND THE INDUSTRIAL DISPUTES ACT, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:"

Short title and date of operation. **1.** This Act may be cited as the Payment of Gratuity Act, No. 12 of 1983, and shall come into operation on such date as the Minister may appoint, by Order published in the Gazette.

PART I

Employer's liability to pay gratuity to workmen employed on lands that vested in the Land Reform Commission. **2.**

(1) Every employer who has employed a workman on any agricultural land or estate land that vested in the Land Reform Commission by the operation of the Land Reform Law or on any land acquired under the Land Acquisition Act on or after May 29, 1971, and deemed to have been vested in the Land Reform Commission in terms of subsection (1) of section 21 of the Land Reform (Special Provisions) Act, No. 39 of 1981, for a period of not less than five completed years immediately prior to such vesting or such acquisition as the case may be, shall pay to that workman in respect of his services, or in the event of the death of that workman to his heirs, a gratuity computed in accordance with the provisions of this Part, within a period of thirty days of the coming into operation of this Act:

Provided however, that the preceding provisions shall not apply in respect of the portion or portions of the agricultural land such employer is allowed to retain in terms of subsection (1) of section 19 of the Land Reform Law.

(2) The provisions of subsection (1) shall be deemed to have come into force on August 26, 1972.

(3) The liability imposed on an employer by subsection (1) shall, in the event of the death of the employer on or after August 26, 1972, and before that liability is discharged, be discharged by his legal representative.

(4) The provisions of this Part shall not apply to or in relation to a workman who is an Indian repatriate to whom the provisions of the Emergency (Payment of Gratuities and other Monetary Benefits to Indian Repatriates) Regulations made under section 5 of the Public Security Ordinance applied or the Payment of Gratuities and other Monetary Benefits to Indian Repatriates, (Special Provisions) Law, No. 34 of 1978, applies,

Rate of payment of a **3.**

gratuity.

(1) A workman employed as a labourer"

(a) shall be entitled to the payment of a gratuity under section 2, in a sum equivalent to fourteen days' wage or salary for each year of completed service prior to the, commencement of his liability to contribute to, the Employees Provident Fund computed at the rate of wage or salary paid or that would have been paid to such workman in the month of November, 1959; and

(b) shall be entitled to the payment of a gratuity under section 2, in a sum equivalent to seven days' wage or salary for each year of completed service subsequent to the commencement of his liability to contribute to the Employees' Provident Fund computed in the same manner as in paragraph (a), of this subsection.

(2) Where a workman is employed in any capacity other than as a labourer, he shall be entitled to the payment of a gratuity under section 2, computed at the rate of a sum equivalent to one month's gross wage or salary of that workman for each year of completed service"

(i) if that workman was employed on any agricultural land that vested in the Land Reform Commission on August 26, 1972, based on the gross rate of wage or salary, that would have been paid for the month of August, 1972. if he had worked, for the whole of that month,

(ii) if that workman was employed on any estate land that vested in the Land Reform Commission on October 17, 1975, based on the rate of wage or salary that would have been paid for the month of October, 1975, if he had worked for the whole of that month,

(iii) if that workman was employed on any land that was acquired under the Land Acquisition Act, based on the rate of wage or salary that would have been paid for the month in which such land was acquired,

if he had worked for the whole of that month, less the employer's contribution to the Employees' Provident Fund,, or to an approved provident fund or to any pension fund in respect of that workman for the period up to August 26, 1972, where that workman is a workman referred to in paragraph (i) of this subsection, or October 17, 1975, where that workman is a workman referred to in paragraph (ii) of this subsection, or, up to the date of such, acquisition where that workman is. a workman referred to in paragraph (iii) of this subsection.

(3) Where an employer has paid a gratuity in respect of the services of a workman in accordance with the order of a labour tribunal or an award or settlement under the Industrial Disputes Act. that employer, shall not be liable to pay in respect of .such services a gratuity under this Part.

Commissioner to issue certificate **4.**
to the Land Reform Commission
specifying the sum due as gratuity
to a workman.

(1) Notwithstanding the provisions of any other law, where any land on which a workman to whom the provisions of. this Act apply was employed, has vested in the Land Reform Commission under the Land Reform Law or is deemed to have so vested, the Commissioner shall, after' such inquiry as he may deem necessary; issue a certificate specifying the sum due as gratuity to that workman from that employer in respect of his

services under that employer prior to the date of such vesting or acquisition.

(2) Where the Commissioner issues a certificate under subsection (1) specifying the sum due as gratuity to a workman from his employer, the Land Reform Commission shall, subject to the provisions of subsection (1) of section 6, make payment of such sum to the workman "through the Commissioner.

(3) A copy of the certificate referred to in subsection (J) shall be, sent by the Commissioner to the employer of the "workman in respect of whom the certificate is issued.

(4) The sum paid by the Land Reform Commission to a workman under this section or the sum remitted in accordance with the provisions of subsection (1) of section 6, shall be a first charge on the compensation payable to the., employer of that workman under section 32 or section 42J of the Land Reform Law and that sum shall be from the amount of compensation awarded to employer.

PART II

Employers liability to pay gratuity to his workmen for termination after the coming into operation of this Act. **5.**

(1) Every employer who employs or has employed fifteen or more workmen on any day during the period of twelve months immediately preceding the termination of the services of a workman in any industry shall, on termination (whether by the employer or workman, or on retirement or by the death of the workman, or by operation of law, or otherwise) of the services at any time after the coming into operation of this Act, of a workman who has a period of service of not less than five completed years under that employer, pay to that workman in respect of such services, and where the termination is by the death of that workman, to his heirs, a gratuity computed in accordance with the provisions of this Part within a period of thirty days of such termination.

(2) The liability imposed on an employer under subsection (1) shall, in the event of the death of that employer before that liability is discharged, be discharged by his legal representative.

(3) Notwithstanding the provisions of the Payment of Gratuities and other Monetary Benefits to Indian Repatriates (Special Provisions) Law, No. 34 of 1878, if an Indian repatriate as defined in such Law is a workman falling within the category mentioned in subsection (1) of this section, such repatriate shall not be entitled to receive a gratuity under the provisions of the said Law, in respect of a period of service for which a gratuity is payable under this Part.

Rate of payment of gratuity. **6.**

(1) The provisions of this part shall apply to and in relation to a workman employed in any industry in respect of the entire period of service under an employer;

Provided, however that, where a workman who is entitled to a gratuity under Part I

of this Act continues in employment after the agricultural land or estate land on which he was employed vested in the Land Reform Commission by the operation of the Land Reform Law, or the land on which he was employed was acquired under the Land Acquisition Act and is entitled to a gratuity under this Act, the period of service of such workman shall include the period of service in respect of which he is entitled to a gratuity under Part I of this Act, and, the gratuity in respect of the aggregate period of service shall be paid by the employer who is liable in terms of subsection (1) of section 5:

Provided, further that, notwithstanding anything to the contrary in Part I of this Act, the amount of the, gratuity to which such workman is entitled under that Part shall be remitted to the said employer who shall be liable to pay a gratuity in respect of the aggregate period of service of such workman.

(2) A workman referred to in subsection. (1) of section 5 shall be entitled to receive as gratuity, a sum equivalent to-

(a) half a month's, wage or salary for each year of completed service computed at the rate of wage or salary last drawn by the workman, in the case of a monthly rated workman; and

(b) in the case of any other workman, fourteen days' wage or salary for, each year of completed service computed at the rate of wage or salary last drawn by that workman:

Provided, however that, in the case of a piece rated workman the daily wage or salary shall be ,computed by dividing the total wage or salary received by him for a period of three months immediately preceding the termination of his employment, by the number of days worked by him in that period.

(3) Notwithstanding the provisions contained in subsection (2), the gratuity payable to a workman referred to in the first provision to subsection (1) in respect of the period of service for which he is entitled to a gratuity under Part I of this Act, shall be computed at the rate of a sum equivalent to fourteen days' wage or salary of that workman for each year of completed service based on the rate of wage or salary payable in the month in which such land vested in the Land Reform Commission or was acquired under the Land Acquisition Act.

Limits on applicability of 7. The provisions of section 5 shall not apply to or in relation to a workman-section 5.

(a) employed as a domestic servant or as a domestic servant or as a personal chauffeur in a private household; or

(b) entitled to a pension under any non-contributory pension scheme.

PART III

GENERAL

Recovery on 8.
gratuity on
defaulter's failure
to pay.

(1) Where any default is made in the payment of any sum due as gratuity under this Act or where the gratuity due under this Act cannot be recovered under the provisions of section 4 or under the provisions of subsection (5) of section 17 of the Land Acquisition Act, the Commissioner may issue a certificate after such inquiry as he may deem necessary, stating the sum due as gratuity and the name and place of residence of the defaulter, to the Magistrate having Jurisdiction in the division in which the estate or

establishment is situate. The Magistrate shall, thereupon, summon the defaulter before him to show cause why further proceedings for the recovery of the sum due as gratuity under this Act should not be taken against him and in default of sufficient cause being shown, the sum in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment and the provisions of subsection (1) of section 291 (except paragraph (a), (d) and (i) thereof) of the Code of Criminal Procedure Act, No. 15 of 1979, relating to default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any decision which by the provisions of that subsection, he could have made at the time of imposing such sentence.

(2) The Commissioner's certificate shall be prima facie evidence that the amount due under this Act from the defaulter has been duly calculated, and that the amount is in default.

(3) Every sum recovered by Court under this section shall be paid to the Commissioner who shall thereupon pay that sum to the person or persons entitled to it under this Act.

(4) Nothing in subsections (2) to (5) of section 291 of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply to any case referred to in subsection (1) of this section.

(5) In any case referred to in subsection (1) in which the defaulter is sentenced to imprisonment in default of payment of the fine deemed by that section to have been imposed on him, the Magistrate may allow time for the payment of the amount of that fine or direct payment of that amount to be made in installments.

(6) The Court may require bail to be given as a condition precedent to allowing time under subsection (1) for showing cause as therein provided or under subsection (5) for the payment of the fine, and the provisions of Chapter XXXIV of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply where the defaulter is so required to give bail.

(7) Where a Magistrate directs under subsection (5) that a payment be made in installments and default is made in the payment of any one instalment, proceedings may be taken as if default had been made in payment, of all the instalments then remaining unpaid.

Persons to whom gratuity shall be paid in certain circumstances.

9. Any payment of a gratuity due to a workman under this Act shall, in the event of the death of that workman before receiving that payment, be paid to his heirs.

Gratuity to be computed favourable. **10.**

(1) Where the gratuity payable to a workman is governed by a collective agreement, award of an Industrial Court or arbitrator under the Industrial Disputes Act or any other agreement, the computation of such gratuity in respect of his services shall be made in accordance with the terms of such collective agreement, award of an Industrial Court or arbitrator or other agreement as the case may be, provided that the gratuity or terminal benefits set out therein are more favourable to the workman than the gratuity payable under this Act.

(2) No workman shall be entitled to a gratuity or terminal benefit in terms of any collective agreement, award of an Industrial Court or arbitrator or other

agreement in addition to the gratuity under this Act or vice versa.

Power of Commissioner and other officer to enter and inspect premises. **11.**

(1) The Commissioner or any other officer authorized in that behalf by him in writing for the purpose of carrying out the provisions of this Act, may"

(a) enter and inspect at all reasonable hours by day or night any premises or place for examining any books or documents relating to the computation of gratuity under this Act;

(b) make copies of or take extracts from any entries in any such books or documents; and

(c) examine any person who he has reasonable cause to believe is an employer or a person who has made default in the payment of any sum under this Act.

(2) No person shall obstruct or resist the Commissioner or any officer authorized by the Commissioner in writing in the exercise of any power under subsection (1).

Power of Commissioner to call for registers and records.

12. The Commissioner or any officer authorized in that behalf by him in 'writing may direct in writing any employer to produce for his inspection, at such time and place as may be specified in the direction; such books and documents, relating, to the computation of gratuity due under this Act in respect of any, workman of that employer. as may be indicated in the direction and that employer shall comply with that direction.

Forfeiture of gratuity. **13.** Any workman, to whom a gratuity is payable under Part II of this Act and, whose services have been terminated for reasons of fraud, misappropriation of funds of the employer, willful damage to property of the employer, or causing the loss of goods, articles or property of the employer, shall forfeit such gratuity to the extent of the damage or loss caused by him.

Present employer to count services of workman under past employer in certain circumstances.

14. Where an employer sells or otherwise alienates any land or establishment within a period of five years of his becoming such employer, the period of service of any workman under that employer shall be added to the period of service of that workman under the new employer in computing the gratuity payable to that workman by the new employer.

Offences. **15.**

(1) Any person, who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and shall, on conviction by a Magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

(2) Where an offence under this Act is committed by a body of persons then"

(a) if the body of persons is a body corporate every , person who at the time of the commission of that offence was a director or officer of that body; or

(b) if the body of persons, is other than a body corporate every person who at the time of the commission of the offence was a member of that body,

shall be deemed to be guilty of such offence: Provided, however, that such director,

officer or member shall not be deemed to be guilty of that offence if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Where the accused proves that some other person is guilty of the offence.

16. Where a person (hereinafter referred to as "the accused ") is charged with an offence under this Act, he shall, upon complaint duly made by him in accordance with the provisions of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979, and on giving to the prosecution not less than three days notice of his intention, be entitled to have any other person whom he charges as the actual offender brought before the court, and if, after the commission of the offence has been proved, the accused proves to the satisfaction of the court that the commission of the offence was due to the act or default of such other person, such other person may be convicted of the offence, and if the accused further proves that he has used all due diligence to enforce the provisions of this Act, he shall be acquitted of the offence.

Amendment of **17.**
Chapter 131.

(1) Section 31B of the Industrial Disputes Act is hereby amended"

(a) in subsection (1) of that section, as follows: "

(i) by the substitution, for paragraph (b) of that subsection, of the following paragraph:"

" (b) the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits, where such workman has been employed in any industry employing less than fifteen workmen on any date during the period of twelve months preceding the termination of the services of the Workman who makes the application or in respect of whom the application is made to the tribunal;"

(ii) by the relettering of paragraph, (c) of that subsection as paragraph (d) thereof;

(iii) by the insertion immediately after paragraph (b) of that subsection of the following new paragraph :"

" (c) the question whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, 1983, has been correctly made in terms of that Act;" ; and

(b) in subsection (6) of that section, by the substitution, for paragraph (c) of that subsection, of the following paragraph:"

"(c) a labour tribunal may on any such application order such person to pay to that workman any sum as wages in respect of any period during which that workman was employed by such person, or as compensation as an

alternative to the reinstatement of that workman, and such order may be enforced against such person in like manner as if he were such employer:

Provided, however, that in the case of such person who had employed less than fifteen workmen, in any industry, a labour tribunal may in addition to the relief granted in the preceding provisions of this paragraph, order the payment of gratuity to such workman by such person."

(2) Section 33 of the Industrial Disputes Act is hereby amended in subsection (i) of that section, by the substitution, for paragraph (e) thereof, of the following paragraph: "

" (e) as to the payment by any employer of a gratuity (except where a gratuity is payable under the Payment of Gratuity Act, 1983) or pension or bonus to any workman, the amount of such gratuity or pension or bonus and the method of computing such amount, and the time within which such gratuity or pension or bonus shall be paid."

Amendment of the **18**.
Land Reform
Law.

(1) Section 32 of the Land Reform Law is hereby amended by the insertion, immediately after subsection (2) thereof of the following new subsections:"

' (3) Where a person is entitled to compensation under subsection (1) in respect of any agricultural land vested in the Commission, the Chairman of the Commission shall, after reasonable, notice to such person pay from the amount of such compensation, to the Commissioner of Labour, any sum certified under the hand of the Commissioner of Labour to the Commission, to be due from such person as arrears of salary, provident fund contributions, gratuity or other monetary, benefits to any person employed on such land. For the purpose of this subsection the expression " compensation "includes any interest which has accrued due on such, compensation.

(4) The sum paid by the Chairman of the Commission on the certificate issued by the Commissioner shall be a first charge on the compensation payable to the employer.

(2) The amendments made to section 32 of the Land Reform Law. by subsection (1) of this, section, shall be deemed)to have come into operation on August 26, 1972.

Amendment of **19**. Section 17 of the Land Acquisition Act is hereby amended by the insertion, immediately Chapter 460. after subsection (4) thereof of the following new subsections: -

' (5) Where a person is entitled to compensation under subsection (1) in respect of any land which has been acquired under this Act, the acquiring officer shall, after reasonable notice to such parson pay from .the amount of such compensation, to the Commissioner of Labour, any sum certified under the hand, of, the Commissioner of Labour to the acquiring officer to be due from such person as arrears of salary, provident fund contributions, gratuity or other

monetary benefits to any 'person employed on such land. For the purpose of this subsection the expression "compensation " includes any interest which has accrued due on such compensation.

(6) The sum paid by the acquiring officer on the certificate issued by the Commissioner shall be a first charge on the compensation payable to the employer'.

Interpretation.**20.** In this Act, unless the context otherwise requires-

"acquiring officer" shall have the same meaning as in the Land Acquisition Act;

"agricultural land " and "estate land" shall have the same meaning as in the Land Reform Law; approved provident fund" means a provident fund declared to be an approved provident fund under, Part-IV of the Employees provident fund Act No. 15 of "collective agreement" shall have the same meaning as in section 5 of the Industrial Disputes Act;

" Commissioner" means the person for the time being holding the office of the Commissioner of Labour and includes any person for the time being holding the office of Deputy or Senior Assistant or Assistant Commissioner of Labour, or 'any Labour Officer:

"completed service" means uninterrupted includes service which is interrupted by approved leave on any ground whatsoever, a strike or lock out or cessation of work not due to any fault of the workman concerned, whether such uninterrupted or interrupted service was rendered before or after the coming into operation of this Act.

" employer " means any person who employs or, on whose behalf any other person employs any workman and includes a body of employers (whether such body is a body corporate or unincorporated or a public corporation) or any person who on behalf of any other person employs any workman and any person or Body of employers who or which has ceased to be an employer but does not include a co-operative society established under the Co-operative Societies Law. No. 5 of 1972, or a local authority:

" Employees' Provident Fund " shall have the same meaning as in the Employees' Provident Fund Act. No. 15 of 1958;

"Indian repatriate" shall have the same meaning as in the Payment of Gratuities and other Monetary Benefits to Indian Repatriates (Special Provisions) Law, No. 34 of 1978.

" industry " includes"

(a) trade, business, manufacture and agriculture, any undertaking or occupation by way of trade, business, manufacture or agriculture, and any branch or section of trade, business, manufacture or agriculture:

(b) service, work or labour of any description whatsoever performed by persons in the employment of a Local Authority, or of a Corporation established by or under any written law for carrying on an undertaking whether for the purpose of trade or otherwise.

(c) every occupation calling or service of workmen, and'

(d) every undertaking of employers;

"labourer" means any labourer or kangany whose name is borne on an estate register and includes any person who has ceased to be a labourer;

"Land Reform Commission" shall have the same meaning as in the Land Reform Law;

"Land Reform Law " means the Land Reform Law, No. 1 of 1072, as amended by Law, No. 39 of 1975, Act, No. 14 of 1981. and the Land Reform (Special Provisions) Act, No. 39 of 1981;

" legal representative " means the executor or administrator or in the case of an estate below the value of twenty thousand rupees the heirs who have audited the inheritance;

" local authority " means any Municipal Council, Urban Council, Town Council or Village Council and includes any Authority created and established by or under any law to exercise, perform or discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed or discharged by any such Council;

" public corporation" means any corporation, board or other body which was or is established by or under any

written law other than the Companies Ordinance or the Companies Act, No. 17 of 1982, with funds or capital wholly or partly provided by Government by way of grant, loan or otherwise;

" wage or salary " means"

- (a) the basic or consolidated wage or salary;
- (b) cost of living allowance, special living allowance or other similar allowance; and
- (c) piece rates;

"workman" means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular, time, and includes any workman whose services have been terminated; and. " year " means a completed period of twelve months.