


OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

EXTRAORDINARY

GOVERNMENT OF GOA, DAMAN AND DIU

Law and Judiciary Department

Notification

LD/Bill/9/74

The following Act passed by the Legislative Assembly of Goa, Daman and Diu which received the assent of the Administrator of Goa, Daman and Diu on 28th September, 1973 is hereby published for general information.

M. S. Borkar, Under Secretary (Law).

Panaji, 24th October, 1974.

The Goa, Daman and Diu Shops and Establishments Act, 1973

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The Goa, Daman and Diu Shops and Establishments Act, 1973

(Act No. 13 of 1974) [7th October, 1974]

AN

ACT

to provide for the regulation of conditions of work and employment in shops, commercial establishments, restaurants, theatres and other establishments and for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twenty-fourth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. Short title, extent, commencement and application.—(1) This Act may be called the Goa, Daman and Diu Shops and Establishments Act, 1973.

(2) It extends to the whole of the Union territory of Goa, Daman and Diu.

(3) It shall come into force in such areas and on such dates as the Government may, from time to time, by notification, appoint.

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

(1) "apprentice" means a person who is employed, whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment;

(2) "child" means a person who has not completed his twelfth year of age;

(3) "closed" means not open, for the service of any customer, or for any trade or business or for any other purpose connected with the establishment except loading, unloading and annual stock-taking;

(4) "commercial establishment" means any establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes—

- (a) a society registered under the Societies Registration Act, 1860 (Central Act XXI of 1860) or charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary to, such business trade or profession;
- (b) an establishment which carries on the business of advertising, commission agency, forwarding or commercial agency or which is a clerical department of a factory or of any industrial or commercial undertaking;
- (c) an insurance company, Joint Stock Company, bank, broker's office or exchange; and
- (d) any other establishment which the Government may notify to be a commercial establishment, but does not include a factory,

shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

(5) "day" means a period of twenty-four hours beginning at mid-night, except that in the case of an employee, whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences;

(6) "dependent" means in relation to a deceased employee, his nominee or in the absence of such nominee, his heir or legal representative;

(7) "employee" means a person wholly or principally employed in, and in connection with, any establishment, and includes an apprentice or any clerical or other staff of a factory or industrial establishment which falls outside the scope of the Factories Act, 1948 (Central Act 63 of 1948); but does not include the husband, wife, son, daughter, father, mother, brother, sister or dependent relative of an employer or his partner, who is living with and depending upon such employer or partner and is not in receipt of any wages;

(8) "employer" means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;

(9) "establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of the Act;

(10) "factory" means factory within the meaning of the Factories Act, 1948 (Central Act 63 of 1948);

(11) "goods" includes all materials, commodities and articles;

(12) "Government" means the Administrator of the Union territory of Goa, Daman and Diu appointed under article 239 of the Constitution;

(13) "gratuity" means the gratuity payable under section 39;

(14) "Inspector" means an Inspector appointed under section 49;

(15) "notification" means a notification published in the Goa, Daman and Diu Government Gazette;

(16) "opened" means opened for the service of any customer or for any trade or business connected with the establishment;

(17) "periods of work" means the time during which an employee is at the disposal of the employer;

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

(19) "residential hotel" means any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and includes a club;

(20) "restaurant" or "eating house" means any premises in which is carried on wholly or principally

the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises and includes a Halwai shop but does not include a restaurant attached to a theatre or restaurant or a canteen attached to a factory if the persons employed therein are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948);

(21) "shop" means any premises where goods are sold, either by retail or wholesale or both or where services are rendered to customers and includes an office, store-room, godown, ware-house, sale depot and work-place, whether in the same premises or elsewhere, used mainly in connection with such trade or business, but does not include a factory, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948);

(22) "spread over" means the period between the commencement and termination of work of an employee on any day;

(23) "theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of cinematograph or other suitable apparatus or for dramatic or circus performances or for any other amusement or entertainment;

(24) "wages" means every remuneration, whether by way of salary, allowances, or otherwise expressed in terms of money or capable of being so expressed which would, if the term of employment, express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes —

- (a) any remuneration payable under any settlement between the parties or order of a tribunal or court;
- (b) any remuneration to which the employee is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;
- (d) any sum which by reason of the termination of employment of the employee is payable under any law, contract or instrument which provides for the payment of such sums, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the employee is entitled under any scheme framed under any law for the time being in force,

but does not include —

- i) any bonus, whether under a scheme of profit sharing or otherwise, which does not form part of the remuneration payable under the terms of employment, or, which is not payable under any award or settlement between the parties or order of a court;

- ii) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the Government;
- iii) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- iv) any travelling allowance or the value of any travelling concession;
- v) any sum paid to the employee to defray special expenses incurred by him on account of the nature of his employment, or
- vi) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d);

(25) "week" means a period of seven days beginning at midnight on Saturday;

(26) "young person" means a person who is not a child but has not completed eighteen years of age.

3. Registration of Establishments and renewal of registration certificates.—(1) Within the period specified in sub-section (3), the employer of every establishment shall send to the Inspector concerned, a statement in the prescribed form together with such fees as may be prescribed, containing—

- (a) the name of the employer and the manager, if any;
- (b) the postal address of the establishment;
- (c) the name, if any, of the establishment;
- (d) category of the establishment; and
- (e) such other particulars as may be prescribed.

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the Register of Establishments in such manner as may be prescribed and shall issue in the prescribed form a registration certificate to the employer who shall display it at a prominent place in the establishment.

(3) The period in respect of establishments mentioned in column (1) below for filing the statement and depositing the fees as required under sub-section (1), shall be as specified against it in column (2) —

| Establishments (1) | Period (2) |
|---|--|
| (i) Establishments existing on the date on which this Act comes into force. | Ninety days from the date on which the Act comes into force. |
| (ii) New Establishments. | Ninety days from the date on which the establishment commences its work. |

(4) The Inspector may, on receipt of an application made by the employer together with the fees prescribed therefor, renew the registration certifi-

cate for a period of one year commencing from the date of its expiry.

(5) Every application for the renewal of the registration certificate shall be made in such form and in such manner as may be prescribed so as to reach the Inspector not later than thirty days before the date of its expiry:

Provided that an application for the renewal of a registration certificate received not later than thirty days after its expiry may be entertained by the Inspector on the applicant paying such penalty, not exceeding twenty-five rupees, as may be prescribed.

(6) An applicant for the renewal of a registration certificate under sub-section (5), shall, until communication of orders on his application, be entitled to act as if the registration certificate had been renewed.

(7) In the event of any doubt or difference of opinion between an employer and the Inspector as to the category to which an establishment would belong, the Inspector shall refer the matter to the prescribed authority which shall after such inquiry as it thinks proper decide the category of such establishment and its decision shall be final for the purposes of this Act.

CHAPTER II

Shops

4. Opening and closing hours of shops.—(1) No shop shall on any day be opened earlier or closed later than such hours as may, after previous notification be fixed by the Government by a general or special order in that behalf:

Provided that any customer who was being served or was waiting to be served in any shop at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, for the purpose of this section, fix different hours for different classes of shops or for different areas or for different times of the year.

5. Daily and weekly hours of work in shops and prohibition of sales in its vicinity.—(1) Subject to other provisions of this Act, no employee in any shop shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in a shop for any period in excess of the limit fixed under sub-section (1), on payment of over-time wages, subject however that the maximum period of such excess in a week shall be six hours.

(3) For the purpose of stock-taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in a shop for not more than any fifteen days in a year, in excess of the period fixed in sub-section (1), on payment of over-time wages, so however that the excess period shall not in aggregate, exceed twenty-four hours.

(4) No person shall carry on, in or adjacent to, a street or public place, the sale of any goods before the opening and after the closing hours fixed under

section 4 for the shops dealing in any kind of goods in the locality in which such street or public place is situated:

Provided that nothing in this section shall apply to the sale of—

- (i) Newspapers,
- (ii) Flowers,
- (iii) Pan,
- (iv) Vegetables and fruits, and
- (v) such other goods as the Government may, from time to time, by notification, specify.

6. Interval for rest.—No employee in any shop shall be required or allowed to work therein for more than five hours in any day unless he has had an interval for rest of at least one hour:

Provided that an employee who was serving a customer at the commencement of the interval may be required to serve him during the quarter of an hour immediately following such commencement.

7. Spread over of period of work.—The periods of work of an employee in a shop shall be so arranged that, along with his intervals for rest, they shall not spread over more than twelve hours in any day: Provided that where an employee works on any day for the purpose of stock-taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day, on payment of over-time wages.

8. Closing of shops and grant of holidays.—(1) Every shop shall remain closed on one day of the week. The employer shall fix such day at the beginning of the year, notify it to the Inspector and specify it on a notice prominently displayed in a conspicuous place in the shop: Provided that the employer shall not without reasonable cause alter such day more often than once in three months, shall notify the alteration to the Inspector, and shall also make the necessary change in the notice displayed in the shop.

(2) The Government may, by notification, require in respect of any specified class of shops that they shall, in addition to the weekly holiday prescribed under sub-section (1) be closed at such hour in the afternoon of one week day in every week as may be fixed by the Government.

(3) The Government may, for the purpose of sub-section (2), fix different hours for different classes of shops or for different areas or for different times of the year.

(4) The weekly day on which a shop is closed in pursuance of the requirement under sub-section (2) shall be notified to the Inspector and specified by the employer in a notice prominently displayed in a conspicuous place in the shop, and shall not be altered by the employer more often than once in three months.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to the shop in which he is employed or to any other place for any work in connection with the business of his shop on the weekly closed day or part of the day on which it has remained closed.

(6) No deduction shall be made from the wages of any employee in a shop on account of the weekly holiday or part of a day on which it has remained closed; and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall none the less be paid for such day or part of a day the wages he would have drawn had the shop not remained closed or the holiday not been allowed on that day or part of a day.

CHAPTER III

Establishments other than shops

9. Application of this Chapter to establishments other than shops.—The provisions of this Chapter shall apply only to establishments other than shops.

10. Opening and closing hours.—(1) No establishment shall on any day be opened earlier or closed later than such hour as the Government may, after previous publication in the Official Gazette, by general or special order specify in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, for the purposes of this section fix different hours for different classes of establishments or for different areas or for different times of the year.

11. Daily and weekly hours of work in establishment.—(1) Subject to other provisions of this Act, no employee in any establishment shall be required or allowed to work therein for more than eight hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in an establishment for any period in excess of the limit fixed under sub-section (1), on payment of over-time wages, so however that the maximum period of such excess shall be six hours in any week.

(3) For the purposes of stock-taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in an establishment for not more than any fifteen days in a year, in excess of the period fixed in sub-section (1), on payment of over-time wages, so however that the excess period shall not, in aggregate, exceed twenty-four hours.

12. Interval for rest.—No employee in any establishment shall be required or allowed to work in such establishment for more than five hours in any day unless he has had an interval for rest of at least one hour.

13. Spread over of periods of work.—The periods of work of an employee in an establishment shall be so arranged that, along with his interval for rest, they shall not spread over more than twelve hours in any day:

Provided that where an employee works on any day for the purpose of stock-taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day on payment of over-time wages.

14. Holidays. — (1) Every employee in an establishment shall be allowed in each week a holiday of one whole day:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in the week including the days spent on authorised leave is less than six days.

(2) The Government may, by notification, require in respect of any specified class of establishments that every employee therein shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the Government.

(3) The Government may, for the purpose of sub-section (2), fix different hours for different classes of establishments or for different areas or for different times of the year.

(4) No deduction shall be made from the wages of any employee in an establishment on account of any day or part of a day on which a holiday has been allowed in accordance with this section; and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall none the less be paid for such day or part of a day the wages he would have drawn, had the holiday not been allowed on that day or part of a day.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to, his establishment on any day or part of a day on which a holiday has been allowed in accordance with this section.

CHAPTER IV

Employment of children, young persons and women

15. Children not to work in establishment. — No child shall be required or allowed to work in any establishment.

16. Young persons to work only between 6 a. m. and 7 p. m. — No young person shall be required or allowed to work in any establishment before 6 a. m. and after 7 p. m.

17. Daily and weekly hours of work for young persons. — Notwithstanding anything contained in this Act, no young persons shall be required or allowed to work in any establishment for more than seven hours in any day and forty-two hours in any week nor shall such person be allowed to work overtime.

18. Maternity benefit. — The periods of absence from duty in respect of which a woman employee is entitled to maternity leave under section 19, shall be treated as authorised absence from duty, and the woman employee shall be entitled to maternity leave, but not to any wages for any of those periods.

19. Maternity leave. — Every woman who has been for a period of not less than six months preceding the date of her delivery, in continuous employment of the same employer whether in the same or different shops or commercial establishments,

shall be entitled to receive from her employer for the period of —

- (a) six weeks leave immediately preceding the day of delivery; and
- (b) six weeks leave following the day of delivery.

CHAPTER V

Health & Safety

20. Cleanliness. — The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.

21. Ventilation and Lighting. — (1) The premises of every establishment shall be ventilated as provided for in the laws relating to the municipalities, gram panchayats or other local authorities in force in the Union territory.

(2) (a) The premises of every establishment shall be sufficiently lighted during all working hours.

(b) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, he may serve on the employer an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a specified date.

22. Precautions for the safety of employees in establishments. — (1) In every establishment, other than such establishment or class of establishments as the Government may, by notification, specify, all precautions against fire shall be taken as may be prescribed.

(2) If power-driven machinery is used, or any process, which, in the opinion of the Government, is likely to expose any employee to a serious risk of bodily injury is carried on, in any establishment other than such establishment or class of establishments as the Government may, by notification, specify, such precautions, including the keeping of first aid box, shall be taken by the employer for the safety of the employees therein, as may be prescribed.

CHAPTER VI

Leave and Holidays with wages

23. Leave. — (1) Every employee who has served for a period of two hundred and forty days or more during a continuous period of twelve months in any establishment shall be entitled during the subsequent period of twelve months, to leave with wages for a period of fifteen days:

Provided that such leave with wages may be accumulated upto a maximum period of forty-five days:

Provided further that any continuous period of service in an establishment preceding the date on which this Act applies to that establishment shall also count, subject to a maximum period of twelve months:

Provided also that any leave accumulated by an employee in an establishment under the law applicable to that establishment preceding the date on which this Act applies to it, shall not be affected.

(2) An employee may apply in writing to the employer, not less than seven full working days before the date of availing himself of his leave, to allow all the leave or any portion thereof, to which he is entitled under sub-section (1):

Provided that the number of instalments for taking leave shall not exceed three during a period of twelve months.

(3) An employee who has been allowed leave for not less than five days under sub-section (2) shall, before his leave begins, be paid the wages due for the period of the leave allowed if he makes a request therefor.

(4) Every employee in any establishment shall also be entitled during his first twelve months of continuous service and during every subsequent twelve months of such service—

- (a) to leave with wages for a period not exceeding nine days, on the ground of any sickness incurred or accident sustained by him; and
- (b) to casual leave with wages for a period not exceeding six days on any reasonable ground.

(5) If an employee entitled to any leave under sub-section (1), is discharged by his employer before he has been allowed such leave, or if the leave applied for by such employee has been refused and if he quits his employment before he has been allowed the leave, the employer shall pay him the amount payable under this Act in respect of the period of leave.

(6) If an employee is lawfully discharged by his employer when he is sick or suffering from the result of an accident, the employer shall pay him the amount payable under this Act in respect of the period of the leave to which he was entitled at the time of his discharge in addition to the amount, if any, payable to him under sub-section (3).

(7) An employee in a hostel attached to a school or college or in an establishment maintained in connection with the boarding and lodging of pupils and resident masters, shall be allowed the privileges referred to in sub-sections (1) to (6), reduced however proportionately to the period for which he was employed continuously in the previous year or to the period for which he will be employed continuously in the current year, as the case be; and all references to the period of leave in sub-sections (1) and (4) shall be construed accordingly, fractions of less than half a day being disregarded.

24. Other holidays.— (1) Every employee in any establishment shall also be entitled to seven holidays in a year with wages on the days to be specified by notification from time to time by the Government which shall include the 26th January (Republic Day), 15th August (Independence Day), 2nd October (Gandhi Jayanti) and 19th December (Liberation Day) and 1st May; and on every such holiday, the establishment should remain closed:

Provided that any such employee in any residential hotel, restaurant, eating house, theatre, or any place of public amusement or entertainment may be required to work in such establishment on any such holiday subject to the condition that in lieu thereof,

a compensatory holiday with wages shall be allowed to such person within thirty days from the date of such holiday:

Provided further that such compensatory holidays shall not exceed seven in a year and where any such employee in any such establishment is required to work on any such compensatory holiday, he shall be paid additional wages at the ordinary rate of wages in lieu of such holidays.

(2) Nothing in sub-section (1) shall apply in respect of any establishment where the number of holidays with wages allowed by the employer is more than the holidays notified by the Government under that sub-section:

Provided that every such employer shall send a list of holidays with wages allowed by him, which shall include the five holidays specified in sub-section (1), to the Inspector and shall also display the list at a prominent place of the establishment.

25. Pay during leave and holidays.— Every employee shall, for the period of the leave allowed under sub-sections (1) and (4) of section 23 or the holidays allowed under section 24, be paid at a rate equivalent to the daily average of his wages for the days on which actually worked during the preceding month exclusive of any earnings in respect of overtime.

26. Power to increase the period of leave allowable under section 23.— Notwithstanding anything contained in section 23, the Government may, by notification, increase the total number of days of leave that may be allowed under sub-section (1) of that section and the maximum number of days upto which such leave may be accumulated in respect of any establishment or class of establishments.

CHAPTER VII

Wages

27. Responsibility for payment of wages.— Every employer shall be responsible for payment to his employees of all wages and sums required to be paid under this Act.

28. Fixation of wage-period.— (1) Every employer shall fix periods (hereinafter referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

29. Wages for overtime work.— Where any employee in any establishment is required to work overtime he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages:

Provided that where the normal hours of work in an establishment are ordinarily less than eight hours a day and forty-eight hours a week, he shall be entitled in respect of work in excess of such normal hours upto eight hours a day, and forty-eight hours a week to wages at the ordinary rate of wages and in respect of work in excess of eight hours a day and forty-eight hours a week at twice the ordinary rate of wages, in addition to the wages for the normal hours of work.

Explanation. — For the purpose of this section, the expression "ordinary rate of wages" shall mean such rate of wages as may be calculated in the manner prescribed.

30. Time for payment of wages. — (1) The wages of every employee shall be paid before the expiry of the seventh day after the last day of the wage-period in respect of which the wages are payable.

(2) Where the service of any employee is terminated by or on behalf of the employer, the wages earned by such employee shall be paid before the expiration of the second working day from the day on which his employment is terminated.

(3) All payments of wages shall be made on a working day.

31. Wages to be paid in current coin or currency notes. — All wages shall be paid in current coin or currency notes or in both.

32. Deductions which may be made from wages. —

(1) The wages of an employee shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation. — Every payment made by an employee to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employee shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely: —

- (a) fines and other penalties lawfully imposed;
- (b) deductions for absence from duty;
- (c) deductions for damages to, or loss of, goods expressly entrusted to the employee for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deduction for house accommodation provided by the employer;
- (e) deduction for such amenities and services supplied by the employer as the Government may, by general or special order, authorise;
- (f) deductions for recovery of advances or for adjustment of overpayments of wages;
- (g) deductions of income-tax or profession tax payable by the employee;
- (h) deductions required to be made by order of a court or other authority competent to make such order;
- (i) deductions for subscriptions to, and for repayment of advances from, any provident fund to which the Employees Provident Funds Act, 1952 (Central Act 19 of 1952) applies or any recognised provident fund as defined in section 2(38) of the Income Tax Act, 1961 (Central Act 43 of 1961), or any provident fund approved in this behalf by the Government during the continuance of such approval;

(j) deductions for payments to cooperative societies approved in this behalf by the Government or any officer authorised by them in this behalf or to a scheme of Insurance maintained by the Indian Post Office or the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956);

(k) deductions made with the written authorisation of the employee.

33. Fines. — (1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, without the previous approval of the Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner in the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three paise in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employee who has not completed the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him after the expiration of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the employees in the establishment as are approved by the prescribed authority.

Explanation. — When the employees are only part of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

34. Deductions for absence from duty. — (1) Deductions may be made under clause (b) of sub-section (2) of section 32 only on account of the absence of an employee from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employee in respect of the wage-period for which the deduction is

made, a larger proportion than the period for which he was absent bears to the total period, within such wage-period during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Government, if ten or more employees acting in concert absent themselves without due notice that is to say, without giving the notice which is required under the terms of their contract of employment and without reasonable cause such deduction from any such employee may include such amount not exceeding his wages for four days as may by any such terms be due to the employer in lieu of due notice.

Explanation. — For the purpose of this section, an employee shall be deemed to be absent from the place where he is required to work, if, although present in such place he refuses, in pursuance of a stay in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

35. Deductions for damage or loss. — (1) A deduction under clause (c) of sub-section (2) of section 32 shall not exceed in respect of the damage of goods, one half of the amount of such damage, and in respect of the loss of goods or money, the amount of such loss caused to the employer by negligence or default of the employee and shall not be made until the employee has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deduction.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed.

36. Deductions for services rendered. — A deduction under clause (d) or clause (e) of sub-section (2) of section 32 shall not be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of a deduction under the said clause (e) it shall be subject to such conditions, as the Government may impose.

37. Deductions for recovery of advances. — Deductions under clause (f) of sub-section (2) of section 32 shall be subject to the following conditions, namely: —

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;
- (b) recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

38. Deductions for payment to co-operative societies and insurance schemes, etc. — Deductions under

clause (j) and clause (k) of sub-section (2) of section 32 shall be subject to such conditions as the Government may impose.

39. Conditions for terminating the service of an employee and payment of gratuity. — (1) No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and a gratuity amounting to fifteen days' average wages for each year of continuous employment.

Explanation. — For the purpose of this sub-section:

- (a) the expression "wages" does not include over time wages;
- (b) the expression "wages" means the daily average of wages for the days an employee actually worked during the thirty days immediately preceding the date of termination of service;
- (c) an employee in an establishment shall be deemed to have been in continuous employment for a period of not less than six months, if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination of the service of that employee;
- (d) where the total continuous employment is for a fraction of a year or extends over a fraction of a year in addition to one or more completed years of continuous employment, such fraction, if it is not less than half a year shall be counted as a year of continuous employment in calculating the total number of years for which the gratuity is to be given.

(2) Where a gratuity is payable under sub-section (1) to an employee, he shall be entitled to receive his wages from the date of termination of his service until the date on which the gratuity so payable is actually paid subject to a maximum of wages for two months.

(3) An employee, who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a medical certificate or who wants to retire on medical grounds or to resign his service, may give up his employment after giving to his employer notice of at least one month and every such employee and the dependent of an employee who dies while in service, shall be entitled to receive a gratuity amounting to fifteen days' average wages for each year of continuous employment calculated in the manner provided in the Explanation to sub-section (1). He shall be entitled to receive the wages from the date of giving up the employment until the date on which the gratuity so payable is actually paid, subject to a maximum of wages for two months.

(4) The services of an employee shall not be terminated for misconduct except, for such acts or omissions and in such manner, as may be prescribed.

Explanation. — For the purpose of this section, the term "employee" shall include part-time employee also.

40. Appointment of authority to hear and decide appeals arising out of termination of service. —

(1) (a) The Government may, by notification, appoint an authority to hear and decide appeals arising out of the termination of service of employees under section 39.

(b) Any employee whose service has been terminated may appeal to the authority concerned within such time and in such manner as may be prescribed.

(2) The authority may, after inquiring in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) Against any decision of the authority under sub-section (2), a second appeal shall lie to the Labour Court constituted under section 7 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) within thirty days from the date of communication of the decision and the decision of the Labour Court on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that Court.

(4) Any amount directed to be paid under this section may be recovered —

- (a) if the authority is a Magistrate, by the authority, as if it were a fine imposed by him as Magistrate; and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

41. Notice and payment of gratuity to employees in case of transfer of establishment. — Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer, every employee who has been in continuous employment for not less than six months in that establishment immediately before such transfer, shall be entitled to the notice and the gratuity in accordance with the provisions of sub-section (1) of section 39:

Provided that nothing in this section shall apply to an employee in any case where there has been a change of employers by reason of transfer, if —

- (a) the employment of the employee has not been interrupted by such transfer;
- (b) the terms and conditions of employment applicable to the employee after such transfer are not in any way less favourable to the employee than those applicable to him immediately before such transfer; and
- (c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the employee in the event of

termination of his services, gratuity on the basis that his employment has been continuous and has not been interrupted by the transfer.

CHAPTER VIII

Appointment, power and duties, etc. of the authority to hear and decide claims relating to wages, etc. of employees in establishments

42. Appointment of the authority to hear and decide claims arising out of deductions from the employees etc. — For any specified area the Government may, in consultation with the Judicial Commissioner, appoint, by notification, any Civil Judge (hereinafter to be referred to as the judicial authority) to hear and decide all claims arising out of deductions from the wages or delay in payment of the wages or gratuity payable under this Act to employees in any establishment in that area.

43. Claims arising out of deductions from wages or delay in payment of wages, etc. and penalty for malicious or vexatious claims. — (1) Where, contrary to the provisions of this Act, any deduction has been made from the wages of an employee in an establishment or any payment of wages or gratuity to him has been delayed, such employee himself, or if he is dead any of his dependents, or any legal practitioner, or any official of a registered trade union authorised in writing to act on behalf of such employee or dependent, or any Inspector under this Act, or any other person acting with the prior permission of the prescribed authority may apply to the judicial authority for a direction under sub-section (2):

Provided that every such application shall be presented within one year from the date on which the deduction from the wages was made or from the date on which the payment of the wages or gratuity was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of one year when the applicant satisfies the judicial authority that he had sufficient cause for not making the application within such period.

(2) When any application under sub-section (1) is entertained, the judicial authority shall, hear the applicant and the employer or give them an opportunity of making representation either in person or through an authorised representative, and after such further inquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer is liable under this Act, direct the refund to the employee, of the amount deducted, or the payment of the delayed wages or the gratuity together with the payment of such compensation as that authority may think fit, not exceeding ten times the amount deducted or the amount of delayed wages and not exceeding twenty five rupees in case of gratuity:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages or gratuity if the said authority is satisfied that the delay was due to —

- (a) a bonafide error or a bonafide dispute as to the amount payable to the employee, or

- (b) the existence of exceptional circumstances, such that the employer was unable, though exercising reasonable diligence to make prompt payment, or
- (c) the failure of the employee to accept payment.

(3) If the said authority hearing any application under this section is satisfied that it was either malicious or vexatious, that authority may direct that a penalty not exceeding five rupees be paid to the employer by the person presenting the application.

(4) Any amount directed to be paid under this section may be recovered—

- (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate; and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes an application in this behalf, as if it were a fine imposed by such Magistrate.

Explanation.—For the purpose of this section, the term “employee” shall include part-time employee also.

44. Single application in respect of claims from unpaid group.—(1) Employees are said to belong to the same unpaid group if they are borne on the same establishment and if their wages or gratuity for the same period or periods have remained unpaid after the day on which those were due.

(2) A single application may be presented under section 43 on behalf, or in respect, of any number of employees belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (2) of that section shall be twenty five rupees per head.

(3) The Judicial authority may deal with any number of separate pending applications, presented under section 43, in respect of persons belonging to the same unpaid group, as if it were single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

45. Appeal.—(1) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) of section 43 or against a direction made under sub-section (2) or sub-section (3) of that section may be preferred before the District Court within thirty days of the date on which the order or direction was served on the applicant or the employer, as the case may be—

- (a) by the employer, if the total sum directed to be paid by way of wages, gratuity and compensation exceeds three hundred rupees, or
- (b) by the person who had applied under sub-section (1) of section 43 if the total amount of wages or gratuity claimed to have been withheld from the employee or from the unpaid group to which he belonged exceeds fifty rupees, or
- (c) by any person directed to pay a penalty under sub-section (2) of section 43.

(2) Save as provided in sub-section (1) any order dismissing either wholly or in part an application made under sub-section (1) of section 43 or a direction made under sub-section (2) or sub-section (3) of that section shall be final.

46. Conditional attachment of property of employer.—(1) Where at any time after an application has been made under sub-section (1) of section 43, the authority, or where at any time after an appeal has been filed under clause (b) of sub-section (1) of section 45, the Court referred to in that section, is satisfied that the employer is likely to evade payment of any amount that may be directed to be paid under section 43 or section 45, the authority or the Court, as the case may be, except in cases where the authority or Court is of opinion that the ends of justice would be defeated by the delay, after giving the employer an opportunity of making representation, may direct the attachment of so much of the property of the employer as is, in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.

(2) The provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) relating to attachment before judgement under that Code shall, so far as may be, apply to any direction for attachment under sub-section (1).

47. Powers of authority appointed under section 42.—Every authority appointed under section 42 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

48. Powers of Government to prescribe costs and court-fees for proceedings under this chapter.—The Government may prescribe the scales of cost which may be allowed and the amount of court-fees which shall be payable, in respect of any proceedings under this Chapter.

CHAPTER IX

Appointment, power and duties of Inspectors

49. Appointment of Inspectors.—The Government may by notification, appoint such number of Inspectors as it may think necessary for the purposes of this Act and fix the local limits of their jurisdiction.

50. Powers and duties of Inspectors.—An Inspector may, within the local limits for which he is appointed,

- (a) enter at all reasonable hours with the assistance of such persons in the service of the Government or any local authority as he thinks fit, any place which is or which he has reason to believe, is used as an establishment;
- (b) make such inspection of the premises and of any registers or other records and take on the spot or otherwise evidence of such

persons, as he may deem necessary, in the manner prescribed;

- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

51. Inspectors to be public servants. — Every Inspector appointed under section 49 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, (Central Act 45 of 1860).

CHAPTER X

Penalties for Offences

52. Penalties. — Any employer who contravenes any of the provisions of sections 4, 5 to 8, 10 to 25, 27 to 39, 41 and 57 shall be punishable for a first offence with fine which may extend to twenty five rupees, for a second offence with fine which shall not be less than fifty rupees and which may extend to one hundred rupees, and for a third or subsequent offence with fine which shall not be less than one hundred rupees and which may extend to two hundred and fifty rupees:

Provided that where any employer fails to possess a valid certificate of registration in contravention of the provisions of section 3 or of the rules made thereunder, he shall, on conviction, be punishable, in the case of a continuing offence, with a further fine which may extend to ten rupees for each day during which the offence continues.

53. Penalty for obstructing Inspector, etc. — Any person who wilfully obstructs an Inspector in the exercise of any power conferred on him under this Act, or any person lawfully assisting such Inspector in the exercise of such power, or who fails to comply with any lawful direction made by such Inspector, shall be punishable with fine which may extend to two hundred and fifty rupees.

54. Procedure in trial of offence. — (1) No Court shall take cognizance of a complaint against an employer under section 43 relating to deductions from wages or delay in payment of wages or gratuity payable under this Act to an employee, unless an application in respect of the facts constituting the offence has been presented under section 43 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against the employer for such an offence, the authority empowered under section 42 or the appellate Court, as the case may be, shall give such employer an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such employer satisfies the authority or Court that his default was due to —

- (a) a bonafide error or bonafide dispute as to the amount payable to the employee; or
- (b) the existence of exceptional circumstances, such that the employer was unable, though exercising diligence, to make prompt payment; or
- (c) the failure of the employee to accept payment.

(3) No Court shall take cognizance of a complaint against any person for an offence under section 43 other than the offence referred to in sub-section (1) or for a contravention of any rule made under section 59 except on a complaint made by or with the previous sanction in writing of an Inspector under this Act within six months from the date on which the offence or contravention is alleged to have been committed.

(4) In imposing any fine for an offence referred to in sub-section (1), the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 43.

55. Bar of suits. — No Court shall entertain any suit for the recovery of wages or gratuity or of any deduction therefrom in so far as the sum so claimed —

- (a) forms the subject of an application under section 43 which has been presented by the plaintiff and which is pending before the authority appointed under section 42 or of an appeal under section 45; or
- (b) has formed the subject or a direction under section 43 in favour of the plaintiff; or
- (c) has been adjudged, in any proceeding under section 43 not to be owed to the plaintiff; or
- (d) could have been recovered by an application under section 43.

56. Contracting out. — Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

CHAPTER XI

Miscellaneous

57. Restriction on double employment, maintenance of registers, records, etc. — (1) No employee shall work in any establishment, nor shall any employer knowingly permit an employee to work in any establishment, on a day or part of a day on which the employee is given a holiday or is on leave in accordance with the provisions of this Act.

(2) Subject to the control of the Government, an employer shall maintain such registers and records and display such notices, as may be prescribed. All such registers and records shall be kept, and all such notices shall be displayed on the premises of the establishment to which they relate.

(3) Every employer shall on demand produce or cause to be produced for inspection by an Inspector all registers, records and notices required to be kept by or under this Act.

(4) Every employer shall submit such returns relating to his business, in such manner and within such period, and to such authority as may be prescribed.

(5) Every employer shall give an order of appointment to his employee in the establishment before such employee joins the service:

Provided that in the case of an employee in the service at the commencement of this Act, the employer shall give such order of appointment within a period of three months from the date of such commencement.

58. Delegation of powers. — (1) The Government may, by notification, authorise any officer or authority subordinate to them, to exercise any one or more of the powers vested in them by or under this Act, except the power mentioned in section 59, subject to such restrictions and conditions, if any, as may be specified in the notification.

(2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the Government or by such persons as may be empowered by them in that behalf. The Government shall also have power to control and revise the acts or proceedings of any persons so empowered.

59. Power to make rules. — (1) The Government may make rules for carrying out the purposes of this Act.

(2) In making a rule under sub-section (1), the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(3) The power to make rules conferred by this section shall be subject to the conditions of the rules being made after previous publication.

(4) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of Goa, Daman and Diu if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall thereafter have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

60. Right and privilege under other law, etc. not affected. — Nothing in this Act shall affect any rights, privileges which any employee in any establishment is entitled to, on the date on which this Act comes into operation in respect of such establishment, under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

61. Exemptions. — (1) Nothing in this Act shall apply to —

- (a) employees in any establishments whose average monthly wages exceed five hundred rupees;
- (b) establishments under the Central and State Governments, local authorities, cantonment authorities, the Reserve Bank of India, a railway administration operating any rail-

way as defined in clause (20) of article 366 of the Constitution;

- (c) establishments in mines and oil fields;
- (d) establishments in bazaar or in places where fairs or festivals are held temporarily for a period not exceeding one month at a time.

(2) Nothing in section 4 or section 10, as the case be, shall apply to —

- (a) hospitals and other institutions for treatment or care of the sick, the infirm, destitute or the mentally unfit;
- (b) such chemists' or druggists' shops as the Government may, by general or special order, specify;
- (c) hair-dressing shops, clubs and residential hotels, educational institutions, hostels attached to schools or colleges, and establishments maintained in connection with the boarding and lodging of pupils and resident masters;
- (d) stalls and refreshment rooms at railway stations, docks, wharves, ports, airports or bus stands;
- (e) establishments wholly or principally engaged in the sale of ice or aerated water;
- (f) establishments wholly or principally engaged in the sale of funeral requisites.

(3) Nothing in sections 4, 5, 8 or 10 shall apply to —

- (a) persons whose work is of an intermittent nature such as caretaker, sweeper, travelling staff;
- (b) persons employed for loading and unloading goods at godowns.

(4) The Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments, or persons or classes of persons, from all or any of the provisions of this Act, subject to such condition as they may deem fit.

(5) Notwithstanding anything contained in the foregoing sub-sections, the Government may, by notification, apply all or any of the provisions of this Act to any class of persons or establishments mentioned in those sub-sections other than those mentioned in clause (b) of sub-section (1) and modify or cancel any such notification.

62. Appointment of an authority to decide certain questions. — (1) If any question arises whether all or any of the provisions of this Act apply to an establishment or to an employee therein or whether section 61 applies to any case or not, it shall be decided by such authority as may be prescribed by the rules made under this Act.

(2) The decision of such authority shall be final and shall not be liable to be questioned in any Court of law.

63. Application of the Workmen's Compensation Act, 1923. — The provisions of the Workmen's Compensation Act, 1923 (Central Act 8 of 1923),

and the rules made thereunder, shall so far as may be, apply to every employee to whom this Act applies.

64. Protection of persons acting under this Act.— No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

65. Power of Government to suspend provisions of the Act during fairs and festivals.— On any special occasion in connection with a fair or festival or a succession of public holidays, the Government may by notification, suspend for a specified period the operation of all or any of the provisions of this Act, subject to such conditions, as may be specified in such notification.

66. Weekly Holidays Act 1942 not to apply to establishments governed by this Act.— On and from the date on which this Act comes into operation in respect of any establishment, the Weekly Holidays Act, 1942 (Central Act 18 of 1942) shall cease to apply to such establishment.

67. Repeal and Savings.— With effect on and from the date on which this Act is brought into force, the Diploma Legislative No. 1441 dated 28th

August, 1952 and the Diploma Legislative No. 1503 dated 3rd September, 1953, as in force in the territory shall stand repealed:

Provided that —

(a) every appointment, order, rule, notification or notice made, issued or given under the provisions of any of the Legislative Diplomas so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, notification or notice made, issued or given under this Act; and

(b) any proceedings relating to the trial of any offence punishable under the provisions of the Legislative Diplomas so repealed shall be continued and completed as if the said Legislative Diplomas had not been repealed but had continued in operation and any penalty imposed on such proceeding shall be recovered under the Legislative Diplomas so repealed.

Secretariat,
Panaji,
7th October, 1974

B. M. MASURKAR
Secretary to the Government
of Goa, Daman and Diu
Law and Judiciary Department