

The Maharashtra Workers Payment of Legal Dues Act, 2003.

An Act for regulating the payment of statutory dues of workers, to make provisions for proper, adequate and prompt payment of such dues and for matters connected therewith.

WHEREAS it is expedient to regulate the payment of statutory dues of workers engaged in establishments, such as payment of gratuity, contribution of Provident fund, retrenchment/closure, retirement dues compensation, etc., to make provision for ensuring an adequate, proper and prompt payment of such dues, to provide for the constitution of Board, in respect of these establishments and in the different areas of the State and to provide for purposes connected with the matters aforesaid. It is hereby enacted in the 54th year of the Republic of India as follows:

1. Short title, extent and commencement.

(1) This Act may be called as the Maharashtra Workers Payment of Legal Dues Act, 2003.

(2) It extends to the whole State of Maharashtra.

(3) It shall come into force on such date as the State Government may by Notification in the Official gazette appoint.

(4) It shall apply to all establishments of factories, construction, service, motor transport or inland water transport works, Shops & Commercial establishments including film making, Cinema, Theatres, Charitable, Research, Training, Educational Institutions, Hospitals, dispensaries, nursing home, restaurants, eating houses, consultancy and Solicitors & Lawyers organization & to any other establishment, which the State Government may by notification in the Official Gazette, specify in this behalf.

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

(a) ‘Average Wage’ means the average of wages (including piece rate earnings) paid to workers.

(i) in case of monthly paid workers and piece rated workers, in 3 completed calendar months,

(ii) in case of fortnight or weekly paid workers in four completed fortnights or 4 complete weeks,

(iii) in case of daily paid workers, in the 12 full working days,

preceding the date with reference to which the average pay becomes payable if the worker had worked for 3 complete calendar months or 4 complete fortnights or 4 complete weeks or as the case may be, 12 full working days and where such average cannot be calculated as aforesaid, the average of wages payable to the workers during the period he actually worked.

(b) ‘Board’ – means the Board constituted under Section 6.

(c) ‘Construction’ – means the construction, alteration, repair, maintenance or demolition of or in relation to buildings, roads, streets, irrigation, drainage, embankment works, flood control works, transmission and distribution of power, water works including canals, for distribution of water, electric lines, dams, Reservoirs, tunnels, bridges, pipelines, towers and such other work as may be specified in this behalf by the State Government by Notification.

(d) ‘Closure’ – means the permanent closing down of any place of employment or part thereof.

- (e) 'Day'- means a period of 24 hours beginning at the midnight.
- (f) 'Contribution' –means a contribution payable in respect of a worker registered under a Scheme or the contribution payable in respect of a worker to whom the Scheme applies.
- (g) 'Employer'- means an owner thereof or a person who employs workers in his establishment or a person who has ultimate control over the affairs of the establishment including an agent of such owner & the legal representative of the deceased owner or employer.
- (h) 'Establishment'- means any activity carried on by co-operation between the employer and workers and include any branch or office of the establishment, & also includes manufacturing activity, factory, construction, service of transport or other enterprises, hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, shops & establishments, charitable, research training & educational institutions, consultancy and solicitors or lawyers organizations and other professionals such as Chartered accountants, Architects, etc.
- (i) 'Charitable Institution'- means an institution whether registered or unregistered under the relevant Act, which is established for the purpose of charity to any living being or formed for not any profit motive or formed for the welfare of living beings, or for preservation of environment or for heritage or for religious purposes.
- (j) 'Factory'- means factory as defined under the Factories Act, 1948.
- (k) 'Hotel'- means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of sum or money by traveller or any member of the public or a class of the public and includes club.
- (l) 'Restaurant'- means any premises in which is carried on wholly or principally the business of supply of meals or refreshment to the public or a class of the public or consumption on the premises.
- (m) 'Shop'- means any premises where goods are sold either on retail or on wholesale, the services are rendered to customers and includes the office, store-room, godown, warehouse or work house, work place, wherein the same premises or otherwise, used in or in connection with such trade or business, but does not include the factory.
- (n) 'Worker'- means any person employed for carrying out any establishment for hire or re-ward, where the terms of employment be expressed or implied and whose wages do not exceed Rs.25000/- per month, and for the purpose of any proceedings under this Act, in relation to an individual claim includes any such worker who has been separated from service, dismissed, discharged, retrenched and whose separation from service, dismissal, discharge or retrenchment, has led to that claim but does not include any such person who is employed in managerial, administrative or supervisory capacity.
- (o) 'Notification'- means a notification published in the Official Gazette.
- (p) 'Prescribed'- means prescribed by the Rules made in this Act.
- (q) 'Separation from service'- means the termination, by employer, of services of the worker, on account of –
 - i) Retrenchment, or
 - ii) By way of punishment on account of misconduct, or
 - iii) Voluntary retirement, or

- iv) Resignation, or
 - v) Reaching the age of superannuation in terms of contract of employment, rules, or Standing Orders applicable to the worker, or
 - vi) Closure of establishment, or
 - vii) As a result of the contract of employment coming to an end or non renewal of the contract of employment or termination of contract under stipulation in that behalf contained therein, or
 - viii) Termination of service on grounds of ill health or
 - ix) Termination of service on account of any other reason.
- r) 'Legal Dues Fund' - means fund constituted under the Scheme.
- s) 'Scheme' - means a scheme made under this Act.
- t) "Wages" means all remuneration capable of being expressed in terms of money which would if the terms of employment, express or implied were fulfilled, be payable to a worker in respect of his employment, or of work done in such employment and includes,
- (i) such allowance (including dearness allowance) as the workman is for the time being entitled to;
 - (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service, or of any concessional supply of food grains or other articles;
 - (iii) any traveling concession;
 - (iv) any remuneration payable on the promotion of sales or business or both;
- but does not include-
- a) any bonus;
 - b) any gratuity payable on the termination of service;
 - c) any contribution paid or payable to the legal dues fund or for the benefit of the worker under any law for the time being in force.

The term and expressions not defined in this Act shall have the same meaning as assigned to them in respective prevailing Acts.

3. Scheme for ensuring adequate, proper & prompt payment of legal dues.

(i) For the purpose of ensuring an adequate and proper, prompt payment of legal dues, the State Government may in the scheme provide for registration of the employers, workers in an establishment and make provisions for the general social security measures for such workers,

(ii) In particular the scheme may provide for all or any of the following matters i.e. to say-

- a) to make provision regarding payment of legal dues of workers of the establishments which are closed/not working for whatsoever reasons.
- b) for application of the Scheme, to such class of registered workers and employments as may be specified therein,
- c) for defining obligations of registered workers and employers,
- d) for regulating the registration of the workers and employers, removal of the names of the workers/employers from the register and the imposition of fees for registration.

- e) for regulating the payment of contribution towards legal dues to workers such as gratuity, provident fund, separation from service, compensation and payment of any other legal dues to the workers.
- (f) for providing the time within which the registered employers should remit to the Board the amount of payment of contribution towards gratuity, provident fund & unpaid legal dues.
 - g) For the constitution of a Legal Dues Fund, or Funds, the vesting of such funds and the payment, contribution to be made to the funds, provision for gratuity, bonus, leave with wages and all matters relating thereto.
 - h) For the manner in which, the date from which (either prospective or retrospective) and the persons by whom the cost of operating of the scheme is to be defrayed.
 - i) For constituting persons or authorities who are to be responsible for the administration of the Scheme and for the administration of the funds constituted for the purpose aforesaid.
 - j) For specifying the powers and duties which the persons or Authorities referred to in clause (i) may exercise or perform.
 - k) For such incidental and supplementary matters as may be necessary or expedient for giving effect to the purposes of a Scheme.

iii) The Scheme may further provide that a contravention of any provision thereof shall be punished with imprisonment for such term as may be specified or with both imprisonment and fine and if the contravention is continued after conviction with a further fine which shall not be less than Rs. 1000/- for each day from which the contravention is so continued.

4. Making variation & revocation of Scheme– a) The State Government may, by Notification in the official gazette and subject to the condition of previous publication, make the Scheme for the State and in like manner add to, amend, vary or substitute another Scheme for any Scheme made by it.

Provided that no such notification shall come into force unless the period of one month has expired from the date of its publication in the official gazette.

5. If any question arises whether any Scheme applies to any class of workers or employers, the matter shall be referred to the Board or such officer as may be specified by it in this behalf and the decision of the Board or such officer as may be specified by it, on this question, shall be final.

6. Constitution of Board.–

i) The State government may by Notification in the official Gazette establish a Board to be known by such name as may be specified in the Notification.

ii) The Board shall be a body corporate with the name aforesaid having perpetual succession and common seal with power to acquire, hold, and dispose of property, and to contract, and may, by that name, sue or be sued.

iii) The Board shall consist of members nominated from time to time by the State Government representing the employers, the workers and the State Government. The members representing employers and workers shall be equal in number and the members representing State Government shall not exceed one third of the total number of members representing the employers and workers.

- iv) The Chairman of the Board shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.
- v) After nomination of all the members of the Board including the Chairman, the State Government shall by notification in the official Gazette publish the name of all the members of the Board.
- vi) The term of office of members of the Board shall be such as may be prescribed.
- vii) There shall be paid to every member (not being a member representing the State Government) from the fund of the Board, travelling and daily allowances for attending the meetings of the Board at such rate as may be prescribed.
- viii) The meetings of the Board and procedure to be followed for the purpose and all matters supplementary or ancillary thereto shall subject to the approval of the State Government, be regulated by the Board itself.

7. Power of State Government to appoint a Board consisting of one person-

- i) Where by reason of employers or workers refusing to nominate persons for representing them on the Board or for any reasons whatsoever it appears to the State Government that it is unable to constitute a Board in accordance with the provision of section 6 the State Government may by Notification in the official Gazette appoint a person who shall hold office until a Board is duly constituted under section 6.
- ii) The person so appointed shall be deemed to constitute the Board for the time being, and shall exercise all the powers and perform and discharge all the duties and functions conferred and imposed upon the Board by or under this Act. He shall continue in office until the day immediately preceding the date of the first meeting of such Board constituted under Section 6.
- iii) The person constituting the Board shall receive such remuneration from the fund of the Board and the terms and other conditions of service shall be such as State Government may determine.

8 – Powers and duties of the Board.

- a) The Board shall be responsible for administering the Scheme and shall exercise such powers and perform such functions as may be conferred on it by the Scheme.
- b) The Board may take such measures as it may deem fit for administering the Scheme.
- c) The Board shall submit to the State Government as soon as may be, after 1st day of April every year, and not later than 31st day of October the annual report on the working of the Scheme during the preceeding year ending on 31st day of March of that year. Every report so received shall be laid as soon as may be after it is received before each House of the State Legislature if it is in session or in the session immediately falling on the date of receipt of the report.
- d) The Board shall maintain proper accounts of its income & expenditure in such form and in such manner as the State Government may specify in the scheme. e) The accounts of the Board shall be audited annually by the Controller & Auditor General of India/Maharashtra & any expenditure is owned by him in connection with such audit shall be payable by the Board to Controller & Auditor General of India/Maharashtra.

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

- (a) is a salaried officer of the Board; or
- (b) is or at any time has been adjudged insolvent; or
- (c) is found to be a lunatic or becomes of unsound mind; or
- (d) (1) is or has been convicted of any offence involving moral turpitude

- (di) (2) the State Government may remove from office any member, who- is absent without leave of the Board for more than three consecutive meetings of the Board.
- (dii) (3) Notwithstanding anything contained in sub-section (v) and (vi) of section 6 or other provisions of this Act or the rules made thereunder, the members shall hold office during the pleasure of the State Government and, if in the opinion of the State Government,-

- (a) the member representing the employers or the workers ceases to adequately represent the employers, or as the case may be, the workers; or
- (b) having regard to the exigencies of circumstances or service in the State Government, the member (including the Chairman) representing the State Government cannot continue to represent the State Government,

the State Government may, by order remove all or any of them (including the Chairman) from office at any time.

10. Any member of the Board may at any time resign his office by writing under his hand addressed to the State Government, and his office shall, on acceptance of resignation, become vacant.

11. In the event of any vacancy occurring on account of death, resignation, disqualification or removal or otherwise, the Board shall forthwith communicate the occurrence to the State Government, and the vacancy shall be filled not later than ninety days from the date of the occurrence of the vacancy, and the person nominated to fill in the vacancy shall hold office so long only as the member in whose place he is nominated would have held it if the vacancy had not occurred;

Provided that, during any such vacancy, the continuing members may act as if no vacancy has occurred.

12. No act or proceeding of the Board shall be questioned or invalidated merely by reason of any defect in the constitution hereof.

1. The State Govt. shall appoint a State Legal Dues Fund Commissioner who shall be Chief Executive Officer of the Board & shall be subject to the general control & superintendence of the Board.

- 1) The State Government may appoint a Financial Advisor & Chief Accounts Officer to assist the State Legal Dues Fund Commissioner in discharge of his duties.
- 2) The state government may appoint as many Additional Legal Dues Commissioner, Deputy Legal Dues Commissioner, Asstt. Legal Dues Fund Commissioner and such other Officers & employees as it may consider necessary for the efficient administration of the scheme.
- 3) No appointment for the post of State Legal Dues Fund Commissioner, Addl. Legal Dues Fund Commissioner, Dy. Legal Dues Fund Commissioner, Financial Adviser & Chief Accounts Officer or any other post under the Board carrying a pay scale equivalent to Existing Group A or Group B post under State Government, shall be made except after consultation with MPSC.

14. Delegation of Powers.

The Board may delegate to Chairman of the Board or to any of its Officers subject to such conditions & limitations, if any, as it may specify such of its powers & functions under this Act as it may deem necessary for the efficient administration of the Scheme. Determination of applicability of the Act & determination of amount due from the employer.

15.(1) The Board or such officer as may be specified by it in this behalf may by order, a) in case where a dispute arises regarding the applicability of this Act, to an establishment, decide such dispute and b) determine the amount due from any employer under this Act or any Scheme made thereunder, and for this purpose may conduct such inquiry as the Board or such officer may think to be necessary.

(2) The Board or such officer, conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents; (c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses; and

any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

(3) No order determining the sum due from any employer or worker shall be made under sub-section (1), unless the employer or worker, as the case may be, is given a reasonable opportunity of representing his case.

(4) where the employer, worker or any other person required to attend the inquiry under section 15, fails to attend such enquiry without assigning any valid reason, or fails to produce any document or to give any report or return when called for upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer as the case may be, on the grounds of the evidence adduced during such enquiry & other documents available on record.

(5) An order made under this section shall be final and shall not be questioned in any Court.

(6) Any sum determined under this section may, if such sum is in arrears, be recovered as an arrear of land revenue.

16. (1) The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purposes of this Act or of any Scheme and may define the limits of their jurisdiction.

(2) Subject to any rules made by the State Government in this behalf, an Inspector may-

(a) enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where workers are employed, or work is given out to workers for the purpose of examining any register, record of wages or notices required to be kept or exhibited under any Scheme and require the production thereof, for inspection

(b) examining any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is worker employed therein or worker to whom work is given out therein;

(c) require any person giving any work to worker or to a group of workers to give any information, which is in his power to give in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

- (d) seize or take copies of such registers, records of wages or notices or portions thereof,, as he may consider relevant, in respect of an offence under this Act or Scheme, which he has reason to believe has been committed by an employer; and;
- (e) excise such other powers as may be prescribed;

Provided that, no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate himself.

(3). Every Inspector appointed under the section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17.(1) If the State Government, on consideration of the report/information received by it or otherwise, is of the opinion-

- (a) that the Board is unable to perform its functions; or
- (b) that the Board has persistently made default in the discharge of its functions or has exceeded or abused its powers,

the State Government may, by notification in the Official Gazette, supersede the Board and constitute it in the prescribed manner, within a period of twelve months from the date of supersession. The period of supersession may be extended for sufficient reasons by a like notification by not more than six months.

Provided that, before issuing a notification under this sub-section on any of the grounds mentioned in clause (b), the state government shall give a reasonable opportunity to the Board to show cause why it should not be superseded, and shall consider the explanations and objections, if any, of the Board.

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

(3) When the Board is superseded the following consequences shall ensure, that is to say-

- a) All the members of the Board shall, as from the date of publication of the notification under sub-section (1) vacate their office;
- b) all the powers and functions, which may be exercised or performed by such persons as may be specified in the notification'
- c) all funds and other property vesting in the Board shall, during the period of supersession, vest in the State Government and on the reconstitution of the Board, such funds and property shall revert in the Board.

18. Act to override other enactments,etc.- The provisions of this Act or any rules made thereunder shall have, effect notwithstanding anything with inconsistent therewith contained in any other enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

19. Powers to make rules- 1) The State Government may, by Notification make rules for the purpose of carrying out the provisions of this Act. 2) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature.