TERMINATION OF EMPLOYMENT OF WORKMEN (SPECIAL PROVISIONS)

TERMINATION OF EMPLOYMENT OF WORKMEN

(SPECIAL PROVISIONS)

Act AN ACT TO MAKE SPECIAL PROVISIONS IN RESPECT OF THE

No. 45 of 1971.

TERMINATION OF THE SERVICES OF WORKMEN IN CERTAIN

Law

No. 4 of 1976. EMPLOYMENTS BY THEIR EMPLOYERS

Act

No. 51 of 1988.

No. 12 of 2003.

No. 20 of 2008.

[21st May, 1971]

Short title. 1. This Act may be cited as the Termination of Employment of Workmen (Special

Provisions) Act, No.45 of 1971.

Regulation of 2. (1) No employer shall terminate the scheduled employment of any workman without -

the termination by

employers of the (a) the prior consent in writing of the workman; or

scheduled

employments of (b) the prior written approval of the Commissioner.

workmen.

(2) The following provisions shall apply in the case of the exercise of the powers conferred

on the Commissioner to grant or refuse his approval to an employer to terminate the scheduled

employment of any workman:-

[§ 2, 12 of 2003.] (a) such approval may be granted or refused on application in that behalf made by

such employer; a copy of which application shall be served on the workman

concerned, who shall be afforded an opportunity of being heard,

(b) the Commissioner may, in his absolute discretion, decide to grant or refuse such

approval;

(c) the Commissioner shall grant or refuse such approval within three months from

the date of receipt of an application in that behalf made by such employer;

(d) the Commissioner shall give notice in writing of his decision on the application

to both the employer and the workman;

(e) the Commissioner may, in his absolute discretion, decide the terms and conditions

subject to which his approval should be granted, including any particular terms

and conditions relating to the payment by such employer to the workman of a

gratuity or compensation for the termination of such employment; and

(f) any decision made by the Commissioner under the preceding provisions of

this subsections shall be final and conclusive, and shall not be called in question

whether by way of writ or otherwise -

(i) in any court, or

(ii) in any court, tribunal or other institution established under the Industrial

Disputes Act.

(2A). It shall be the duty of the Commissioner or receipt of an application under subsection

[§ 2, 12 of 2003.]

(2), to call upon the workmen concerned within three days of the receipt of such application, by the

[§ 2, Law 4 of 1976.]

Commissioner, to submit his response to such application within seven days of the receipt of the

same by such workmen:

Provided however, that where the workman fails to respond within the above period, the

Commissioner may grant a further period not exceeding seven days, upon his being satisfied that

such failure was due to circumstances beyond the control of such workmen.

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(3) Any person who fails to comply with any decision made by the Commissioner under

subsection (2) shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be

liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term

not exceeding six months or to both such fine and imprisonment.

[§ 2, Law 4 of 1976.] (4) For the purposes of this Act, the scheduled employment of any workman shall be

deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of

a punishment imposed by way of disciplinary action, the services of such workman in such employment

are terminated by his employer, and such termination shall be deemed to include -

(a) non-employment of the workman in such employment by his employer, whether

temporarily or permanently, or

(b) non-employment of the workman in such employment in consequence of the

closure by his employer of any trade, industry or business.

[§ 2, 51 of 1988.] (5) Where any employer terminates the scheduled employment of any workman by

reason of punishment imposed by way of disciplinary action the employer shall notify such workman

in writing the reasons for the termination of employment before the expiry of the second working day

after the date of such termination.

The provisions of 3. (1) The provisions of this Act, other than this section, shall not apply -

this Act, other

than this section, (a) to an employer by whom less than fifteen workmen on an average have been

not to apply in employed during the period of six months preceding the month in which the

certain cases or employer seeks to terminate the employment of a workman;or

circumstances.

[§ 3, 51 of 1988.] (b) to the termination of employment of any workman who has been employed by

an employer for a period of less than one hundred and eighty days inclusive of-

(i) every day of absence on any ground approved by the employer;

(ii) every day of absence due to any injury to the workman caused by an

accident arising out of, and in the course of his employment;

(iii) every day of absence due to anthrax or any occupational disease speci-

fied in Schedule III of the Workman’s Compensation Ordinance (Chapter

139);

(iv) every day on which the employer fails to provide work for the workman;

(v) every day of absence due to a lockout, or strike that is not illegal, if such

days do not in the aggregate exceed thirty days; and

(vi) every holiday or day of absence from work to which a workman is enti-

tled, by or under, the provisions of any written law,

in the continuous period of twelve months commencing from the date of employment if such termina-

tion takes place within that period of twelve months; or

[§ 3, Law 4 of 1976.] (c) to the termination of employment of any workman who has been employed by

an employer where such termination was effected by way of retirement in ac-

cordance with the provisions of -

(i) any collective agreement in force at the time of such retirement; and

(ii) any contract of employment wherein the age of retirement of such work-

man is expressly stipulated; or

(d) to the Government in its capacity as an employer; or

(e) to the Local Government Service Commission in its capacity as an employer ; or

(f) to any local authority in its capacity as an employer; or

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(g) to any co-operative society in its capacity as an employer; or

[§ 3, Law 4 of 1976.] (h) to any public corporation in its capacity as an employer; or

(i) to the termination of employment of any workman who has been employed by

an employer in contravention of the provisions of any law for the time being in

force.

(2) The other provisions of this Act shall be read and construed subject to the provisions

of subsection (l), and in particular, but without prejudice to the generality of the preceding provisions

of this subsection, the terms “employer”, “employers”, “workman” and “workmen” occurring in such

other provisions shall be so read and construed.

Par IVB of the 4. The provisions of Part IVB of the Industrial Disputes Act shall not apply to any

Industrial Disputes workman within the meaning of this Act.

Act not to apply

to any workman.

Termination of 5. Where an employer terminates the scheduled employment of a workman in

scheduled contravention of the provisions of this Act, such termination shall be illegal, null and void, and

employment of a accordingly shall be of no effect whatsoever.

workman in

contravention of

this Act to be

null and void.

Power of 6. Where an employer terminates the scheduled employment of a workman in

Commissioner contravention of the provisions of this Act, the Commissioner may order such employer to

to issue orders continue to employ the workman, with effect from a date specified in such order, in the same

and duty of

capacity in which the workman was employed prior to such termination, and to pay the workman his

employers to

comply with wages and all other benefits which the workman would have otherwise received if his services had

such orders. not been so terminated; and it shall be the duty of the employer to comply with such order.

The Commissioner shall cause notice of such order to be served on both such employer and the

workman.

Provisions 6A. Where the scheduled employment of any workman is terminated in contravention of

relating to the provisions of this Act in consequence of the closure by his employer of any trade, industry or

termination of business, the Commissioner may order such employer to pay to such workman on or before a

shceduled

specified date any sum of money as compensation as an alternative to the reinstatement of such

employment by

closure of any trade, workman and any gratuity or any other benefit payable to such workman by such employer.

industry or business.

[§ 4, Law 4 of 1976.]

No order to be \* 6B.(1) No order shall be made by the Commissioner under section 6 or section 6A in

made after six pursuance of an application made by a workman unless such application was made within

months of making six months of the termination to which such application related.

the applicaton

and rights of

workman to seek

other legal remedy.

[§ 4, 51 of 1988.]

[§ 2, 20 of 2008.]

(2) Noting in this Act shall be read and construed as effecting section 2 or section 5 of this

Act or the rights of a workman whose employment has been terminated to apply for any other legal

remedy in respect of such termination or as effecting the jurisdiction of any court, tribunal or institu-

tion to grant relief in respect of such termination.

Magistrate to make 6C. Where the Commissioner orders any sum of money to be paid to a workman under

order where money has section 6 or section 6A of this Act, the Magistrate’s Court having jurisdiction in the area where such

not been paid on an workman is or was employed by his employer shall, if satisfied on the written petition of such

order made under

section 6 or 6A. workman that payment of such money has not been made within the time specified in that behalf by

[§ 3, 20 of 2008.] the Commissioner, make order that amount of such money shall be paid by such employer to such

\* subsecion (2) of 6A is repealed by Act, No. 12 of 2003.

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workman and that such amount if not paid in compliance with the order, be recovered in like manner

as a fine imposed by the Court, and the amount so recovered shall be paid to such workman

Computation of any 6D. Any sum of money to be paid as compensation to a workman on decision or order made

compensation payable. by the Commissioner under this Act, shall be computed in accordance with such formula as shall be

[§ 5, 12 of 2003.] determined by the Commissioner, in consultation with the Minister, by Order published in the

Gazette.

Failure to comply 7. (1) Where an employer fails to comply with an order made under section 6 or section

with the provisions 6A such employer shall be guilty of an offence under this Act, and shall be liable on conviction after

of section 6 to be

summary trial before a Magistrate to imprisonment of either description for a term of not less than

an offence.

[§ 4,20 of 2008.] six months and not exceeding two years.

[§ 4,20 of 2008.] (2) In any prosecution for an offence under subsection (1), the burden of proving that

the employer has complied with an order made under section 6 or section 6A shall lie on the accused.

Additional 8 . (1) On the conviction of an employer for an offence under section 7 in respect of any

punishment for workman, such employer shall be liable -

an offence

under section 7. (a)to pay, in addition to any punishment that may be imposed on such employer

under that section, a fine of fifty rupees for each day on which the failure is

continued after conviction thereof; and

[§ 6,51 of 1988.] (b) (i) to pay the workman, in any case where the offence relates to non-

compliance with an order made under section 6, the wages and benefits

specified in that order and wages and benefits which would have been

payable to him, if he had been in employment for the period commencing

on the date specified in the order made under section 6 and ending on the

date of conviction of such employer; or

(ii) to pay the workman, in any case where the offence relates to non-com-

pliance with an order made under section 6A, the sum of money specified

in such order.

(2) Any sum which an employer is liable to pay under paragraph (b) of subsection (1) may

be recovered on the order of the court by which the employer was convicted as if it were a fine

imposed on him by that court, and the amount recovered shall be paid to the workman.

Special provisions 9. Where any offence under this Act is committed by a body of persons, then, -

in respect of

offences committed (a) if the body of persons is a body corporate, every director and officer of that

by bodies of body corporate shall be deemed to be guilty of that offence;

persons.

(b) if he body of persons is a firm, every partner of the firm shall be deemed to be

guilty of that offence;

(c) if body of persons is a trade union, every officer of that union shall be deemed

to be guilty of that offence; and

(d) if the body of persons is a body, unincorporate other than a firm or a trade

union, the president, manager, secretary and every officer of that body shall

each be deemed to be guilty of that offence:

Provided, however, that no such person shall be deemed to be guilty of an offence under this

Act if he proves that the offence was committed without his knowledge or that he exercised all due

diligence to prevent the commission of that offence.

Special defence 10. Where a person (hereinafter in this section referred to as “the accused”) is charged

open to a person with an offence under this Act, the accused shall, upon complaint duly made by him in accordance

charged with with the provisions of section 136 of the Criminal Procedure Code and on giving to the prosecution

an offence under

not less than three days’ notice of his intention, be entitled, subject to the provisions of Chapter XV

this Act.

of that Code to have any other person whom he charges as the actual offender, brought before

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the court; and if, after the commission of the offence has been proved, the accused proves to

the satisfaction of the court, that he has used due diligence to enforce the provisions of this Act and

that such other person has committed the offence without his knowledge, consent or connivance,

such other person shall be convicted of the offence and the accused shall be acquitted of the offence.

Administration 11. (1) The Commissioner shall be in charge of the general administration of this Act.

of this Act

vested in the

Commissioner.

(2) The Commissioner may delegate to any officer of the Labour Department any power,

function or duty conferred or imposed on him under this Act.

Powers of inspection 12. (1) The Commissioner shall have power -

& c. of the

(a) to enter and inspect at all reasonable hours of the day or night any place in

Comissioner.

which workmen are employed in scheduled employments for the purpose of

examining any register or record of wages, or of ascertaining whether the provi-

sions of this Act are being complied with; or

(b) where any such record or register is not available for examination when he is

inspecting such place, to require the production of such register or record on a

specified later date for examination at such place or at the office of the Commis-

sioner; or

(c) to take copies of the whole or any part of any such register or record;

(d) to interrogate any person whom he finds in such place and whom the Commis-

sioner has reasonable cause to believe is an employer or a workman engaged or

employed in any scheduled employment carried on in such place, or is an

employer or a workman in the establishment or institution in such place; or

(e) to hold such inquiries as he may consider necessary for the purposes of this

Act.

(2) The Commissioner shall, for the purposes of any inquiry under this Act, have all the

powers of a District Court -

(a) to summon and compel the attendance of witnesses;

(b) to compel the production of documents; and

(c) to administer any oath or affirmation to witnesses.

Powers of 13. (1) The Commissioner may direct any employer to furnish to him before a date

Commissioner to specified in the direction -

call for returns, &c.

(a) a return relating to all his employees or any class or description of such employees

as may be so specified and containing such particulars as the Commissioner

may require for the purposes of this Act; or

(b) such information or explanations as the Commissioner may require in respect of

any particulars stated in any return furnished by such employer; or

(c) a true copy of the whole or any part of any register or record maintained by such

employer.

(2) A direction under subsection (1) may be given to any employer by notice in writing

served on him.

General offences 14. Every person who -

under this Act.

(a)fails to furnish the means required by the Commissioner as necessary for any

entry or inspection under this Act, or the exercise of his powers under section

12; or

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(b) hinders or molests the Commissioner in the exercise of the powers conferred by

section 12; or

(c) refuses to produce any register or record of wages, or give any information

which the Commissioner requires him to produce or give under the powers

conferred by section 12; or

(d) makes or causes to be made any register or record of wages which is false in any

material particular, or produces or causes or knowingly allows to be produced

any such register or record to the Commissioner acting under the powers

conferred by section 12, knowing the same to be false; or

(e) furnishes any information to the Commissioner acting under the powers

conferred by section 12, knowing the same to be false; or

[§ 5, Law 4 of 1976.] (f) (i) fails without cause, which in the opinion of the Commissioner is reason

able, to appear before the Commissioner at the time and place mentioned

in any summons issued under subsection (2) of section 12 of this Act; or

(ii) refuses or fails without cause, which in the opinion of the Commissioner

is reasonable, to produce and show to the Commissioner any document

or other thing which is in his possession or power and which is in the

opinion of the Commissioner necessary for arriving at the truth of the

matters being inquired into by the Commissioner; or

(iii) refuses to be affirmed or sworn as a witness before the Commissioner; or

(g) makes default in complying with any direction given by the Commissioner under

section 13, or who, when called upon to furnish a return under the said section

13, knowingly makes or furnishes, or causes to be made or furnished, a false

return or a return containing any false statement,

shall be guilty of an offence and shall be liable on conviction thereof after summary trial before a

Magistrate to a fine not exceeding one thousand rupees or to imprisonment of either description for

a term not exceeding six months, or to both such fine and imprisonment.

Offences under 15. All offences under this Act shall be triable summarily before a Magistrate.

this Act to be

triable summarily

before a Magistrate.

Conduct of \*17. The proceedings at any inquiry held by the Commissioner for the purposes of this Act

proceedings of

may be conducted by the Commissioner in any manner, not inconsistent with the principles of

inquiries held by

Commissioner natural justice, which to the Commissioner may seem best adapted to elicit proof or information

for the purposes concerning matters that arise at such inquiry.

of this Act.

Appearance 17A. In any proceedings at any inquiry held by the Commissioner, the employer or the

before the workman may be represented by an officer of a trade union of which such employer or workman is

Commissioner. a member.

[§ 7,Law 4 or 1976.]

Offence of contempt 17B. (1) Where any person -

against or in

(a) insults or intimidates the Commissioner during the progress of any inquiry

disrespect of the

Commissioner. conducted by such Commissioner;

[§ 7,Law 4 of 1976.]

(b) interferes with the lawful process of such Commissioner,

\* Section 16 is repealed by Law, No.4 of 1976.

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such person shall be deemed to commit the offence of contempt against or in disrespect of the

authority of such Commissioner.

(2) Every offence of contempt committed against or in disrespect of the authority of such

Commissioner shall be punishable by the Court of Appeal under Article 105 (3) of the Constitution.

(3) Every complaint of contempt committed against or in disrespect of the authority of

such Commissioner shall be communicated to the Court of Appeal by letter signed by such

Commissioner.

(4) The Court Appeal may, upon receiving a communication referred to in subsection (3),

take cognizance of and try in a summary manner such offence of contempt committed against or in

disrespect of the authority of such Commissioner.

(5) In any proceedings against any person for the offence of contempt committed against

or in disrespect of the authority of such Commissioner, such Commissioner shall not be liable to be

summoned as a witness by the first mentioned person but the Court of Appeal may, if it considers it

necessary to do so, examine such Commissioner.

Service of 18. Any notice which is required by this Act to be served on, or given to, any person shall,

Notice. if it is not served on, or given personally to, such person, be deemed to have been duly served or

given -

(a) if it is left at the usual or last known place of abode or business of such person;

or

(b) if it is sent to him by post in a registered letter addressed to the usual or last

known place of abode or of business of such person.

Interpretation. 19. In this Act, unless the context otherwise requires,-

[§ 8, Law 4 of 1976.]

“collective agreement” has the same meaning as in the Industrial Disputes Act;

“Commissioner” means the person for the time being holding the office of the Commissioner

of Labour;

“co-operative society” means a co-operative society registered as such under the Co-

operative Societies Law;

“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 firm, company,

corporation, trade union or other body unincoporate), and any person who on behalf of

any other person employs any workman, but does not include any such other person or

such body to whom, by virtue of the operation of the provisions of subsection (1) of

section 3, the provisions of this Act, other than section 3, do not apply;

†

“local authority” includes any Municipal Council, Urban Council, Town Council or

†

Village Council;

“Local Government Service Commission” means the Local Government Service Commis-

sion established under the Local Government Service Act, No.18 of 1969.

[§ 8, Law 4 of 1976.] “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,\* with

capital wholly or partly provided by the Government by way of grant, loan or other

form;

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**†**

See Pradeshiya Sebhas Act, No. 15 of 1987 which repealed and replaced both the Town Councils Ordinance

and the Village Councils Ordinance.

\* Repealed by Companies Act, No.17 of 1982. Act, No. 17 of 1982 repealed by Act, No. 7 of 2007.

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[§ 9, Law 4 of 1976.] “scheduled employment” means employment in -

(a) any trade, in respect of which a notification has been published in the Gazette

under subsection (2) of section 6 of the Wages Boards Ordinance of an order

made under subsection (1) of that section and shall include the work of any

worker referred to therein but excluded from the provisions of such order;

(b) every shop and every office within the meaning of the Shop and Office Employees

(Regulation of Employment and Remuneration) Act; or

[§ 8, Law 4 of 1976.] (c) every factory within the meaning of the Factories Ordinance;

[§ 8, Law 4 of 1976.]

“trade union” means any trade union (whether of employer or of workman)

registered under the Trade Unions Ordinance;

“worker” has the same meaning as in the Wages Boards Ordinance;

“workman” has the same meaning as in the Industrial Dispute Act, but does not

include a workman to whom, by virtue of the operation of the provisions of

subsection (1) of section 3, the provisions of this Act, other than section 3, do

not apply.

The provistions 20. In the event of any conflict or inconsistency between the provisions of this Act and the

of this Act provisions of any other written law, the provisions of this Act shall prevail over the provisions of

to prevail over such other written law.

other written law.

Date of 21. The provisions of this Act shall be deemed to have come into operation on May 21,

operation of Act. 1971.

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L.D.B 8/2003

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[The Gazette of the

Democratic ACT, NO. 45 OF 1971

Socialist Republic

of Sri Lanka

Extraordinary No. Order under Section 6 D

1384/07 -Tuesday,

March 15, 2005.]

BY virtue of the powers vested in me by section 6D of the Termination of Employment of

Workmen (Special Provisions) Act, No. 45 of 1971 as amended by Act, No. 12 of 2003, I Mahinda

Madihahewa, Commissioner of Labour, in consultation with the Minister in charge of the subject of

Labour Relations and Foreign Employment, do hereby set out in the Schedule hereto, the formula to

be followed for the computation of compensation to be paid to a workman.

The Order published in the Gazette Extraordinary No. 1321/17 dated 31st December, 2003 is

hereby rescinded.

MAHINDA MADIHAHEWA.

Commissioner of Labour.

Colombo,

15th March, 2005.

SCHEDULE

FORMULA FOR PAYMENT OF COMPENSATION

Column I Column II Column III

Number of Year(s) of service Number of Months Salary to Maximum Compensation

Completed at the Date of be paid as Compensation for (Cumulative)

Termination each Year of Service

1 to 5 2.5 12.5 months

6 to 14 2.0 30.5 months

15 to 19 1.5 38.0 months

20 to 24 1.0 43.0 months

25 to 34 0.5 48.0 months

Note.- (I) However, if at the time of the termination of his services a workman has less than Four

years left of his services, he shall be paid either the aggregate salary for the period of

denied service or compensation computed according to the above Formula, whichever is

less, and if the period of denied service is more than four years, compensation shall be

computed according to the above formula.

(2) No amount in excess of Rupees One Million Two Hundred and Fifty Thousand shall be

paid to any workman as compensation computed according to the above formula.

In this Order :-

“Salary” means the basic salary or wages plus cost of living allowance or any other similar allowance

; and

“Year” means a completed period of twelve months and in relation to the first year in employment,

includes One Hundred and Eighty days of service.

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