PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

BUDGETARY RELIEF ALLOWANCE OF

WORKERS ACT, No. 4 OF 2016

[Certified on 23rd March, 2016]

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Budgetary Relief Allowance of Workers 1

Act, No. 4 of 2016

[Certified on 23rd March, 2016]

L.D.—O. 27/2015.

AN ACT TO PROVIDE FOR THE PAYMENT OF A BUDGETARY RELIEF

ALLOWANCE BY EMPLOYERS TO WORKERS AND FOR MATTERS

CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows:—

1. This Act may be cited as the Budgetary Relief Short title.

Allowance of Workers Act, No. 4 of 2016.

2. (1) The Commissioner-General shall be the competent Competent

authority for the purposes of this Act. Authority.

(2) The competent authority may delegate to any officer

of the Department of Labour any power, function or duty

conferred or imposed on, or assigned to, such authority by

this Act.

3. (1) With effect from May 1, 2015, every employer in Payment of

any industry or service shall, in respect of each month pay to Budgetary Relief

Allowance.

every worker employed by him, a Budgetary Relief

Allowance (hereinafter referred to as “the allowance”),

calculated on the following basis:-

(a) in the case of a worker whose monthly wages or

salary for the month of May, 2015 (hereinafter

referred to as the “relevant month”) is rupees forty

thousand or below, the allowance payable shall be

one thousand five hundred rupees:

Provided however, that in the case of a worker

who for any reason other than the failure of the

employer to provide work for such worker, does

2—PL 009757— 2,950 (02/2016)

2 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

not work for the required number of days in a month as

prescribed by any written law or contract of

employment, the allowance payable to such worker

for such month shall be in proportion to the number of

days he has worked during such month;

(b) in the case of a worker who is paid a daily rate not

exceeding rupees one thousand six hundred for the

relevant month, the allowance payable shall be sixty

rupees per day for each day he has worked during the

month;

(c) in the case of a worker who is employed in the relevant

month on a piece-rate basis, the allowance payable in

respect of a month shall be not less than fifteen per

centum of the total wages or salary payable to such

worker for that month:

Provided however, the total allowance payable for

a month under paragraph (a), (b) or (c) shall not exceed

one thousand five hundred rupees;

(d) in the case of a worker whose monthly wages or salary

for the relevant month exceeds rupees forty thousand

and does not exceed rupees forty one thousand five

hundred, the allowance payable shall be the difference

between rupees forty one thousand five hundred and

the amount of wages or salary for the relevant month;

(e) in the case of a worker who is paid a daily rate of a sum

exceeding rupees one thousand six hundred and not

exceeding rupees one thousand six hundred sixty for

the relevant month, the daily allowance payable shall

be one twenty fifth of the difference between rupees

forty one thousand five hundred and the total wages

for the relevant month.

Budgetary Relief Allowance of Workers 3

Act, No. 4 of 2016

(2) Notwithstanding the provisions of subsection (1),

every employer in any industry or service shall, in respect of

each month commencing from January 1, 2016 pay to every

worker referred to in subsection (1) employed by him, an

allowance calculated on the following basis:–

(a) in the case of a worker whose monthly wages or

salary for the relevant month is rupees forty

thousand or below, the allowance payable shall be

one thousand rupees:

Provided however, that in the case of a worker

who for any reason other than the failure of the

employer to provide work for such worker, does

not work for the required number of days in a month

as prescribed by any written law or contract of

employment, the allowance payable to such worker

for such month shall be in proportion to the number

of days he has worked during such month;

(b) in the case of a worker who is paid a daily rate not

exceeding rupees one thousand six hundred for the

relevant month, the allowance payable shall be a

sum of forty rupees per day for each day he has

worked during the month;

(c) in the case of a worker who is employed in the

relevant month on a piece-rate basis, the allowance

payable in respect of a month shall be not less than

ten per centum of the total wages or salary payable

to such worker for that month:

Provided however, the total allowance payable

for a month under paragraph (a), (b) or (c) shall not

exceed one thousand rupees.

(3) (a) The allowance payable under subsection (1) or (2)

or both subsections (1) and (2), as the case may be, shall be

subjected to a maximum limit of the total wages or salary of

rupees forty one thousand five hundred to a worker for a

month.

4 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

(b) For the avoidance of doubt, it is declared that any worker

who has received the allowance under paragraph (d) or (e) of

subsection (1) shall not be entitled to any allowance under

subsection (2).

(4) An employer in any industry or service who had made

wages or salary increase of the workers employed by him, during

the period between October 1, 2014 and April 30, 2015 if such

increases added together exceed the amount to be increased

under subsection (1) or under subsections (1) and (2), such

employer shall be exempt from the application of subsection

(1) or both subsections (1) and (2), as the case may be.

(5) A worker who has received wages or salary increase of a

sum less than one thousand five hundred rupees during the

period between October 1, 2014 and April 30, 2015 shall be

entitled to an allowance under subsection (1) which is equivalent

to the difference between one thousand five hundred rupees

and the amount of such wages or salary increase.

(6) A worker who has received wages or salary increase of a

sum more than one thousand five hundred rupees and less than

two thousand five hundred rupees during the period between

October 1, 2014 and April 30, 2015 shall be entitled to an

allowance under subsection (2) which is equivalent to the

difference between two thousand five hundred rupees and the

amount of such wages or salary increase.

(7) A worker who is covered by–

(a) a Collective Agreement entered into under the

Industrial Disputes Act (Chapter 131), which is in

force on the date of coming into operation of this

Act and which contains provisions relating to

increase of wages; or

(b) an order under subsection (2) of section 10 of the

Industrial Disputes Act, extending the application

of a Collective Agreement referred to in paragraph

(a) in respect of such worker,

Budgetary Relief Allowance of Workers 5

Act, No. 4 of 2016

shall not be entitled to the allowance under subsection (1)

or subsection (2).

(8) A worker who is employed –

(a) by any charitable institution within the meaning

of the Inland Revenue Act, No. 10 of 2006; or

(b) by any religious institution maintained for, or

connected with worship,

shall not be entitled to the allowance under this Act.

For the purpose of this subsection, “religious institution”

means any temple, kovil, church, mosque or other similar

institution and includes any institution owned and

maintained by such temple, kovil, church or mosque for the

purpose of, or connected with worship.

(9) The Minister may, taking into consideration the

relevant declining economic conditions prevailing in

relation to any industry or service, in consultation with the

Minister assigned the subject of Industry and the Minister

assigned the subject of Economic Affairs, defer by Order

published in the Gazette, the operation of the provisions of

this section in relation to any industry or service specified

in such Order, to such date as may be specified therein :

Provided that, any deferment in terms of this subsection

shall not extend beyond a period of twelve months from the

date of the making of such Order.

(10) For the purposes of subsections (4), (5) and (6), the

expression “wages or salary increase” means any increase of

wages or salary connected to Budgetary Relief Allowance

under this Act but does not include any annual or periodical

increments given to a worker or to which a worker is entitled:

Provided however, any increase paid to a worker by any

employer, which is in the nature of increment connected to

the allowance under this Act within the period commencing

6 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

from October 1, 2014 and ending on April 30, 2015 shall be

deemed as a part of the wages or salary for the purpose of this

section.

Special 4. Every worker who had been employed by any employer

provisions in the relevant month subject to the provisions of section 3, for

regarding

so long as he continues to be a worker of such employer, shall

continuation

of continue to be so employed on such terms and conditions

employment. relating to wages or salary, allowances or other payments in

money by whatsoever name or designation as are not less

favourable than those which such worker had enjoyed on the

day immediately prior to the date of the coming into operation

of this Act.

Duty of the 5. (1) The employer of a worker in any industry or

employer to service shall from and after the date of the coming into operation

maintain a

register. of this Act, maintain and keep in the premises in which that

industry or service is carried on, a register setting out—

(a) the name of each worker employed by him;

(b) the class of work performed by each worker employed

by him; and

(c) the amount paid to each such worker as allowance in

accordance with the provisions of this Act.

(2) Every register maintained under subsection (1) shall be

preserved for a period of six years by the employer. Every

employer shall when required by the Commissioner-General,

produce such register for inspection or furnish a true copy

thereof or permit a copy of such register to be made.

(3) Where an employer of any worker in any industry or

service has failed to maintain and keep in the premises where

that industry or service is carried on the register required to be

kept under subsection (1) or fails, when required to do so under

subsection (2) to produce such register for inspection, the

Budgetary Relief Allowance of Workers 7

Act, No. 4 of 2016

Commissioner-General is hereby empowered to assess the

allowance or the short payment of allowances, as the case

may be, payable to such worker under this Act on the basis

of all the evidence, both oral and documentary, available to

him and the provisions of section 11 shall apply where

default is made in the payment of any such allowance.

6. The competent authority shall have power— Powers of

competent

authority.

(a) to enter into and inspect at all reasonable hours

of the day or night, any place in which workers

in any industry or service are employed, for the

purpose of examining any register or for

ascertaining whether the provisions of this Act

are being complied with;

(b) where no such register is available for

examination when he inspects such place, to

require the production of such register on a

specified later date for examination at such place

or at the office of such authority;

(c) to take copies of the whole or any part of any

such register;

(d) to question any person whom he finds in such

place and whom he has reasonable cause to

believe is an employer of workers employed in

any industry or service carried on in such place;

or

(e) to direct, in writing, any employer of workers

employed in any industry or service to furnish

him on or before a specified date, with–

(i) a return, relating to all workers employed

by any such employer in any specified

class or description of such workers and

containing such other particulars as he

may require for the purposes of this Act;

8 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

(ii) such information or explanation as he may

require in respect of particulars stated in any

return furnished by any such employer; or

(iii) a true copy of the whole or any part of any

register maintained by any such employer.

Offences and 7. (1) Any employer in any industry or service who

penalties. contravenes the provisions of section 3 or section 4 or section

5 of this Act shall be guilty of an offence and shall be liable on

conviction by a Magistrate to a fine not exceeding twenty five

thousand rupees or to imprisonment of either description for a

term not exceeding six months or to both such fine and

imprisonment.

(2) Any person who–

(a) fails to furnish the competent authority with such

assistance as is necessary for any entry or inspection

or for the exercise of his powers under section 6;

(b) hinders or obstructs such authority in the exercise

of the powers conferred by that section;

(c) refuses to produce any register or furnish any

information which such authority requires him to

produce or furnish;

(d) makes or causes to be made in any register, any

false statement or makes or causes or knowingly

permits to be produced, any register containing a

false statement to such authority, knowing the same

to be false;

(e) furnishes any information to such authority acting

under the powers conferred by that section,

knowing the same to be false; or

(f) fails to comply with any directions given by such

authority under section 6, or who, when called upon

Budgetary Relief Allowance of Workers 9

Act, No. 4 of 2016

to furnish a return under that section, knowingly,

makes or furnishes, or causes to be made or

furnished, a return containing any false statement,

shall be guilty of an offence and shall be liable on conviction

by a Magistrate to a fine not exceeding twenty five thousand

rupees or to imprisonment of either description for a term

not exceeding six months or to both such fine and

imprisonment.

8. Where an offence under this Act is committed by a Liability of the

body of persons then— directors and

certain officers

for offences

(a) if that body of persons is a body corporate, every committed by a

person who at the time of the commission of the body of persons.

offence was a director, general manager, agent,

secretary or officer holding similar office of that

body;

(b) if that body of persons is a firm, every partner of

that firm; or

(c) if that body of persons is not a body corporate,

every person who at the time of the commission of

the offence was a member of that body,

shall be deemed to be guilty of that offence, unless he proves

that the offence was committed without his consent or

connivance and that he exercised all such diligence so as to

prevent the commission of that offence as he ought to have

exercised having regard to the nature of his functions and

the related circumstances.

9. The allowance payable to a worker under this Act Payment due

shall be deemed for all purposes to include— under this Act to

constitute part of

a worker’s

(a) contributions to Employees’ Provident Fund, wages or salary.

Employees Trust Fund and pension;

10 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

(b) wages or salary of annual holiday or leave;

(c) overtime remuneration;

(d) maternity benefit payment; and

(e) gratuity,

and shall constitute part of the wages or salary of such worker.

Every employer of any such worker shall pay such allowance

within the period within which such employer is required by

any relevant written law to pay the wages or salary of such

worker.

Failure to 10. (1) Any employer who fails to pay the allowance

pay sums due required to be paid to a worker under this Act shall be guilty of

to workers.

an offence and shall be liable on conviction by a Magistrate to

a fine not exceeding twenty five thousand rupees or to

imprisonment of either description for a term not exceeding six

months or to both such fine and imprisonment.

(2) Upon conviction by the Magistrate of an employer for

failure to pay any sum required to be paid to a worker under this

Act, the court shall, in addition to the penalty imposed for such

offence, order such employer to pay such sum to such worker

within a period specified in the Order, and if the sum is not so

paid, such sum shall be recovered by Order of court, as if it were

a fine imposed by the court and paid to such worker.

Action 11. (1) Where any employer defaults in payment of the

against allowance payable to any worker or workers the Commissioner-

default of

General shall, after such investigation as he may deem necessary,

payment of

the if he is satisfied that the employer has defaulted payment of the

allowance. allowance to such worker or workers, by notice issued to such

employer, require the employer to deposit with him the amount

of the allowance defaulted in respect of such worker or workers

for the period the amount is due, within the date specified in

such notice.

Budgetary Relief Allowance of Workers 11

Act, No. 4 of 2016

(2) The employer shall, upon receipt of such notice under

subsection (1), deposit with the Commissioner-General the

amount indicated in the notice on or before the date specified

in the notice and any payment of allowance to the worker or

workers made by the employer after receipt of such notice

shall not be deemed to be a valid payment of the allowance

in default.

(3) Where an employer fails to make the payment of any

sum he is liable to pay as the allowance under this Act and

contravenes subsection (2), the Commissioner-General shall

issue a certificate containing particulars of the sum so due

and the name and place of residence of the defaulting

employer to the Magistrate having jurisdiction in the

division in which the place of employment of the worker or

workers in respect of whom default is made is situate. The

Magistrate shall, thereupon summon such employer to appear

before him to show cause why further proceedings for the

recovery of the sum due under this Act should not be taken

against him and if such employer fails to appear before court

on the day specified in such summons or sufficient cause is

not shown, as the case may be, such sum shall be deemed to

be a fine imposed by a sentence of the Magistrate on such

employer for an offence punishable with imprisonment and

the provisions of subsection (1) of section 291 [except

paragraphs (a), (d) and (i)] of the Code of Criminal Procedure

Act, No. 15 of 1979 relating to the default of payment of a

fine imposed for such an offence shall thereupon apply and

the Magistrate may make any direction which by the

provisions of that subsection he could have made at the

time of imposing such sentence.

(4) The correctness of any statement in a certificate issued

by the Commissioner-General for the purpose of this section

shall not be called in question or examined by the court in

any proceedings under this section, and accordingly any

statement in such certificate shall be sufficient evidence to

the facts that the amount due under this Act from the

defaulting employer has been duly calculated and that such

amount is in default.

12 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

(5) In any proceedings against any employer under this

section for failure to pay any sum which he is liable to pay

under this Act, the burden of proving that the sum was paid

shall lie on the employer.

Conditions 12. No prosecution for any offence committed under this

necessary for

Act shall be instituted except by, or with the previous written

the

prosecution sanction of, the Commissioner-General.

for offences

under this

Act.

Retrospective 13. (1) Section 3 of this Act shall be deemed for all purposes

effect. to have come into operation on May 1, 2015.

(2) Where there remains, as on the date of coming into

operation of this Act, any unpaid amount of the allowance

payable by any employer to any worker under subsection (1) or

subsection (2) of section 3 of this Act for the period commencing

on May 1, 2015 and ending on the date on which this Act

comes into operation, and where such employer pays to such

worker such arrears of the allowance in equal monthly

instalments or higher monthly installments within a period of

twelve months commencing from the date on which this Act

comes into operation, such employer shall for all purposes be

deemed to have complied with the provisions of subsection (1)

or (2) of section 3 of this Act.

Interpretation. 14. In this Act, unless the context otherwise requires—

“Collective Agreement” shall have the same meaning

as in the Industrial Disputes Act (Chapter 131);

“Commissioner-General” means the person for the

time being holding the office of Commissioner-

General of Labour and includes any person for

the time being holding office as an Additional

Commissioner-General, a Commissioner of

Labour, a Deputy Commissioner of Labour, an

Assistant Commissioner of Labour or a Labour

officer;

Budgetary Relief Allowance of Workers 13

Act, No. 4 of 2016

“employer” means any person who employs or on

whose behalf any other person employs, any

worker and includes a body of employers

(whether such body is a firm, company, local

authority or trade union), and any person

who on behalf of any other person employs

any worker including a competent authority

of a business undertaking vested in the

Government under any written law, the legal

heir, successor in law, executor or

administrator and liquidator of a company

and in the case of an unincorporated body

the president or secretary of such body, and

in the case of a partnership the managing

partner or manager;

“industry or service” includes–

(a) any trade, business, manufacture and

agriculture, any undertaking or

occupation by way of trade, business,

manufacture or agriculture and any

branch or section of trade, business,

manufacture or agriculture;

(b) work or labour of any description

whatsoever performed by persons in

the employment of a local authority,

or of a corporation established by or

under any written law for carrying

on an undertaking whether for

purposes of trade or otherwise;

(c) every occupation, calling or service

of workers, and

(d) every undertaking of employers,

but does not include any industry, business

or undertaking which is carried on by any

corporation, board or other body which was

14 Budgetary Relief Allowance of Workers

Act, No. 4 of 2016

or is established by or under any written law

where the Government holds a majority of the

share capital with funds or capital wholly or

partly provided by the Government by way of

grant, loan or otherwise; or any registered

society within the meaning of the Co-operative

Societies Law, No. 5 of 1972;

“wages or salary” means–

(a) the contractual wage or salary of the

worker or the wage prescribed under the

Wages Boards Ordinance (Chapter 136)

for the industry or service to which the

worker belongs; and

(b) wages or basic salary together with the

cost of living allowance, special living

allowance or any other similar

allowance;

“worker” means, any person who has entered into or

works under a contract with an employer in any

capacity, whether the contract is expressed or

implied, oral or in writing and whether it is a

contract of service or of apprenticeship

excluding a contract of apprenticeship covered

under the Tertiary and Vocational Education

Act, No. 20 of 1990 and the Employment of

Trainees (Private Sector) Act, No. 8 of 1978, or

a contrcat personally to execute any work or

labour and includes any person ordinarily

employed under any such contract whether such

person is or is not in employment at any

particular time and includes any person whose

services have been terminated but does not

include a domestic servant.

Sinhala text 15. In the event of any inconsistency between the Sinhala

to prevail in and Tamil texts of this Act, the Sinhala text shall prevail.

case of

inconsistency.

Budgetary Relief Allowance of Workers 15

Act, No. 4 of 2016

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