

***THE KERALA ABKARI WORKERS' WELFARE FUND ACT, 1989**

(ACT 19 OF 1989)

An Act to provide for the constitution of a Fund to grant relief to, to promote the welfare of and to pay pension to the Abkari Workers in the State of Kerala and for certain other matters incidental thereto

Preamble.- WHEREAS it is expedient to provide for the constitution of a fund to grant relief to, to promote the welfare of and to pay pension to the Abkari Workers in the State of Kerala t and for certain other matters incidental thereto;

BE it enacted in the Fortieth Year of the Republic of India as follows:-

1. Short title, extent and commencement.-(i) This Act may be called the Kerala Abkari Workers' Welfare Fund Act, 1989.

(2) It extends to the whole of the State of Kerala

(3) It shall come into force**on such date as the Government may, by notification in the Gazette, appoint.

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

(a) "Abkari Worker" means any person who is employed for wages in connection with the storing, bottling, transport or sale of liquor and who gets his wages directly or indirectly from the employer but does not include an employee as defined in the Toddy Workers' Welfare Fund Act, 1969 (22 of 1969);

(b) "Board" means the Kerala Abkari Workers' Welfare Fund Board constituted under Section 6;

(c) "Chief Welfare Fund Inspector" means the Chief Welfare Fund Inspector appointed under sub-section (1) of Section 9;

(d) "Contribution" means the sum of money payable to the Fund under Section 4;

(e) "employer" means any person who employs whether by himself or through any other person one or more abkari workers and includes any person who has a licence for storing, distribution or sale of liquor under the Abkari Act (1 of 1077)

* Published in K.G. No. 170 dt. 26-2-1990 as Nott. No.62/Leg. C3/89/Law dt. 26-2-1990.

** Date of commencement w.e.f. 1-1-1990.

OBJECTS AND REASONS Act 19 of 1989

A large number of workers in the State are now engaged in the abkari industry. For the welfare of toddy workers, Government have already enacted the Kerala Toddy Workers' Welfare Fund Act, 1969 (22 of 1969). However, the said Act does not cover workers employed in the arrack and foreign liquor industries. It is therefore considered necessary to constitute a fund to grant relief to, to promote the welfare of, and to pay pension to, the workers engaged in this sector also.

2. As the Legislative Assembly was not in session and it was necessary to give effect to the proposal immediately, the Kerala Abkari Workers' Welfare Fund Ordinance, 1989 (2 of 1989) was promulgated by the Governor on the 3rd day of May, 1989.
3. The-Bill seeks to replace the said Ordinance by an Act of the State Legislature. (Pub. in K.G.No.24 dt 13-6-1989 at p-13.)

(f) "family" means the wife, husband, minor sons, unmarried daughters and parents solely dependant on the Abkari Workers;

(g) "Fund" means the Abkari Workers' Welfare Fund established under the scheme;

(h) "liquor" means Ifquor defined in the Abkari Act (I of 1077) but does not include toddy;

(i) "member" means a member of the Fund;.

(j) "prescribed" means prescribed by Rules made under this Act.

(k) "Schedule" means a schedule to this Act;

(l) "scheme" means a scheme framed under this Act,

(m) "Wages" means all emoluments which are earned by an abkari worker while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him but does not include-

(i) the cash value of any food concession, and

(ii) overtime allowance, bonus and commission.

3. Abkari Workers' Welfare Fund.- (1) The Government may, by notification in the Gazette, frame a scheme to be called the Abkari Workers' Welfare Fund Scheme for the establishment of a Fund under this Act for Abkari workers and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the scheme.

(2) There shall be credited to the Fund,-

(a) the contributions and gratuity specified in Section 4;

(b) the amount borrowed by the Board under Section 10;

(c) damages realised under Section 20;

(d) grants or loans or advances made by the Government of India or the State Government or any institution;

(e) any donation from whatever source;

(f) any amount raised by the Board from other sources to augment the resources of the Board;

(g) fee levied under the scheme;

(h) any other amount which, under the provisions of the scheme, shall be credited to the fund.

(3) The Fund shall vest in and be administered by the Board constituted under Section 6.

(4) The Fund may be utilised for all or any of the following purposes namely:-

(a) for payment of pension;

(b) for payment of provident fund;

(c) for payment of gratuity;

(d) for payment of family pension;

(e) for payment of financial assistance to a member who suffers from permanent disablement;

(f) for payment of loans or grants to a member to meet expenses for the marriage of children or in connection with disease or death of dependents or for the education of children or for construction or maintenance of houses;

(g) to provide for maternity benefits to women abkari workers who are not eligible for such benefits under any other law for the time being in force;

(h) to provide for distress relief to the family of a member affected by natural calamities or epidemics;

(i) to provide for the abkari workers and members of their families,-

(i) medical facilities;

(ii) education and vocational training and facilities for part-time employment;

(j) to provide for the establishment of nurseries and creches for the children of the abkari workers;

(k) for implementation of any other purpose specified in the scheme.

(5) Subject to the provisions of this Act, the scheme framed under sub-section (1) may provide for all or any of the matters specified in sub-section (4) and in the schedule.

(6) The scheme shall be laid, as soon as may be, after it is framed, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the scheme, the scheme shall thereafter have effect only in such modified form; so however that any such modification shall be without prejudice to the validity of anything previously done under the scheme.

4. Contribution to the fund.- (1) The contribution which shall be paid by employer to the Fund shall be ten per cent of the wages for the time being payable to each of the abkari worker and the abkari worker's contribution shall be equal to the contribution payable by the employer in respect of him in the manner specified in the scheme.

(2) The employer shall, in addition to the contribution payable under sub-section (1) contribute to the Fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the abkari worker;

Provided that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for the rounding off of such fraction to the nearest rupee.

5. Modification of scheme.- (1) The Government, may, by notification in the Gazette, add to, amend or vary the scheme.

(2) Every notification under sub-section (1) shall be laid as soon as may be, after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, 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 notification.

6. Constitution of Board.- (1) The Government may, by notification in the Gazette,, constitute with effect from such date as may be specified therein a Board to be called "the Abkari Workers' Welfare Fund Board", for the administration of the Fund and to supervise or carry out the activities financed from the Fund-

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of fifteen Directors nominated by Government as hereinafter provided-

- (i) Five members representing Abkari workers
- (ii) Five members representing the employers,
- (iii) Five members representing the Government.

(4) One of the Directors of the Board shall be appointed by the Government to be its Chairman.

(5) The Government shall publish in the Gazette the names of all the Directors of the Board.

(6) The Board shall administer the Fund vested in it in such manner as may be specified in the scheme.

(7) The Board may, with the previous approval of Government, delegate to the Chairman or to any Director of the Board or to the Chief Welfare Fund Inspector such of the powers and functions under this Act or the scheme as it may consider necessary for the efficient administration of the Fund, subject to such restrictions, and conditions, if any, as it may specify.

7. Term of office of the Directors. - (1) Non-official Directors nominated under Section 6 shall hold office for a period of three years.

(2) Notwithstanding anything contained in Section 8 the Government may, at any time, for reasons to be recorded in writing, remove from office any non-official director of the Board after giving him a reasonable opportunity of showing cause against the proposed removal;

Provided that it shall not be necessary to record in writing, the reason for removal or to give an opportunity of showing cause against the proposed removal, if the Government are of the opinion that it is not expedient in the public interest, to record the reasons in writing or to give such opportunity.

(3) Any Director may resign his membership by giving notice in writing to the Government. His resignation shall be deemed to have come into force on the date of sending the letter of resignation.

8. Removal of Non-official Directors.- (1) The Government may, by notification in the Gazette, remove any non-official Director of the Board from office,-

(a) If he has, without the permission of the Board, been absent from the meetings of the Board for three consecutive meetings:

Provided, however, that such absence may be condoned by the Board before the publication of the notification in the Gazette;

(b) If in the opinion of the Government, he is unsuitable or has become incapable of acting as a Director or has so abused his position as a Director as to render his continuance as such Director detrimental to the public interest.

Provided that before removing a Director under this Section, he shall be given a reasonable opportunity to show cause why he should not be removed.

(2) A non-official Director of the Board removed under clause (a) of sub-section (1), shall be disqualified for reappointment as a Director of the Board for a period of three years from the date of his removal unless otherwise ordered by the Government.

(3) A non-official Director of the Board removed under clause (b) of sub-section (1), shall not be eligible for reappointment until he is declared by an order of the Government to be no longer ineligible.

9. Appointment of Officers and employees.- (1) The Government may appoint the Chief Welfare Fund Inspector and as many Welfare Fund Inspectors and such number of officers and employees as the Government consider necessary to assist the Board in the discharge of its functions and duties under this Act. The Chief Welfare Fund Inspector shall be the Chief Executive Officer of the Board.

(2) Subject to the provisions of sub-section (3), the method of appointment, salary and allowances, discipline and other conditions of service of the officers and employees appointed under sub-section (1) shall be such as may be prescribed.

(3) In the case of posts in the service under the Board to which appointment is made by direct recruitment, the Government shall mutatis mutandis observe the provisions of clause (a), (b) and (c) of the 14 and the provisions of Rules 15,16,17 and 17A of the Kerala State and Subordinate Service Rules. 1958 as amended from time to time.

10. Power of the Board to borrow.- The Board may, from time to time, with the previous approval of the Government and subject to such terms and conditions as may be specified by the Government, borrow money for the purposes of the scheme.

11. Determination of amounts due from employers.- (1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector authorised by him in this behalf, may, by 'order, determine the amount due from any employer under the provisions of this Act or of the scheme and for this purpose may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under sub-section (1) shall, for purpose of such inquiry have the same powers as are vested in a court for trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) 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;

(3) Any inquiry under this Section shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and for the purpose of Section 196 of the said Code.

(4) No order determining the amount due from any employer shall be made under sub- section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may prefer an appeal to the Government or any other authority as may be specified by the Government within sixty days from the date of the receipt of the order and the decision of the Government or of such authority on such appeal shall be final.

12. Provisional assessment of amounts due from employers.-(1) An employer who is liable to pay Contribution to the Fund under Section 4 shall, pending determination of the amount under Section 11, himself assess the same at such rates as mentioned in Section 4 and pay the amount in such manner as specified in the scheme on or before the 5th day of every month.

(2) In case of default to pay the amount as mentioned in sub-section (1), the Chief Welfare Fund Inspector or any other officer authorised by him in this behalf, shall send a notice to the person who has defaulted showing the amount of arrears and if the amount is not remitted within 15 days from the date of receipt of notice, the same may be recovered as arrears of public revenue due on land.

(3) The amount paid for one year under **this** Section shall be set off against the amount determined under Section 11.

13. Mode of recovery of moneys due from employers.- Any amount due from the employer in pursuance of the provisions of this Act or the Scheme may, if the amount is in arrears be recovered with interest at twelve per cent per annum in the same manner as arrears of public revenue due on land.

14. Priority of payment of contribution over other debts.- Where any employer is adjudicated as insolvent or being a company, an order for winding up is made, the amount due from the employer under the scheme shall, where the liability therefore has accrued before the order of adjudication or winding up is made be deemed to be included among the debts which under Section 64 of the Insolvency Act, 1955 or under Section 530 of the Companies Act, 1956 are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

15. Employer not to reduce wages.- No employer shall by reasons only of his liability for the payment of any contribution and gratuity to the Fund reduce, whether directly or indirectly the wages of any abkari worker to whom the scheme applies or the total quantum of benefits to which the abkari worker is entitled under the terms of his employment express or implied.

16. Members of the Board etc, to be public servants- Every Director of the Board nominated under sub-section (3) of Section 6, the Chief Welfare Fund Inspector and every Welfare Fund Inspector and other officers and employees of the Board appointed under sub section (I) of Section 9 shall be deemed to be public servant withiri the meaning of S.21 of the Indian Penal Code, 1860 (Central Act 45 of 1860)

17. Penalty.- (1) Whoever for the purpose of avoiding any payment to be made by himself under this Act or under the scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to three months or with fine which may extent to five hundred rupees, or with both.

(2) Whoever contravenes or makes default in complying with any of the provisions of this Act or of the scheme shall, if no other penalty is elsewhere provided, by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to two months or with fine which may extend to four hundred rupees, or with both.

(3) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(4) No court shall take cognisance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Welfare Fund Inspector.

18. Enhanced punishment for second or subsequent offence.- Whoever, having been convicted by a court of an offence punishable under this Act again commits the same offence shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year, but which shall not be less than three months, or with fine which may extend to four thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term of less than three months.

19. Offences by Companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company; as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person

liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence,

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer of the company such officer of the company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this Section-

- (a) "company" means anybody corporate and includes a firm, co-operative society or other association of individuals;
- (b) "Officer of the company" means the Managing Director, Director, Secretary, Treasurer or Manager of the company and includes the office-bearers of a firm, co-operative society or other association of individuals.
- (c) "Director in relation to a firm" means a partner in the firm

20. Power to recover damages.- Where an employer makes default in the payment of any contribution to the fund under this Act the Government may recover from the employer damages not exceeding twenty-five per cent of the amount of arrears as it may think fit to impose.

21. Protection for acts done in good faith.- No suit or other legal proceeding shall lie against any Director of the Board or the Chief Welfare Fund Inspector or any other person in respect of any thing which is in good faith done or intended to be done under this Act or under the scheme.

22. Directions by Government.- (1) The Government may give to the Board general or 11 special directions to be followed by the Board.

(2) In the exercise of the powers and performance of its duties under this Act the board shall not depart from any directions issued under Sub-section (1), except with the previous permission of the Government.

23. Power to order inquiry.- (1) The Government may, at any time appoint an officer not below the rank of a Joint Secretary to inquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed, under sub-section (1) all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts and information in the possession of the board as he may require.

24. Power to supersede the Board.- (1) If, on consideration of the report under Section 23 or otherwise, the Government are of opinion that the Board has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification.

Provided that before issuing a notification under this sub-section, the 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) Upon the publication of a notification under sub-section (1),-

(a) all the Directors of the Boards shall, as from the date of such publication, be deemed to have vacated their offices as such Directors;

(b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession be exercised or performed by such officer or officers as may

be specified in the notification:

(c) all funds and other properties vested in the Board shall during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section(1), the Government shall constitute the Board in the manner provided in Section 6.

25. Audit of Accounts of the Board and appointment of auditors.- (1) The Board shall appoint auditors to audit the accounts of the Board.

(2) The Accounts of the Board shall be examined and audited once in every year by such auditors.

26. Annual report and audited statement of accounts.- (1) The annual report of the Board shall be prepared under the direction of the Board and after approval by the Board, a copy of the report shall be submitted to Government before the end of July every year.

(2) The Government shall, as soon as the annual report is received, cause the same together with the audited statement of accounts to be laid on the Table of the Legislative Assembly.

27. Bar of Jurisdiction of civil courts.- No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the scheme required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Welfare Fund Inspector or any officer authorised by the Board.

28. Special provisions for transfer of accumulation from welfare funds established by an Act or Agreement.- Notwithstanding anything contained in any other law for the time being in force, on the date of publication of this Act, the sums standing to the credit of a member in any welfare fund established by any law or agreement shall stand transferred to and credited to the fund established under this Act and the liability of such member to pay contribution to such welfare funds shall cease from such date.

29. Removal of difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with this Act or the rules made thereunder, which appears to them necessary for the purposes of removing the difficulty:

Provided that no such order shall be passed after two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before the Legislative Assembly.

30. Power to make rules.- (1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively for the purpose of carrying into effect the provisions of this Act.

(2) Every Rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the Rule or decides that the Rule should not be made, the Rule shall thereafter have effect only in such modified form or be of no effect, 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.

31. Repeal.-The Kerala Abkari Workers' Welfare Fund Ordinance 1989 (2 of 1989) is hereby repealed.

SCHEDULE

[See Section 3(5)1

MATTERS FOR WHICH PROVISIONS MAY BE MADE IN THE SCHEME

1.The time and manner in which contributions shall be made to the Fund by employers on behalf of abkari workers and the contributions which an abkari worker may make under Section 4 and the manner in which such contributions may be recovered.

2.The manner in which the registration of abkari workers is to be done.

3.The manner in which contribution of the abkari worker may be recovered by contractors from abkari workers employed by or through such contractors.

4.The constitution of any committee for assisting the Abkari Workers' Welfare Fund Board.

5.The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government.

6.The conditions under which withdrawals from the fund may be permitted any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

7.The fixation by the Government in consultation with the Board the rate of interest payable to members.

8.The form in which an abkari worker shall furnish particulars about himself and his family whenever required.

9.The nomination of any person to receive the amount standing to the credit of a member on his death and the cancellation or variation of such nomination.

10.The registers and records to be maintained with respect to abkari workers and the returns to be furnished by the abkari workers or employers.

11.The form or design of any identity card, token or disc for the purpose of identifying any abkari worker and for issue, custody and replacement thereof.

12.The fees to be levied for any of the purposes specified in this schedule.

13. Additional powers if any, which may be exercised by the officers appointed under this Act.

14.The conditions under which a member may be permitted to pay premia on life insurance from the Fund.

15.The conditions of service, duties and remuneration of officers appointed under this Act.

16.The manner in which any welfare fund vested under Section 24 or 28 is to be brought and credited to the accounts of the abkari workers entitled hereto.

17.Any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme.