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## THE GAZETTE OF THE REPUBLIC OF SRI LANKA (CEYLON)

EXTRAORDINARY

අංක 243/35—1976 දෙසැම්බර් 17 වැනි සිකුරාදා—1976.12.17

No. 243/35 — FRIDAY, DECEMBER 17, 1976

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### PART I: SECTION (I)—GENERAL

#### Government Notifications

P. O. No. W. 68 (70)/76.

#### THE PUBLIC SECURITY ORDINANCE (CHAPTER 40)

REGULATIONS made by the President under section 5 of the Public Security Ordinance, upon the recommendation of the Prime Minister.

President's Office,  
Colombo, December 17, 1976.

W. GOPALLAWA,  
President.

#### Regulations

1. These regulations may be cited as the Emergency (Payment of Gratuities and Other Monetary Benefits to Indian Repatriates) Regulations.

2. (1) The Commissioner shall be the Competent Authority for the purposes of these regulations.

(2) The Competent Authority may delegate to any officer of the Labour Department any power, function or duty conferred or imposed on such authority by these regulations.

3. The provisions of these regulations shall have force and effect notwithstanding anything in any other written law or in any contract of employment whether oral, written, expressed or implied; and accordingly in the event of any conflict or inconsistency between the provisions of these regulations and such other law or contract, the provisions of these regulations shall prevail over any such law or contract.

4. (1) Every employer who has employed an Indian repatriate as a labourer on any estate for a period of not less than five years, shall pay such repatriate in respect of his services as a labourer a gratuity computed in accordance with the rates set out in the Schedule hereto.

(2) Every employer who has employed an Indian repatriate as a member of the staff on any estate for a period of not less than five years, shall pay such repatriate in respect of his services as a member of the staff a gratuity computed in accordance with the rates set out in the Schedule hereto.

(3) The provisions of paragraphs (1) and (2) of this regulation shall not apply to, or in relation to, an Indian repatriate who has been, paid a gratuity in respect of such services by such employer on or before the date of coming into force of these regulations.

(4) Any payment of gratuity due to an Indian repatriate under the preceding provisions of this regulation shall, in the event of the death of such repatriate before receiving such payment, be paid to such person or persons as would have been entitled under section 24 of the Employees' Provident Fund Act to receive the amount referred to in that section, had such repatriate been a member of the Employees' Provident Fund.

5. (1) An Indian repatriate who is a labourer or a member of the staff employed on any estate or, on his behalf, a trade union of which he is a member shall not be entitled to make an application for relief or redress in respect of the payment of gratuity or other benefits under section 31 B (1) (b) of the Industrial Disputes Act.

(2) Every application made to a Labour Tribunal under section 31 B (1) (b) of the Industrial Disputes Act, on or before the date of coming into force of these regulations, by an Indian repatriate who is a labourer or a member of the staff employed on any estate or, on his behalf, by a trade union of which he is a member in respect of the payment of gratuity or other monetary benefits may by motion at any time before a determination is made on that application be withdrawn by such repatriate or the trade union of which he is a member and such Tribunal shall make order allowing such motion.

(3) Where an order allowing a motion to withdraw an application has been made under paragraph (2), the provisions of these regulations relating to the payment of gratuity and other monetary benefits shall apply to the Indian repatriate in respect of whom such application was made to the Labour Tribunal, and accordingly the employer shall within two weeks of the date of the said Order notify such repatriate the amount of gratuity and other monetary benefits due to him.

6. Every employer of an Indian repatriate to whom regulation 4 of these regulations applies shall—

(a) notify such repatriate the amounts of gratuity and other monetary benefits due to him within two weeks of the date on which such employer certifies a claim under section 23 of the Employees' Provident Fund Act for the payment of benefits under that Act due to such repatriate or, where such repatriate has made such claim or has received such benefits on or before the date of coming into force of these regulations, within two weeks of the date of coming into force of these regulations; and

(b) pay such repatriate the amount of gratuity and other monetary benefits due to such repatriate within two weeks of the date on which such repatriate produces a permit from the Controller of Exchange for the transfer of his assets or the assets of his family.

7. (1) There shall be established a fund known as the "Advance Account Fund" into which shall be paid—
- (a) any such sums of money as may be paid into the fund, for the purposes of these regulations, out of the Consolidated Fund ; and
  - (b) any such sums of money as may be received by the Commissioner from the Tea Controller and Rubber Controller under the provisions of these regulations.
- (2) The Commissioner shall be responsible for the administration of the Advance Account Fund.

8. (1) Where on an application made for the payment of gratuity or other monetary benefits by an Indian repatriate or on his behalf by a trade union, the Commissioner is satisfied after such inquiry as he deems necessary that any employer has failed or refused to notify an Indian repatriate of the amount of gratuity and other monetary benefits due to such repatriate as required by these regulations or has notified an incorrect amount, the Commissioner shall issue a certificate specifying the amount of gratuity and other monetary benefits due to such repatriate from such employer. A copy of such certificate shall be sent by post to such repatriate and his employer.

(2) The correctness of any statements in the certificate issued by the Commissioner under paragraph (1) of this regulation shall be final and conclusive and shall not be called in question in any court or tribunal by writ or otherwise.

(3) Where an employer fails or refuses to pay the amount of gratuity and other monetary benefits due to any Indian repatriate under or as required by these regulations, the Commissioner shall have the power to make the payment of such gratuity and other monetary benefits to such repatriate from the Advance Account Fund and notify such payment to the employer of such repatriate and to the Tea Controller or the Rubber Controller, as the case may be.

(4) Where the Commissioner makes any payment to any Indian repatriate from the Advance Account Fund under paragraph (3) of this regulation, the employer of such repatriate shall be liable to pay to the Commissioner a surcharge on such payment in a sum not exceeding fifty *per centum* of amount as paid by the Commissioner to such repatriate as the Commissioner may determine.

(5) Where the Commissioner makes any payment to any Indian repatriate under paragraph (3) of this regulation, he shall notify such payment and the amount of surcharge payable thereon by the employer of such repatriate to such employer and the Tea Controller or the Rubber Controller, as the case may be.

(6) Where a notification under paragraph (5) of this regulation is received from the Commissioner, the Tea Controller or the Rubber Controller, as the case may be, shall have the power to pay to the Commissioner the amounts specified in such notification as payment of gratuity made to an Indian repatriate and surcharge payable thereon, from any monies payable to the employer of such repatriate under the Tea Subsidy Fund or the Rubber Replanting Subsidy Fund, as the case may be.

9. (1) Where an estate on which an Indian repatriate was employed has been vested in the Land Reform Commission under the Land Reform Law, or has been acquired under the provisions of the Land Acquisition Act, the Commissioner shall after such inquiry as he may deem necessary issue a certificate specifying the amount of gratuity and other monetary benefits due to such repatriate from his employer in respect of his services under such employer prior to the date of such vesting or acquisition.

(2) The correctness of any statement in the certificate issued by the Commissioner under paragraph (1) of this Regulation shall be final and conclusive and shall not be called in question in any court or tribunal by writ or otherwise.

(3) Where the Commissioner issues a certificate under paragraph (1) of this Regulation specifying the sum due to an Indian repatriate from his employer, the Land Reform Commission or the acquiring officer, as the case may be, shall make payment to such repatriate, through the Commissioner, such sum as may be certified, after such repatriate produces a permit from the Controller of Exchange for the transfer of his assets or the assets of his family.

(4) A copy of the certificate referred to in paragraph (1) of this Regulation shall be sent by the Commissioner to the employer of the repatriate in respect of whom such certificate is issued.

(5) Any sum paid by the Land Reform Commission or the acquiring officers to an Indian repatriate under the provisions of this regulation, shall be a first charge on the compensation payable to the employer of such repatriate under section 31 of the Land Reform Law or section 17 of the Land Acquisition Act, as the case may be, and such sum shall be deducted from the amount of compensation awarded to such employer.

10. The Competent Authority shall have power—

- (a) to enter and inspect at all reasonable hours of the day or night, any estate in which Indian repatriates are employed for the purpose of examining any register or record relating to them, or of ascertaining whether the provisions of these regulations are being complied with ;
- (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 such authority ;
- (c) to require the employer to furnish all such information as he may require for the purpose of the exercise of his powers and duties under these regulations and it shall be the duty of such person to comply with such request ;
- (d) to take copies of the whole or any part of a register or record ; and
- (e) to make such inquiries as he may consider necessary for the purpose of giving effect to these regulations.

11. In these regulations, unless the context otherwise requires—

"acquiring officer" shall have the same meaning as in the Land Acquisition Act (Chapter 460) ;

"Commissioner" means the person for the time being holding the office of the Commissioner of Labour and includes—

- (a) in respect of any power, duty or function of the Commissioner under these regulations, other than regulations 8 and 9, any person authorized in writing by the Commissioner to exercise such power, perform such duty or discharge such functions ;
- (b) in respect of the power conferred on the Commissioner by regulations 8 and 9 of these regulations, any person for the time being holding the office of Deputy or Senior Assistant or Assistant Commissioner of Labour, or any Labour Officer ;

"Employees' Provident Fund" shall have the same meaning as in the Employees' Provident Fund Act, No. 15 of 1958 ;

"Employees' Provident Fund Act" means the Employees' Provident Fund Act, No. 15 of 1958 ;

"employer" means—

- (a) any person who employs or on whose behalf any other person employs any labourer, or

(b) any person who on behalf of any other person employs any labourer, and includes a body of employers (whether such body in a firm, company, corporation or trade union) and any person or body of employers who or which has ceased to be an employer ;

“estate” shall have the same meaning as in the Estate Labour (Indian) Ordinance (Chapter 133) ;

“Indian repatriate” means a person recognized as a citizen of India by the Government of India under the Indo-Ceylon agreement of 1964 ;

“Industrial Disputes Act” means the Industrial Disputes Act (Chapter 131) ;

“labourer” means any labourer and kangany (commonly known as Indian coolies) whose name is borne on an estate register, and includes the Muslims commonly known as “Tulicans” and any person who has ceased to be a labourer ;

“Land Acquisition Act” means the Land Acquisition Act (Chapter 460) ;

“Land Reform Law” means the Land Reform Law, No. 1 of 1972 ;

“Land Reform Commission” shall have the same meaning as in the Land Reform Law ;

“member of the staff” means any person employed on an estate in any capacity other than as a labourer and includes any person who has ceased to be a member of the staff ;

“other monetary benefits” shall include arrears of wages, provident fund contributions and annual holiday wages ;

“Rubber Replanting Subsidy Fund” means the Rubber Replanting Subsidy Fund established by the Rubber Replanting Subsidy Act (Chapter 437) ; and

“Tea Subsidy Fund” means the Tea Subsidy Fund established by the Tea Subsidy Act, No. 12 of 1958.

#### SCHEDULE

The gratuity payable under these regulations to an Indian repatriate shall be computed at the following rates :

(1) Rates applicable to labourers—

(a) For each year of employment prior to the commencement of liability to make contributions to the Employees' Provident Fund—

- (i) for a male —Rs. 35.00
- (ii) for a female —Rs. 30.00

(b) For each year of employment from the date of commencement of liability to make contributions to the Employees' Provident Fund up to December 31, 1970—

- (i) for a male —Rs. 17.50
- (ii) for a female —Rs. 15.00

(2) Rates applicable to members of the staff—

One month's gross salary for each year of employment based on the terminal salary less employer's contribution to any provident fund.