

L. A. Bill No. 45 of 1958

**THE KERALA INDUSTRIAL ESTABLISHMENTS
(NATIONAL AND FESTIVAL HOLIDAYS)
BILL, 1958**

THE KERALA INDUSTRIAL ESTABLISHMENTS
(NATIONAL AND FESTIVAL HOLIDAYS) BILL, 1958.

A Bill to provide for the grant of National and Festival holidays to persons employed in industrial establishments in the State of Kerala.

WHEREAS it is expedient to provide for the grant of National and festival holidays to persons employed in industrial establishments in the State of Kerala;

BE it enacted in the Ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958.

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

(3) It shall come into force at once.

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

(a) “day” means a period of twenty-four hours beginning at mid-night;

(b) “employee” means—

(i) any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

(ii) any other person employed in any industrial establishment whom the Government may, by notification in the Gazette, declare to be an employee for the purposes of this Act;

(c) “employer” when used in relation to an industrial establishment means a person who has the ultimate control over the affairs of the industrial establishment, and where the affairs of any industrial establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person.

(d) “holiday” means holiday as provided in this Act.

(e) “industrial establishment” means,—

(i) any establishment, industrial, commercial or otherwise, wherein fifty or more persons are employed, or were employed on any day of the preceding twelve months, and includes—

(a) a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948); and

(b) a plantation;

(ii) any other establishment which the Government may, by notification in the Gazette, declare to be an industrial establishment for the purposes of this Act;

(f) "Inspector" means an Inspector appointed under sub-section (1) of section 6;

(g) "plantation" means any estate maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, which is fifty acres or more in extent, or in which fifty or more persons are employed, or were employed on any day of the preceding twelve months, for that purpose;

(h) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of the work done by him in such employment, and includes—

(i) such allowances, (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension, fund or provident fund, or for the benefit of the employee under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

(d) any sum paid to the employee to defray special expenses entailed on him by the nature of his employment;

(e) any travelling concession.

3. *Grant of National and Festival Holidays.*—Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 15th August and the 1st May and four other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.

4. *Employer to display statement of holidays.*—Every employer shall display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed.

5. *Wages.*—(1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under section 3.

(2) where an employee works on any holiday allowed under section 3, he shall, at his option, be entitled to—

(a) twice the wages; or

(b) wages for such day and to avail himself of a substituted holiday with wages on any other day.

(3) notwithstanding anything contained in sub-section (1) or sub-section (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3—

(i) only at a rate equivalent to the daily average of his wages for the days on which he actually worked during the month immediately preceding such holiday;

(ii) where he works on any such holiday, only at twice the rate mentioned in clause (i), or in lieu thereof, at the rate mentioned in that clause and to avail himself of a substituted holiday with wages at that rate on any other day:

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under this section, if his name was not on the rolls of the industrial establishment continuously for a month immediately prior to the holiday:

Provided further that no such employee shall be entitled to be paid any wages for any of the holidays allowed under this section if he was, enjoying leave with pay.

(4) Any amount due to an employee under this Act shall be recoverable as arrears of land revenue under the Revenue Recovery Act for the time being in force.

6. *Inspectors*.—(1) The Government may, by notification in the Gazette, appoint such persons or such class of persons as they think fit to be Inspectors for the purposes of this Act for such local limits as the Government may specify.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

7. *Powers of Inspectors*.—Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe is, an industrial establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act;

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

8. *Penalties.*—Any employer who contravenes any of the provisions of section 3 or section 5 shall be punishable with fine which may extend to two hundred and fifty rupees.

9. *Penalty for obstructing Inspector.*—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act or of any rule made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

10. *Exemptions.*—(1) Nothing contained in this Act shall apply to—

- (a) any employee in a position of management;
- (b) any employee whose work involves travelling;
- (c) any industrial establishment under the control of the Central Government, the Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution or a cantonment authority;
- (d) any mine or oil field.

(2) The Government may, by notification in the Gazette, exempt either permanently or for any specified period any establishment or class of establishments, or person or class of persons from all or any of the provisions of this Act, subject to such conditions as the Government may deem fit.

11. *Rights and privileges under other laws, etc., not affected.*—Nothing contained in this Act shall adversely affect any rights or privileges which any employee is entitled to with respect to national and festival holidays on the date on which this Act comes into force under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

12. *Power to make rules.*—(1) The Government may, by notification in the Gazette make rules for the purpose of carrying into effect the provisions of this Act.

(2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(3) All rules made under this Act shall be laid for not less than fifteen days before the Legislative Assembly, as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as the Legislative Assembly may make during the Session in which they are so laid or the Session immediately following.

STATEMENT OF OBJECTS AND REASONS

The State Industrial Relations Board constituted by Government to advise them on questions of labour policy, felt that there was need to provide for the grant of National and festival holidays with wages to the workers in the industrial establishments in the State.

This question of holidays with wages had already been considered at the 15th and 16th sessions of the Standing Labour Committee constituted by the Government of India when the view was expressed that there should be seven paid holidays to the industrial workers in the private sector of industrial undertakings and that suitable legislation should be undertaken. But the Government of India did not think it practicable to undertake legislation on an All-India basis. They wanted to have the States to take the initiative in this regard. This Government have, therefore, thought it necessary to promote this legislation and have decided to provide for seven paid National and festival holidays. In fixing the festival holidays there is the obvious difficulty of specifying the days acceptable to all regions because of the varying nature and importance of the festivals in different localities. Therefore, the bill seeks to leave to the workers and the managements to evolve an understanding about the fixation of the particular festival holidays suited to regional and local sentiments.

FINANCIAL MEMORANDUM

Clause 6 of the bill provides for the appointment of Inspectors for the purposes of the Act. It is not proposed to appoint separate Inspectors for this work. The intention of the Government is to appoint Assistant Labour Officers as Inspectors under the Act. Therefore no additional expenditure from the Consolidated Fund will be involved by the passing of this bill.

T. V. THOMAS.
