

LABOUR ORDINANCE, 1962

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THE TEA PLANTATIONS LABOUR ORDINANCE, 1962
ORDINANCE No. XXXIX OF 1962
[4th June, 1962]

An Ordinance to provide for the welfare of labour, and to regulate the conditions of work, in tea plantations

WHEREAS it is expedient to provide for the welfare of labour, and to regulate the conditions of work, in tea plantations;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise, of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :-

CHAPTER I

1. Short title, extent, commencement and application.—(1) This Ordinance may be called the Tea Plantations Labour Ordinance, 1962.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) It applies in the first instance to all tea plantations, but the Provincial Government may, by notification in the official Gazette, apply it to any other area of land measuring twenty-five acres or more and used or intended to be used for growing tea whereon less than thirty persons are

employed, or were employed on any day of the preceding twelve months.

2. Definitions.—In the Ordinance, unless there is anything repugnant in the subject or context,-

(a) “adolescent” means a person who has completed his fifteenth year but has not completed his seventeenth year ;

(b) “adult” means a person who has completed his seventeenth year;

(c) “child” means a person who has not completed his fifteenth year;

(d) “day” means a period of twenty four hours beginning at midnight;

(e) “employer” when used in relation to a tea plantation means the person who has ultimate control over the affairs of the tea plantation, and where the affairs of any tea plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that tea plantation;

(f) “prescribed” means prescribed by rules made under this Ordinance;

(g) “tea plantation” means any land used or intended to be used for growing tea which measures twenty five acres or more and whereon thirty or more persons are employed, or were employed on any day of the preceding twelve months ;

(h) “wages” has the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (IV of 1936) ;

(i) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be fixed by the Provincial Government in relation to tea plantations in any area after such consultation as may be prescribed with reference to the tea plantations concerned in that area ;

Gj) “worker” means a person employed in a tea plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, but does not include-

(i) a medical officer at the plantation ;

(ii) any person whose monthly wages exceed five hundred rupees; or

(iii) | a person employed in a tea plantation primarily in a managerial capacity notwithstanding that his monthly wages do not exceed five hundred rupees ;

(ik) “young” person means a person who is either a child or an adolescent.

CHAPTER II

3. Chief Inspector and Inspectors.—(1) The Provincial Government may, by notification in the official Gazette, appoint for the Province a duly qualified persons to be the chief inspector of tea plantations and so many duly qualified persons to be inspectors of tea plantations subordinate to the chief inspector as it thinks fit.

(2) Subject to such rules as may be made in this behalf by the Provincial Government, the chief inspector may declare the local area or areas within which, are the tea plantations with respect to which, inspectors shall exercise their powers under this Ordinance, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the Provincial Government.

(3) The chief inspector and all inspectors shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XIV of 1860).

4. Powers and functions of inspectors.—Subject to any rules made by the Provincial Government in this behalf, an inspector may within the local limits for which he is appointed-

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Ordinance and of the rules made thereunder are being observed in the case of any tea plantation;

(b) with such assistants from amongst persons in the employment of Government or of any municipal body or other local authority, as he thinks fit, enter, inspect and examine any tea plantation or part thereof at any reasonable time for the purpose of carrying out the objects of this Ordinance;

(c) examine any worker employed in any tea plantation or require the production of any register or other document maintained in pursuance of this Ordinance, and take on the spot or otherwise statement of any persons which he may consider necessary for carrying out the purposes of this Ordinance ; and

(d) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

5. Facilities to be provided to inspector.—Every employer shall afford the inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Ordinance.

6. Notice to inspector before commencement of work.—Before work is begun in any tea plantation after the commencement of this Ordinance, the employer shall, send to the inspector a written notice containing—

(a) the name of the tea plantation and its situation;

(b) the address to which communications relating to the tea plantation should be sent ; and

(c) such other particulars as may be prescribed for the purposes of this Ordinance.

7. Certifying surgeons.—(1) The Provincial Government may appoint medical practitioners having the prescribed qualifications to be certifying surgeons for the purposes of this Ordinance within such local limits or for such tea plantation or class of tea plantations as it may assign to them respectively.

(2) The certifying surgeon shall carry out such duties as may be prescribed in connection with-

(a) the examination and certification of workers ; and

(b) the exercise of such medical supervision as may be prescribed where young persons are, or are to be, employed in any work in any tea plantation which is likely cause injury to their health.

CHAPTER III

8. Drinking water.—In every tea plantation such arrangements as may be prescribed shall be made by the employer to provide and maintain at convenient places in the tea plantation a sufficient supply of wholesome drinking water for all workers.

9. Conservancy.—(1) There shall be provided separately for males and females in every tea plantation a sufficient number of latrines and urinals of prescribed types and number so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

10. Medical facilities In every tea plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers as may be prescribed.

CHAPTER IV

11. Canteens.—(1) The Provincial Government may make rules requiring that in every tea plantation wherein one hundred and fifty or more workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—
(a) the date by which the canteen shall be provided;

(b) the number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteens;

(c) the food-stuffs which may be served therein and the charges which may be made therefor;

(d) the constitution of managing committee for the canteen and the representation of the workers in the management of the canteen ; and

(e) the delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

12. Creches.—The Provincial Government may make rules providing that in every tea plantation wherein forty or more women workers are employed or were employed on any day of the preceding twelve months the employer shall provide and maintain, in such manner and of such standard as may be prescribed, rooms for the use of such of the children of the women workers as are below the age of six years.

13. Recreational facilities—The Provincial Government may make rules requiring every employer to make provision in his tea plantation for such recreational facilities for the workers and their children as may be prescribed.

14. Educational facilities —Where the children between the ages of six and twelve of workers employed in any tea plantation exceed twenty five in number, the Provincial Government may make rules requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

15. House building facilities.—It shall be the duty of every employer to provide house-building facilities to every worker and his family residing in the tea plantation according to such scale as may be prescribed.

16. Facilities for daily necessities, etc —It shall be the duty of the employers to provide facilities within easy reach of the employees for obtaining the daily necessities of life through co-operative or other means and also to provide the employees with such amenities for protection from adverse weather conditions as may be prescribed.

17. Welfare Officers.—(1) In every tea plantation wherein three hundred or more workers are ordinarily employed the employer shall employ such number of Welfare Officers as may be prescribed.

(2) The Provincial Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

CHAPTER V

18. Weekly hours, spread-over and daily intervals for rest.—The Provincial Government may make rules providing for the regulation of the weekly working hours, their spread-over per day, and the daily intervals for rest, for the workers,

19. Weekly holidays.—(1) The Provincial Government may make rules providing for-

(a) a day of rest in every period of seven days which shall be allowed to all workers ; and

(b) payment for work done on a day of rest at such overtime rate as may be prescribed under section 31.

(2) Notwithstanding anything contained in clause (a) of sub-section (1) where a worker is willing to work on any day of rest which is not a closed holiday in the tea plantation, nothing contained in this section shall prevent him from doing so:

Provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Explanation.— Nothing contained in this section shall apply to any worker whose total period of employment, including any day spent on leave, is less than six days.

20. Notice of period of work.—(1) There shall be displayed and correctly maintained in every tea plantation, in such form and manner as may be prescribed, a notice of periods of work showing clearly for every day the periods during which the workers may be required to work.

(2) Subject to the other provisions of this Ordinance, no worker shall be required or allowed to work in any tea plantation otherwise than in accordance with the notice of periods of work displayed in the tea plantation.

(3) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.

21. Prohibition of employment of young children.—No child who has not completed his twelfth year shall be required or allowed to work in any tea plantation.

22. Night work for women and children.—Except with the permission of the chief inspector, no woman or child worker shall be employed in any tea plantation otherwise than between the hours of 6 A.M. and 7 P.M.

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any tea plantations.

23. Non-adult workers to carry tokens.—No child who has completed his twelfth year and no adolescent shall be required or allowed to work in any tea plantation unless-

(a) a certificate of fitness granted with reference to him under section 24 is in the custody of the employer ; and

(b) such child or adolescent carries with him while he is at work a token giving a reference to such certificate.

24. Certificate of fitness—(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed in the tea plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference to any young person intending to work in the tea plantation, examine such person, and ascertain his fitness for work as a child or an adolescent.

(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

(3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the young person, his parents or guardian.

25. Power to require medical examination.— An inspector may, if he thinks necessary so to do, cause any young person employed in a tea plantation to be examined by a certifying surgeon.

CHAPTER VI

26. Application of Chapter.—The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement, or contract of service:

Provided that, where such award, agreement or contract of service provides for a longer leave with wages than provided in this Chapter, the worker shall be entitled only to such longer leave.

Explanation.—For the purpose of this Chapter leave shall not, except as provided in section 27, include weekly holidays or holidays for festivals or other similar occasions.

27. Annual leave with wages.—(1) Every worker shall be allowed leave with wages for a number of days calculated at the rate of.

(a) if an adult, one day for every thirty days of work performed by him; and

(b) if a young person, one day for every twenty days of work performed by him:

Provided that a period of leave shall be inclusive of any holiday which may occur during such period.

(2) if a worker does not in any one period of twelve months taken the whole of the leave allowed to him under sub-section (1) any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding period of twelve months.

(3) A worker shall cease to earn any leave under this section when the leave with wages due to him amounts to thirty days.

28. Festival holidays.—Every worker shall be allowed in a year not less than five days' paid festival holidays which shall be determined by the employer in consultation with the workers.

29. Sick leave—Every worker shall be allowed in a year fifteen days sick leave on half average wages.

30. Wages during leave or holiday period.—(1) For the leave or holidays allowed to a worker under section 27 and section 28 he shall be paid at the rate equal to daily average of his total full-time wages for the days on which he worked, exclusive of any overtime earnings and bonus, if any, but inclusive of dearness allowance and cash equivalent of any advantage accruing from the occasional supply by the employer of food grains.

(2) A worker who has been allowed leave under section 27 for any period not less than four days in the case of an adult and five days in the case of a young person shall, before his leave begins, be paid his wages for the period of the leave allowed.

31. Extra wages for overtime.—Where a worker works on any day or in a week for more than the hours fixed under section 18, he shall be entitled in respect of the overtime worked to wages at such rate as may be prescribed.

CHAPTER VII

32. Obstruction.—(1) Whoever obstructs an inspector in the discharge of his duties under this Ordinance or refuses or willfully neglects to afford the inspector any reasonable facility for making any inspection, examination of inquiry authorized by or under this Ordinance in relation to any plantation, 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.

(2) Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Ordinance, or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Ordinance, 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.

33. Penalty for contraventions of provisions relating to medical facilities —Any employer who contravenes the provisions of section 10 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

34. Use of false certificate of fitness—Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 24 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

35. Contravention of provisions regarding employment of labour.—Whoever except as otherwise permitted by or under this Ordinance, contravenes any provision of this Ordinance or of any rules made thereunder, prohibiting, restricting or regulating the employment of persons in a tea plantation, 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.

36. Other offences.—Whoever contravenes any of the provisions of this Ordinance or of any rules made thereunder for which no other penalty is elsewhere provided by this Ordinance or the rules, 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.

37. Enhanced penalty after previous conviction.—If any person who has been convicted of any offence punishable under this Ordinance is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

38. Exemption of employer from liability in certain cases—Where an employer charged with an offence under this Ordinance alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf to have, on giving to the prosecutor in this behalf three clear days' notice in writing of his intention so to do, that other person brought before the court on the day appointed for the hearing of the case and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that-

(a) he has used due diligence to enforce the execution of the relevant provisions of this Ordinance ; and

(b) that the other person committed the offence in question without his knowledge, consent or connivance ; the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that—

(a) the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor; and

(b) if, in spite of due diligence, the person alleged as the actual offender cannot be brought before the court on the day appointed for the hearing of the case, court shall adjourn the hearing thereof from time to time so, however, that the total period of such adjournment does not exceed three months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the court, the court shall proceed to bear the case against the employer.

39. Cognizance of offences.— No court shall take cognizance of any offence punishable under this Ordinance except on complaint made by the chief inspector or any person authorized by him in this behalf and no court inferior to that of a Magistrate of the first class shall try any offence punishable under this Ordinance.

40. Limitation of prosecutions.—No court shall take cognizance of any offence punishable under this Ordinance unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence comes to the knowledge of an inspector:

Provided that, where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

41. Indemnity.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance.

CHAPTER VIII

42. Leave for person simultaneously engaged in a tea factory and a tea plantation —If a person is employed within the same year both in the tea plantation covered by this Ordinance and a tea processing factory covered by the Factories Act, 1934 (XXV of 1934), under the same management, he shall be entitled to the maximum facilities provided under either this Ordinance or that Act so far as annual leave, sick leave and other similar conditions are concerned.

43. Power to exempt.—The Provincial Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Ordinance.

44. General power to make rules.—The Provincial Government may, subject to the conditions of previous publication, make rules to carry out the purposes of this Ordinance.