

SINDH ACT NO. XXXIII OF 2015.

THE SINDH WORKERS WELFARE FUND ACT,2014.

04TM JUNE, 2015.

AN ACT to provide for the establishment of a Workers Welfare Fund in the Province of Sindh.

WHEREAS it is expedient to provide for the establishment of a Preamble.

Workers Welfare Fund in the Province of Sindh and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows: -

1. (1) This Act may be called the Sindh Workers Welfare Fund Short title, Act,2014. extent and commencement.

(2) It shall extend to the whole of the Province of Sindh.

(3) It shall come into force at once.

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

(a) "Board" means the Workers' Welfare Board constituted under section 3;

(b) "Chairperson " means the Chairperson of the Board;

(c) "Employer" in relation to an industrial establishment means any person or body of persons, whether incorporated or not, who or which employs worker in the industrial establishment under a contract of employment or is worker as defined in clause (n) and includes -

(i) an heir, successor or assign, as the case may be, of such person or body as aforesaid;

(ii) any person responsible for the management, supervision and control of the establishment; and

(iii) in relation to any other establishment, the proprietor of such establishment and every director, manager, secretary, agent or other officer or person, concerned with the management of the affairs thereof.

(d) "Fund" means the Fund constituted under section 4;

(e) "Government" means the Government of Sindh;

(f) "Taxation officer or Officer of Inland Revenue" means any person appointed as such under the Income Tax Ordinance, 2001, Sindh Sales Tax Act, 2011 and the

Federal Excise Act, 2005;

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(g)"industrial establishment" means —

- (i) any concern owning or managing a factory, workshop or other establishment in which articles are produced, adapted or manufactured with the aid of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency;
- (ii) any concern working in mine or quarry or natural gas or oilfield;
- (iii) any concern engaged in the carriage of worker and goods by inland mechanically propelled vessels;
- (iv) any concern engaged in the growing of tea, coffee; and
- (v) any concern engaged in the Banking or financial Institution except State Bank of Pakistan;
- (vi) any concern engaged in telecommunication;
- (vii) any other concern or establishment which Government, may by notification in the official Gazette, declare to be an industrial establishment for the purposes of this Act but does not include any concern or establishment which is owned by Government or by a corporation established by Government or where majority of its shares are owned by Government.

(h) "Income Tax Ordinance" means the Income-tax Ordinance, 2001 (XLIX of 2001);

- (i) "prescribed" means prescribed by rules and regulations made under this Act;
- (j) "Secretary" means the Secretary of the Board;
- (k) "Sindh Revenue Board" means the Board constituted under the Sindh Revenue Board Act, 2010.

(1) "total income" means -

- (i) where return of income is required to be filed under Income Tax Ordinance,2001, or under this Act, the profit as per accounts or the declared income as per the return of income.

(ii) where return of income is not required to be filed, four percent of the receipt as per the statement filed under section 115 of the Income Tax Ordinance, 2001.

(iii) where both return and statement are filed under sub-clauses (i) and (ii), both the incomes would be clubbed to form the total income;

(iv) the income tax and other taxes deducted at source or paid with income tax return should be considered as tax paid on taxable income.

(m) "worker" means any person not falling within the definition of employer who is employed in an industrial establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute and shall include the family viz. spouse, unmarried sons, daughters and dependent parents but does not include any person-

(a) who is employed mainly in a managerial or administrative capacity; or

(b) any person" responsible for direction, administration, management and control of the industrial establishment.

3. (1) As soon as may be, after the commencement of this Constitution of Act, Government shall constitute and establish a Board, by Board notification in the official gazette for the purposes of this Act to be called "Workers Welfare Board."

(2) The Board shall consist of -

(i) the Chairperson;

(ii) three members of the Provincial Assembly of Sindh nominated by the Speaker;

(iii) Secretary, Labour Department, Government of Sindh;

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(iv) three members from amongst the Employer; on the recommendation of Industrial Associations;

(v) three members from amongst the workers;

(vi) a representative of the Health Department;

(vii) a representative of the Education Department;

(viii) a representative of the Industries Department;

(ix) a representative of the Works and _ Services Department;

(x) a representative of the Sindh Revenue Board.

(3) The members of the Board other than the Chairperson and representatives of Government Departments, shall hold office for such period and on such terms and conditions as may be prescribed.

(4) The Minister to Government of Sindh, Labour Department shall be the Chairperson of the Board.

(5) No act or proceedings of the Board shall be invalid by reasons of existence of any vacancy in, or defect in the constitution of the Board.

4. (1) There shall be constituted for the purpose of this Act, a Workers Welfare Fund which shall consist of -

(i) an initial contribution to be made by Government;

(ii) the share of funds or assets, received from Workers Welfare Fund;

(iii) such moneys as may, from time to time, be paid by the industrial establishments under sections 5 and 6;

(iv) any amount transferred to the Fund from time to time under clause (d) of paragraph 4 of the scheme set out in the Schedule to the Companies Profits (Workers Participation) Act, 1968 (Act No.XII of 1968);

(v) voluntary contributions in the shape of money or building, land or other assets made to it from time to time by Federal Government, Provincial Government, local body or corporation established under law, or by

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any person, charitable institutions or philanthropists;

(vi) income from the investments made and properties and assets acquired from out of the Fund;

(vii) proceeds of loans raised by the Board; and

(viii) all assets transferred and devolved by the Federal Government.

5. (1) Every industrial establishment located in the Province of Sindh and the total income of which in any year of account commencing on or after the date of closing of account on or after 31st December, 2013, in this behalf is not less than five hundred thousand rupees, shall pay to the Fund in respect of that year a sum equal to two percent of so much of its total income declared and the difference based on the assessed total income, if any, made at the higher or lower side of such total income at the time the difference in tax is paid, or total income which would have been assessable but for the exemption under the Income Tax Ordinance based on the return of income or statement in respect of total income or before the date of filing of Return and the additional amount on assessment of income by the Taxation Officer or Officer of Inland Revenue.

(2) Every industrial establishment, which is liable under sub-section (1), shall pay the amount due from it to the Sindh Revenue Board for the purpose of this Act.

(3) The industrial establishment shall, on or before the date on which it is required to furnish a return of income, pay the amount due from it under sub-section (1) calculated with reference to the total income reported in the Tax Return.

(4) In the first instance, at the time of filing of the return, and thereafter at the time of assessment and vice versa, the Officer of Sindh Revenue Board not below BS-17 shall, by order in writing, collect the amount payable or, as he may determine, based on the books of accounts or the statement, collect the amount determined so payable, or determine and collect the amount due from industrial establishment under sub-section (1), if any, on the basis of the income so assessed after taking into account the amount paid by the industrial establishment under sub-section (3) in respect of the year and the industrial establishment shall pay the amount so determined on or before the date specified in the order.

(5) Any change by way of enhancement or reduction in the assessed income subsequent to the assessment made under the Income Tax Ordinance' shall be given' effect to by adjustment of the amount due under sub-section (1).

(6) Any amount paid by an industrial establishment under sub-

section (3) which is found, on the basis of an order in appeal or

Mode of
payment by and
recovery from
industrial
establishment.

revision under the Income Tax Ordinance, to have been paid in excess shall be refunded or to be adjusted as the case may be.

(7) The payment made by an industrial establishment to the Fund under sub-section(1) shall be treated as an expenditure for purposes of assessment of Income Tax.

(8) Where any industrial establishment fails to pay the amount due from it as required under this section, it shall, without prejudice to any other liability to which it may be subject under this Act or any other law, be liable to pay an additional amount equal to fifteen percent per annum of the amount due from it, from the date on which it was originally payable to the date on which it is paid.

(9) Where an industrial establishment is not found on National Tax Number list, the Sindh Revenue Board shall issue a notice and form of statement for the purposes of assessing, determining and requiring the industrial establishment to pay.

(10) Where any amount of Fund charge was due from the industrial establishment, under the Workers Welfare Ordinance, 1971 (Ordinance as XXXVI of 1971) for that particular income or the tax year, as the case may be, for which notice to the effect has been issued, or where demand notice has been issued or communicated but the amount is outstanding, such charge or contribution so due or found due or found payable shall be collected, recovered, determined or assessed, as the case may be, under the provisions of this sub-section.

Provided that the action to assess, determine, collect or recover tax shall be, where no assessment has been made, or return of income was not filed, shall be based on declared income or income as per books.

Provided further that no action shall be taken, without providing an opportunity of hearing, and such action would not be taken prior to five tax or income years, from the end of financial year 2013-2014; however, where demand has been raised already or amount of charge in sub-section is due on the basis of return of income or assessment, limitation of five years shall not apply in such case.

(11) The provisions of the Sindh Sales Tax on Services Act, 2011, and the Sindh Revenue Board Act,2010 relating to the mode and time of recovery of the sales tax shall, in so far applicable, apply to the recovery of the amount due under this Act.

(12) The Taxation Officer or the officer of Inland Revenue shall provide the relevant information of assessment of any Employer made by the Income Tax Department under the Income Tax Ordinance as and when called by the Officer of Sindh Revenue Board

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and shall also provide any other information as may be required from time to time.

(13) Without prejudice to the provisions of aforesaid sub-sections, where any industrial establishment is not required to file return or the statement or where any industrial establishment is not on the National Tax Number, the officer of Sindh Revenue Board may issue a notice, requiring such industrial establishment to file the return or statement and pay the amount.

(14) In the matter of collection or recovery of the charges or amount for the Fund, notice of demand or the notice for filing of the statement shall be issued by the Sindh Revenue Board and for any default penal provisions as provided in Sales Tax on Services law and rules made there under shall also mutatis mutandis apply in such case.

6. (1) Every industrial establishment referred to in sub-section (1) of section 5 shall, in addition to the amount payable by it under that sub-section in respect of any year of account, pay such amount as the Income Tax or Inland Revenue Department or the Sindh Revenue Board may determine.

(2) Government may appoint one or more committees in the Province and, where it appoints more than one committees, shall specify the area or class of industrial establishments in relation to which each such committee shall perform its functions.

(3) A committee appointed under sub-section (2) shall consist of an officer of Government who shall be its Chairperson and three members from private sector to be appointed by Government, or as the case may be, in the area or class of industrial establishments in relation to which the committee is to perform its functions.

(4) The Committee shall examine the financial and other circumstances of each of the industrial establishments and make recommendations to the Sindh Revenue Board as to the amount, if any, to be paid by such establishment in addition to the amount payable by it under section 5.

(5) The committee shall submit its recommendations to Government, which shall determine the amount to be paid under this section.

(6) The committee shall have power to ask any _ industrial establishment to furnish such information, as it may consider

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necessary for the performance of its functions under sub-section (4).

(7) If an industrial establishment fails to furnish the required information under sub-section (6), the committee shall make its recommendations under sub-section (4) to the Sindh Revenue Board on the basis of such information as may be available to it.

7. Any liability imposed on an industrial establishment by this Act shall be deemed to be the liability of the person who is liable to pay income tax in respect of the income relatable to such industrial establishment.

8. Moneys in the fund constituted under section 4 shall be applied to -

(a) the financing of the projects connected with the establishment of housing estates or construction of houses, flats or development of plots for the workers;

(b) the financing of other measures for the welfare of workers;

(c) to meet the expenditure in respect of the cost of management and administration of the Fund shall not be more than 10% of the total fund.

(d) the repayment of loans raised by the Board and the financing of other welfare measures including education, training, reskilling and apprenticeship for the welfare of the workers; and

(e) investment in securities approved for this purpose by Government.

9. (1) The Board may, with the previous approval of Government appoint a Secretary who shall be the Chief Executive officer of the Board.

(2) The Secretary shall be appointed from amongst the DMG or ex-PCS group, not below the rank of BS-19.

(3) The Board may appoint such other employees, as it may deem necessary for the efficient administration and management of the Fund.

(4) The Board shall determine the terms and conditions of services of the employees of the Board with prior approval of the Government.

Liability to be
discharged by
certain persons.

Purposes to
which moneys in
the Fund may be
applied.

Appointment of
Secretary and
other staff of the
Board.

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(5) The Board may also adopt the existing employees of the Board or Fund other than those who are on deputation from other departments, corporations, as the employees of the Board after commencement of this Act.

(6) The Secretary and other employees of the Board shall be deemed to be the public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

10. The Board shall, immediately after its constitution with the previous approval of Government, lay down the procedure for making the application for grant and the information to be furnished in the application and the principles to be followed by the Board in the disbursements of the grants including assigning the priorities for such disbursements.

11. The functions of the Board shall be -

(a) to sanction expenditure in respect of administration and management of the Board;

(b) to invest money held in the Fund of the Board in Securities approved for the purpose by Government or in any financial institution being run under the control of Government;

(c) to raise loans and to make measures for discharging such loans;

(d) to do or cause to be done all acts and things necessary or desirable for the proper administration of the Board;

(e) to do or cause to be done all things ancillary or incidental to any of the above functions;

(f) to regulate the matters connected with allotment, cancellation of allotment and fixation of rent, cost of the houses or flats financed by the money allocated from the Fund and external maintenance and repairs;

(g) to take any other measures for the welfare of workers financed by the money allocated from the Fund;

(h) to incur the expenditure in respect of the cost of management and administration of such scheme;

(i) to recover the rent, cost and arrears of rent or cost of such houses, flats in the manner laid down by the Board;

Board to lay
down procedure.

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(j) to do other things necessary for, connected with, or incidental to the discharge of its functions under this Act or the rules or scheme made thereunder;

(k) to get its accounts annually audited in the prescribed manner; and

(l) to make regulations to regulate its procedure.

12.(1) The Board shall meet as often as necessary but not less than every quarter in a calendar year. Board.

(2) Half of the total membership of the Board shall form a quorum for the meeting of the Board.

(3) The Chairperson shall preside all meetings of the Board.

(4) The members shall have reasonable notice of the time and place of the meeting and the agenda for such meeting.

(5) The decision of the Board shall be taken by majority vote and in case of a tie, the Chairperson shall have a casting vote.

(6) The decisions taken by the Board shall be in writing and signed by the Secretary of the Board.

(7) The minutes of the meeting shall be circulated amongst all the members of the Board within one week's time.

13. The Board shall - Maintenance of books of

(a) cause to be maintained such books of account as may account, etc be prescribed;

(b) cause to be prepared in the prescribed manner an annual statement of account;

(c) cause the accounts of the Board to be audited annually by the Director General Audit Sindh; and

(d) submit to Government the statement referred to in clause (b) together with the report of the auditor thereon.

14. The Board may direct in writing that any of its powers and Delegation of functions Chairperson under this Act may, subject to such limitations, powers. restrictions, or conditions, if any, as may be imposed by it from time to time, be also exercised or performed by the Secretary of the

Board.

15. Government may, by notification in the official Gazette, remit or Power to remit reduce the amount due from any industrial establishment or class of or reduce

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industrial establishments under the provisions of section 5:

Provided that two percent contribution under section 5 and the additional contribution under section 6 due from any class of industrial establishment may be remitted or reduced by Government at its discretion on the merits of each case.

16. The provisions of Sindh Sales Tax on Services Act,2011 in the matter of charge of additional charge or tax, penalty and prosecution matters shall, mutatis mutandis, apply in case of any additional charge or amount, penalty and prosecution under this Act.

17. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

18. Government may, with the consent of the Federal Government, by notification in the official gazette, entrust, its functions either conditional or unconditional to the Federal Government or to its officers in relation to any matter under this Act.

19. Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

20. (1) The provisions of the Workers Welfare Ordinance, 1971, hereinafter referred to as the repealed Ordinance, in its application to the Province of Sindh, are hereby repealed.

(2) Notwithstanding the repeal of the provisions of the repealed Ordinance under sub-section(1), all orders, rules or regulations made, notifications issued, actions and proceedings taken under the repealed Ordinance shall continue to remain in force until altered, amended or repealed under the provisions of this Act.

amount due.

Additional tax,
penalty and
prosecution.

Protection of
persons acting
under this Act.

Power of the
Government to
entrust
functions to the
Federal
Government.

Powers to make

rules.

Repeal and

Saving.