



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

EMPLOYEES' TRUST FUND
(AMENDMENT)
ACT, No. 47 OF 1988

[Certified on 30th November 1988]

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L.D.—O. 39/86

AN ACT TO AMEND THE EMPLOYEES' TRUST FUND ACT, No. 46
OF 1980

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Employees' Trust Fund
(Amendment) Act, No. 47 of 1988. Short title

2. Section 4 of the Employees' Trust Fund Act, No. 46 of
1980 (hereinafter referred to as the "principal enactment")
is hereby amended by the insertion, immediately after sub-
section (2) of that section, of the following new subsec-
tion:— Amendment
of section 4
of Act No.
46 of 1980.

"(3) The administration, management and control of
the Fund shall be vested in the Board."

3. Section 5 of the principal enactment is hereby amend-
ed as follows:— Amendment
of section
5 of the prin-
cipal enact-
ment.

(1) by the repeal of paragraph (e) of subsection (1) of
that section and the substitution therefor of the
following new paragraph:—

"(e) two members nominated by the Minister in
consultation with the executive of every
trade union having more than 100,000 mem-
bers.

For the purpose of this paragraph, "execu-
tive" in relation to a trade union has the
same meaning as in the Trade Unions
Ordinance:—";

(2) by the repeal of subsection (2) of that section and the
substitution therefor of the following new sub-
section:—

"(2) The Chairman of the Board, who shall be
the chief executive of the Board, shall be appointed
by the Minister."

4. Section 8 of the principal enactment is hereby amend-
ed as follows:— Amendment
of section
8 of the prin-
cipal enact-
ment.

(1) by the repeal of paragraph (a) of that section and
the substitution therefor of the following para-
graph:—

"(a) shall receive all sums paid under this Act as
contributions, surcharges, loans, grants, in-
terest, dividends, deposits by members or by

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employers on their behalf, borrowings from Banks and other sources and all moneys realised from investments and sale of movable or immovable property or any other form of payment whatsoever and shall credit all such moneys to the Fund ;” ;

(2) by the insertion immediately after paragraph (a) of that section of the following new paragraph :—

“(aa) may acquire, in any manner whatsoever and hold, take or give on lease or hire, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property ;”.

5 The following new section is hereby inserted immediately after section 8, and shall have effect as section 8A of the principal enactment :—

Insertion of new section 8A in the principal enactment.

“The seal of the Board.

8A. The seal of the Board—

- (a) shall be in the custody of such persons as the Board may from time to time determine ;
- (b) may be altered in such manner as may be determined by the Board ; and
- (c) shall not be affixed to any document except with the sanction of the Board, and in the presence of two members of the Board who shall sign the document in token of their presence.”.

6. Section 18 of the principal enactment is hereby amended by the substitution for the words “A self-employed person desiring”, of the words “A self-employed person or a migrant worker desiring”.

Amendment of section 18 of the principal enactment.

7. Section 20 of the principal enactment is hereby amended as follows :—

Amendment of section 20 of the principal enactment.

(1) by the repeal of subsection (2) of that section and the substitution of the following subsection therefor :—

“(2) Where a person becomes a member of the Fund under the provisions of subsection (1), he shall in respect of each month pay on or before the last day of the succeeding month a contribution of

an amount equal to twenty-five rupees or a multiple thereof, so however that the amount of the monthly contribution shall be constant during the calendar year.”;

(2) in subsection (3) of that section by the substitution for the words “such date as he ceases to be self-employed”, of the words “such date as he ceases to be self-employed or ceases to be employed outside Sri Lanka”;

(3) by the addition at the end of that section of the following subsection:—

“(4) In the event of the non-payment of contributions for three consecutive months in a calendar year or for an aggregate of five months in a calendar year by a person becoming a member of the Fund under subsection (1), such member shall not be entitled to any interest or dividend for that calendar year on his contributions to the Fund.”.

8. Section 22 of the principal enactment is hereby amended by the repeal of the proviso to subsection (1) of that section and the substitution therefor of the following new proviso—

Amendment
of section
22 of the
principal
enactment.

“Provided that for the period commencing on the first day of January of the calendar year in which any sum is paid as a benefit under this Act to, or in respect of, a member of the Fund and ending on the last day of the month preceding the date of payment of that sum, interest at the rate of three *per centum* per annum shall be paid on the amount to the credit of the individual account of that member on the date of termination of that period.”.

9. Section 23 of the principal enactment is hereby repealed and the following section substituted therefor:—

Replacement
of section
23 of the
principal
enactment.

“Payment of benefits to the employees on termination of employment” 23. (1) Subject to the provisions of section 24, the amount standing to the credit of any employee in his individual account shall be payable by the Board to such employee on the termination of his employment:

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Provided that a member of the Fund shall not be entitled to withdraw any sum standing to his credit in his individual account more than once in a period of five years except—

- (a) where a member is over sixty years of age; or
- (b) where a member satisfies the Board by documentary evidence, that he is due to leave Sri Lanka with the intention of not returning to Sri Lanka or for permanent residence abroad.

(2) Notwithstanding anything contained in subsection (1) of this section, where an employee to whom this Act applies takes up pensionable employment—

- (i) in the Public Service;
- (ii) in the Local Government Service constituted by the Local Government Service Act, No. 16 of 1974;
- (iii) in the District Service established under section 47 of the Development Councils Act, No. 35 of 1980; and
- (iv) in the service of any local authority other than as a member of the Local Government Service,

the amount standing to the credit of such employee in his individual account on the day he takes up such pensionable appointment, shall be payable by the Board to such employee."

Amendment
of section
24 of the
principal
enactment.

10. Section 24 of the principal enactment is hereby amended as follows:—

- (1) by the substitution in subsection (1) of that section for the words and figures "the proviso to section 23", of the words and figures "the proviso to subsection (1) of section 23"; and

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- (2) by the insertion, immediately after subsection (2) of that section of the following new subsection:—

“(3) The Chairman of the Board may, where he has reason to doubt the genuineness of a medical certificate submitted by an employee under subsection (2) of this section, refer such employee for re-examination by a duly constituted Medical Board or a Government Medical Officer and where on such re-examination the original medical certificate is found to be false in any material particular, the Board shall reject such certificate, and the Board shall be entitled to refuse to accept future medical certificates issued by such registered medical practitioner.”.

11. Section 28 of the principal enactment is hereby amended as follows:—

Amendment of section 28 of the principal enactment.

- (1) in subsection (2) of that section, by the substitution for the words “where the defaulting employer resides or in which any property movable or immovable owned by such employer is situated”, of the words “in which the employee in respect of whom the default is made is, or was, employed, by such defaulting employer,”; and
- (2) in subsection (3) of that section, by the substitution for the words “over the place of work of such employer.”, of the words “in the division in which the place of work of the employee in respect of whom the default is made, is situate.”.

12. Section 33 of the principal enactment is hereby repealed and the following section substituted therefor:—

Replacement of section 33 of the principal enactment.

“Board or an officer authorized by the Board to determine claims.

33. (1) All claims to any payment from the Fund shall be determined by the Board or an officer authorized in that behalf by the Board and the determination of the Board or such officer shall, subject to any decision on appeal made against such determination, be final.

(2) Any person dissatisfied with a determination made by an officer of the Board under subsection (1) may appeal therefrom to the Board, within thirty days of the com-

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munication of such determination to such person. The Board may, on any appeal, confirm, vary or overrule the determination of the officer and the decision of the Board in any such appeal shall be deemed to be a determination of the Board, for the purposes of subsection (1) of section 34."

13. Section 34 of the principal enactment is hereby amended by the repeal of subsection (3) of that section and the substitution of the following subsection therefor:—

Amendment
of section
34 of the
principal
enactment.

"(3) The petition of appeal shall be filed within thirty days of the communication of the determination to the appellant. The date on which a determination is communicated to a person, for the purposes of subsection (2) of section 33 and this section, shall be deemed to be the date on which such determination is posted under registered cover to such person."

14. Section 37 of the principal enactment is hereby amended by the repeal of paragraph (c) of that section and the substitution therefor of the following paragraph:—

Amendment
of section
37 of the
principal
enactment.

"(c) a true copy of or extract from any register or record, required by this Act or under any other law, to be kept by that employer or any part of such register or record."

15. The following new sections are hereby inserted immediately after section 40, and shall have effect as sections 40A and 40B of the principal enactment:—

Insertion
of new sec-
tions 40A and
40B in the
principal
enactment.

Protection of
members,
officers and
servants of
the Board.

40A. No member, officer or servant of the Board shall be liable either civilly or criminally, in respect of anything he may have done or may have omitted to do, when acting in good faith, in pursuance or in supposed pursuance of his powers or in the performance of his duties under this Act.

Reimbursement
of expenses
incurred on
behalf of
the Board.

40B. Every member, officer or servant of the Board shall be indemnified from the Fund for all losses and expenses incurred by him in, or about, the performance of his duties, other than such losses and expenses as the Board may deem to have been occasioned by his misconduct or wilful default."

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Amendment
of section
44 of the
principal
enactment.

16. Section 44 of the principal enactment is hereby amended as follows:—

(1) by the insertion, immediately before the definition of "earnings", of the following definition:—

"duly constituted Medical Board" means a Medical Board nominated by the Director-General of Health Services on an application made by the Chairman of the Board for the purpose of examining persons the medical certificates submitted by whom give rise to reasonable doubt;";

(2) by the substitution for the definition of "earnings", of the following definition:—

"earnings" means—

- (a) wages, salary or fees;
- (b) cost of living allowance, special living allowance and any other similar allowances;
- (c) payment in respect of holidays;
- (d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used, in preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner of Labour whose decision of such appeal shall be final;
- (e) meal allowance; and
- (f) such other forms of remuneration as may be prescribed;";

(3) by the substitution for the definition of "employee", of the following definition:—

"employee" means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral

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or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work of labour, and includes any person ordinarily employed under any such contract, whether such person is, or is not in employment at any particular time;"; and

- (4) by the substitution for the definition of "employer", of the following definition:—

“employer” means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union), and any person who on behalf of any other person employs any workman, and includes a competent authority of a business undertaking vested in the Government under any written law, the legal heir, successor in law, executor or administrator and liquidator of a company; and in the case of an unincorporated body, the president or the secretary of such body, and in the case of a partnership, the managing partner or manager;’;

- (5) by the insertion, immediately after the definition of “employer”, of the following definitions:—

“local authority” means any Municipal Council, Urban Council or Pradeshiya Sabha and includes any authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council or Sabha;

“migrant worker” means a person who is a citizen of Sri Lanka but is employed outside Sri Lanka, for so long as such person is so employed.’.

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Transitional provisions.

17. Notwithstanding anything in the principal enactment the amount standing to the credit of the individual account of an employee of—

(a) the University Grants Commission established by the Universities Act, No. 16 of 1978 or of a Higher Educational Institute within the meaning of that Act;

(b) the National Apprenticeship Board established by the National Apprenticeship Act, No. 49 of 1971,

on the date of commencement of this Act, shall be paid to such employee by the Board within six months of the date of commencement of this Act.