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THE ASSAM GAZETTE

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EXTRAORDINARY

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No. 48 Dispur, Friday, 22 April, 1994, 2 Vaisakha, 1916 (S. B.)

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT : LEGISLATIVE BRANCH

NOTIFICATION

The 22nd April 1994.

Provided that the Government may by notification in the Assam Gazette No. LGL/1105/85/107.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT NO. IX OF 1994.

(Received the assent of the President on 16th April, 1994)

THE ASSAM INDUSTRIAL ESTABLISHMENTS
(CONFERMENT OF PERMANENT STATUS
TO WORKMEN) ACT, 1985.

AN

ACT

to provide for the conferment of permanent status to workmen in the industrial establishments in the State of Assam.

Preamble. Whereas it is expedient to make provision for conferment of permanent status to workers in the industrial establishments in the State of Assam.

It is hereby enacted in the Thirty-sixth Year of the Republic of India, as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Assam Industrial Establishments (Conferment of permanent status to workmen) Act, 1985.

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

(3) It applies to every industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 50 (Fifty) workmen were employed on any day of the preceding twelve months. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the Government thereon shall be final;

Provided that the Government may, by notification in the official Gazette apply the provisions of this Act to any industrial establishment employing such number of workmen less than fifty as may be specified in the notification.

(4) It shall come into force at once.

Provided that nothing contained in this Act shall apply to any industrial establishment until the expiry of a period of two years from the date of its establishment.

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

(1) "employer" means the owner of an industrial establishment to which this Act for the time being applies and includes:—

(a) in a factory, any person named under Clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (Central Act LXIII of 1948) as manager of the factory;

(b) in any industrial establishment under the control of any Department of any State Government in India, the authority appointed by such State Government in this behalf or where no authority is so appointed, the head of the department;

(c) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

(2) "Government" means the State Government of Assam.

(3) "Industrial Establishment" means:—

(a) a factory as defined in Clause (m) in Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of Section 85 of that Act; or

(b) a Plantation as defined in Clause (f) of Section 2 of the Plantation Labour Act, 1951 (Central Act LXIX of 1951); or

(c) a motor transport undertaking as defined in Clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d) a beedi industrial premises as defined in Clause (i) of Section 2 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, (Central Act 32 of 1966); or

(e) an establishment as defined in Clause (8) of Section 2 of the Assam Shops and Establishments Act 1971 (Assam Act XXI of 1974); or

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

(4) "Workman" means any person 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 but does not include any such person,—

(a) who is employed in the police service or as an officer or other employee of a prison; or

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

(c) who, being employed in a supervisory capacity, draws wages exceeding one thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature.

3. Conferment of permanent status to workmen.—(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of 180 days in a period of 12 (twelve) calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is for that period, in uninterrupted service

including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal or a lockout, or on account of non-employment or discharge of such workman for a period which does not exceed 45 days and during which period a substitute, has been employed in his place by the employer, or a cessation of work which is not due to any fault on the part of the workman.

Explanation.—For the purposes of this section; the number of days on which a workman has worked in an industrial establishment include the days on which—

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

4. Appointment of Inspectors.—(1) The Government may, by notification, appoint such persons or such class of persons as they think fit to be Inspectors for the purpose of this Act within 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 Indian Penal Code (Central Act XLV of 1860):

5. Powers and duties of Inspectors.—Subject to any rules made by the Government in this behalf, the inspector may, within the local limits for which he is appointed,—

(a) enter at all reasonable times and with such assistance, 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 industrial establishments;

(b) make such examination of the industrial establishments and of any registers, records and notices and take on the spot or elsewhere the evidence of such persons as he may deem necessary, for carrying out the purposes of this Act; and,

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

6. Penalties.—(1) Every employer who contravenes the provision of Section 3 of this Act shall be punishable with fine which may extend to five thousand rupees and in the case of continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) No prosecution for an offence punishable under the section shall be instituted except with the previous sanction of the prescribed authority.

7. Act not apply to workmen employed in certain industrial establishment.—Nothing contained in this Act shall apply to workmen employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction works whether structural, mechanical or electrical.

8. Cognizance of Offence.—No Court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act.

9. Power to exempt.—The Government may, by notification in the Official Gazette, exempt conditionally or unconditionally any employer or class of employers or any industrial establishment or class of industrial establishments, from the provisions of this Act.

10. Power to make rules.—(1) The Government may make rules to carry out the purposes of this Act.

(2) All rules made under this Act shall be published in the Official Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day shall come into force on the day on which they are published.

(4) Every rule or notification issued under this Act shall as soon as after it is made or issued shall be laid before the Assam Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the legislature agrees in making any modification in any such rule or notification or the legislature agrees that the rule or notification should not be made or issued, the rule or notification shall, thereafter have effect only in such modified form or be of no effect as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

K. LASKAR,
Secretary to the Govt. of Assam,
Legislative Department.