

GOVERNMENT OF WEST BENGAL

LEGISLATIVE DEPARTMENT

West Bengal Act XIII of 1963

THE WEST BENGAL SHOPS AND ESTABLISHMENTS
ACT, 1963.

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette*,
Extraordinary, of the 2nd April, 1963.]

[2nd April, 1963.]

An Act to regulate holidays, hours of work, payment of wages and leave of persons employed in shops and establishments:

It is hereby enacted in the Thirteenth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Shops and Establishments Act, 1963.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

(4) It shall apply to the areas and to the classes of shops and establishments to which the Bengal Shops and Establishments Act, 1940 applied immediately before the commencement of this Act; and shall also apply to such other areas or to such other classes of shops or establishments as the State Government may, by notification, specify in this behalf.

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

(1) "closed" means not open for the service of any customer or for any other purpose whatsoever relating to business;

(2) "commercial establishment" means an advertising, commission, forwarding or commercial agency, or a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office or exchange, and includes such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments, for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement;

Short title,
extent,
commence-
ment and
applica-
tion.

Definitions.

(Section 2.)

- (3) "day" means a period of twenty-four hours beginning at midnight;
- (4) "employer" means a person owning or having charge of an establishment and includes an agent or a manager of, and any other person acting on behalf of, such person in the general management or control of such establishment;
- (5) "establishment" means a commercial establishment or an establishment for public entertainment or amusement;
- (6) "establishment for public entertainment or amusement" means a hotel, restaurant, eating-house, cafe, cinema, theatre and includes such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be, for the purposes of this Act, establishments for public entertainment or amusement, but does not include a shop or a commercial establishment;
- (7) "half day" means a continuous period of five hours and a half,—
- (i) in the case of a shop or an establishment for public entertainment or amusement, beginning at the commencement, or ending on the termination, of the ordinary daily working hours of such shop or establishment, as the case may be, and
- (ii) in the case of a commercial establishment, between the hours of half past eight o'clock *ante meridiem* and half past eight o'clock *post meridiem*;
- (8) "lock out" and "strike" have the same meaning as in the Industrial Disputes Act, 1947;
- (9) "notification" means a notification published in the *Official Gazette*;
- (10) "person employed" used in relation to a shop or an establishment means a person wholly or principally employed in connection with the business of the shop or the establishment, but does not include an owner of the shop or the establishment or the husband, wife, child, father, mother, brother or sister of such an owner who lives with, and is dependent on, such owner;
- (11) "prescribed" means prescribed by rules made under this Act;
- (12) "registering authority" means the Chief Inspector of Shops and Establishments or any other person appointed in this behalf by the State Government as the registering authority for any area;

(Sections 3, 4.)

(13) "shop" means any premises used wholly or in part for the sale of services to customers or for the wholesale or retail sale of commodities or articles, either for cash or on credit, and includes any offices, store-rooms, godowns or warehouses, whether in the same premises or elsewhere, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale and also includes such other class or classes of premises as the State Government may, after taking into consideration the nature of the work carried on there, by notification, declare to be shops for the purposes of this Act, but does not include an establishment.

Explanation.—If any doubt arises as to whether any premises are a shop or a commercial establishment or an establishment for public entertainment or amusement, the question shall be referred to the State Government by the registering authority, *suo motu* or on application, and the decision of the State Government thereon shall be final;

(14) "shop-keeper" means a person owning or having charge of the business of a shop, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of a shop;

(15) "wages" means wages as defined in the Payment of Wages Act, 1936;

(16) "week" means a period of seven days beginning at midnight on Sunday; and

(17) "young person" means a person who has completed his twelfth year but has not completed his fifteenth year.

3. References to time of day in this Act shall be deemed to be references to Indian Standard Time, which is five and a half hours ahead of Greenwich mean time. References to time of day.

4. (1) This Act shall not apply to—

(a) offices of or under the Central or State Government, the Reserve Bank of India, any railway administration or any local authority;

(b) any railway service, airways service, water transport service, tramway or motor service, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public;

(c) institutions for the treatment or care of the sick, infirm, destitute or mentally unfit;

Act or some of its provisions not applicable to certain establishments, shops and persons.

(Section 5.)

(d) shops or stalls in any public fair or *bazar* held for a charitable purpose; or

(e) stalls and refreshment rooms at railway stations, docks, wharves or airports.

(2) The State Government may, if it thinks fit so to do in the public interest, by notification, exempt, subject to such conditions, if any, as may be specified in the notification, from the operation of any of the provisions of this Act other than those of sections 8, 9 and 10—

(a) any class or classes of shops or establishments either generally or on such occasion or occasions, in such area or areas and for such period or periods as may be specified in the notification;

(b) any class or classes of persons employed in a shop or an establishment,—

(i) in a managerial or confidential capacity, or

(ii) as a traveller, canvasser, messenger, watchman or care-taker, or

(iii) exclusively in connection with customs examination, collection, despatch, delivery or conveyance of goods from or to booking offices for transport by rail, road or air, docks, wharves or airports.

Holidays
in shops
and estab-
lishments.

5. (1) In each week,—

(a) every shop or commercial establishment shall remain entirely closed on, and

(b) every person employed in a shop or an establishment shall be allowed as holiday,

at least one day and a half day next preceding or next following such day.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in a shop or an establishment, and even if such person is employed on the basis of 'no work, no pay', he shall be paid for such holiday the wages which he would have been entitled to had he not been allowed the holiday.

(3) The day and the half day during which a shop or an establishment shall be entirely closed in each week under clause (a) of sub-section (1) shall, subject to the provisions of sub-section (4), be determined from time to time by the shop-keeper or employer, as the case may be, and shall be specified by him in a notice, which shall be displayed in a conspicuous place in the shop or the establishment:

Provided that the day and the half day so determined shall not be altered more than once in any year.

(Sections 6, 7.)

(4) The State Government may, if it thinks fit so to do in the public interest, by notification, specify any particular area and the day and the half day during which all or any class or classes of shops or establishments in such area shall be entirely closed under clause (a) of sub-section (1), and thereupon the provisions of sub-section (3) shall apply to the day and the half day so specified as if they were determined under sub-section (3) by the shop-keeper or employer of every shop or establishment of such class or classes in such area.

6. (1) In no shop shall the hour of opening be earlier than eight o'clock *ante meridiem* or the hour of closing be later than eight o'clock *post meridiem*: Hours of work in shops.

Provided that if the State Government or any officer empowered in this behalf by the State Government thinks fit so to do in the public interest, the State Government or such officer may, by notification, change such limits of the hours of opening and closing of shops, either generally or for any particular area or fix uniform hours of opening and closing of all or any class or classes of shops in any particular area.

(2) No person employed in a shop shall be required or permitted to work in such shop for more than eight hours and a half in any one day or for more than forty-eight hours in any one week or after the hour of closing of such shop:

Provided that in any day and in any week in which stock-taking, making up accounts or such other business operation as may be prescribed takes place in any shop, a person employed in the shop may be required or permitted to work overtime in such shop so, however, that—

(i) the total number of hours of his work including overtime work shall not exceed ten hours in any one day, and

(ii) the total number of hours worked overtime by him shall not exceed one hundred and twenty hours in any one year.

(3) No person employed in a shop shall be required or permitted to work in such shop for more than six hours in any one day, unless he has been allowed an interval for rest of at least one hour.

(4) The periods of work and intervals for rest of every person employed in a shop shall be arranged by the shop-keeper so that together they do not extend over more than ten hours and a half in any one day.

7. (1) In no hotel, restaurant, eating-house or cafe shall the hour of closing be later than eleven o'clock *post meridiem*. Hours of work in establishments.

(Sections 8—10.)

(2) No person employed in an establishment shall be required or permitted to work in such establishment for more than eight hours and a half in any one day or for more than forty-eight hours in any one week or after the hour of closing of such establishment:

Provided that a person employed in an establishment may be required or permitted to work overtime in such establishment so, however, that—

(i) the total number of hours of his work including overtime work shall not exceed ten hours in any one day, and

(ii) the total number of hours worked overtime by him shall not exceed one hundred and twenty hours in any one year.

(3) No person employed in an establishment shall be required or permitted to work in such establishment for more than six hours in any one day unless he has been allowed an interval for rest of at least one hour during that day.

(4) The periods of work and intervals for rest of every person employed in an establishment shall be arranged by the employer of such person so that together they do not extend over more than ten hours and a half in any one day.

Special provisions for young persons.

8. Notwithstanding anything contained elsewhere in this Act,—

(a) no young person employed in a shop or an establishment shall be required or permitted to work in such shop or establishment for more than seven hours in any one day or for more than forty hours in any one week; and

(b) the periods of work of young persons in a shop or an establishment during each day shall be so fixed that no such person shall work for more than four hours before he has had an interval for rest of at least one hour.

Restriction on employment of children.

9. No child who has not completed the age of twelve years shall be employed in any shop or establishment.

Restriction on employment of young persons or women.

10. No young person shall be required or permitted to work in any shop or establishment after eight o'clock *post meridiem* and no woman shall be allowed or permitted to work—

(a) in any establishment for public entertainment or amusement other than a cinema or a theatre, after six o'clock *post meridiem*, or

(b) in any shop or commercial establishment, after eight o'clock *post meridiem*.

(Sections 11—13.)

11. A person employed in a shop or an establishment shall be entitled— Leave.

- (a) for every completed year of continuous service, to privilege leave on full pay for fourteen days,
- (b) in every year, to sick leave on half pay for fourteen days on medical certificate obtained from a medical practitioner registered under the Bengal Medical Act, 1914, or any other law for the time being in force,
- (c) in every year, to casual leave on full pay for ten days, and
- (d) in the case of women, to maternity leave in accordance with such rules as may be prescribed:

Provided that—

- (i) privilege leave admissible under clause (a) may be accumulated up to a maximum of not more than twenty-eight days;
- (ii) sick leave admissible under clause (b) may be accumulated up to a maximum of not more than fifty-six days; and
- (iii) casual leave admissible under clause (c) shall not be accumulated.

Explanation.—In calculating any leave due under this Act, employment in any shop or establishment before the application of this Act shall be taken into account.

12. Any person employed in a shop or an establishment whose services are terminated by or under the orders of the shop-keeper or the employer shall be entitled to wages for the period of privilege leave due to his credit at the time of such termination.

Person employed to be entitled to wages for the period of privilege leave in case of termination of service.

13. When any person employed in a shop or an establishment is required or permitted to work overtime in such shop or establishment, the wages payable to such person in respect of such overtime work shall be calculated at the rate of one and one-half times of the ordinary rate of wages payable to him, and such ordinary rate of wages shall be calculated in such manner as may be prescribed:

Wages for overtime work.

Provided that this section shall not operate to the prejudice of any higher rate of overtime wages granted under any agreement, award, custom or convention.

Explanation.—For the purpose of this section 'overtime work' shall include any work done on any day declared by notification by the State Government to be a National holiday.

(Section 14.)

Payment
and
recovery
of wages.

14. (1) All wages payable to a person employed in a shop or an establishment shall be paid not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable.

(2) Where any deduction has been made from the wages of any person employed in a shop or an establishment or any payment of wages to such person has not been made within the date referred to in sub-section (1), such person may, within a period of six months from the date on which the deduction from the wages was made or from the date referred to in sub-section (1), as the case may be, make an application to such officer or authority as the State Government may, by notification, appoint in this behalf, for an order under sub-section (3):

Provided that an application under this section may be admitted after the said period of six months if the applicant satisfies the officer or authority that he had sufficient cause for not making the application within such period.

(3) The officer or authority to whom or to which an application under sub-section (2) is made may, after giving the applicant and the shop-keeper or employer concerned an opportunity of being heard and after making such further inquiry, if any, as may be necessary, by order, direct, without prejudice to any other action which may, under this Act or any other law, lie against the shop-keeper or employer, the payment to the applicant of the amount deducted from the wages or of the wages due, together with such compensation, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter, as the officer or authority may think fit:

Provided that no direction for the payment of compensation shall be made in the case of delay in the payment of wages if the officer or authority is satisfied that the delay was due to—

- (a) a *bona fide* error or *bona fide* dispute as to the amount payable to the applicant, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the shop-keeper or the employer, as the case may be, was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the applicant to apply for or accept payment.

(4) If on hearing any application made under sub-section (2), the officer or authority is satisfied that it was either malicious or vexatious, the officer or authority may, by order, direct that a penalty not exceeding fifty rupees be paid by the applicant to the shop-keeper or employer concerned.

(Section 15.)

(5) Any amount directed to be paid by an order under sub-section (3) or sub-section (4) may be recovered by any Magistrate to whom the officer or authority making the order makes application in this behalf as if it were a fine imposed by such Magistrate.

(6) An appeal shall lie from an order of the officer or authority dismissing any application made under sub-section (2) or giving any direction under sub-section (3) or sub-section (4), if made within thirty days of the date on which the order was made,—

(a) where the shop or establishment concerned is situated in any area within Calcutta as defined in the Calcutta Police Act, 1866, to the Court of Small Causes, Calcutta, and

(b) where it is situated in any other area, to the Munsif having jurisdiction over such other area.

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4 of 1936.

(7) Nothing in this section shall apply to any person to whom the Payment of Wages Act, 1936, applies under section 1 of that Act.

15. (1) No person shall, after completing one year of continuous service in any shop or establishment, have his services terminated, without sufficient cause, unless he has been given one month's notice in writing or has been paid one month's wages in lieu of such notice.

Notice of
termina-
tion
of services.

Explanation.—For the purposes of this section and section 11—

(i) continuous service includes any holiday, authorised leave or period of any strike which is not illegal or of any lock out;

(ii) in computing a completed year of continuous service, section 25B of the Industrial Disputes Act, 1947 shall, *mutatis mutandis*, apply.

14 of 1947.

(2) Any person employed in a shop or an establishment, whose services have been terminated in contravention of the provisions of sub-section (1), may make an application to a Presidency Magistrate or a Magistrate of the first class alleging such termination. The Magistrate, if satisfied that there is a *prima facie* case showing that the services of the applicant have been terminated without sufficient cause, shall issue a notice to the person registered for the time being as the shop-keeper or the employer under section 16, to appear in person or by an agent authorised by such shop-keeper or employer in writing in this behalf and show cause why proceedings shall not be taken against such shop-keeper or employer under this section and may, after giving him or such agent an opportunity of being heard, and after recording the reasons in writing, direct that such shop-keeper or employer shall pay one month's wages as compensation and thereupon such shop-keeper or employer shall pay to the applicant the amount of compensation so directed to be paid.

(Section 16.)

(3) The amount of compensation payable under this section shall, for purposes of its recovery, be deemed to be a fine imposed under this Act.

(4) The provisions of sub-sections (2) and (3) shall be in addition to, and not in derogation of, the provisions of section 21 or any other law for the time being in force and nothing in sub-section (2) of section 22 shall be deemed to require any complaint to be made under that sub-section before an application is made under sub-section (2).

Registra-
tion of
shops and
establi-
shments.

16. (1) Every shop-keeper or employer shall—

- (i) in the case of shops or establishments in existence on the date on which this Act applies—within such date as the State Government may, by notification, specify, and
- (ii) in the case of new shops or establishments, if this Act applies—within such period as may be prescribed,

apply for registration under this Act to the registering authority, in such form together with such fee, not exceeding one rupee, as may be prescribed. Every such application shall contain—

- (a) the name of the shop-keeper or the employer;
- (b) the postal address of the shop or the establishment;
- (c) the name of the shop or the establishment;
- (d) declaration of weekly closing days in the case of a shop;
- (e) such other particulars as may be prescribed.

The registering authority on being satisfied about the correctness of the particulars, shall register the shop or the establishment in such manner as may be prescribed and shall issue a certificate of registration in the prescribed form to the shop-keeper or the employer.

(2) The registering authority shall maintain a Register of Shops and Establishments in the prescribed form.

(3) Every shop-keeper or employer shall display the certificate of registration issued under sub-section (1) in a conspicuous place in the shop or the establishment.

(4) (a) Every shop-keeper or employer shall inform the registering authority in the prescribed form of any change in respect of any particulars contained in the application under sub-section (1) within seven days after the change has taken place:

Provided that the declaration of weekly closing days in the case of a shop shall not be changed more than once in any year.

(Sections 17—19.)

(b) The registering authority, on receipt of such information and on payment of such fee, not exceeding one rupee, as may be prescribed, shall, if satisfied about the correctness of the information, make necessary changes in the Register of Shops and Establishments and shall amend the certificate of registration or issue a fresh certificate of registration, if necessary.

(5) A shop-keeper or an employer shall, within fifteen days of the winding up of his business, inform the registering authority in writing. The registering authority, on being satisfied about the correctness of the information, shall remove the name of the shop or the establishment from the Register of Shops and Establishments and cancel the certificate of registration.

(6) A shop-keeper or an employer shall apply to the registering authority in such form together with such fee, not exceeding one rupee, as may be prescribed, for renewal of the certificate of registration within thirty days after the expiry of three years from the date of the issue or renewal, as the case may be, of the certificate of registration.

17. (1) In every shop or establishment, the shop-keeper or employer concerned shall, for the purposes of this Act, maintain and keep a register of employees in the prescribed form and such other registers, records and documents, and display such notices as may be prescribed and produce them on demand by the Inspector.

Shop-keepers and employers to maintain and keep records, etc.

(2) The register of employees maintained and kept under sub-section (1) may, from time to time, be inspected and signed by the persons employed in the shop or establishment.

18. Every shop-keeper or employer shall furnish every person employed in his shop or establishment with a letter of appointment in such form as may be prescribed.

Persons employed to be furnished with letter of appointment.

19. (1) The State Government may, by notification, appoint such persons or such class of persons as it thinks fit to be Inspectors for the purposes of this Act.

Appointment of Inspectors.

(2) All Inspectors appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(Sections 20—22.)

Powers of
Inspectors.

20. Subject to rules made under this Act, an Inspector appointed under section 19 may, within the local limits for which he is appointed,—

- (a) enter, at all reasonable hours, with such assistants, if any, as he may consider necessary, being persons in the service of the Government, any premises or place, where he has reason to believe there is a shop or an establishment, for inspecting any certificate of registration, records, registers, documents or notices required to be displayed, or maintained and kept under this Act or the rules made thereunder and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a person employed in the shop or the establishment; and
- (c) seize, when so authorised under orders of such superior officer as may be prescribed, or take copies of such registers, records, documents or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the shop-keeper or employer.

Penalties.

21. (1) Whoever contravenes any of the provisions of this Act, shall, on conviction, be punishable with fine which may extend to five hundred rupees for the first offence and to one thousand rupees for any subsequent offence.

(2) Whoever makes or causes or allows to be made in any register, record, document or notice required to be maintained and kept or displayed under this Act or the rules thereunder any entry which is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such register, record, document or notice an entry required to be made therein, shall, on conviction, be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

Procedure.

22. (1) No Court inferior to a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by an Inspector appointed under section 19:

Provided that such complaint shall, in the case of offences punishable under sub-section (2) of section 21, be made with the prior approval of the State Government.

(Sections 23—26.)

23. No suit, prosecution or legal proceeding shall lie against any person in respect of anything in good faith done or intended to be done under this Act or the rules made thereunder. Indemnity.

24. Nothing in this Act shall affect any right or privilege to which any person employed in any shop or establishment is entitled on the date of the commencement of this Act under any law for the time being in force or under any contract, custom or usage which is in force on that date, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act or granted to him at the time of appointment. Saving of certain rights and privileges.

25. (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) any matter which may be or is required to be prescribed under this Act;

(b) the manner of appointment and qualifications of Inspectors appointed under section 19.

(3) Any rule made under this section may provide that any person committing a breach thereof shall, on conviction, be punishable with fine, which may extend to one hundred rupees, and where the breach is a continuing one, with a further fine which may extend to twenty-five rupees, for every day, after the first, during which the breach continues.

26. The Bengal Shops and Establishments Act, 1940, is hereby repealed. Repeal.

Provided that any weekly closing days or any working hours fixed under that Act and in force immediately before the commencement of this Act, may be continued for a period not longer than three months after such repeal.