



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LEGISLATIVE DEPARTMENT : : : LEGISLATIVE BRANCH

NOTIFICATION

The 3rd March, 2016

No. LGL.24/1998/156.— The following Act of the Assam Legislative Assembly which received the assent of the Governor on 2nd March, 2016 is hereby published for general information.

ASSAM ACT NO. III OF 2016

(Received the assent of the Governor on 2nd March, 2016)

THE ASSAM TEA PLANTATIONS PROVIDENT FUND AND PENSION FUND AND
DEPOSIT LINKED INSURANCE FUND SCHEME (AMENDMENT) ACT, 2016.

**AN
ACT**

further to amend the Assam Tea Plantations Provident Fund and Pension Fund and Deposit Linked Insurance Fund Scheme Act, 1955.

Preamble

Whereas it is expedient further to amend the Assam Tea Plantations Provident Fund and Pension Fund and Deposit Linked Insurance Fund Scheme Act, 1955 hereinafter referred to as the Principal Act, in the manner hereinafter appearing;

Assam Act
No. X of
1955

It is hereby enacted in the Sixty-seventh year of the Republic of India as follows :-

Short title, extent and commencement.

1. (1) This Act may be called the Assam Tea Plantations Provident Fund and Pension Fund and Deposit Linked Insurance Fund Scheme (Amendment) Act, 2016.
- (2) It shall have the like extent as the principal Act.
- (3) It shall come into force at once.

Amendment of section 2.

2. In the principal Act, in section 2,-
 - (i) in clause (d), in between the words "the employer" and the punctuation mark ",", the words "and includes any person employed by or through a contractor in connection with the works of the plantation" shall be inserted and for the figures and words, "Rs.6500/- (Rupees Six thousand five hundred) only" appearing in between the words "exceed" and "per", the figures and words "Rs.15,000/- (Rupees fifteen thousand) only" shall be substituted;
 - (ii) in clause (f), sub-clause (i) shall be deleted and sub-clauses (ii), (iii) and (iv) shall be renumbered respectively as sub-clauses (i), (ii) and (iii) and in sub-clause (i) so renumbered, for the words "with an area of not less than 10 hectares under tea" before the word "where", the words "Any tea Plantations" shall be substituted;
 - (iii) existing clause (3) shall be renumbered as clause (i) and in clause (i) so renumbered for the punctuation mark "." appearing at the end, the punctuation mark ";" shall be substituted;
 - (iv) after clause (i) as renumbered, the following new clauses shall be inserted, namely :-
 - (j) "Board" means Board of Trustees as defined in paragraph 2(b) of the Assam Tea Plantation Provident Fund and Pension Fund Scheme, 1968 (as amended up to date);
 - (k) "Authorised Officer" means the Secretary-Cum-Provident Fund Commissioner or such other officer as may be authorised by the State Government by notification in the Official Gazette as Authorised Officer to exercise his powers and functions as such officer under the provisions of this Act;
 - (l) "Recovery Officer" means any officer of the Board of Trustees who may be authorised by the State Government by notification in the official Gazette as such officer to exercise his powers and functions under the provisions of this Act."

Amendment of section 15. 3. In the principal Act, in section 15, for the existing provision, the following shall be substituted, namely :-

“Recovery of money due from employer.

15 Any amount due from the employer in relation to a plantation to which any Scheme or the Insurance Scheme applies in respect of any contribution payable under this Act to the Fund or as the case may be to the Insurance Fund, damages recoverable under section 16, accumulations required to be transferred under section 14, statutory interest payable under section 11 (A) and sub-section 4(a) of section 3 or any charges payable by him under any other provision of his Act or of any provision of the Scheme or the Insurance Scheme, may, if the amount is in arrear, be recovered in the manner specified in sections 15B to 15G.”

Insertion of new Section 15A to 15G.

4. In the principal Act, after section 15, the following new section 15A to 15G shall be inserted, namely:-

Recovery of moneys by contractor and employers.

15A (1) The amount of employer’s contribution as well as the employee’s contribution in pursuance of any Scheme and the employer’s contribution in pursuance of the Insurance Scheme and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee’s contribution under any Scheme by deduction from the wages, if any payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer’s contribution or the charges referred to in sub-section (1) from the wages, if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Issue of certificate to the Recovery Officer.

15B.(1) Where any amount is in arrear under section 15, the Authorised Officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the plantation or, as the case may be, the employer by one or more of the modes mentioned herein below:-

(a) attachment and sale of the movable or immovable property of the plantation or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the plantation or, as the case may be, the employer;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the plantation and where such attachment and sale is insufficient for recovery of the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

- (2) The Authorised Officer shall issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

Recovery officer to whom certificate to be forwarded.

15C.(1) The Authorised Officer may forward the certificate referred to in section 15B to the Recovery Officer within whose jurisdiction-

- (a) the prime place of the plantation is situated; or
(b) the employer resides or any movable or immovable property of the plantation or the employer is situated.

- (2) Where a plantation or the employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the Authorised Officer, -

- (a) is unable to recover the entire amount by the sale of the property movable or immovable, within his jurisdiction; or
(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do, he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate, certified in the prescribed manner and specifying the amount to be recovered, to the Recovery Officer within whose jurisdiction the plantation or the employer has any other property or the employer resides, and thereupon the Recovery Officer to whom the certificate is so sent shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the Authorised Officer under section 15B.

Validity of certificate and amendment thereof.

15D (1) When the Authorised Officer issues a certificate to a Recovery Officer under section 15B, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount or any other materials in the certificate and no objection to the certificate on any ground whatsoever shall be entertained by the Recovery Officer.

- (2) Notwithstanding the issue of a certificate to a Recovery Officer under section 15B the Authorised Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate as may appear to him to be necessary by sending an intimation to the Recovery Officer to that effect.

- (3) The Authorised Officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 15(E) and the Recovery Officer shall immediately proceed to act according to such order of the Authorised Officer.

Stay of Proceedings, amendment or withdrawal thereof.

15E (1) Notwithstanding the fact that a certificate has been issued by the Authorised Officer to the Recovery Officer for the recovery of any amount against any plantation or employer, the Authorised Officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the Authorised Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Authorised Officer shall stay the recovery of such part of the amount of the certificate which pertains to the said reduction, for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Authorised Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate accordingly or withdraw it, as the case may be.

Other modes of recovery.

15F. Notwithstanding the issue of a certificate to the Recovery Officer under section 15B, the Secretary-Cum-Provident Fund Commissioner or any other officer authorised by the Board may recover the amount by any one or more of the following modes:-

(a) If any amount is due from any person to any employer who is in arrears, the Secretary-Cum-Provident Fund Commissioner or any other officer authorised by the Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Secretary-Cum-Provident Fund Commissioner or the officer so authorised, as the case may be:

Provided that nothing in this clause shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

Central Act
No. 5 of
1908.

(b) (i) The Secretary-Cum-Provident Fund Commissioner or any other officer authorised by the Board in this behalf may, at any time by notice in writing, require any person from whom any money is due or may become due to the employer or, as the case may be, the plantation or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the plantation, to pay to the Secretary-Cum-Provident Fund Commissioner either forthwith upon the money becoming

due or being held or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the whole amount due from the employer in respect of arrears or part of amount due from the employer if the whole amount of money becoming due or being held is not sufficient to pay the whole amount due by the employer.

- (ii) A notice under this clause may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this clause the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.
- (iii) A copy of the notice shall be forwarded to the employer at his last address known to the Secretary-Cum-Provident Fund Commissioner or as the case may be, the officer so authorised and in the case of a joint account to all the joint holders at their last addresses known to the Secretary-Cum-Provident Fund Commissioner or the officer so authorised.
- (iv) Save as otherwise provided in this clause, every person to whom a notice is issued under this clause shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.
- (v) Any claim, respecting any property in relation to which a notice under this clause has been issued, arising after the date of the notice shall be void as against any demand contained in the notice.
- (vi) Where a person to whom a notice under this clause is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then nothing contained in this clause shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered later that such statement was false in any material particular, such person shall be personally liable to the Secretary-Cum-Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.
- (vii) The Secretary-Cum-Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this clause or extend the time for making any payment in pursuance of such notice.
- (viii) The Secretary-Cum-Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this clause, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this clause shall be personally liable to the Secretary-Cum-Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this clause is sent fails to make payment in pursuance thereof to the Secretary-Cum-Provident Fund Commissioner or the officer so authorised, he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 15B to 15E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 15B.

(c) The Secretary-Cum-Provident Fund Commissioner or the officer authorised by the Board in this behalf may apply to any court in whose custody there is money belonging to the employer, for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(d) The Secretary-Cum-Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the State Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the plantation by distraint and sale of his or its movable property in the same manner as laid down in the Third Schedule to the Income-Tax Act, 1961.

Central Act
43 of 1961

Application of
certain provisions
of Income Tax Act.

15G The provisions of the Second and Third Scheduled of the Income-tax Act, 1961 and the Income-tax Certificate Proceeding Rules, 1962 as in force from time to time, shall apply, with such modifications as may be necessary for their application to this Act, as if the said provisions and the rules are referred to the arrears of the amount mentioned in section 15 of this Act instead of the Income-tax:

Central Act
43 of 1961

Provided that any reference in the said provisions of the Income Tax Act, 1961 and the rules to the word "assessee" shall be construed as a reference to an "employer" as defined in this Act."

Central Act
43 of 1961

Amendment of
the Schedule.

5. In the principal Act, in the Schedule, in para 9B, in sub-para (iii), for the word "thirty", appearing in between the words "rupees" and "thousand", the word "forty" shall be substituted.

S. M. BUZAR BARUAH,

Secretary to the Government of Assam,
Legislative Department, Dispur.

