

Thirteenth Kerala Legislative Assembly

Bill No. 100

**THE KERALA HEADLOAD WORKERS'
(AMENDMENT) BILL, 2012**

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further to amend the Kerala Headload Workers' Act, 1978.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Headload Workers' Act, 1978 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Headload Workers' (Amendment) Act, 2012.

(2) Sections 3 and 4 of this Act shall be deemed to have come into force on the 1st day of January, 2009 and the remaining sections shall be deemed to have come into force on the 14th day of June, 2010.

2. *Amendment of section 2.*—In the Kerala Headload Workers' Act, 1978 (20 of 1980) (hereinafter referred to as the principal Act), in section 2, for clause (k), the following clause shall be substituted, namely:—

“(k) “family” means,—

- (i) husband;
- (ii) wife;
- (iii) minor children;
- (iv) mentally challenged children;
- (v) dependent parents;
- (vi) unmarried or widowed daughters who are dependent; and
- (vii) Physically challenged children who are dependent.”.

3. *Amendment of section 13.*—In section 13 of the principal Act, after clause (b) of sub-section (2), the following clause shall be inserted, namely:—

“(bb) for providing benefits under the Employees' State Insurance Act, 1948 (Central Act 34 of 1948) to headload workers.”.

4. *Amendment of section 24.*—To section 24 of the principal Act, the following proviso shall be added, namely:—

“Provided that the Workmen’s Compensation Act, 1923 (Central Act 8 of 1923) shall not apply to the headload workers insured under the Employees’ State Insurance Act, 1948 (Central Act 34 of 1948).”.

5. *Amendment of section 37.*—In section 37 of the principal Act, for the word “Government”, the word “Board” shall be substituted.

6. *Repeal and saving.*—(1) The Kerala Headload Workers’ (Amendment) Ordinance, 2012 (32 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Based on the recommendation in the 8th report of the Subordinate Legislation Committee of the 11th Kerala Legislative Assembly, the Government of Kerala have decided to include “fully dependent mentally retarded or physically handicapped children” in the definition of “family” under section 2(k) of the Kerala Headload Workers’ Act, 1978.

2. As per section 37 of the Kerala Headload Workers’ Act, 1978, where an employer makes default in the payment of any contribution to the fund, the Government can recover damages from him. Now, the Government have decided to entrust the Kerala Headload Workers’ Welfare Board with this power to recover damages from an employer.

3. The Kerala Headload Workers’ Welfare Board had approved the proposal furnished by the Cochin Port Trust Area Committee to extend the provisions of the Employees’ State Insurance Scheme to the headload workers registered under the Committee and passed a resolution to request the Government to implement the same. Accordingly the Government have decided to extend the scope of the Scheme framed under the Kerala Headload Workers’ Act, 1978 so as to provide the benefits under the Employees’ State Insurance Act, 1948 to headload workers, but limiting the benefits under the Workmen’s Compensation Act, 1923, by amending sections 13 and 24.

4. As the Kerala Legislative Assembly was not in session and circumstances existed for making immediate legislation for implementing the above said decision, the Kerala Headload Workers' (Amendment) Ordinance, 2010 was promulgated by the Governor of Kerala on the 14th day of June, 2010 and the same was published as ordinance No. 24 of 2010 in the Kerala Gazette Extraordinary No.1337 dated 14th June, 2010.

5. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No.355 of the Twelfth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 28th day of June, 2010 and ended on the 29th day of July, 2010.

6. In order to keep alive the provisions of the said Ordinance, the Kerala Headload Workers' (Amendment) Ordinance, 2010 was promulgated by the Governor of Kerala on the 8th day of August, 2010 and the same was published as Ordinance, No. 37 of 2010 in the Kerala Gazette Extraordinary No. 1817 dated 8th August, 2010.

7. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 373 of Twelfth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 21st day of December, 2010 and ended on the 3rd day of January, 2011.

8. In order to keep alive the provisions of the said Ordinance, the Kerala Headload Workers' (Amendment) Ordinance, 2011 was promulgated by the Governor on the 22nd day of January, 2011 and the same was published as Ordinance No. 13 of 2011 in the Kerala Gazette Extraordinary No. 168 dated 23rd January, 2011.

9. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 422 of the Twelfth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 4th day of February, 2011 and ended on the 24th day of February, 2011.

10. In order to keep alive the provisions of the said Ordinance, the Kerala Headload Workers' (Amendment) Ordinance, 2011 was promulgated by the Governor on the 17th day of March, 2011 and the same was published as Ordinance No. 37 of 2011 in the Kerala Gazette Extraordinary No. 659 dated 18th March, 2011.

11. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commence on the 1st day of June, 2011 and ended on the 20th day of July, 2011.

12. As per the provisions of sub-clause (a) of clause (2) of article 213 of the Constitution of India, an Ordinance promulgated shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature. Accordingly the said Ordinance ceased to operate on the 13th day of July, 2011.

13. In order to keep alive the provisions of the said Ordinance, and to validate the actions taken after the cessor of operation of the said Ordinance, the Kerala Headload Workers' (Amendment) Ordinance, 2011 was promulgated by the Governor on the 19th day of December, 2011 and the same was published as Ordinance No. 60 of 2011 in the Kerala Gazette Extraordinary No. 2402 dated 20th December, 2011.

14. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of March, 2012 and ended on the 23rd day of March, 2012.

15. In order to keep alive the provisions of the said Ordinance, the Kerala Headload Workers' (Amendment) Ordinance, 2012 was promulgated by the Governor on the 11th day of April, 2012 and the same was published as Ordinance No. 32 of 2012 in the Kerala Gazette Extraordinary No. 734 dated 11th April, 2012.

16. This Bill seeks to replace Ordinance No. 32 of 2012 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

SHIBU BABY JOHN.

EXTRACT OF THE RELEVANT PORTIONS FROM THE KERALA
HEADLOAD WORKERS' ACT, 1978
(20 OF 1980)

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

(a) “adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year of age;

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(k) “family” means husband, wife, dependent parents, minor children and unmarried or widowed daughters;

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13. *Scheme.*—(1) The Government may, by notification in the Gazette, make one or more scheme or schemes for any employment or group of employments in one or more area or areas specified in the notification, and by similar notification add to, amend or vary any such scheme or substitute another scheme for any such scheme:

Provided that no such notification shall come into force unless a draft thereof is published in the Gazette and unless it is finalised after considering objections and suggestions received within one month of the publication of such draft in the Gazette.

(2) Subject to the provisions of this Act and the rules made thereunder, a scheme made under sub-section (1) may provide for all or any of the following matters, namely:—

(a) for the welfare of headload workers;

(b) for health and safety measures for headload workers;

(c) for the constitution of any fund or funds including provident fund for the benefit of headload workers, the vesting of such funds, the payment of contribution to be made to such funds and all matters relating thereto:

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24. *Application of Workmen's Compensation Act to headload workers.*—The provisions of the Workmen's Compensation Act, 1923 (Central Act 8 of 1923) and the rules made thereunder shall *mutatis mutandis* apply to the headload workers employed in any establishment, and for that purpose, they shall be deemed to be workmen within the meaning of that Act.

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37. *Power to Recover Damages.*—Where an employer makes default in the payment of any contribution to the fund, the Government may recover from him such damages, not exceeding five per cent of the amount of arrears, as they think fit.

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