

PART IV (A) - PROVINCIAL COUNCILS

Provincial Councils Notifications

WESTERN PROVINCE PROVINCIAL COUNCIL CO-OPERATIVE EMPLOYEES COMMISSION STATUTE, No. 01 OF 1994

Announcement

IN terms of powers vested in me as per Section 01 of the Western Province Provincial Council Co-operative Employees Commission Statute, No. 01 of 1994, I, Rathnasiri Wickramanayake as the Minister in-charge of the subject of co-operatives in the Western Province do hereby declare the Western Province Co-operative Employees Commission Statute, No. 01 1994.

RATHNASIRI WICKRAMANAYAKE,
Minister in-charge of the Subject
of Co-operatives of the
Western Province Provincial Council.

Colombo,
21st July, 1994.

CO-OPERATIVE EMPLOYEES COMMISSION STATUTE, No. 01 OF 1994 OF THE PROVINCIAL COUNCIL OF WESTERN PROVINCE

A STATUTE TO ESTABLISH AND INCORPORATE A PROVINCIAL COMMISSION TO BE KNOWN AS THE WESTERN PROVINCE CO-OPERATIVE EMPLOYEES COMMISSION TO MAKE SPECIAL PROVISIONS IN RESPECT OF THE EMPLOYEES OF CO-OPERATIVE SOCIETIES IN THE WESTERN PROVINCE AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be it enacted by the Provincial Council of the Western Province of the Democratic Socialist Republic of Sri Lanka as follows:

1. This Statute may be cited as the Co-operative Employees Commission Statute, No. 01 of 1994 of the Provincial Council of the Western Province of Sri Lanka and shall come into operation on such date as may be appointed by the Minister by order published in the *Gazette* (herein after in this statute referred as the appointed date).

Short title and
date of
operation.

2. The Minister may, by Order published in the *Gazette*, exempt from the succeeding provisions of this statute-

Power of
Minister to
exempt
Co-operative
Societies from
the succeeding
Provisions of this
statute.

(a) any such class of co-operative societies as shall be specified therein; or

(b) any such co-operative society as shall be so specified

and accordingly the expression "Co-operative Society" wherever it occurs in such provisions, shall be read and construed to mean a Co-operative Society in respect of which any such order is not for the time being in force.

PART I

CONSTITUTION, POWERS AND FUNCTIONS OF THE CO-OPERATIVE EMPLOYEES COMMISSION
 (WESTERN PROVINCE)

Establishment of
Co-operative
Employees
Commission.

3. For the purpose of this Statute, an authority to be called and known as the Western Province of Co-operative Employees Commission shall be established.

Constitution of
the Commission.

4. (1) The Commission shall be constituted in accordance with the succeeding provisions of this Section.

(2) The Commission shall consist of three members appointed by the Minister in consultation with the Chief Minister of the Province.

(3) A person shall not be qualified for appointment as a member of the Commission, if he is-

(a) an employee or a past employee of a Co-operative Society; or

(b) a person who is a member of any body of person which, in the opinion of the Minister is a staff association, or trade union, which has as its objects, the regulation of salaries, wages or conditions of service of any category of persons employed by Co-operative Societies; or

(c) a person who is an officer of Co-operative Society according to the law relating to Co-operative Societies; or

(d) a person who is for the time being a Member of Parliament, a member of Provincial Council or a member of any other local body.

Incorporation of
the Commission.

5. The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate capacity.

Term of office of
members.

6. Each member of the Commission shall hold office for a period of three years from the date of his appointment.

Provided that notwithstanding the term of any such appointment:

(a) any such member may at any time resign his office or be removed from office by the Minister; and

(b) any such member shall, upon his becoming disqualified in terms of Section 4 (3) *ipso facto* vacate his office:

Provided further that any person who is appointed to fill any vacancy caused by the death, resignation or removal from or vacation of office, of any such member shall, unless he vacates office, earlier, hold office during a period equal to the unexpired portion of the term of office of the member in whose place he is appointed and no longer.

Chairman
and conduct
of business.

7. (1) The Minister shall appoint one of the members of the Commission to be its Chairman. The Chairman shall preside at all meetings of the Commission at which he is present. In the absence of the Chairman from any meeting of the Commission any member chosen by those presents may preside there at.

(2) Two members shall constitute the quorum for a meeting of the Commission.

(3) If at any meeting only two members of the Commission are present and such members are divided in opinion as to the decision to be taken on any question such question shall be referred to a meeting at which the three members of the Commission are present.

(4) If at any meeting, at which the three members of the Commission are divided in opinion as to the decision to be given on any question, such question shall be decided according to the opinion of the majority of the members present, but if the members are equally divided then the Chairman shall have a casting vote.

(5) The Commission may regulate its own procedure in any matter not provided for in this statute or any regulation made thereunder.

(6) Any act or proceeding of the Commission shall not be invalid by reason only of the existence of a vacancy among its members or any defect in the appointment of any of its members.

8. The Chairman and members of the Commission shall be paid such remuneration and such allowances as may be determined by the Minister, in consultation with the Minister of Finance of the Western Province Provincial Council.

Remuneration
of Members.

9. There shall be a Secretary of the Commission and a staff to assist him.

Secretary
and other
officers.

10. (1) The members of the Commission shall on first appointment, take an oath or make an affirmation in the form set out in the Schedule to this statute.

Taking of
oaths by
members and
officers
of the
Commission.

(2) The Secretary to the Commission, and such of the other officers of the Commission as may be required so to do by the Chairman thereof, shall, on first appointment, take an oath or make an affirmation in the form set out in the Schedule to this Statute.

11. (1) The Commission shall have the following powers:-

Powers
of the
Commission.

(a) to determine all matters relating to methods of recruitment to and conditions of employment of employees of Co-operative Societies, and the principles to be followed by such societies in making appointments and in making promotions from one post in a co-operative society to another post in the same society;

(b) to conduct examinations for recruitment as employees of co-operative societies or to appoint boards of examiners for the purpose of conducting such examinations and to charge fees from candidates presenting themselves for examinations;

(c) to determine the qualifications necessary for appointment to any such post, to fix the scales of salaries to be attached to any such post or posts in any class or grade, to revise or adjust such scales of salaries from time to time, in consultation with the Commissioner and to establish such consultative machinery as the Commission may deem necessary to assist it in determining the remuneration and conditions of service of co-operative employees;

(d) to require co-operative societies to pay salaries in accordance with the salary scales fixed by the Commission for any post or posts in any class or grade;

- (e) to determine the procedure or procedures to be followed by any Co-operative society in exercising its rights of disciplinary action against its employees, to call upon any co-operative society to complete disciplinary inquiries against its employees within a time stipulated by the Commission and to hear appeals arising out of any disciplinary orders made by any co-operative society;
- (f) to call upon any co-operative society to keep the prescribed records relating to employees of that society;
- (g) to call upon any co-operative society to furnish before a specified date such files, other documents or information as the Commission may require in respect of any employee of that society;
- (h) to nominate a panel or panels of officers to make such inquiries as are necessary on appeals that are referred by the Commission to such panel or panels and to report thereon to the Commission;
- (i) to require any co-operative society to carry out such instructions, including instructions relating to reinstatement, as may be given by the Commission in regard to any employees of such society, where the conduct of the employees has been the subject of an inquiry and the employees had appealed to the Commission against the decision of the society;
- (j) to determine the general principles in accordance with which gratuity or other benefits may be granted to employees on the termination of their services;
- (k) to advise the Minister, in consultation with the Commissioner, in regard to the exemption of any co-operative society or class of co-operative societies from the operation of this Statute;
- (l) to exercise such other powers in relation to co-operative societies and their employees as may be vested in the Commission by Order made by the Minister and published in the *Gazette* after the approval of the Provincial Council.

(2) In the exercise of the powers vested in the Commission by Sub-section. (1), the Commission may modify, vary or revise or set aside any decisions or determinations made by the Commission.

Financial Provisions.

12. The expenses of the Commission shall be paid out of the moneys provided for the purpose by the Provincial Council annual appropriation statute (or any other supplementary appropriation statute).

PART II

CO-OPERATIVE SOCIETIES AND THEIR EMPLOYEES

Co-operative Society to be an employer.

13. A Co-operative society which for the time being pays out of its funds the salary and other emoluments of any employees shall be deemed to be the employer of such employee.

Co-operative Societies and their employees to be subject to direction of the Commission.

14. Any co-operative society, and any employee of such society, shall be subject to such directions as may be given by the Commission under this Statute and all decisions of the Commission in the discharge and exercise of its functions and powers under this statute subject to the provisions of Section 11(2) shall be final and shall be binding on all such co-operative societies as are not exempted from the operation of this statute by order made under section 2 by the Minister and on the employees of such societies.

15. All directions given by the Commission in regard to any employee of any co-operative society, subject to the provisions of Section 11(2) shall be final and binding upon such employee as if such directions were given by such society.

Directions of Commission to be binding upon employees of Co-operative Societies.

16. Unless otherwise ordered and directed by the Commission all directions and orders issued regarding Co-operative Societies and their employees by the Western Province Co-operative Employees Commission, established by the Minister in-charge of the subject of Co-operatives in the Western Province on 25th September, 1991, including:-

Changes that arises subsequent to this statute.

- (a) All classifications decided in regard to salary scales and conditions of service;
- (b) Provisions made in regard to all functions of the Co-operative Societies;
- (c) All appeals entertained, all appeals in respect of which inquiries have commenced, and all appeals relating to decisions already made after conclusion of inquiries;
- (d) All legal activities that have been initiated;
- (e) All regulations enforced and circular instructions issued; and
- (f) All appointments and promotions made shall be deemed to be valid and made by the Co-operative Employees Commission established under this statute.

17. (1) The Commission may having regard to the nature of the office and the responsibility and functions connected therewith require any employee to satisfy the Commission by examination or otherwise of his proficiency and fitness to hold that office.

Examination serving officers and restrictions applications new terms and conditions of service.

Provided that the preceding provisions of this Sub-section shall apply only to such category or categories of employees as may be prescribed.

(2) Where the holder of an office to which Sub-section (1) applies fails to satisfy the Commission of his proficiency and fitness to hold such office, the Commission shall endeavour to place him, with his consent, in an office which in the opinion of the Commission, is commensurate with his abilities, and in default of such placement the Commission may, in its absolute discretion, require that his employment be terminated by his Co-operative Society in accordance with the terms and conditions of service then applicable to him or where no such terms exist, after giving reasonable notice.

(3) Where the holder of an office to which Sub-section (1) applies opts to accept the terms and conditions of service prescribed by the Commission, he shall not be entitled to such terms and conditions of service, unless and until he has satisfied the Commission in accordance with the provisions of Sub-section (1).

18. (1) No person shall be appointed to any post in a co-operative society in any district in the Western Province unless that person has been resident within that District for a period of at least two years.

Residential Qualifications.

(2) Provided however that where in the opinion of the Commission, no suitable candidate is available in any District for any post in any co-operative society in the District, the Commission may permit that society to fill that post by appointing a suitable person from candidates of any other district of the Province.

19. Any person appointed to a post in a co-operative society shall be assigned the scale of salary pertaining to that post in accordance with the grading of such society and the grade or class of employees as determined under Section 29(1).

Scales of salary of employees to be determined according to grading of a co-operative society and grade or class of employees.

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பகுதி IV (அ) - இலங்கைச் சனநாயக சோசலிசக் குடியரசு வர்த்தமானப் பத்திரிகை - அதிவிசேஷமரணது - 1994.08.17

PART IV (A) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 1994.08.17

Secondment of
Provincial Public
servant.

20. Notwithstanding any other provisions of this statute the Commission may with the concurrence of the Minister and the approval of the Provincial Public Service Commission and with the consent of the person appoint to any office in the Co-operative Society, a person in the Provincial Public Service seconded for service in that society for that purpose for such period on such terms and conditions as the Commission may approve.

Salary of
employees of
co-operative
societies.

21. Every co-operative society shall out of its funds pay the salary and other allowances, if any, of its employees.

Transfer of
employees of
co-operative
societies.

22. (1) A co-operative society shall have the power to transfer any employee of such society from any one of its work places to any other of its work places, and where such transfer is made for any reason other than on disciplinary grounds such transfer shall not adversely affect the emolument of any such employee.

(2) The Commission shall have the power to transfer any employee of a co-operative society to another co-operative society as an employee of the latter society at the joint request of two employees holding posts of similar status, provided that the concurrence of the respective employers has been previously obtained.

Dismissal and
punishment of
employees of
co-operative
societies.

23. (1) No employee of a co-operative society shall be suspended, dismissed or otherwise punished by any co-operative society except in accordance with the provisions of this statute or any Regulations made thereunder.

(2) Nothing in the preceding provisions of this Section shall be deemed to render it unlawful for any co-operative society to commence proceedings in accordance with such provisions, or to continue and complete as far as possible in accordance with such provisions any proceedings pending on the appointed date against any of its employees in respect of any misconduct or breach of discipline or other cause of complaint which may have occurred or arisen before such date.

Security
furnished.

24. (1) A co-operative society shall not require any employee to furnish by way of security an amount in excess of such sum as the Commission may prescribe.

(2) Any cash security furnished by any employee of a co-operative society shall be invested in a bank in the name of the society, and any interest accruing thereon shall be paid to that employee.

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25. (1) Regulations may be made:-

(a) in respect of the recruitment, appointment, promotion, transfer, resignation and termination of services of employees of co-operative societies;

(b) prescribing such terms and conditions of employment of such employees and providing for salary scales, the payment of allowances and gratuities, the grant of advances, promotion, leave, the interdiction of officers, termination of appointments, dismissals or the imposition of any other form of punishment to such employees and any appeal therefrom; and

(c) in respect of such other matters relating to the terms of employment, or the conditions of service, or any other matter of such employees as are deemed necessary.

(2) Every regulation made in respect of any matter referred to in Sub-section (1) shall be binding on all co-operative societies and their employees.

(3) Regulations made under Co-operative Employees Commission Act, No. 12 of 1972 and published in the *Gazette* No. 169/8 of 01st December, 1981, shall continue to be in force and effect until such time, Regulations are made by the Minister.

26. Every co-operative society in the province shall-

- (a) keep and maintain in respect of every one of its employees the prescribed registers of records, and enter therein all such particulars relating to each such employee as may be prescribed;
- (b) furnish to the Commission such returns or reports relating to its employees as may be prescribed or such information as the Commission may from time to time require; and
- (c) permit any member or servant of the commission authorised in that behalf to enter any of its offices and to inspect and take copies of any books, accounts, records or other documents kept therein.

Duties of Co-operative Society in respect of its employees.

27. Every co-operative society which is an employer and every employee of such society shall contribute periodically to the Employees Provident Fund and Employees Trust Fund such amounts as may be required by law.

Provident Fund and Employment Trust Fund.

28. For the avoidance of doubt, it is hereby declared that all employees whether employed prior to the effective date of this Statute or after, are servants of employed by and owe their loyalty to the society by which they are employed.

Co-operative employees to be employees of the society and not of the Commission.

PART III

POWERS OF THE COMMISSIONER

29. (1) The Commissioner shall have the power to grade each co-operative society for the purpose of fixing scales of salaries for posts in co-operative societies and to determine the grades or classes of employees and the number of employees in each such grade or class of any co-operative society and vary it as he may deem necessary, from time to time.

Commissioner to grade societies and determine staff.

(2) No co-operative society shall employ any person in contravention of the determination made by the Commissioner under Sub-section (1).

30. The Commission shall with the concurrence of the Commissioner determine the qualifications necessary for appointment to any post in co-operative societies, fix the scales of salary to be attached to any such post or posts in any class or grade and revise such scales of salaries from time to time.

The Commission to secure the concurrence of the Commissioner regarding qualification, salary scales, etc.

PART IV

MISCELLANEOUS

31. If in giving effect to the provisions of this statute any doubt or difficulty arises in respect of any matter or question for which no provision or no effective provision is made by this statute, the Minister may, by order, remove or determine such doubt or difficulty. Every such order shall be published in the *Gazette*, and upon such publication shall have the force of law and be as valid and effectual as if it were herein enacted.

Removal of difficulties

Commission
to make
regulations.

32. (1) Unless otherwise expressly provided, the Commission may make all such regulations as may seem to the Commission to be necessary for carrying out the provisions of this statute or giving effect to the principles, thereof, including regulations for all matters for or in respect of which regulations are authorised or required to be made under this statute, and all matters stated or required by this statute to be prescribed.

(2) No such regulations shall have effect until it has been approved by the Provincial Council of the Western Province and notification of such approval has been published by the Minister in the *Gazette*.

(3) Upon the publication in the *Gazette* of any notification under Sub-section (2) the regulation to which the notification relates shall be as valid and effectual as though it were herein enacted.

Immunity of
individual
members of
the Commission.

33. No action, prosecution or other proceeding, whether civil or criminal, shall be instituted or maintained against any individual member of the Commission or its officer in respect of any decision taken or act done or omitted to be done by him in his capacity as such member officer or by the Commission in its corporate capacity.

Engagement of
contractual,
casual
or daily paid
employees.

34. Notwithstanding the provisions of this statute, a co-operative society may in the interests of its efficient operation -

(a) engage the services of an expert or any specialist for any defined term on a contractual basis with the prior approval of the Commission; or

(b) engage casual or daily-paid employees or employees paid on a piece rate basis;

Provided, however, that no permanency of tenure of the office shall be granted to such employees without the concurrence of the Commission.

Offences.

35. (1) Any co-operative society or Committee, member of Committee, or members of the Committee or Director of the Society or Directors of the Society any officer or employee thereof -

(a) Which or who contravenes the provisions of this Statute; or

(b) Which or who wilfully neglects or refuse or fails to do any act required by the Commission to be done, or to furnish any information, required for the purposes of this statute by the Commission or other duly authorised person; or

(c) Which or who wilfully makes a false return or furnishes false information,

shall be guilty of an offence under this statute.

(2) Every co-operative society or person which or who commits any offence referred to in Sub-section (1) shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five thousand rupees.

(3) Where any offence under this statute is committed by a co-operative society, every officer of that society shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(4) On the conviction of any co-operative society for failure to carry out any such instructions or order given by the Commission as requires the reinstatement of any employee, such co-operative society shall be liable -

(i) to pay, in addition to any punishment that may be imposed on such co-operative society under Sub-section (2) a fine of Hundred Rupees for each day on which the failure is continued after the given date of conviction thereof; and

(ii) to pay such employee the remuneration which would have been payable to him if he had been in such service on each such day and on each day of the period commencing on the date on which he should have been reinstated in service according to the instructions of the Commission and ending on the date of the conviction of such co-operative society, computed at the rate of salary or wages to which he would have been entitled if his services had not been terminated.

Any sum which a co-operative society is liable to pay under paragraph (ii) of this Sub-section may be recovered on the order of the court by which it was convicted as if it were a fine imposed on it by that court and the amount so recovered shall be paid to the employee.

36. Every person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person, in any manner whatsoever influences or attempts to influence any decision of the Commission or any member thereof shall be guilty of an offence. And shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

Interference with the Commission.

37. No member of the Commission, nor the Secretary of the Commission, nor any member of the staff of the Commission, nor any other person shall publish or disclose to any person, otherwise than in the exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.

Unauthorised disclosure of information prohibition.

38. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission or any member, or officer thereof and any co-operative society or any members of the committee of management of such society or officer thereof or between any member or officer of the Commission in the exercise of, or in connection with the exercise of any of the functions of the Commission, unless the Chairman shall consent in writing to such production or disclosure.

Communication of the Commission to be privilege.

39. (1) A labour tribunal established under the Industrial Disputes Act shall not entertain an application, by an employee, under Section 31 B of that Act, for relief or redress in respect of any matter if an appeal has been made to the Commission by such employee, in respect of the same matter or substantially the same matter.

Application of the Industrial Disputes Act to Co-operative Societies and their employees.

(2) The Commission shall not entertain an appeal from an employee in respect of any matter, if an application has been made by such employee under Section 31 B of the Industrial Disputes Act, to a labour tribunal established under that Act, in respect of the same matter or substantially the same matter.

40. In this Statute, unless the context otherwise requires -

Interpretation.

(1) "Commission" means the Western Province Co-operative Employees Commission";

"Commissioner" means the Commissioner of Co-operative Development and Registrar of Co-operative Societies of the Western Province;

"Co-operative Society" means a society registered under the law relating to co-operative societies and functioning within the Western Province; and the head office of which is established within the Western Province;

"District" means an Administrative District within the Western Province;

"Employee" means an employee of a co-operative society within the meaning of this Statute;

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பகுதி IV (அ) - இலங்கைச் சனநாயக சோசலிசக் குடியரசு வர்த்தமானப் பத்திரிகை - அறிவிசேஷமானது - 1994.08.17

PART IV (A) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 1994.08.17

“Minister” means the Provincial Minister to whom the subject or function of co-operative development has been assigned in the Western Province;

“Prescribed” means prescribed by Regulation made by the Commission.

(2) In the event of any inconsistency between the Sinhala, Tamil and English texts of this statute the Sinhala text shall prevail.

41. This Statute is and shall be deemed for all purposes to have come into operation on 1st of September, 1991 and accordingly the Minister is deemed to have been vested with the powers and authority, to appoint the Co-operative Employees Commission (Western Province) and the three members thereof in terms of Section (3) and (4) (1) and (2) (above) of this Statute as and from 01st September, 1991 and accordingly the appointment dated 25th September, 1991 of the Co-operative Employees Commission (Western Province), and of the three members thereof by the Minister and notified in the *Gazette of the Democratic Socialist Republic of Sri Lanka*, No. 686 of 25th October, 1991 is and shall be deemed to have been and to be validly made and the Co-operative Employees Commission (Western Province), to have been validly established in accordance with this Statute.

Retrospective operation.

SCHEDULE

Oath or Affirmation of Member of the Commission

I..... having been appointed the Chairman/a member of the Co-operative Employees Commission do swear/solemnly and sincerely affirm that I will, without fear or favour, affection or ill-will, discharge the functions of the Office of Chairman/Member of the Co-operative Employees Commission of Western Province and that I will not, directly or indirectly reveal any matters relating to such functions to any matters relating to such functions to any person otherwise than in the course of duty.

Sworn/Affirmed before me this.....day of 19.....

Judge of the (Supreme) Court.

Oath or Affirmation of Officer of the Commission

I..... having been called upon to exercise the functions of the Secretary of/an officer of the Co-operative Employees Commission of the Western Province do swear/solemnly and sincerely affirm that I will not, directly or indirectly, reveal to any person otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as the Secretary of an officer of the Co-operative Employees Commission of Western Province.

Sworn/Affirmed before me this..... day of 19.....

Chairman,
Co-operative Employees Commission,
Western Province.

