

ASSAM ACT NO. II OF 1990

(Received the assent of the President on 7th February, 1990)

THE ASSAM PHYSICALLY HANDICAPPED
PERSONS (EMPLOYMENT IN
FACTORIES) ACT, 1986.

An

Act

to secure employment to physically handicapped persons and provide for matters connected therewith.

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

Short title, extent, commencement and application. 1. (1) This Act may be called the Assam Physically Handicapped Persons (Employment in Factories) Act, 1986.

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

(3) It shall come into force at once.

(4) (a) It shall apply in the first instance to:—

(i) every existing factory where five hundred or more workers are working or were working on any day of the twelve months immediately preceding the commencement of the Act;

(ii) every new factory where five hundred or more workers are working.

(b) The State Government may, after giving two months notice of the intention of so doing, by notification in the Official Gazette, apply the provisions of this Act to other factories where

such lesser number of workers are working as specified in such notification;

(c) It shall apply to a factory belonging to or managed by any Government except the Central Government, if such factory is a factory referred to in clause (a) or in the notification issued under clause (b);

(d) A factory to which this Act applies under clause (a) or (b) shall continue to be governed by this Act notwithstanding that the number of workers working therein falls below the number specified in clause (a) or in the notification issued under clause (b);

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

(a) "Certifying Surgeon" means a Certifying Surgeon appointed under Section 10 of the Factories Act, 1948; 63 of 1948.

(b) "existing factory" means a factory existing on the commencement of this Act;

(c) "Inspector" means an Inspector appointed under Section 8 of the Factories Act, 1948; 63 of 1948.

(d) "new factory" means a factory in which the manufacturing process is commenced at any time after the commencement of this Act;

(e) "person registered as physically handicapped" means a physically handicapped person whose name is registered with an employment exchange;

(f) "physically handicapped person" means a person who, on account of any deficiency, injury, disease or congenital deformity, is substantially handicapped in obtaining or keeping employment, or in undertaking work on his own account, of a kind which but for such deficiency,

injury, disease or deformity would be suited to his age, experience and qualifications ;

(g) "prescribed" means prescribed by rules made under this Act;

(h) (i) the word "employment exchange" shall have the meaning assigned to it in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

31 of 1959.

(ii) other words and expressions used but not defined in this Act shall have meanings respectively assigned to them in the Factories Act, 1948.

63 of 1948.

Obligation of occupier to employ persons registered as physically handicapped in factory.

3. (1) Every occupier of an existing factory to which this Act applies shall allocate such number of vacancies for employment of persons registered as physically handicapped, as is not less than one half percent or such higher percent not exceeding one as may be prescribed of the number of workers so working.

(2) Where an occupier has, under sub-section (1), allocated a number of vacancies, such occupier shall not, at any time, take or offer to take into his employment any person other than a person registered as physically handicapped till all the vacancies so allocated are filled.

(3) Nothing in sub-section (2) shall apply to taking, or offering to take into employment any person required by—

(a) an agreement to reinstate such person in his employment entered into before the commencement of this Act; or

(b) an Act whether passed before or after this Act; or

(c) any judgement, decree or order of a court.

(4) Every occupier of a new factory to which this Act applies shall give employment to such number of persons registered as physically handicapped, as is not less than one half percent of the workers to be employed.

(5) Whenever this Act applies to an existing or new factory the occupier thereof shall allocate such number of vacancies for employment of persons registered as physically handicapped as is not less than one half percent of the number of workers so working and thereupon the provision of sub-sections (2) and (3) shall so far as may be, apply.

(6) In determining the number of vacancies for employment of persons registered as physically handicapped under sub-section (1) or sub-section (5) and the number of persons registered as physically handicapped to be employed under sub-section (4), a fraction equal to or exceeding half shall be counted as one and a fraction less than half shall be ignored.

Conditions for employment of physically handicapped persons.

4. No physically handicapped person shall be employed under Section 3 unless—

- (a) he is an adult;
- (b) his name is registered at any employment exchange in the State; and
- (c) a certificate of fitness granted under Section 5 is in the custody of manager of the factory.

Certificate of fitness.

5. (1) A Certifying Surgeon shall, on an application of a person registered as physically handicapped accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in the factory or on an application of the manager of the factory in which the person registered as physically handicapped wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) A Certifying Surgeon after examination may grant to the person registered as physically handicapped a certificate of fitness to work in the prescribed forms ;

Provided that the Certifying Surgeon shall not grant certificate under this sub-section unless he has personal knowledge of the place where the person registered as physically handicapped person is to be employed and of the manufacturing process in which he is to be employed.

(3) A Certifying Surgeon may revoke any certificate granted under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Any fee payable for the certificate under this section shall be paid by the occupier and shall not be recovered from the person registered as physically handicapped.

Records to be maintained by occupier.

6. Every occupier to whom Section 3 applies shall maintain a record in such form as may be prescribed, of particulars showing the number of persons employed by him, the number of persons registered as physically handicapped employed by him and the names of such persons and such other particulars as may be prescribed.

Powers and duties of Inspectors.

7. Subject to any rules made by the State Government, in this behalf, an Inspector may, within the local limits for which he is appointed—

(a) enter at all reasonable times, accompanied with such persons in the service of the Government as he thinks fit, any place which is used or which he has reason to believe is used as a factory ;

(b) make such examination of records and take on the spot or otherwise evidence of any person as he may deem necessary, for carrying out the purposes of this Act; and

(c) exercise such other powers as may be prescribed, for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or to give any evidence tending to incriminate himself.

Occupier and manager to produce records, etc. for inspection. 8. Every occupier and in his absence the manager shall on demand produce for inspection by an Inspector all records required to be kept under and for the purposes of this Act.

Offences by occupier or manager. 9. If any occupier or manager—

(a) fails to employ under Section 3 persons registered as physically handicapped; or

(b) contravenes provisions of Section 4; or

(c) fails to maintain records required under Section 6 ; or

(d) wilfully obstructs an Inspector in the exercise of his powers or discharge of his duties under this Act or fails to produce for inspection on demand by an Inspector any records maintained in pursuance of the provisions of this Act or the rules made thereunder or to supply to him on demand true copies of any such records ;

he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Penalty for using false certificate of fitness. 10. Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under Section 5, a certificate granted to another person under that section or who, having procured such a certificate, knowingly allows it to be used or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to one

month or with fine which may extend to one hundred rupees or with both.

Cognizance of offences.

11. No court shall take cognizance of any offence under this Act, except on a complaint by, or with the previous sanction in writing of, an Inspector.

12. No suit or other proceedings shall lie against the State Government or any officer or employee of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Power to make rules.

13. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which a certificate of fitness to work to be granted by a Certifying Surgeon under sub-section (2) of Section 5;

(b) the form in which an occupier shall maintain a record and the other particulars to be shown in such form;

(c) the rules subject to which an Inspector may exercise his powers and perform his duties under Section 7 and the other powers to be exercised by an Inspector under clause (c) of Section 7; and

(d) any other matter which is to be or may be prescribed.

(3) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

A. RAHMAN,
Secretary to the Govt. of Assam,
Legislative Department.