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ASIAN WIDOWS' AND ORPHANS' PENSIONS ACT

CHAPTER 193

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CHAPTER 193**ASIAN WIDOWS' AND ORPHANS' PENSIONS ACT**

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CHAPTER 193

ASIAN WIDOWS' AND ORPHANS' PENSIONS ACT

[Date of assent: 15th July, 1961.]

[Date of commencement: 22nd October, 1927.]

An Act of Parliament to make provision for granting pensions to widows and children of deceased Asian public officers

[Act No. 20 of 1927, Cap. 74 of 1948, Act No. 80 of 1948, Act No. 53 of 1949, Act No. 42 of 1955, Act No. 16 of 1958, Act No. 7 of 1961, Act No. 28 of 1961, L.N. 168/1964, Act No. 21 of 1966, Act No. 9 of 1967.]

1. Short title

This Act may be cited as the Asian Widows' and Orphans' Pensions Act.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

“**Asian officer**” means any officer both of whose parents or either of them are of Asian descent, but includes also any other officer who is appointed under the conditions of service ordinarily applicable to Asians;

“**beneficiary**” means one or more of the following persons, as the case may be—

- (a) the widow, or if more than one the widows, of a contributor;
- (b) the children of a contributor, by his marriage with any wife who dies in his lifetime, which children are alive and are of a pensionable age at the death of the contributor;

“**Board**” means the Board constituted under section 16;

“**Bombay Agents**” means the agents in India for the Government of Kenya;

“**contributor**” includes a person all of whose contributions are fully paid;

“**Fund**” means the Asian Widows' and Orphans' Fund;

“**this Government**” means the Government of Kenya, and does not include the East African Railways and Harbours Administration.

“**Karachi Agents**” means the agents in Pakistan for the Government of Kenya;

“**of a pensionable age**” as applied to children means, in the case of a male, that he is under the age of eighteen years, and, in the case of a female, that she is under the age of twenty-one years and has not been married; a child shall be deemed to cease to be of a pensionable age within the meaning of this Act, if a male, on attaining the age of eighteen years or dying under that age, and, if a female, on attaining the age of twenty-one years, or dying or marrying under that age:

Provided that a child who has ceased to be of pensionable age and is, in the opinion of the Board, by reason of infirmity of mind or body, incapable of earning a livelihood and without sufficient means of support shall be deemed for the purposes of this Act to continue to be of pensionable age or such period as the Board may determine;

(2) When the marriage of any contributor has been annulled or dissolved by the decree of any competent court, the wife, party to such marriage, shall for all purposes of this Act be deemed to have died and the contributor to have become a widower at the date of the decree.

[Act No. 53 of 1949, s. 2, Act No. 7 of 1961, s. 2, Act No. 28 of 1961, Sch., L.N. 168/1964.]

3. Fund closed to new entrants

The provisions of this Act shall not apply to any Asian officer appointed to the service of this Government or to the amalgamated postal and telegraph department of Kenya and Tanganyika on or after the 1st May, 1942.

4. Who shall not be contributors

The following shall not be eligible to be contributors—

- (a) Asian officers actually in the service of the Government of India or other governments who are temporarily seconded for service in Kenya;
- (b) persons whose engagement is for a specified period, which is less than three years, or persons whose engagement, not being for a specified period, is terminable at one month's notice or less;
- (c) females;
- (d) any other class of persons whom the President, by order, may declare to be ineligible to contribute on the grounds that it is impossible or inexpedient to apply the provisions of the Act to that class;
- (e) persons who are unmarried and are at the time of employment under the age of twenty-one years:

Provided that if they are otherwise liable to contribute they shall, on becoming married or on reaching the age of twenty-one years, forthwith become contributors.

5. Who must contribute

Subject to the exceptions mentioned in section 4, every Asian officer who is under the age of thirty-five years, or who is a contributor in any administration which has provisions relating to pensions to the widows and orphans of Asian officers similar to those in Kenya, or is deemed to be a contributor in Kenya, or who was appointed permanently or temporarily to a post in the service of this Government after, and not appointed or selected for appointment to such service on or before, the 1st October, 1927, shall become a contributor from the date on which he commences to draw any salary of the post:

Provided that any Asian officer of the age of thirty-five years or over appointed to a post in the service of this Government after the 1st October, 1927, (not being a contributor in any administration which has provisions relating to the pensions to the widows and orphans of Asian officers similar to those in Kenya or deemed to be a contributor in Kenya) and who is otherwise eligible to become a contributor, may elect within three months of his appointment to become a

contributor, and if he so elects he shall pay in addition to his contribution a lump sum contribution as if he had been appointed to his present post at the age of thirty-five years at his present salary and drawn such salary to the date of his actual appointment to his present post.

6. Who may but need not become contributors

Subject to the same exceptions, every Asian officer who was in or selected for appointment to the service of this Government on the 1st October, 1927, may, if at the time of election he is in the service of this Government, by a written notice addressed to the Secretary, the Asian Widows' and Orphans' Pension Fund, and received by the Secretary before the 1st April, 1928, elect to become a contributor; and if he so elects he shall contribute as from the first day of the month after that in which his notice was received by the Secretary.

7. Extension of time within which officers may be admitted as contributors

Notwithstanding anything in section 6, any Asian officer who was in, or selected for appointment to, the service of this Government on the 1st October, 1927, and who had not elected to become a contributor before the 1st April, 1928, may before the 9th December, 1928, apply to the Board for special sanction to be admitted as a contributor, and that officer may with the approval of the Board be admitted as a contributor as from the first day of the month next following the date of the approval:

Provided that any such officer admitted as a contributor shall within a time to be specified by the Board pay to the Fund a lump sum, which shall be equal to the total of the amounts which the officer would have contributed up to the date on which he becomes a contributor if he had become a contributor on the 1st April, 1928, together with the interest on that lump sum for the period from 1st April, 1928, to the date on which he becomes a contributor at the rate of six per centum per annum.

8. Election not to contribute in certain cases

Where any Asian officer who was in or was selected for appointment to the service of this Government on the 1st October, 1927, and was not on that date eligible to become a contributor and has not since that date become eligible to become a contributor, must, but for the provisions of this section, become a contributor from the 10th July, 1931, he may within three months from such date by letter addressed to the secretary of the Asian Widows' and Orphans' Pension Fund elect not to become a contributor.

9. Rate of contribution

Contributions to the Fund shall be at the rate of five per centum of the contributor's annual salary or pension; all annual contributions shall be paid in monthly installments and shall be payable until the contributor reaches the age of fifty years or up to the date of his retirement from the service, whichever is the later:

Provided that no contributor shall be required to contribute after he has attained the age of fifty-five years.

[Act No. 16 of 1958, s. 2.]

10. Rate of contribution to Fund of certain pensioned officers

Any Asian officer who elects to receive a reduced pension and a gratuity in lieu of the pension which he might but for such election have received shall for the purpose of paying contributions to the Fund under section 9 be deemed to be in receipt of the pension which he would have received had he not so elected.

11. Salary only to determine rates of contribution

For the purpose of fixing the rate of contribution, no regard shall be had to any personal, duty or acting allowance, nor to any other receipts, emoluments or advantages of any kind which the officer may receive or enjoy; but the contribution shall be assessed with regard only to the amount of the salary of the definite post held by the officer or of the officer's pension without previous deduction of the amount of contributions.

12. Contribution by re-engaged contributor

Anything in this Act to the contrary notwithstanding, if a contributor, who is married or who is a widower with children of a pensionable age, retires on pension or otherwise leaves the service of this Government and is reappointed, permanently or temporarily, to a post in the service of this Government, he shall, as from the date of his reappointment and until he leaves the service or until he attains the age of fifty-five years, whichever is the earlier, contribute at the rate of five per centum of his annual salary.

[Act No. 42 of 1955, s. 2.]

13. Manner of contribution

(1) The Government shall deduct the contributions from the salaries or pensions of contributors.

(2) If a contributor is on leave on half salary or under interdiction or on leave without salary, he shall still be liable to contribute at the ordinary rate; and, in that case, if the contributor does not himself pay to the Government his contributions during the period when he was on leave without salary, the amount of his contributions in arrear shall be deducted from the first payment of salary or pension subsequent to that leave.

14. How contributions brought to account

All contributions under this Act shall be paid into, or credited by the Bombay Agents, to the Treasury of Kenya for the credit of the Fund.

15. Pension to beneficiaries

The pension payable to a beneficiary of a deceased contributor, where there is only one such beneficiary, shall be fifty pounds per annum, and where there is more than one beneficiary the pension payable amongst such beneficiaries shall be fifty pounds per annum in the aggregate:

Provided that where the beneficiaries consist of—

- (a) more than one widow of a deceased contributor and no wife of his has predeceased him leaving children by her marriage with him, the pension shall be payable to the widows in equal shares;

- (b) a widow or widows of a deceased contributor and children of a deceased wife of such contributor by her marriage with him, the pension shall be divided into equal shares and shall be payable, as to one share to each widow and one share to those children.

[Act No. 80 of 1948, s. 2.]

16. Constitution of Board

(1) Immediately after the commencement of this Act, the President shall appoint a Board, consisting of the Minister for the time being responsible for Finance and four public officers, for the purposes of this Act.

(2) On the death, inability to act, resignation or absence from Kenya for more than three months of any member of the Board, the President may appoint a public officer to the vacancy.

(3) The Minister shall be chairman of the Board.

(4) The chairman and two other members shall form a quorum.

(5) The chairman shall have a casting vote.

(6) The Board shall from time to time appoint an officer to be secretary, and may replace at its pleasure any officer so appointed.

[Act No. 21 of 1966, First Sch., Act No. 9 of 1967, Sch.]

17. Duties and powers of Board

The duties and powers of the Board shall be as follows—

- (a) to make rules regulating their own proceedings;
- (b) to consider and advise the President on all questions arising on the interpretation of this Act;
- (c) to supervise and control all financial transactions;
- (d) to approve in writing the payment of all pensions and any expenditure authorized by them;
- (e) to invest in trustee securities any funds which may be available from time to time;
- (f) generally to do any other act or perform any other duty reasonably necessary for the carrying out of the provisions of this Act.

18. Audit of Accounts

All accounts passed by the Board shall be audited each year by the Controller and Auditor-General, who shall certify as to their correctness or otherwise prior to their submission to the President for his approval.

19. Registers of particulars

Registers shall be kept by the Permanent Secretary to the Treasury, in which shall be entered the date of the birth of every contributor and, if he is married, the dates of the births of his wife and children (if any), particulars of his contributions and all other dates and particulars respecting contributors and their families material to be recorded for the purposes of this Act.

20. Information to be furnished by contributors and beneficiaries

(1) Every contributor who marries while he is a contributor shall, within three months after his marriage or after each marriage, as the case may be, notify the fact of his marriage to the Permanent Secretary to the Treasury in writing, and shall state the date of the birth of his wife or of each wife, as the case may be.

(2) Every contributor shall, within three months from the date of the event, notify to the Permanent Secretary to the Treasury in writing—

- (a) the birth of any child born to him or the adoption by him of a child of pensionable age;
- (b) the marriage, under the age of twenty-one years, of any female child of the contributor;
- (c) the death of his wife, or of any of his wives, as the case may be;
- (d) the death or adoption of any of his children of a pensionable age.

(3) After the death of any married contributor, the widow, or each widow, as the case may be, shall, within three months from the date of the event, notify the Permanent Secretary to the Treasury in writing—

- (a) the date of the death of the contributor, if he was not at the time of his death in the service of the Government;
- (b) the birth of any posthumous child born to the contributor;
- (c) the marriage, under the age of twenty-one years, of any female child of the contributor;
- (d) the death or adoption of any child of the contributor of a pensionable age.

(4) Any such statement or notice shall be proved by the production of a birth, death or marriage certificate or by an affidavit or otherwise, to the satisfaction of the Permanent Secretary to the Treasury.

[Act No. 53 of 1949, s. 3, Act No. 7 of 1961, s. 3.]

21. Penalty for non-compliance or false statement

(1) A contributor or widow who fails or neglects to comply with any of the requirements of section 20 shall be liable, at the discretion of the Board, for each default, to pay a fine not exceeding forty shillings, which may be deducted from his salary or his or her pension, as the case may be.

(2) A contributor or widow who has been fined under subsection (1) shall be liable, at the discretion of the Board, to pay a further fine not exceeding forty shillings, in respect of every further period of three months during which such default continues, and such fine or fines may be deducted from his salary or his or her pension, as the case may be.

(3) All fines inflicted under this section shall be collected by the Permanent Secretary to the Treasury at the request of the Board.

(4) A contributor or widow who wilfully makes any false statement respecting any of the particulars required by this Act or by any rules or regulations made thereunder to be furnished shall be liable to forfeit at the discretion of the President all or any part of his or her rights under this Act.

[Act No. 21 of 1966, Second Sch., L.N. 168/1964.]

22. Lapsed pensions

(1) Where the beneficiary is a widow or widows of a contributor, the pension payable to such beneficiary shall, subject to any deduction in respect of partial forfeiture under subsection (2) of section 21 of this Act, be paid to such widow or widows, as the case may be, and shall, in respect of any such widow, cease on her death, bankruptcy or remarriage, or on the forfeiture of the whole of the benefits under that subsection.

(2) If, on a pension ceasing as aforesaid, there are no children of the marriage with the contributor of any such widow living and of a pensionable age, the pension shall lapse.

(3) If, on a pension ceasing as mentioned in subsection (1), there are children of the marriage with the contributor of that widow living and of pensionable age, the pension shall be continued and shall be paid to the children in the manner hereinbefore provided and the children shall be deemed to constitute a beneficiary within the meaning of this Act.

[Act No. 53 of 1949, s. 4.]

23. Pensions to children

(1) Where a beneficiary consists of children of a contributor, the pension payable to that beneficiary shall be at the same rate as the pension which their mother received or would have received if she had been alive and entitled to a pension, and shall be paid to the children in equal shares while they remain of pensionable age.

(2) When any of the children ceases to be of pensionable age, his or her share of the pension shall be paid to the surviving children of pensionable age in equal shares, and when the last surviving child of pensionable age ceases to be of pensionable age the beneficiary shall be deemed to cease to exist and the pension payable to it shall lapse.

24. Pensions to adopted children

(1) A child adopted by a contributor while he is married shall, for the purposes of this Act, be deemed to be the child of the contributor by that marriage if—

- (a) the contributor adopted the child before he retired from the public service;
- (b) the contributor had not ceased to contribute at the time of the adoption; and
- (c) the adoption was in accordance with the law of the place where the contributor was resident at the time of the adoption.

(2) The child of a contributor who is adopted by any other person—

- (a) in the lifetime of the contributor or while a pension is being paid under this Act to the mother of that child shall be deemed, for the purposes of this Act, to have died at the date of the adoption;
- (b) after the death of the contributor shall, if the child is being paid a pension or a share of a pension under this Act, continue to be paid the pension or the share.

(3) Nothing in this section shall entitle an adopted child to be paid any pension or a share in any pension where the payment to him of that pension or share would diminish the pension or the share of any pension immediately payable or being paid at the date on which this section comes into operation to the widow or to any child or children by marriage of the contributor.

(4) The provisions of this section shall have effect notwithstanding anything to the contrary in the law relating to adoption now in force, or hereafter enacted, in Kenya.

[Act No. 16 of 1958, s. 3, Act No. 7 of 1961, s. 4.]

25. Who not entitled to pension

(1) No widow of a contributor whose marriage with him is contracted after he has ceased to contribute to the Fund and no issue of that marriage shall be capable of constituting a beneficiary or become entitled to any pension under this Act.

(2) No widow of a contributor whose husband dies within twelve months of the marriage without issue of that marriage born in his lifetime, or in due time after his death, shall be capable of constituting a beneficiary or become entitled to any pension under this Act:

Provided that the Board may, with the approval of the President, grant to the widow all or any part of the pension to which she would have been entitled but for the provisions of this subsection.

26. Officer dismissed for misconduct not to rank for benefit

Notwithstanding anything contained in this Act, no officer who is dismissed from the service of this Government for misconduct shall be entitled to rank for benefit under this Act, whether by way of pension or return of contributions.

27. Pension: when to commence and how payable

All pensions payable under this Act shall commence upon the death of the contributor in respect of whom they are payable, shall accrue daily and shall be payable monthly in arrear:

Provided that a pension may be payable quarterly instead of monthly if the pensioner so desires.

28. Allowance in lieu of pension to widow on bankruptcy

If a widow's pension ceases in her lifetime by reason of her bankruptcy, and there are no children of hers to whom the pension can be continued in accordance with subsection (3) of section 22, the Board with the approval of the President may, from time to time, during the remainder of her life, or during such shorter period or periods, either continuous or discontinuous, as shall be thought fit, pay to the widow an allowance at a rate not exceeding the rate of that pension, or may apply it for the maintenance and personal support or benefit of the widow, in such manner as the Board may, from time to time, think proper.

29. Pension not to be assigned or levied upon

No pension payable under this Act and no rights of any contributor acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

30. Payment of pension in a case of desertion of child

If the widow of a contributor while in receipt of a pension does not assist or deserts or abandons a child of hers by the contributor whom she is bound by law to maintain and who is of a pensionable age, the Board with the approval of the President may pay to a fit and proper person, on behalf of that child, such portion of the pension as they may think fit, and the widow shall have no further claim in respect of that portion.

31. Discretion as to payment of minors' pensions

In all cases where under this Act the parties entitled to pensions are minors, the pensions may be paid either to the legal guardian or guardians of those minors or to those minors or to such person or persons as the Board may think fit and proper persons to apply them for the benefit of those minors, and after such payment this Government shall be free from all responsibility in respect of that payment.

32. Proof of title may be required before payment of pension

The Board may require such proof as they deem desirable that any person claiming to be entitled to pension, or on behalf of whom a claim is made, is alive and entitled to pension, and the payment of any pension may be refused until proof is furnished to the satisfaction of the Board.

33. Half contributions of contributor dying in or leaving the service without beneficiaries to be refunded

If a contributor being—

- (a) a bachelor; or
- (b) a widower without children of a pensionable age,

leaves, or dies in, the service of this Government, there shall be payable to him or his legal representatives, in case (a) one-half of his total contributions without interest, and in case (b) one-half (without interest) of the contributions which he has paid since the death of his last wife, or the ceasing to be of a pensionable age of his last child, whichever event shall have last happened.

34. Contributor married or widower with pensionable children leaving service

(1) If a contributor who is married or who is a widower with children of pensionable age and whose service is not of such a nature or is not of such length as would render him eligible for a pension if retired from the service of this Government on medical certificate, and whose contribution term has not expired, leaves the service of this Government, and dies within a period dating from the day of his leaving the service equal to one-third of the number of complete months during which he contributed, his beneficiaries shall be entitled to a pension; but such a contributor shall not be eligible to continue to contribute after he has left the service, and, if he is alive on the expiration of the period above-mentioned, he shall cease to be entitled to rank for benefit under this Act, whether by way of pension or return of contributions.

(2) For the purpose of this section, one-third of a month shall be taken as ten days and two-thirds of a month as twenty days.

35. Questions to be decided by President

All questions and disputes as to who is entitled to be deemed a contributor, or as to the rights of a widow or child to a pension, or as to the amount of a pension or as to the rights or liabilities of any person under this Act, shall be referred by the Board to the President, and the President's decision shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal or be questioned or revised by any court.

36. Government guarantee

All pensions granted under this Act shall be guaranteed by this Government.

37. Share of pensions

Where an Asian officer has been a contributor in more administrations than one which have provisions relating to pensions to the widows and orphans of Asian officers similar to those in Kenya, this Government shall be liable for such share of the pensions in the proportion which its contributions bear to the total contributions paid to the administrations concerned:

Provided that where any part of the contributions has been repaid under section 33 that part shall not be deemed contributions for the purpose of this section.

38. Contributions of officers transferred to other administrations

Where a contributor is transferred to the service of an administration in which he is not eligible to join a Widows' and Orphans' Pension Scheme, he may elect, within three months of his transfer, to continue his contributions, in which case his contributions shall be the same as he was contributing at the date of his transfer, or where the contributor is on an incremental scale his contributions shall be those which he would contribute if he remained in Kenya on that scale and obtained each increment at the earliest possible date:

Provided that contributions may only be continued while the contributor is in the service of the administration afore-said or on pension therefrom, and he shall while contributing and at the date of his leaving that service, if then contributing, be deemed a contributor contributing in Kenya.

39. Sections 33 and 34 not to apply in certain cases

Where any contributor on leaving the service of this Government becomes a contributor in an administration having provisions relating to pensions of widows and orphans of Asian officers similar to those in Kenya or on so leaving is deemed to be a contributor in Kenya, sections 33 and 34 shall not apply to that contributor, while he is contributing as aforesaid or while he is deemed to be a contributor in Kenya.

40. Officers in amalgamated posts and telegraphic service may elect to contribute

(1) Subject to the exceptions contained in sections 4 and 5, any Asian officer who was in or selected for appointment to the service of the Government of Tanganyika on the 1st January, 1933, and who, in consequence of the amalgamation of the postal and telegraphic services of Kenya and Tanganyika was on that date transferred to the amalgamated postal and telegraph

department of Kenya and Tanganyika may, if at the time of election hereinafter referred to he is still in the service of the amalgamated department, by a notice addressed to the secretary, Asian Widows' and Orphans' Pension Fund, and received by the secretary within three months from the 27th August, 1934, elect to become a contributor:

Provided that the President may, for good and sufficient reason, extend the time.

(2) Any such Asian officer shall on election under subsection (1) pay to the Fund, within a time to be specified by the Board, in a lump sum, or in the discretion of the Board in instalments, within a period not exceeding six months, the arrears of contribution together with interest on the lump sum at the rate of six per centum per annum in respect of the period from the 1st January, 1933, to the first day of the month immediately preceding the month in which his notice was received by the secretary; and thereafter the officer shall contribute as from the first day of the month in which his notice was received by the secretary.

(3) Any Asian officer appointed to the amalgamated Posts and Telegraphs Department of Kenya, Uganda and Tanganyika since the 1st January, 1933, may, subject to the provisions of sections 4 and 5, become a contributor whether he is serving in Kenya, in Uganda or in Tanganyika; and any contributor who is in the service of the amalgamated Posts and Telegraphs Department of Kenya, Uganda and Tanganyika may continue to contribute to the Fund notwithstanding that he is serving in Uganda or in Tanganyika.

(4) For the purposes of this Act, the officers referred to in this section shall be deemed to be in the service of the Government of Kenya.

41. Rules and regulations

The President may make rules and regulations, not inconsistent with this Act, for the proper carrying out of the provisions of this Act.

[L.N. 168/1964.]

42. Rates of exchange

In all cases where conversion is necessary from Kenya currency to any other currency for the purpose of payment of contributions or pensions under this Act, the rate of exchange shall be that which the President may, from time to time, by notice in the *Gazette*, prescribe for the purpose of that conversion.
