

COMPANIES PROFITS (WORKERS' PARTICIPATION) ACT, 1968

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TEXT

COMPANIES PROFITS (WORKERS' PARTICIPATION) ACT, 1968 (XII OF 1968)

[4th July, 1968]

An Act

to provide for Participation of workers in the profits of companies

Whereas it is expedient to provide for participation of workers in the profits of companies and for matters ancillary thereto

And Whereas the national interest of Pakistan in relation to the achievement of uniformity within the meaning of clause (2) of Article 131 of the Constitution requires Central legislation in the matter ;

It is hereby enacted as follows :

1. Short title, extent and commencement.— (1) This Act may be called the Companies Profits (Workers' Participation) Act, 1968.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,

(a) "Board" in relation to a Fund means a Board of Trustees constituted under section 4 for the management and administration of the Fund;

(b) "Company" means a company within the meaning of ¹[Companies ordinance of 1984], ²[XLVII fo 1984], and includes—

(i) a body corporate established by or under any law for the time being in force;

(ii) any institution, organization or association whether incorporated or not, declared³ by the ⁴[Federal Government] in the official Gazette to be a company for the purposes of this Act;

(c) "Fund" means a Workers' Participation Fund established under section 3;

(d) "profits" in relation to a company means such of the "net· profits" as defined in section 87-C of the Companies Act, 1913 (VII of 1913)⁵, as are attributable in its

¹ For the words, comma and figure "Companies Act, 1913" the words, comma and figures subs. By Finance Act IV of 2007 (2.7.2007).

² For the figures and word "VII of 1913" the figures and word subs. by Finace Act, IV of 2007(2.7.2007).

³ The Federal Government declared each of the following to be a company for the purposes of the Act, namely:---

(i) Any Companies incorporated, registered or established outside Pakistan which is engaged in industrial undertaking in Pakistan.

(ii) Any partnership, association of persons (including consortium , syndicate or joint venture) or proprietorship which is engaged in an industrial undertaking in Pakistan.

(iii) Any industrial undertaking which is set up as a department activity of , the Federal or Provincial Government of a body corporate established under any law for the time being in force. [Gaza, of Pak, Extra, 31st July, 1968]

⁴ Subs. For "Central Government" by P.O. 4 of 1975, s. 2(3).

⁵ Repealed. See new Companies Ordinance (XLVII of 1984).

business, trade, undertakings or other operations in Pakistan;

⁶((dd) "rule" means rules made under this Act.]

(e) "scheme" means the scheme set out in the Schedule;

⁷[(f) "Worker" in relation to a company means an employee of the ⁸[, including employed by or through the contractors,] who falls within the definition of the worker as defined in Clause (xxx) of section 2 of the Industrial Relations Ordinance, 2002(XCI of 2002) and has been ⁹[working for or in] the company for a period of not less than six months.]

3. ¹⁰Establishment of Fund. — (1) Every company to which the scheme applies shall ----

(a) establish a Workers' Participation Fund in accordance with the scheme as soon as the accounts for the year in which the scheme becomes applicable to it are finalized, but not later than nine months after the close of that year ¹¹[***]

¹²[b) subject to adjustments, if any, pay every year to the Fund not later than nine months after the close of that year five percent of its profits during such year, which shall, where the accounts have been audited by an auditor appointed under Section 23 of the Industrial Relations Ordinance, 1969 XXIII of 1969), be assessed on the basis of such audit; and

(c) furnish to the Federal Government and the Board, not later than nine months after the close of every year of account, its audited accounts for that year, duly signed by its auditors]

(2) The amount paid to the Fund under clause (b) of sub-section (1) in relation to a year shall be deemed to have been allocated to the Fund on the first day of the year next succeeding that year.

4. Management of the Fund. — (1) As soon as may be ¹³[but not later than two months], after the establishment by a company of a Fund under section 3, there shall be constituted a Board of Trustees consisting of the following trustees, namely: -

(a) two persons elected by the workers of the company from amongst themselves; and

(b) two persons nominated by the management of the company of whom at least one shall be a person from the accounts branch of the company.

(2) The person's holding office as trustees shall elect for one year a person to be the Chairman of the Board alternatively from amongst the trustees elected under clause (a) of sub-section (1) and those nominated under clause (b) of that sub-section, the first Chairman being from amongst the later.

(3) A trustee shall, unless he sooner ceases to represent the interest he was

⁶ Cl. (dd) added by Ord. XII of 1970, S.2.

⁷ Substituted vide Finance Act, 2006.

⁸ After the word "company" occurring for the second time, commas and the words inst. by Finance Act, IV of 2007(2.7.2007).

⁹ For the word "in the employment of" the words subs.by Finance Act, IV of 2007 (2.7.2007).

¹⁰ subs. Section 3 and 4 for the original by Ord.XII of 1970,S.2

¹¹ The word "and" omitted by Act XVII of 1977, S.2 & 1st Sch.

¹² Clauses (b) & (c) subs.for the original Cl.(b), *ibid*.

¹³ Works added by Act XVII of 1977, S.2 & 1st Sch.

elected or nominated to represent, hold office for such term and on such conditions as may be prescribed by rules.

(4) All decisions of the Board shall be expressed in terms of the opinion of the majority of the trustees and in the event of the trustees being equally divided in their opinion, the Chairman shall have and exercise a second or casting vote.

(5) The Board shall manage and administer the Fund in accordance with the provisions of this Act, the scheme and any rules made in this behalf.

(6) The Board shall, in the exercise of its powers and performance of its functions under this Act, be subject to such directions as the ¹⁴[Federal Government] may from time to time give.

(7) The ¹⁵[Federal Government], if it is of opinion that a trustee or a Board has been persistently failing in the performance of his or its functions or has generally been acting in a manner inconsistent with the objects and interests of the Fund, may, after giving such trustee or, as the case may be, the Board, an opportunity of showing cause against it, by order.

(a) remove such trustee from his office or direct that the Board shall stand superseded for such period as may be specified in the order; and

(b) direct that, pending the election or nomination of a person in place of the trustee removed from office or, as the case may be, the re-constitution of the Board, the powers and functions of the trustee so removed or the Board shall be exercised and performed by a person specified in the order.

(8) A casual vacancy in the office of a trustee shall be filled as soon as may be by the election or, as the case may be, nomination of another person and the person elected or nominated to fill such vacancy shall hold office for the unexpired term of his predecessor.

(9) Upon the supersession of a Board under sub-section (7) the trustees in that Board shall cease to hold office and references to the Board in this Act, the scheme and the rules shall be construed as references to the officer specified in the order under that sub-section.

(10) Before the expiry of the period of supersession, the Board shall be reconstituted in accordance with the provisions of this Act so as to enable it to take over its functions upon the expiry of such period.

(11) No act or proceeding of the Board shall be invalid or questioned merely on the ground of the existence of a vacancy in, or defect in the constitution of the Board].

5. Penalty.— ¹⁶[(1) Where a company to which the scheme applies fails to comply with any of the provisions of this Act or the scheme, every director, manager or other officer responsible for the management of the affairs of the company, shall, if the Federal Government by order so directs, pay by way of penalty a sum which may extend to 5000 rupees and, in case of a continuing failure, a further sum which may extend to one thousand rupees for every day after the first during which the failure continues].

¹⁴ subs.for "Central Government" by P.O. 4 of 1975,S.2(3).

¹⁵ subs.for "Central Government" by P.O.4 of 1975,s.2 (3)

¹⁶ subs.sub-sec. (1) for the original sub-sections (1) and (2) by Act XVII of 1977,s.2 & 1st Sch.

(3) A penalty imposed by an order under sub-section ¹⁷[(1)] shall, if it is not paid within the time specified in the order, be recoverable as an arrears of land revenue.

(4) The ¹⁸[Federal Government] may, upon an application made in this behalf by any person aggrieved by an order made under sub-section (1) ¹⁹* * * within a period of six months from the date of the order, review the order and may, upon such review, pass such order as it may think fit.

²⁰6. Power to call for information.— The ²¹[Federal Government] may at any time, call upon a company or a Board to furnish it with such information and documents, including the records of the proceedings of the company or the Board, as may be relevant or useful for the purposes of, or necessary for ensuring proper compliance with, the provisions of this Act, the rules and the scheme.

7. Settlement of disputes, etc.— (1) Any difference arising between the Board and the company relating to the administration of the scheme shall be reported to the ²²[Federal Government] whose decision thereon shall be final.

(2) All claims of a worker relating to the benefits of the scheme, whether against the Board or the company, shall be settled in the same manner as is provided for in the Payment of Wages Act, 1936 (IV of 1936), for the settlement of claims arising out of deductions from wages.

8. Delegation of power.— The ²³[Federal Government] may, by notification in the official Gazette, direct that all or any of its powers or functions under this Act may, subject to such limitations, restrictions or conditions, if any, as may be specified in the notification, be exercised or performed also by any officer subordinate to it or by any authority so specified.

9. Power to make rules.— The ²⁴[Federal Government] may make rules to carry out the purposes of this Act.

9. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force, or in any contract or the memorandum or articles of association of a company.]

THE SCHEDULE SCHEME [(See Section 2(c))]

1. Scope of the scheme.— The scheme applies to all companies ²⁵* * * engaged in industrial undertakings which satisfy any one of the following conditions, and to such other companies²⁶ as the ²⁷[Federal Government] may, by notification in the official Gazette, specify in this behalf, namely:---

¹⁷ subs.for "(2)",ibid.

¹⁸ subs. for "Central Government" by P.O. 4 of 1975,s. 2(3).

¹⁹ omitted words "or sub-sections (2)" by Act XVII of 1977, s.2 & 1_{st} Sch.

²⁰ Subs. sections 6, 7, 8, 9 & 10 for the original sections 6 & 7 by ord. XII of 1970, s. 4.

²¹ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

²² Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3)

²³ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

²⁴ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

²⁵ Omitted word "primarily" by ord. XII of 1970. s. 5(1).

²⁶ For companies specified by the Federal Govt's Notification. C#1 to s. 2(b)(II).

²⁷ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

- (i) The number of workers employed by the company ²⁸ at any time during a year is ²⁹[50] or more.
- (ii) The paid-up capital of the company as on the last day of its accounting year is Rs. 20 lakhs or more.
- (iii) The value of the fixed assets of the company (at cost) as on the last day of the accounting year is Rs. 40 lakhs or more.

³⁰[**EXPLANTION:-** In this scheme:-

(a) "**industrial undertaking**" means an institution, organisation, enterprise or establishment which involves the use of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency and which is engaged in any one or more of the following operations, namely :

- (i) the subjection of goods or materials to any manufacturing, assembly, finishing or other artificial or natural process, which changes their original condition or adds to their value;
- (ii) ship-building ;
- (iii) the transformation, generation, conversion, transmission or distribution of electrical energy, including hydraulic power ; and
- (iv) the working of a mine, oil-well or any other source of mineral deposit, including blending, refining and purification of oils and gases; and includes companies engaged in the marketing and distribution of gas or oil or in the carriage of men or goods by sea or air, and any other institution, organisation, enterprise or establishment which the ³¹[Federal Government] may, by notification in the official Gazettet, declare to be an industrial undertaking for the purposes of this scheme; and

(b) references to the paid-up capital and the value of the fixed assets of the company shall, in the case of a company incorporated outside Pakistan but having a branch in Pakistan, be construed as references respectively to the capital invested in such branch and the value of the fixed assets of the branch.]

³²[**2. Investment of Fund.**— (1) The amount allocated or accruing to the Fund shall be available to the company for its business operations. The company may, however, request the Board to utilize the amount in the Fund for investment under sub-paragraph (7) and the Board may decide to so invest the amount.

(2) The company shall pay to the Fund in respect of the amount in the Fund available to it for its business operations as aforesaid interest at the rate of 2 1/2 percent above the bank rate or 75 percent of the rate at which dividend is declared on its ordinary shares, whichever is higher. In case there is more than one class of ordinary shares on which different rates of dividend have been declared, then the weighted average of the different rates of dividend shall be taken for the purpose of determining the rate of interest. The interest to the Fund shall accrue on and from the first day of the year next succeeding the year in Which the scheme becomes applicable to the company. Even when the company does not wish to utilize

²⁸ The words "begins in any shift omitted by Act, XX of 1973, s. (1)(II).

²⁹ Subs. for '100', *ibid.*, s.3(1)(II).

³⁰ Explanation added, by ord. XII of 1970, s.5(II).

³¹ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

³² Paragraph (2) subs. by the companies profits (workers' participation)(Amendment) Ordinance, XII of 1970.

the amount available to it under sub-paragraph (1), interest at the rate aforesaid shall be payable by the company for the period between the date of allocation of any amount to the Fund and the date of its investment under sub-paragraph (7).

(3) If, at any time after the establishment of the Fund, the company raises any additional capital, otherwise than through the issue of bonus or bonus shares, the Fund shall have the first option to convert any amount available to the company under sub-paragraph (1) or any of the assets of the Fund into ordinary equity capital up to a ceiling of 20 per cent of the paid up capital of the company prior to such conversion on 50 per cent of the additional capital, whichever is less.

Explanation.—*In* this sub-paragraph, "additional capital" does not include any capital offered or to be offered to foreign participates of the company.

(4) For the exercise of the right of conversion under sub-paragraph (3), the Board shall be given sufficient time to sell assets of the Fund to realise the amount needed for subscription to the additional issue of capital by the company.

(5) The shares acquired in the manner 'set out in sub-paragraph (3) Shall participate in future bonus and right issues in the same manner as other shares.

(6) The shares acquired in the manner set out in sub-paragraph (3) shall carry voting rights in the same manner as other shares and such voting rights shall be exercised by the Board on behalf of the Fund.

(7) The amount in the Fund which, under sub-paragraph (1), the company has requested to be utilized for investment under this paragraph may be invested by the Board for the purchase of any of the following, namely;---

- (a) I.C.P. Mutual Fund Certificate ;
- (a) National Investment Trust (Unit) Certificates ;
- (b) Government securities including Defence and Postal Savings Certificates; and
- (b) any other securities approved for the purpose by the ³³[Federal Government].

³⁴[3. Eligibility to benefits of scheme.— All workers shall be eligible to the benefits of the scheme and to participate in the Fund.³⁵ However, a worker not completing six 'months of employment with the company during a year of account shall not participate in the Fund in respect of that year

4. Distribution of benefits to workers.— The share of a worker in the annual allocation to the Fund shall be expressed in units or fractions of units (worked out to two places of decimal) of the face value of . Rs. 10 determined in the following manner, namely :—

- ³⁶[(a) The number of available units shall be so divided into three parts for the three categories of workers mentioned below that a worker in the first of those categories gets four units for each two units that a worker in the second of those categories gets or for each one unit that a worker in the last of these categories gets: -

CATEGORIES

³³Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

³⁴Subs. Paragraphs 3 and 4 for the original pares 3 and 4 by ord. XII of 1979, s.5(4).

³⁵ The sum or income received by a worker out of Workers Participation Fund exempted from the tax livable under Income Tax Act, 1922[see now Income Tax Ordinance, 2001, the Second Schedule, s.26;Gaz. of Pakistan., Extra., Pt.I,sept. 13, 2001,P.969-1217.] in exercise of the power under section 60(1) of that Act. S. or. O 1557(1) 73 of Nov. 5, 1973, Gaz. of Pak., Extr.,Pt.II, Nov 7,1973, P.2287.

³⁶ Subs. clause (A) for the original by ord. IX of 1972, s. II. First Schedule

- ³⁷[1. Workers drawing average monthly wages not exceeding rupees [7500/-]
2. (a) Workers drawing average monthly wages exceeding Rs, [7500/-] but not exceeding Rs. [15000/-]
3. Workers drawing average monthly wages exceeding Rs, [15000/-] rupees and
- (b) The average monthly wages shall be rounded up to the nearest Rs.10.
- (c) The number of units available to each category of workers shall be divided equally among all the workers in that category to determine the share of each workers of that category.
- (d) Notwithstanding anything contained in this scheme, no worker shall, in any one year, be entitled out of the annual allocation to units exceeding rupees ³⁸[the amount of ³⁹[four] times of the minimum wages for unskilled workers as given in the schedule of Minimum Wages for unskilled Workers Ordinance, 1969 (W.P. Ord. XX of 1969) in value insofar as such allocation is relatable to ⁴⁰[xxx] clause (b) of sub-section (1) of section (3). Any amount left out of annual allocation after the units have been so allocated shall be transferred to the Fund constituted under section 3 of the Workers Welfare Fund Ordinance, 1971 (XXXVI of 1971). No part of such amount shall be deemed to be included in the asset value of the Fund established under this Act and no individual worker shall have any lien on this amount by virtue of holding any units].

Explanations.— In this paragraph, "average monthly wages" means total wages drawn during the year of account divided by 12, or by the number of months a worker actually worked during a year in respect of which he is entitled to the benefit under the scheme, as the case may be, and "wages" has the same meaning as in clause (vi) of section 2 of the Payment of Wages Act, 1936 (IV of 1936); but does not include any overtime allowance ⁴¹[or bonus],

5. Disbursement of benefits.— The disbursement of the benefits from the fund shall be as under:-

(a) 100 per cent of the annual income of the Fund, including capital gains realized, shall be distributed each year to workers in proportion to their units of entitlement.

⁴²[(b) A worker who voluntarily leaves the employment of the company or whose services are terminated shall be entitled to receive 100 per cent, of the net asset value of the units standing in his name.]

(c) (d), and (e) ⁴³[x x x x]

⁴⁴[(f) A worker who continues in the service of the company shall be entitled to receive 100 per cent of the net asset value of the units in his name each year or he may choose to leave his share in the Fund, provided that a worker while in employment may choose to encash all the units standing in his name at any time

³⁷ In clause with (A), under heading "Categories" for the adjusting entries, the following shall be substituted by Finance Act, IV of 2007 (2. 7. 2007) earlier it was subs. by the Finance Act, (III) of 2006., dated 1.7.2006.

³⁸ Subs. by Finance Act, 2006(III of 2006).

³⁹ In clause (D), for the word "three" the word "four" subs. by Finance Act, IV of 2007(2.7.2007).

⁴⁰ The words "Sub clause (1) of" omitted by the companies profit (workers' participation)(Amdt)Act. XX of 1973, s.3.

⁴¹ Added by the Companies profits (workers participation (Amdt) Act, XX of 1973, s.3 (3).

⁴² CL (B) subs. for by the Companies profits (workers participation (Amdt) Act, XX of 1973, s.3 (3).

⁴³ Omitted by the companies profit (workers' participation)(Amdt)Act. XX of 1973.

⁴⁴ Subs. for original clause (f), ibid.

at his discretion.]

- (g) **A worker, in the event of his retirement or, his nominated beneficiary, in the event of the worker's death (from whatsoever cause) while in the employment of the company, shall receive 100 per cent of the, net asset value of the units standing in. the worker's name irrespective of the period of employment.**

6. Definition of the net asset value of the unit.— To determine the net asset value of a unit; the total net assets of the Fund, namely, market value of the securities, cash and other assets resulting from the investment and re-investment, capital accretion thereto and all incomes of any kind rising there from shall be divided by the number of units in the Fund. Net asset value of the entire Fund shall be computed once every year and each worker's unit entitlement determined at the same time. Additional units will be given to the workers according to the amount they voluntarily contribute to the Fund.

⁴⁵**7. Employee's own contribution.—** A worker may voluntarily choose to contribute a part of his wages, cash bonus, dividend or interest to the Fund. For each unit of contribution, he shall receive credit for 1-1/4 units. Contribution received during the course of a year of account shall, however, be deemed to be contribution received on the last day of that year. if at any time a worker chooses to leave the employment of the company or ⁴⁶[his services are terminated or in the event of his retirement or death or' on the expiry of three years from the date he voluntarily chooses to contribute a part of his wages, cash bonus, dividend or interest to the Fund, he, at his option, or, in the event of his death, his nominated beneficiary, may,] receive the net asset value of the units representing his contribution. The contribution by a worker in any one year of account shall not exceed 10 per cent of his annual wages during such year.]

8. Fiscal concession to the Companies.— All companies to whom the scheme applies shall be allowed the allocation made to the scheme as a deduction to arrive at the taxable income.

9. Tax treatment of the income of the Fund.— The income of the Fund including capital gains shall be exempt from income-tax.

9. Tax treatment of the income of the workers.— All sums paid out by the Fund shall be exempt from income-tax in the hand of the workers.

⁴⁷**11. Working and location of the Board of Trustees.— The office of the Board of Trustees shall be located at the factory premises or, if there is more than one factory run by the company, at the registered head office of the company. All expenses of the Board, including the cost of maintaining accounts, shall be borne by the company.]**

12. Audit of the Fund accounts.— The Fund accounts shall be audited annually at the company's expense in the same manner as the accounts of the company are audited :

Provided that the ⁴⁸[Federal Government] may, at its own cost, appoint independent accountants for a special audit of the accounts of the Fund.

13. Scheme's benefits to be in addition to other benefits.— The benefits to a worker under this scheme shall be in addition to, and not in derogation or substitution of, .any other benefits to which the worker maybe entitled under any other law, contract, terms and

⁴⁵ Paragraphs 7.subs. for the original by ord. XII of 1970, s. 5(6).

⁴⁶ Subs. for the original words by Act, XX of 1973, s. 3(4).

⁴⁷ Paragraphs 11.subs. for the original by ord. XII of 1970, s. 5(7).

⁴⁸ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

conditions of employment or otherwise.

⁴⁹[14. Special provision for industries working seasonally.— Notwithstanding anything contained in this Act or this scheme the ⁵⁰[Federal Government], may, by notification in the official Gazette, make special provisions⁵¹for the participation of workers in the profit of companies engaged in industrial undertakings which operate only for a part of the year.

15. Companies engaged in more than one industrial undertakings.— Notwithstanding anything contained in this Act or this scheme, the ⁵²[Federal Government] may, at the request of a company which is engaged in more than one industrial undertakings located at different places permit the splitting up of the Fund amongst the various undertakings or groups of undertakings and constitution of the Board of Trustees for each such undertaking or group of undertakings; and thereupon the provisions of the Act and this scheme shall have effect in relation to such undertakings or groups as if each such undertaking or group were a company.

16. Entrustment of management of Fund to Investment Corporation of Pakistan, etc.
— The Board of Trustees may, with the prior approval of the ⁵³[Federal Government], enter into a contract with the Investment Corporation of Pakistan, the National Investment Trust or the National Bank of Pakistan, entrusting the management of the Fund to that Corporation, Trust or Bank on such fee which shall be payable by the company, and on such terms and conditions as may be mutually agreed upon.]

⁴⁹ Paragraph 14, 15 and 16 added by the ord. XII of 1970, s. 5(8).

⁵⁰ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

⁵¹ The Federal Government made the following special provisions for the participation of workers in the profit of the companies engaged in the following industrial undertakings which operate only for a part of year.

(I) for the purpose of clause (f) of section 2 of the Act, of Paragraph 3 of the schedule thereto a worker of an industrial undertaking engaged in the manufacturing of sugar, ginning, willing of cotton or processing of Tobacco to which paragraph one for the said schedule applies shall be deemed to have completed six months of continuous employment with the company and eligible to the benefits of the scheme, if he is in continuous employment of the industrial undertaking for not less than half of the period for which undertaking has operated in a year of account.

(II) For the purpose of disbursement of benefits to workers in accordance with paragraph 5 of the schedule, worker of an industrial undertaking which is not in continuous operation for the whole of the year shall be credited----

(a) with a year of continuous employment if he has been continuous employment with that undertaking for the entire period for which it has operated in the year of account; and

With period of continuous employment as that period bears to the period he continuously worked with the undertaking the same proportion as the whole year bears to the total period for which the undertaking operated during a year of account.

(Gaz. of Pak. Extra.20 August, 1971)

⁵² Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).

⁵³ Subs. for "Central Government" by P. O. 4 of 1975. s. 2(3).