

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR

Law, Justice, Parliamentary Affairs and Human Rights Department

“Muzaffarabad”

Dated: 09.02.2016

No. LD/Legis-Act/89-100/2016. The following Act of Assembly received the assent of the President on the 08th day of February 2016, is hereby published for general information.

[Act VIII of 2016]

An ACT

to provide a law for the maintenance of Essential Services

Whereas it is expedient to provide law for the maintenance of Essential Services to public at large and to prohibit illegal and unauthorized strikes and agitations in such services in public interest or order;

It is hereby enacted as follows:-

1. **Short title, Commencement and Application.**- (1) This Act may be called the Azad Jammu and Kashmir Essential Services (Maintenance) Act, 2016.
 - (2) It shall come into force at once.
 - (3) It shall apply to such services as may be declared or notified by the Government under Section 3.
2. **Definitions.**- In this Act, unless there is anything repugnant in the subject or context,-
 - (i) “Code” means the Code of Criminal Procedure, 1898 (Act V of 1898) as adapted and enforced in Azad Jammu and Kashmir;
 - (ii) “Employment” includes any employment under the Government or corporation, authorities, statutory bodies or other institutions, organizations or board set up, owned, managed or controlled by the Government;
 - (iii) “Essential Service” means a Service to the Employment of which this Act applies;
 - (iv) “Government” means the Azad Government of the State of Jammu and Kashmir.
3. **Employment to which this Act applies.**- (1) The Employment, department or any force which force is performing the basic humanitarian and public services, shall be deemed to be the Essential Service under this Act.
 - (2) Without prejudice to the generality of sub-section (1) following shall be the basic Essential Services:
 - (i) Divisional and District Administration of Management and Revenue Departments.
 - (ii) Police force and agencies under the Home Department.
 - (iii) Power Generation and Electricity distribution department.
 - (iv) Health and Preventive health care including Primary and Secondary Health Services.

- (v) Public Health Engineering.
- (vi) State Disaster Management Authority and Rescue Services.
- (vii) Local Council Service under Local Government & Rural Development Department.

(3) In addition to sub-section (1), the Government may from time to time and in public interest, declare any service or class of service in any department or Government organization as Essential Service under this Act.

4. **Essential Service to continue and maintain Essential Services.**- A member of any service declared as Essential Service under Section 3 of the Act shall continue for maintaining their respective essential services and shall,-

- (i) perform or continue to perform certain duty in relation to his Employment;
- (ii) not depart from such area of his duty or areas which deemed necessary for performing duties in the time of exigencies for such service; and
- (iii) not declare lockout or go on strike or help to bring about a strike or propagates a strike or take part in activities relating to such acts including procession, meeting or agitation at the expense of suspension of Essential Service.

(2) Any person who contravenes sub-section (1) shall be deemed to be abstention or desertion from performing duty of Essential Service and guilty of misconduct and, without prejudice to any disciplinary proceeding which may be initiated against him under any law, he shall not be entitled to any kind of salary or remuneration for the period of such absence from duty or remained on strike and shall also be guilty of the offence under Section 5 of this Act.

5. **Offence.**- Any person engaged in any Employment or class of Employment to which this Act applies who,-

- (a) disobeys any lawful order given in the course of such Employment or attempts to persuade any person to disobey any such order; or
- (b) without reasonable excuse abandons such Employment or absents himself from performance of Essential Service assigned to him; or
- (c) contravenes sub-section (1) of Section 4; shall be guilty of an offence under this Act.

6. **Regulation of salary, allowances and conditions of service etc.**- The Government may make rules regulating or empowering specified authorities to regulate the salary and other conditions of service of persons or of any class of persons engaged in any Employment or class of Employment declared under Section 3 to be an Employment or class of Employment to which this Act applies.

7. **Penalties and Procedure.**- (1) Any person found guilty of an offence under this Act, shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to Rs. 50,000/- or both.

(2) No Court shall take cognizance of an offence under this Act except upon complaint in writing by the head of department or Employment or any other government servant specially authorized by the Government in this behalf.

(3) Notwithstanding anything contained in the Code, an offence under this Act shall be cognizable; and

(a) no Magistrate other than a Magistrate of the First Class shall try an offence under this Act;

(b) a Magistrate trying an offence under this Act shall have powers to try such offences summarily in accordance with the procedure laid down for summary trial in the Code.

8. **Overriding Effect.**- Notwithstanding anything to the contrary contained in the Industrial Relations Ordinance, 1974 (Ord. XXVI of 1974) or any other law for the time being in force, the provisions of this Act shall have an overriding effect.
9. **Bar on legal proceedings.**- No suit, prosecution or other legal proceedings shall lie against any person for anything which is, in good faith done or intended to be done under this Act or the rules made there under.
10. **Power to make rules.**- The Government may make rules for carrying out the purposes of this Act.
11. **Saving.**- Notwithstanding anything done, action taken, notification issued, order or appointment made, proceeding initiated, jurisdiction or power exercised under the provisions of the West Pakistan Essential Services (Maintenance) Act, 1958 (Act XXXIV of 1958) shall be deemed to have validly done, taken, issued, made, initiated or exercised under this Act.
12. **Repeal.**- The West Pakistan Essential Services (Maintenance) Act, 1958 (Act XXXIV of 1958), as enforced in Azad Jammu and Kashmir, is hereby repealed.

(Ch. Muhammad Nawaz)
Section Officer (Legislation)