THE UNITED REPUBLIC OF TANZANIA

No. 25 OF 2001

I ASSENT

President,

9th January 2002

An Act to amend the Parastatal Pensions Act, 1978

ENACTED by the Parliament of the United Republic of Tanzania

Short title

1. This Act may be cited as the Parastatal Pensions (Amendment) Act, 2001, and shall be read as one with the Parastatal Pensions Act, 1978 hereinafter referred to as "the principal Act"

Amendment of Section 2

2. The principal Act is here by amended in subsection (I) Of section (2) by -

(a) deleting the definition of the word "corporation";

(b) deleting the definition of "employee" and substituting for it the following new definition-

"employee" means any person employed by a parastatal organization or any self employed person;

(c) deleting the definition of "parastatal organisation" and substituting for it the following new definition -

"parastatal organisation" means -

(a) any body corporate established by or under any written law including -

(i) the East African Community;

(ii) any corporation within the East African Community Cap. 212

(iii) any company registered under the Companies Ordinance upon registration and becoming a member,

(b) any company registered under the Companies Ordinance of which the Government or any parastatal organisation has shares;

(d) any body of persons, whether corporate or incorporate, upon becoming a member

(c) any person in the informal sector upon becoming a member, and

(d) deleting the definition of the word "pensionable emoluments" and substituting for it the following-

"pensionable emoluments" means the salary used in deduction of contributions which shall be taken into account in computing pensions, gratuities or other benefits under this Act".

General wnendment

3. The principal Act is hereby amended by deleting the word "Corporation" wherever that word appears and substituting for it the word "Fund"-

Anmid-Inent of' Section ,;

4. Section 5 of the principal Act is hereby amended-

(a) by adding immediately after figure "5" the following figure 11(l)"-

(b) in paragraph (a) by inserting immediately after the word "forty" the word "five" -

(c) by adding immediately after paragraph (b) of the proviso the following new paragraph-

"(c) any person registered as a member **under** this Act shall not cease to be a member by reason that his employer has been privatized, sold, leased or liquidated";

(d) any person who ceases to be member due to any of the circumstances specified in paragraphs (c), (d), (e) and (f) of subsection (1) of section 26 of the Act, in which he does not attain retirement age, he shall upon re-employment resume membership;

(e) by adding immediately after the renumbered subsection (1) the following subsection-

"(2) Notwithstanding the provisions of subsection (1) of this section, a person who is non-pensionable in the service may become with effect from the date of employment a member of the scheme."

Repeal and replacement

5. Section 8 of the principal Act is hereby repealed and replaced by the following new section-

''Compul-sory contribu-tions

8-- (1) Each member shall make contribution to the Fund at the rate determined by the Minister and published in the Gazette, and such contribution shall be deducted from his salary monthly

(2) The employer of the member shall contribute to the Fund each month such amount as may be necessary to meet the Board's obligations under this Act, in respect of the member as may be determined by the Minister upon recommendations by the Board.

(3) Both the member and employer's contributions shall be remitted by the employer to the Fund within thirty days after the end of the month to which they relate."

6. The principal Act is hereby amended by deleting subsection (2) and (3) of section 9 and Substituting for them the following -

Amendment section

"(2) An employer who fails to remit to the Fund any contribu-- tions and additional contribution which under this Act are required to be remitted, commits an offence."

Amendment of section 16

7. Section I 6 of the principal Act is hereby amended in subsection (1) by deleting the word "less" appearing after the word "not" and Substituting for it the word "more"

8. Section 18 of the principal Act is hereby amended by -

(a) inserting immediately after paragraph (d) the following -

Amendment of section 18

"(e) to formulate or design schemes and grant benefits to both formal and informal sector whenever it deems appropriate"; and

(b) renumbering paragraph (e) as (f);

9. Section 26 of the principal Act is hereby amended .

Amendment section 26

(a) by adding immediately after figure "26" the following figure (1);

(b) in paragraph (a) by adding immediately after the word "fifty" the word "five",

(c) by deleting the proviso;.

(d) by adding a new subsection (2) as f'ollows -

"(2)Notwithstanding the provisions of paragraphs (c),(d) (e) and (f) of subsection (1), no pension shall be payable

(a) to a member unless lie has attained the age of fifty years and has retired from service; or

(b) to a member who has retired from service and is on receipt of monthly pension until he has attained the age of fifty five."

Repeal and replacement of section 27

10. Section 27 of the principal Act is hereby repealed and replaced by the following -

" Service not qualifying for pension

27. -0) No pension shall be awarded under this Act to any member in respect of any service -

(a) while absent from duty on leave without salary unless it is established to the satisfaction of the Board that -

(i) such leave was granted oil grounds Of public policy, and

(ii) the employer undertakes to pay into the Fund the employee's and the employers contributions and additional contributions for the period that employee was so absent; or

(c) while below tile retirement age.

(2) No gratuity shall be awarded under this Act to any member in respect of any service -

(a) while absent from duty oil leave without salary unless it is established to the satisfaction of the Board that -

(i) such leave was granted oil grounds Of public policy; and

00 the ernployer undertakes to pay into the fund the ernployees and the employer's contributions for tile period that employee was so absent;

(b) while under the age of eighteen years

Arnendment or section 39

11. Section 39 of the principal Act is hereby arrierided in subsection (3) by deleting the definition of the phrase "annual pensionable emoluments" arid substituting for it the following -

"annual pensionable emolument" means an average of five years highest pensionable emoluments a member earned during his pensionable service."

12. The principal Act is hereby amended by deleting section 44 and substituting for it the following- .Amen&nent of section 44

"With drawal benefits

44.-(I) Where a member ceases to be employed in circumstances in which he is not eligible for any pension, gratuity or any other benefit under the provisions of this Act, he shall be refunded the amount of his own contributions and that of his employer to the Fund.

(2) Where a member has been employed for a period of not less than five years and the cessation of such employment is not due to dismissal for misconduct the amount of his own contribution and that of his employer together with a simple interest at the rate to be determined by the Board of Trustees shall be paid to him.

13. The principal Act is amended- Insertion of new Part VII

(a) by inserting immediately after Part VII the following new Part-

"PART VIII

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

Criminal proceedings

45. Any person who-

(a) for the purposes of evading payment of any contribution by him or another person knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular;

(b) for the purpose of obtaining any benefit or refund for himself or some other person , knowingly makes any false statement or representation or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particulars;

(c) misrepresents or fails to disclose any material fact;

(d) fails to pay to the fund within the prescribed period any contributions and additional contributions thereof which he is liable to pay under this Act;

(e) fails to comply with any regulations made under this Act as a result of which there is loss to the Fund or as a result of which the individual covered by the scheme records or contribution cannot be maintained;

(f) fails without lawful excuse to produce docurnents required to be produced under this Act;

(g) knowingly deducts from an employee's salary any sum in respect of contribution to the Fund greater than the employee's share of statutory contribution;

(h) misrepresents or fails to disclose any material fact as a result of which lie obtains benefits from the Fund which lie would have not been entitled, commits an offence and is liable on conviction to a fine of five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

(2) The court before which any person is convicted of an offence under this Act may, without prejudice to any civil remedy; order the person to pay to the Fund the amount Of any contributions, together with any interests or penalty thereon, certified to be due from such person to the Fund at the date of conviction, and the amount may be recovered in the same manner as a fine and shall be paid into the Fund for the account of the concerned covered persons.

(3) Proceedings in respect of any offence under this Act may be commenced at any time when it comes to the knowledge of the Director General that there i's evidence to justify the prosecution for the offence.

(4) Every magistrate, other than a primary Court rnagistrate, shall have jurisdiction, notwithstanding anything to the contrary contained in any law respecting the jurisdiction of such magistrate, in all cases or matters arising under this Act.

Joinder in cases of non-payment of contributions

46. - (1) Notwithstanding anything to the contrary contained in any other law in force, in any proceedings against an employer in respect of contributions due for more than one of his employees, the magistrate may permit one plaint or one charge sheet to be made or filed in respect of all contributions claimed to be due.

All claims shall rank equally between thernselves, and shall be entered in full to the member's contribution account, unless the amount recovered from the employer be less than the total arnount of tile clairns with costs, in which case, after payment of the costs, all the claims shall, Subject to marginal adjustrnents, abate in equal proportions among thernselves and be entered to the member's contribution records accordingly.

Legal proceedings

47. Any action for the recovery of contributions and all criminal proceedings under section 45 may be instituted by the Director General or an officer of the Fund appointed by the Fund in that behalf, and where action is instituted before any court, any person authorized by this section may appear and conduct the case.

Priority for payment Contribution

48. Where the Director General has given the court a written notice of a clairn under this Act and -

(a) any attachment is issued against the property of an employer in execution of a decree against him and any such property is seized or sold or otherwise realized in pursuance of such executing; or

(b) oil the application of a creditor tile property of an employer is sold, the proceedings of the sale or other realization of such property, shall not be distributed to any person entitled thereto until the court ordering the sale or realization has made provisions for the payment, after the payment of costs of sale or realization, or any amounts due in respect of contributions payable by the employee under this Act before the date of such order.

Protection of contribution

49. The surn standing to the account of a member shall, until paid out in accordance with the provisions of this Act, remain the property of the Fund and shall not form part of the **assets of that member in the event of his bankrupt or insol vency, or be liable to attachment in satisfaction of his debts.**

Protection

50. Notwistanding anything to the contrary contained in any written law, where any judgment or order has been obtained against a contributory member, no execution or attachrnent or process of any nature shall be issued against his contributions, except in accordance with the terms of the Fund

and the contributions shall not form part of the assets of the member in event of bankruptcy"; and

(b) by renumbering Part VIII as Part IX and sections 45-50 as sections 46-5 1 respectively;

Addition of a new section

14. The principal Act is hereby amended by adding immediately after section 51 as renumbered the following -

"Fund guarantee

52. Where the Fund by reason of insufficient funds at its disposal is unable to meet its liability to any member for any benefit to which such member is entitled under this Act, or for any portion of any such benefit, the entitlement of such member to that benefit or that portion of benefit shall constitute a charge on and be paid out of the Consolidated Fund.

Passed in the National Assembly on the Oh November, 2001

Clerk of the National Assembly

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