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THE SOLDIERS (LITIGATION) ACT, 1925

ACT NO. IV OF 1925

[26th February, 1925]

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of soldiers serving under special conditions.*

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of soldiers serving under special conditions;

It is hereby enacted as follows:—

1. (1) This Act may be called the Soldiers (Litigation) Act, 1925. Short title, extent and commencement

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on the first day of April, 1925.

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

(a) "Court" means a Civil or Revenue Court;

¹[* * *]

(b) "soldier" means any person subject to the ²[Army Act, 1952, or the] Air Force Act, 1953;

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

* Throughout this Act, except otherwise provided, the words "Bangladesh" and "Government" were substituted, for the words "Pakistan" and "Central Government" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ Clause (aa) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words, commas and figure "Army Act, 1952, or the" were substituted, for the words, commas and figures "Indian Army Act, 1911 or the Pakistan Army Act, 1952 or the Indian Air Force Act, 1932 or the Pakistan" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (d) "proceeding" includes any suit, appeal or application.

Circumstances in which a soldier shall be deemed to be serving under special conditions

3. For the purposes of this Act, a soldier shall be deemed to be or, as the case may be, to have been serving—

- ¹[(a) under special conditions—when he is or has been serving under war conditions or overseas, or with any unit the headquarters of which are situated at any place which is more than fifty miles distant by road from the nearest railway station;]
- (b) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the Government by notification in the official Gazette to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter,—
- (i) serving out of Bangladesh,
 - (ii) under orders to proceed on field service,
 - (iii) serving with any unit which is for the time being mobilised, or
 - (iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Government by notification in the official Gazette to be service under war conditions; and
- (c) overseas—
- (i) when he is or has been serving in any place outside Bangladesh the journey between which and Bangladesh is ordinarily undertaken wholly or in part by sea, or

¹ Clause (a) was substituted, for clause (a) by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹[* * *]

²[* * *]

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Particulars to be furnished in plaints, applications or appeals to court

5. If any Collector has reason to believe that any soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Power of Collector to intervene in case of unrepresented soldier

6. (1) If a Collector has certified under section 5, or if the Court has reason to believe, that a soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority:

Notice to be given in case of unrepresented soldier

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

- (a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of preemption, or
- (b) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

¹ Sub-clause (ii) was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² Explanation was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(2) If it appears to the Court before which any proceeding is pending that a soldier though not a party to the proceeding is materially concerned in the outcome of the proceeding, and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority.

Postponement
of proceedings

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Court may
proceed when
no certificate
received

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Postponement
of proceedings
against soldier
on leave

9. When any document purporting to be signed by the Commanding Officer of a soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

- (a) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or
- (b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to sub-section (1) of section 6 and shall, in any other case, be postponed in the manner provided in section 7.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any soldier whilst he was serving under any special conditions, the soldier or, if he is dead, his legal representative may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

Power to set aside decrees and orders passed against a soldier serving under war or special conditions

(2) The period of limitation for an application under sub-section (1) shall be ninety days from the date of the decree or order, or, where the summons or notice was not duly served on the soldier in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order; and the provisions of section 5 of the Limitation Act, 1908, shall apply to such applications.

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

11. In computing the period of limitation prescribed by sub-section (2) of section 10 of this Act, the Limitation Act, 1908 or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been a soldier, or is the legal representative of a soldier, the period during which the soldier has been serving under any special conditions, and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next-of-kin by the authorities in Bangladesh, shall be excluded:

Modification of law of limitation where soldier or his legal representative is a party

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except where the said right accrues in such circumstances, and is in respect of agricultural

land and village immovable property situated in any such area, as the Government may, by notification in the official Gazette, specify in this behalf.

Power of Court to refer questions to prescribed authorities

12. If any Court is in doubt whether, for the purposes of section 10 or section 11, a soldier is or was at any particular time serving under special conditions, or has died while so serving or as to the date of such death or as to the date on which official intimation of such death was sent to his next-of-kin by the authorities in Bangladesh, the Court may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Rule-making power

13. The Government after consulting the ¹[Supreme Court] may, by notification in the official Gazette, make rules to provide for all or any of the following matters, namely—

- (a) the manner and form in which any notice or certificate under this Act shall be given;
- (b) the period for which proceedings or any class of proceedings shall be postponed under section 7;
- (c) the persons who shall be the prescribed authorities for the purposes of this Act;
- (d) any other matter which is to be or may be prescribed; and
- (e) generally, any matters incidental to the purposes of this Act.

Power to apply the provisions of the Act to

14. (1) ²[The] Government may, by notification in the official Gazette, direct that all or any of the provisions of this Act, shall apply to any other class of persons in the service of

¹ The words "Supreme Court" were substituted, for the words "High Court concerned" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word "The" was substituted, for the words and commas "As respects the Provincial Public Services the Provincial Government, and in other cases, the" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

the ¹[Republic] specified in such notification in the same manner as they apply to soldiers. other person in the service of the Republic

(2) [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

14A. [*Omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.*]

15. [*Repealed by the Repealing Act, 1927 (Act No. XII of 1927), section 2 and Schedule.*]

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¹ The word "Republic" was substituted, for the word "State" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).