



DRAFT MAHARASHTRA CODE ON SOCIAL SECURITY RULES, 2021

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<https://taxguru.in/corporate-law/draft-maharashtra-code-social-security-rules-2021.html>

In Pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification No. S.S.C.-2021/C.R.28/LABOUR-9, dated 27th August 2021 published in the *Maharashtra Government Gazette*, Part I-L, Extra Ordinary is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

S. M. SATHE,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT
Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk, Mumbai 400 032,
dated the 27th August 2021.

NOTIFICATION

CODE ON SOCIAL SECURITY, 2020.

No. S.S.C-2021/C.R.28/LABOUR-9.—The following draft of rules which the Government of Maharashtra, proposes to make in exercise of the powers conferred by section 154 and section 156 of the Code on Social Security, 2020 (36 of 2020) read with section 24 of the General Clauses Act, 1897 (10 of 1897) and of all other powers enabling it in that behalf and in supersession of the Maharashtra Maternity Benefit Rules, 1965 made under the Maternity Benefit Act, 1961 (53 of 1961), the Payment of Gratuity (Maharashtra) Rules, 1972 made under the Payment of Gratuity Act, 1972 (39 of 1972) and the Maharashtra Unorganised Workers' Social Security Rules, 2013 made under the Unorganised Workers' Social Security Act, 2008 (33 of 2008), is hereby published as required by sub-section (1) of section 154 and sub-section (1) of section 156, for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration by the Government of Maharashtra, after the expiry of forty-five days from the date of publication of this notification in the *Maharashtra Government Gazette*.



**Social Security
Rules, 2021**

2. Any objection or suggestion, which may be received by the Commissioner of Labour, Maharashtra State, Kamgar Bhavan, 'E' Block, Bandra-Kurla Complex, Bandra East, Mumbai-400051 or on email mahalabourcommr@amail.com from any person with respect to the said draft before the expiry of the above mentioned period, will be considered by the Government.

By order and in the name of the Governor of Maharashtra,

S. M. SATHE,
Joint Secretary to Government.

DRAFT RULES
CHAPTER I
PRELIMINARY

1. Short title.—*These* rules may be called the Maharashtra Code on Social Security Rules, 2021.

2. Definition- (1) In these rules, unless the subject or context otherwise requires,—

(a) “appellate authority” means the Government of Maharashtra or the authority specified by the Government of Maharashtra under sub-section (8) of section 56 or an officer, senior in rank to the Assessing Officer for the purposes of section 105 of the Code, appointed by the State Government, as the case may be;

(b) “authority” means the Government of Maharashtra or the authority specified by the Government of Maharashtra under sub-section (3) of section 72, for making appeal against the order of the Inspector-cum-Facilitator;

(c) “chairperson” means the Chairperson of the Social Security Board or, as the case may be, the Chairperson of the Welfare Board;

(d) “Code” means the Code on Social Security, 2020 (36 of 2020);

- (e) “electronically” means any information submitted by email or uploading on the designated portal or digital payment in any mode for the purpose of Code;
- (f) “member” means member of the Board;
- (g) “fund” means the Social Security Fund;
- (h) “Form” means a form appended to these rules;
- (i) “nomination” means nomination made under section 55 of the code;
- (j) “Urregister of women employees” means a register of women employees maintained under rule 41;
- (k) “section” means a section of the Code;
- (l) “Social Security Board” means the Maharashtra Unorganised Workers’ Social Security Board constituted under sub-section (9) of section 6 of the Code;
- (m) “specified” means specified by an order of the Government of Maharashtra or any officer so authorised by the Government of Maharashtra;
- (n) “year” shall mean the financial year, that is to say, beginning from the first of April and ending with the thirty-first of March of the year following;
- (o) “Welfare Board” means the Maharashtra Building and other Construction Workers’ Welfare Board constituted under section 7 of the Code.

(2) Words and expressions used in these rules and not defined herein, but are defined in the Code shall have the same meanings as are respectively assigned to them under the Code.

CHAPTER II

MAHARASHTRA UNORGANISED WORKERS SOCIAL SECURITY BOARD

3. Maharashtra Unorganised Workers’ Social Security Board under section 6 of Code.—(1) The Board constituted under sub-section (9) of section 6 shall be called as the Maharashtra Unorganised Workers’ Social Security Board.

(2) (a) A member, other than an *ex-officio* member, shall hold office for a period not exceeding three years from the date of his nomination.

(b) A member shall be eligible for re-nomination, provided that a member shall not hold office for more than total of two terms.

(3) (a) The State Government may seek one member representing the Central Government in the Ministry of Labour and Employment, Government of India under clause (c) of sub-section (10) of section 6.

(b) The State Government may seek seven nominations from amongst the representatives of associations of unorganised sector workers and seven nominations from employers’ associations of unorganised sector, on the Social Security Board, under sub-clauses (i) and (ii) of clause (d) of subsection (10) of section 6 in manner, as decided by the State Government.

(c) The State Government shall nominate two members representing the Legislative Assembly under sub-clause (iii) of clause (d) of sub-section (10) of section 6.

(d) The State Government shall nominate five members under sub-clause (iv) of clause (d) of sub-section (10) of section 6 from amongst persons of eminence in the field of labour welfare, management, finance, law and administration.

(e) The State Government shall nominate ten members under sub-clause (v) of clause (d) of sub-section (10) of section 6 representing various Departments of State Government, concerned with matters relating to the welfare of the unorganized workers.

(4) The State Government shall nominate the Development Commissioner (Unorganised Labour) as a Member-Secretary of the Social Security Board.

(5) A member nominated under sub-clauses (i) and (ii) of clause (d) of sub-section (10) of the section 6, shall cease to be a member of the Board if he ceases to represent the category of interest from which he was so nominated:

Provided that, out of seven persons nominated under sub-clause (i), one member each from the Scheduled Caste, the Scheduled Tribe, the Minorities and women shall be represented.

(6) A member nominated under sub-clause (iii) of clause (d) of sub-section (10) of the section 6 shall cease to be a member of the Board if he ceases to be a member of the Legislative Assembly by which he was so elected.

(7) No person shall be chosen as, or continue to be, a member of the Board, if such person incurs any of the disqualifications under section 8.

4. Manner of exercising powers and performance of functions of Social Security Board. (1) The Board for discharging its functions as assigned to it, under sub-section (15) of section 6, may constitute a committee to deliberate and recommend on the specific issues as may be assigned to such committee.

(2) Such committee may co-opt members from the Board or outside, as the case may be, from the fields of the experts, on which committee is required to deliberate.

5. Reconstitution of Social Security Board. – (1) The State Government shall initiate the process to fill the vacancies to reconstitute the Social Security Board, prior to six months of expiry of the term of the Board.

(2) If the new Social Security Board is not re-constituted after completion of the term of the Board, such arrangements may be made for discharging the functions of the Social Security Board as may be decided by the State Government for the period till the new Board is constituted.

(3) Consequent upon institution of such arrangement, all actions taken shall have the same effect as if it has been carried out by the Social Security Board itself.

6. Resignation of members of Social Security Board. (1) A member of the Social Security Board, not being an *ex-officio* member, may resign by a letter in writing addressed to the State Government.

(2) The seat of such a member shall fall vacant from the date on which his resignation is accepted or on the expiry of thirty days from the date of receipt of intimation of resignation, whichever is earlier.

(3) The power to accept the resignation of a member shall vest with the State Government.

7. Change of address.—If a member changes his address, he shall communicate in writing his new address to the Member-Secretary of the Social Security Board who shall thereupon enter his new address in the official records:

Provided that, if a member fails to communicate his new address, the address in the official records shall for all purposes be deemed to be the member's correct address.

8. Manner of filling vacancies.—When a vacancy occurs or is likely to occur in the membership of the Social Security Board, Member-Secretary of the Social Security Board shall submit a report to the State Government and on receipt of such report, the State Government may, by notification, nominate a person to fill the vacancy in the manner specified under rule 3 above, and the person so nominated shall hold office for the remainder of the term of office of the member in whose place he is nominated.

9. Procedure for removal of a member from Social Security Board.—(1) During the pendency of the proceeding, if any, under clauses (b) and (c) of sub-section (2) of section 8, for removal of a member of the Social Security Board, such member shall abstain from the meeting of the Social Security Board.

(2) The decision of the State Government, on the debarment, disqualification and removal of any member under section 8, shall be final.

10. Procedure for transaction of business of Social Security Board and Committees thereof.—(1) **Meetings.**—(a) The Social Security Board or any Committee thereof shall, subject to the provisions of sub-rule (2), meet at such place and time as may be decided by the Chairperson.

(b) The Chairperson of the Social Security Board or any Committee thereof may, whenever he thinks fit, and shall within fifteen days of receipt of a requisition in writing from not less than one half of the members of the body concerned, call for a special meeting thereof. A requisition so made shall specify the object of the meeting proposed to be called.

(2) **Notice of meeting and its business.**—(a) A notice of not less than fifteen days from the date of issue, containing the date, time and place of every ordinary meeting of the Social Security Board or any Committee thereof, together with a list of business proposed to be transacted approved by the Chairperson shall be sent to every member of Social Security Board or any Committee thereof, as the case may be, through e-mail or registered post or by special messenger. A brief note on each item of the agenda shall be sent along with the agenda as soon as thereafter possible.

(b) In case when the Chairperson calls an emergency meeting of the Social Security Board or the or any Committee thereof for considering any matter which in his opinion is urgent, a notice giving such reasonable time as he may consider necessary shall be deemed sufficient.

(c) No business other than for which the meeting of the Social Security Board or any Committee thereof has been convened shall be considered at the meeting except with the permission of the Chairperson of the meeting.

(3) **Chairperson to preside at meetings.**—The Chairperson or in his absence the Vice-Chairperson of the Social Security Board, as the case may be, shall preside the meeting. In event of absence of both the Chairperson and the Vice-Chairperson, the meeting shall be presided over by such Member as may be nominated by the Chairperson.

(4) **Quorum.**—(a) No business shall be transacted at any meeting of the Social Security Board unless a quorum of ten members of the Social Security Board are present.

(b) For conducting the meetings of the any Committee of the Social Security Board, the quorum shall consist of one-third members of the strength of the Committee:

Provided that, if at any meeting there is not a sufficient number of members present to form quorum, the Chairperson of the meeting shall adjourn the meeting for an hour and it shall thereupon be lawful to dispose of the business at such adjourned meeting irrespective of the number of members attending.

(5) **Nomination of a substitute during the absence of a member.**—(a) If a member is unable to attend any meeting of the Social Security Board or any Committee thereof, he may, by a written instrument, signed by him, addressed to the Chairperson of the concerned body and explaining the reasons for his inability to attend the meeting, appoint any representative of the organisation, which he represents on the Social Security Board or any Committee thereof, as his substitute for attending that meeting thereof, in his place :

Provided that, no such appointment shall be valid unless,—

(i) such appointment has been approved by the Chairperson of the Body concerned; and

(ii) Instrument making such appointment has been received by the Chairperson of the Body concerned before the date fixed for the meeting.

(b) A substitute nominee appointed under clause (a) shall have all the rights and powers of the member, in relation to the meeting of the Body concerned, in respect of which he is appointed and shall receive allowances, and be under obligations as if he were a member appointed under the Code.

(c) A member appointing a substitute for attending any meeting of the Social Security Board or any Committee thereof, shall, notwithstanding anything contained in this sub-rule, continue to be liable for the misappropriation or misapplication of the Fund by the substitute and shall also be liable for any act of misfeasance or nonfeasance committed in relation to the Fund by the substitute appointed by him.

(6) **Disposal of business.**—Every question considered at a meeting of the Social Security Board or any Committee thereof shall be decided by a majority of the votes of the members of the body concerned present and voting. In the event of an equality of votes the Chairperson shall exercise an additional casting vote :

Provided that, the Chairperson may, if he thinks fit, direct that any question shall be decided by the circulation of necessary papers to members of the Social Security Board or any Committee thereof and by securing their opinions in writing. Any such question shall be decided in accordance with the opinion of the majority of members received within the time-limit allowed and if the opinions are equally divided, the opinion of the Chairperson shall prevail :

Provided further that, any member of the Social Security Board or any Committee thereof may request that the question referred to members of the concerned body, as the case may be, for written opinion be considered at a meeting of the Social Security Board or any Committee thereof and thereupon, the Chairperson may, and if the request is made by not less than three members of the concerned body, shall

direct that it be so considered.

(7) Minutes of meetings.— (a) The minutes of each meeting showing *inter-alia* the names of the member present there, shall be forwarded to each member of the Social Security Board or any Committee thereof, as the case may be, and to the State Government as soon as possible and in any case not later than four weeks after the meeting.

(b) The minutes of the meeting shall be confirmed with such modification considered necessary at the next meeting.

(c) The minutes of a meeting of the Social Security Board or any Committee thereof shall be kept in separate Books (hereinafter referred to as minute-books) and shall be signed by the Chairperson of the meeting at which the proceedings are confirmed.

(d) A copy of the minutes so confirmed shall be forwarded to the State Government within fifteen days from the date of such confirmation.

(e) The minute-books shall be kept open at the head office of the Social Security Board during office hours on working days for inspection free of charge by any of the respective member.

11. Fees and allowances to members of Social Security Board and its Committees.—(1) Every member of the Social Security Board or any Committee thereof, for attending its meetings as the case may be, shall be allowed travelling and daily allowance which will be calculated at the maximum rate admissible to Group 'A' officers of the State Government in their respective places.

(2) Where such member, who is a Member of Legislature shall be paid travelling allowance and daily allowance in accordance with the provisions of the respective provisions of the law pertaining to the members of the Maharashtra Legislature, as the case may be :

Provided that, when a Minister is appointed as Chairperson of the Social Security Board or any Committee thereof and attends a meeting, his travelling and daily allowance shall be governed by the rules applicable to him for journeys performed on official duties and shall be paid by the authority paying his salary.

(3) No daily or travelling allowance in respect of any day of journey, as the case may be, shall be claimed by a member of the Social Security Board or by any Committee thereof, if he has drawn or will draw allowance for the same from his employer or as a member of the Committee or any Legislature or of any Committee or conference constituted or convened by the State Government and no travelling allowance shall be claimed if he uses a means of transport provided at the expense of the State Government or his employer.

(4) The daily and travelling allowance shall also be payable in respect of the meetings of any sub-committee set up by the Social Security Board or by any Committee thereof.

(5) For attending a meeting of the Social Security Board or any Committee thereof, or meetings of a Sub-Committee set up by the Social Security Board or any Committee thereof, or member of the State or Central Government shall draw his travelling allowance from his Department on a scale admissible to him under the State or Central Government Rules and the amounts so drawn shall, on a demand being made therefore by the State Government, be reimbursed by the Social Security Board to the State Government.

(6) Payments shall not be made to a non-official member earlier than the last date up to which the allowance is claimed. The travelling allowance for both the onward and return journeys will be included in the travelling allowance bill and the payment made thereof treated as final, irrespective of the date of completion of the journey.

12. Terms and conditions of service of Officers and employees of Social Security Board under clause (1) of sub-section (2) of section 156.—(a) The Officers and employees of Social Security Board may be taken on deputation from the State Government for a maximum period of three years.

(b) In case where the Officers and employees of the Social Security Board are not drawn from amongst the services of the State Government, the Social Security Board may make appointments subject to such terms and conditions of service as it may determine, subject to the approval of State Government.

(c) The salaries and allowances payable to officers and employees of the Social Security Board shall not be higher than those admissible to the State Government employees of equivalent status.

CHAPTER III

MAHARASHTRA BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARD

13. Term of appointment of Chairperson and members of Welfare Board under section 7:—The Minister (Labour) shall be ex-officio Chairperson of the board. The term of office the members of the Welfare Board constituted under section 7 shall be three years, commencing on the date on which their appointment notified in the *Official Gazette*.

14. Conditions for appointment of members of Welfare Board under sub-section (4) of section 7.—(1) No person shall be appointed or continued to be a member of the Welfare Board, who,—

(a) is a salaried officer of the Welfare Board ; or

(b) is or at any time has been adjudged insolvent ; or

(c) is found to be lunatic or become of unsound mind ; or

(d) is or has been convicted of any offence involving moral turpitude.

(2) The State Government may remove from office any member, who is or has become subject to any of the disqualifications mentioned in sub-rule (1) or is absent without leave of the Board for more than three consecutive meetings of the Board.

(3) A member shall hold the office during the pleasure of State Government.

(4) If, in the opinion of the State Government,—

(a) the member representing the employer or the building workers ceases to represent the employer, or as the case may be, the building workers; or

(b) having regard to the exigencies of circumstances or service in the State Government, a member cannot continue to represent the State Government, the Government may remove such member from the Board.

15. Resignation of Office by Chairperson or member.—The Chairperson or any member of the Welfare Board may, at any time resign his office by writing under his hand addressed to the State Government, and his office shall, on acceptance of resignation, become vacant.

16. Filling up of vacancy.—In the event of any vacancy occurring on account of death, resignation, disqualification or removal or otherwise, the Welfare Board shall forthwith communicate the occurrence of the vacancy to the State Government, and the vacancy shall be filled in not later than ninety days from the date of occurrence of the vacancy and the person so appointed, shall hold the office so long only as the member in whose place he is nominated would have held it if the vacancy had not occurred.

17. Allowances payable to members.—The Chairperson and the members attending the meetings of the Welfare Board, other than the Government representatives, shall be paid travelling allowance and meeting allowance at such rates as may be fixed by the Welfare Board, from time to time.

18. Terms and conditions of service of Secretary, Other Officers and employees of Board under clause (c) of sub-section (5) of section 7.—The terms and conditions of service and salaries, allowances of Secretary, other officers and employees of the Board shall be such as may be determined by the Board, from time to time, subject to the following :—

(a) (i) The Secretary of the Welfare Board shall, as far as possible, be an officer of the State Government preferably of the Labour Department not below the rank of Group ‘A’ Officer taken on deputation

(ii) The term of deputation of an officer appointed as Secretary shall not exceed three years.

(b) The other officers and employees of the Welfare Board may also be taken on deputation from the State Government for a maximum period of three years.

(c) In case where the Secretary, other officers and employees of the Welfare Board are not drawn from amongst the services of the State Government, the Welfare Board may make appointments subject to such terms and conditions of service as it may determine, subject to the approval of the State Government.

(d) Subject to the provisions contained in clause (b) of sub-section (2) of section 108 of the Code, the salaries and allowances payable to the Secretary, other officers and employees of the Welfare Board shall not be higher than those admissible to the State Government employees of equivalent status.

19. Functions of Welfare Board under sub-section (6) of section 7.—The Welfare Board shall perform the following functions for the purposes of clauses (c), (d), (e) and (j) of sub-section (6) of section 7 for the Building workers :—

(i) payment of amount in connection with premium for Group Insurance Scheme of the beneficiaries ;

(ii) frame educational schemes for the benefit of children of the beneficiaries ;

(iii) meet medical expenses for treatment of major ailments of a beneficiary or his dependent.

CHAPTER IV GRATUITY

20. Investment of gratuity for benefit of minor under third proviso to sub-section (1) of section 53.—In the case of nominee, or an heir, who is minor, the competent authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any Nationalised Bank.

Explanation.—“*Nationalised Bank*” means a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Schedule of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

21. Application for nomination by an employee under section 55.- (1) A nomination under sub-section (1) of section 55 shall be made in **Form-I** and submitted in duplicate by the employee either by personal service, after taking proper receipt or by registered post acknowledgement due or electronically to the employer,-

(i) in the case of an employee who is already in employment for a year or more on the date of commencement of these rules but not submitted the nomination, ordinarily, within ninety days from such date; and

(ii) in the case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within thirty days of the completion of one year of service:

Provided that, nomination shall be accepted by the employer after the specified period, if filed and no nomination so accepted shall be invalid merely because it was filed after the specified period.

(2) Within thirty days of the receipt of nomination under sub-rule (1), the employer shall get the service particulars of the employee, as mentioned in the form of nomination, verified with reference to the records of the establishment and return to the employee, after obtaining a receipt thereof, the duplicate copy of the nomination duly attested either by the employer or an officer authorised in this behalf by him, as a token of recording of the nomination by the employer and the other copy of the nomination shall be recorded.

(3) An employee who has no family at the time of making a nomination shall, within ninety days of acquiring a family, submit a fresh nomination under sub-section (4) of section 55, in the manner specified in sub-rule (1), in duplicate in **Form-I** to the employer and thereafter the provisions of sub-rule (2) shall apply *mutatis mutandis* as if it was made under sub-rule (1).

(4) A notice of modification of a nomination including cases where a nominee predeceases an employee, shall be submitted in duplicate in **Form-I** to the employer in the manner specified in sub-rule (1), and thereafter the provisions of sub-rule (2) shall apply *mutatis mutandis*.

(5) A nomination or a fresh nomination or a notice of modification of nomination shall be, signed by the employee or, if illiterate, shall bear his thumb impression and shall be submitted by the employee electronically or by registered post acknowledgement due.

(6) A nomination, fresh nomination or notice of modification of nomination shall take effect from the date of receipt thereof by the employer.

22. Application for payment of gratuity under section 56.—(1) An employee who is eligible for payment of gratuity under sub-section (1) of section 56, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in **Form-II** to the employer:

Provided that, where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement:

Provided further that, an employee on fixed term employment shall be eligible for gratuity, if he renders service under the contract for a period of one year and he shall be paid gratuity at the rate of fifteen days' wages, based on the rate of wages last drawn by him, for every completed year of service or part thereof in excess of six

months.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 53 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in **Form-II** to the employer:

Provided that, an application on plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 53 shall apply, ordinarily within one year from the date of gratuity becomes payable to him, in **Form-II** to the employer.

(4) Where gratuity becomes payable under the Code before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Code shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the competent authority for his decision.

(6) An application under this rule shall be presented to the employer either by electronically or personal service or by registered post acknowledgement due.

23. Notice for payment of gratuity.-(1) Within fifteen days of the receipt of an application under rule 21 for payment of gratuity, the employer shall,—

(a) if the claim is found admissible on verification, issue a notice in **Form-III** to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or

(b) if the claim for gratuity is not found admissible, issue a notice in **Form-III** to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In the case of denial of gratuity a copy of the notice shall be endorsed to the competent authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice under clause (a) of sub-rule (1) shall be re-fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.

(4) A notice shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due or electronically.

(5) As soon as the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give a notice in writing under subsection (2) of section 56 in **Form-III**.

24. Mode of payment of gratuity.—*The* gratuity payable under the Code shall be paid through Demand Draft or by crediting in the bank account of the eligible employee, nominee or legal heir, as the case may be:

Provided that, intimation about the details of payment shall also be given electronically by the employer to the competent authority of the area.

25. Application to competent authority for direction under clause (b) of sub-section (5) of section 56.—(1) If an employer,—

- (a) refuses to accept a nomination under rule 20 or to entertain an application sought to be filed under rule 21, or
- (b) issues a notice under sub-rule (1) of rule 22, either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility for payment of gratuity, or
- (c) having received an application under rule 21, fails to issue notice as required under rule 22 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within one hundred eighty days of the occurrence of the cause for the application, apply in **Form-IV** to the competent authority for issuing a direction under clause (c) of sub-section (5) of section 56 with as many extra copies as are the opposite party or parties :

Provided that, the competent authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the competent authority or shall be sent by registered post acknowledgement due or electronically.

26. Procedure for dealing with application for direction.—(1) On receipt of an application under rule 24, the competent authority shall, by issuing a notice in **Form-V**, by electronically or registered post acknowledgment due or in person call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorised representative together with all relevant documents and witnesses, if any.

(2) Any person desiring to act on behalf of an employer or employee, nominee or legal heir, as the case may be, shall present to the competent authority a letter of authority, from the employer or the person concerned, as the case may be, on whose behalf he seeks to act together with a written statement explaining his interest in the matter and praying for permission so to act. The competent authority shall record thereon an order either according his approval or specifying, in the case of refusal to grant the permission prayed for, the reasons for the refusal.

(3) A party appearing by an authorised representative shall be bound by the acts of the representative.

(4) After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and inquiry, as may be deemed necessary, the competent authority shall record his finding as to whether any amount is payable to the applicant under the Code. A copy of the finding shall be given to each of the parties.

(5) If the employer concerned fails to appear on the specified date of hearing after due service of notice, without sufficient cause, the competent authority may proceed to hear and determine the application *ex parte*. If the applicant fails to appear on the specified date of hearing without sufficient cause, the competent authority may dismiss the application:

Provided that, an order under sub-rule (5) may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application.

27. Place and time of hearing.—*The* sittings of the competent authority shall be held at such time and at such places as it may think fit.

28. Administration, of oath.—*The* competent authority may authorise the clerk of his office to administer oaths for the purpose of making affidavits.

29. Summoning and attendance of witnesses. —The competent authority may, at any stage of the proceedings before him, either upon or without an application by any of the parties involved in the proceedings before him, and on such terms as may appear to the competent authority just, issue summons to any person in **Form-V** either to give evidence or to produce documents or for both purposes on a specified date, time and place.

30. Service of summons or notice.—(1) Subject to the provisions of sub-rule (2) any notice, summons, process or order issued by the competent authority may be served either personally or by registered post acknowledgement due or electronically or in any other manner as prescribed under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Where there are numerous persons as parties to any proceeding before the competent authority and such persons are members of any trade union or association or are represented by an authorised person, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association, or on the authorised person shall be deemed to be service on such persons.

31. Maintenance of records of cases by competent authority.—(1) The competent authority shall record the particulars of each case under section 56 and at the time of passing orders shall sign and date the particulars so recorded.

(2) The competent authority shall, while passing orders in each case, also record the findings on the merits of the case and file it together with the memoranda of evidence with the order sheet.

(3) Any record, other than a record of any order or direction, which is required by these rules to be signed by the competent authority, may be signed on behalf of and under the direction of the competent authority by any subordinate officer appointed in writing for this purpose by the competent authority.

32. Direction for payment of gratuity.— If a finding is recorded under of sub-rule (4) of rule 25 that the applicant is entitled to payment of gratuity under the Code, the competent authority shall issue a notice to the employer concerned in **Form-VI** electronically or registered post acknowledgment due or in person specifying the amount payable and directing payment thereof to the applicant under intimation to the competent authority within thirty days from the date of the receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employee, nominee or legal heir, as the case may be.

33. Appeal.—(1) The Memorandum of appeal under sub-section (8) of section 56 of the Code shall be submitted to the appellate authority with a copy thereof to the opposite party and the competent authority, either through

delivery in person or under registered post acknowledgement due or electronically.

(2) The Memorandum of appeal shall contain the facts of the case, the decision of the competent authority, the grounds of appeal and the relief sought.

(3) There shall be appended to the Memorandum of appeal a certified copy of the finding of the competent authority and direction for payment of gratuity.

(4) On receipt of the copy of Memorandum of appeal, the competent authority shall forward records of the case to the appellate authority.

(5) Within fourteen days of the receipt of the copy of the Memorandum of appeal, the opposite party shall submit his comments of each paragraph of the memorandum with additional pleas, if any, to the appellate authority with a copy to the appellant.

(6) The appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard. A copy of the decision shall be given to the parties to the appeal by electronically or registered post or in person and a copy thereof shall be sent to the competent authority returning his records of the case.

(7) The competent authority shall, on receipt of the decision of the appellate authority, make necessary entry in the records of the case maintained by him.

(8) On receipt of the decision of the appellate authority, the competent authority shall, if required under that decision, modify his direction for payment of gratuity and issue a notice to the employer concerned in **Form-VI** specifying the modified amount payable and directing payment thereof to the applicant, under intimation to the competent authority within fifteen days of the receipt of the notice by the employer. A copy of the notice be endorsed to the appellant employee, nominee or legal heir, as the case may be, and to the appellate authority.

34. Application for recovery of gratuity.—Where an employer fails to pay the gratuity due under the Code in accordance with the notice by the competent authority under rule 31 or rule 32, as the case may be, the employee concerned, his nominee or legal heir, as the case may be, to whom the gratuity is payable may apply to the competent authority in duplicate in **Form-VII** for recovery thereof under section 129 of the Code.

35. Qualifications and Experience of the Officer appointed as the Competent Authority under sub-section (1) of Section 58.—The Competent Authority shall be appointed under sub-section (1) of Section 58 for the purpose of Chapter V shall possess following qualifications and experience and for such area as may be specified in the notification;

The State Government may by notification appoint any person who is a member of State Judicial Service for a period of not less than 5 years.

CHAPTER V

MATERNITY BENEFIT

36. Complaint for maternity benefit under sub-section (1) section 72.—(1) A complaint under sub-section (1) of section 72 shall be made to Inspector-cum-Facilitator in writing in **Form-**

(2) When a complaint referred to in section 72 is received by an Inspector-cum-Facilitator, he shall examine the relevant records maintained by the employer in this behalf, examine any person employed in the establishment and take down necessary statement for the purpose of the enquiry and if he is satisfied that the maternity benefit

or the amount has been improperly withheld, he shall direct the employer to make the payment to the woman or to the person claiming the payment under section 63, as the case may be, immediately or within a specified period.

37. Appeal under sub-section (1) section 72.—(1) An appeal against the decision of the Inspector-cum-Facilitator under sub-section (2) of section 72, shall lie to the Competent Authority.

(2) The aggrieved person shall prefer an appeal in writing to the Competent Authority in **Form-IX** and file other supporting documents.

(3) When an appeal is received, the Competent Authority shall call from the Inspector-cum-Facilitator before a fixed date, the record of the case. The Competent Authority shall, if necessary, also record the statements of the aggrieved person and of the Inspector-cum-Facilitator and seek clarification if any is required.

(4) Taking into account the documents, the evidence produced before him and the facts presented to him or ascertained by him, the Competent Authority shall give his decision.

CHAPTER VI

CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

38. Time limit to pay amount of cess under section 101.—Date of payment of cess shall be the date on which the amount is deposited with the Cess Collector or the date of deduction at source or the date on which the amount has been deposited with the local authority.

39. Fees for appeal under sub-section (2) of section 105.—Every appeal under sub-section (1) shall be accompanied by a non-refundable fee equivalent to one per cent., but not exceeding rupees twenty five thousand of the amount in dispute or penalty or both, as the case may be, under such appeal.

CHAPTER VII

FINANCE AND ACCOUNTS

40. Conditions and manner of writing off irrecoverable dues under section 121.—Where the Social Security Board is of the opinion that the amount of contribution, cess, interest and damages due to the Social Security Board has become irrecoverable, Social Security Board or any other officer authorized by it in this behalf may sanction the writing off of the said amount, subject to the following conditions, namely :—

(a) establishment has been closed for more than five years and the whereabouts of the employer cannot be ascertained, despite all possible efforts;

(b) decree obtained by the Maharashtra Unorganised Workers' Social Security Board could not be executed successfully for want of sufficient assets of the defaulting employer; or

(c) claim for contribution is not fully met by,-

(i) the Official Liquidator in the event of factories or establishments having gone into liquidation; or

(ii) the Commissioner of payments in the event of unit being nationalised or taken over by the Government.

CHAPTER VIII

AUTHORITIES, ASSESSMENT, COMPLIANCE AND RECOVERY

41. Form and manner for maintenance of records and registers under section 123.-(1) Register of women employees.—(a) (i) The employer of every establishment in which women are employed shall prepare and maintain a register of women employees in **Form-X** electronically or in hard copy and shall enter therein particulars of all women workers in the establishment.

(ii) The register shall always be available for inspection under notified inspection scheme for the Inspector-cum-Facilitator.

(b) The employer may enter in the register of women employees such other particulars as may be required for any other purpose of the Code.

(2) Records – Records kept under the provisions Chapter V of the Code and the rules framed thereunder shall be preserved for a period of two years from the date of their preparation.

(3) Annual returns.— (a) The employer to which the provisions of Chapter V of the Code applies, on or before the 1st day of February in each year, upload a unified consolidated annual return in **Form XI** online on the web portal of the State Government giving information as to particulars specified in respect of the preceding year: Provided that during inspection, the Inspector-cum-Facilitator may require the production of accounts, books, register and other documents maintained in electronic form or otherwise.

Explanation.—For the purposes of this sub-rule, the expression “electronic form” shall have the same meaning as assigned to it in clause (r) of section 2 of the [Information Technology Act, 2000](#) (21 of 2000).

(b) If the employer to which the Code applies sells, abandons or discontinues the working of the establishment, then, he shall, within one month of the date of such sale or abandonment or four months of the date of such discontinuance, as the case may be, upload online on the web portal of the State Government a further unified return in **Form XI** referred to in clause (a) in respect of the period between the end of the preceding year and the date of the sale, abandonment or discontinuance.

CHAPTER IX

OFFENCE AND PENALTIES

42. Manner of compounding of offences under sub-section (4) of section 138.— (1) The officer authorised by the State Government for the purposes of compounding of offences under sub-section (1) of section 138 shall issue electronically a compounding notice in **Form-XII** for the offences for which are compoundable under section 138.

(2) The person so noticed may apply in Part III of the **Form-XII** to the officer electronically and deposit the entire compounding amount by electronic transfer or otherwise, within fifteen days of the receipt of the notices.

(3) The compounding officer shall issue a composition certificate in Part IV of **Form-XII** within ten days of receipt of the composition amount, to such person from whom such amount has been received in satisfaction of the composition notice.

(4) If a person so noticed fails to deposit the composition amount within the prescribed time the prosecution shall be instituted before the competent court or the offence in respect of which the compounding notice was issued,

against such person.

(5) Composition after institution of prosecution.—(a) The Court may compound any compoundable offence at any time after filing of a complaint under section 138 of the Code.

(b) The provisions of section 320 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to such compositions.

CHAPTER X

MISCELLANEOUS

43. Establishment and administration of Social Security Fund under sub-section (5) of section 141.—(1) All the following funds received shall be credited to separate account and called as the Maharashtra Social Security Fund and all expenses towards the scheme notified under section 109 shall be met out of this fund :—

(a) under sub-section (5) of section 141 of the Code;

(b) contribution from contractors empanelled for supplying manpower to State Government, Semi-Government, or Local Authorities or Autonomous Bodies, etc, in the manner decided by the State Government, in accordance with the provisions of clause (ii) of subsection (5) of section 141 of the Code;

(c) contribution from owners of residential or commercial properties in Municipal Corporations or Municipal Councils or *Nagar Panchayats* in the form of a cess levied on Property Tax in the manner decided by the State Government, in accordance with clause (ii) of sub-section (5) of section 141 of the Code;

(d) contribution by employers, donations by Governments, Semi-Governments, Semi-Government and private organizations;

(e) donations under Corporate Social Responsibility;

(f) income obtained through various fund generating schemes;

(g) grants received from the Central and State Government;

(h) all contributions made by the unorganized workers including registration fee, renewal fee, membership fee, etc.;

(i) interest on investment in security and deposits, rent and all money received by the Board in any other manner or from any other sources;

(j) any other sources as ascertained by the State Govt. from time to time;

(k) income generated by way of tax, cess or duty levied by State Government.

(2) The Social Security Board may invest its funds and realise such investments.

(3) The State Government shall identify the sources for initial funding or replenishing the Maharashtra Social Security Fund from time to time.

- (4) The fund shall be collected, administered and expended by the State Government through the office of the Development Commissioner (Unorganised Labour) in the manner, as notified by the State Government.
- (5) Directions of the State Government, if any, shall be complied by the office of the Development Commissioner (Unorganised Labour).
- (6) The Statement of accounts of Maharashtra Social Security Fund shall be maintained by the office of Development Commissioner (Unorganised Labour), in the form(s) and manner as specified by the State Government and shall be submitted to the State Government from time to time.
- (7) The accounts of the Maharashtra Social Security Fund shall be audited by Comptroller and Auditor General of India.

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