

STATE PRESIDENT'S OFFICE

No. 570.

16 April 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

No. 50 of 1993: Indians Education Amendment Act (House of Delegates), 1993.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Indians Education Act, 1965, so as to make provision for the establishment of certain professional posts and for the appointment of persons to those posts; and to provide for matters connected therewith

(Afrikaans text signed by the State President.)
(Assented to 25 March 1993.)

BE IT ENACTED by the State President and the House of Delegates of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 61 of 1965, as amended by section 1 of Act 39 of 1979, section 1 of Act 78 of 1984 and section 1 of Act 100 of 1986

1. Section 1 of the Indians Education Act, 1965 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "primary school" of the following definition:

"'professional post' means a post to which a person is appointed, transferred or promoted under this Act to assist in certain professional educational services, to wit planning, subject advisory and inspection services;".

Substitution of section 8 of Act 61 of 1965

2. The following section is hereby substituted for section 8 of the principal Act:

"Appointment, promotion, transfer and discharge of staff at State schools, schools of industries, reform schools and certain State-aided schools, and of staff in professional posts

8. (1) Notwithstanding anything to the contrary contained in any other law the establishment of any State school, school of industries or reform school or any State-aided school *other than*

a State-aided vocational school, or the establishment of professional posts in the division of Education of the Department, shall be determined by the Minister, on such basis as he may fix from time to time in consultation with the Minister of the Budget and on the recommendation of the Commission for Administration.

(2) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of this Act, the power to appoint any person to any post included in the establishment of any State school, school of industries or reform school, or any State-aided school other than a State-aided vocational school, *or to any professional post included in the establishment of the division of Education of the Department*, and to promote, transfer or discharge any person occupying any such post, shall be vested in the Minister."

Substitution of section 11 of Act 61 of 1965, as amended by section 6 of Act 39 of 1979

3. The following section is hereby substituted for section 11 of the principal Act:

"Conditions of service of persons employed at State schools, schools of industries, reform schools and State-aided schools, and of persons in professional posts

11. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of subsections (2) and (3) of this section, the conditions of service, salary scales, allowances and leave privileges of persons (other than officers and employees) employed in any post included in **the an establishment of a State school, school of industries, reform school or a State-aided school referred to in section 8(1)**, shall be determined or prescribed by the Minister in consultation with the Minister of the Budget and on the recommendation of the Commission for Administration.

(2) The salary, salary scale, allowances and leave privileges of any person who is, by virtue of the provisions of subsection (1) of section 9 deemed to have been appointed to a post in terms of the provisions of this Act, shall remain the same, as if he had continued occupying the post occupied by him immediately prior to the commencement of this Act, unless or until the Minister determines that the provisions of subsections (1) and (3) of this section shall apply in respect of him.

(3) As from the date on which a person is in terms of the provisions of section 10 transferred to the service of the Department, his salary shall be adjusted to the salary scale applicable to his post, at such notch on that scale as the Minister may determine.

(4) Subject to the provisions of this Act any continuous whole-time employment of any person referred to in section 10 at any State-aided school immediately prior to the date referred to in that section, shall, for leave purposes, be deemed to be employment in the service of the Department: Provided that any sick and accumulative vocational leave to which such person is entitled on that date shall, subject to such conditions as the Minister on the recommendation of the Commission for Administration may determine, be deemed to be leave earned in terms of this Act."

Substitution of section 12 of Act 61 of 1965

4. The following section is hereby substituted for section 12 of the principal Act:

"Pension rights and retirement benefits of persons employed at State schools and certain State-aided schools, and of persons in professional posts

12. Notwithstanding anything to the contrary contained in any other law but subject to the provisions of section 13, any person (other than an officer) employed on a whole-time basis and in a permanent capacity at-

(a) a State school; or

(b) a State-aided school, if his salary is paid in full by the Department; or

(c) *the division of Education of the Department in a professional post*, shall in respect of pension rights and retirement benefits be dealt with as if he occupied a post included in a division of the public service referred to in **paragraph (a) of subsection (1) of section three section 7(1)(a)** of the Public Service Act, **1957 (Act No. 54 of 1957) 1984 (Act No. 111 of 1984)**."

Substitution of section 14 of Act 61 of 1965, as amended by section 7 of Act 39 of 1979

5. The following section is hereby substituted for section 14 of the principal Act:

"Transfer and secondment of certain persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts

14. (1) Any person (other than an officer or employee) occupying a post included in **the an establishment of a State school, school of industries or reform school, or a State-aided school other than a State aided vocational school referred to in section 8(1)** may, subject to the provisions of subsection (2), be transferred from the post in which he is employed to any other post at the said school or any other such school *or professional post in the division of Education of the Department* or at any other institution under the control of the Department, whether established under this Act or any other law, and whether or not it is a transfer to a post of a lower grade.

(2) If a transfer in terms of subsection (1) involves a reduction of the pensionable emoluments of the person in question for the purposes of any law, such transfer shall not be made without his consent, unless it is made in consequence of a reduction of rank under section 17 or 18.

(3) Any person referred to in subsection (1) may, subject to the provisions of subsection (4) and upon such conditions as the Minister in consultation with the Minister of the Budget may determine, be seconded by the Minister-

- (a) upon the recommendation of the Commission for Administration, to the service of the State **or the administration of the territory of South-West Africa** or the service of the State in any other capacity; or
- (b) with his own consent, to the service of the government of any other country or of any person.

(4) If any person is so seconded such secondment shall not affect the application in respect of him of any law which would have applied in respect of him if he had continued occupying his post at the school in question *or at the division of Education of the Department, as the case may be.*".

Substitution of section 15 of Act 61 of 1965, as substituted by section 8 of Act 39 of 1979 and amended by section 1 of Act 114 of 1992

6. The following section is hereby substituted for section 15 of the principal Act:

"Discharge of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts

15. (1) Any person (other than an officer) occupying on a full-time basis in a permanent capacity a post included in **the an establishment of a State school, school of industries or reform school, or State-aided school other than a State-aided vocational school** *referred to in section 8(1)* shall, subject to the provisions of subsections (2) and (3), have the right to retire from the service of the Department on attaining the age of 65 years, and shall be so retired on reaching that age.

(2) Any person referred to in subsection (1) whose pensionable service, as defined in section 1 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), commenced before 24 June 1955 in terms of a pension law referred to in section 13(1)(b), shall have the right at any time before or after attaining, in the case of a male, the age of 60 years or, in the case of a female, the age of 55 years, to give notice in writing to the Director-General of his wish to retire on pension and, if he has so given notice-

- (a) at least three months before the date on which he attains that age, he shall be retired on pension as from the date on which he attains the said age; or
- (b) but not at least three months before the date on which he attains that age, he shall be retired on pension on the first day of the fourth month following the month during which such notice is received.

(3) Any person referred to in subsection (1) who has attained the age of 60 years and any person referred to in subsection (2) who has attained, in the case of a male, the age of 55 years or, in the case of a female, the age of 50 years, may with the approval of the Minister be retired from the service of the Department.

(3A) Notwithstanding the provisions of subsections (2) and (3), any

person referred to in subsection (1) who

- (a) is a member of the Government Service Pension Fund established by section 3 of the Government Service Pension Act, 1973 (**Act No. 57 of 1973**); and
- (b) has completed at least 10 years' continuous pensionable service, shall have the right to retire on pension at any time after he reaches the age of 50 years, provided that he shall give at least three calendar months' written notice of his intention to retire on pension to the Director-General.

(4) Any person referred to in subsection (1) may be discharged from the Department by the Minister-

- (a) on account of continued ill-health;
- (b) on account of the abolition of his post or a reduction, reorganization or rearrangement of the staff of the school in question *or of professional posts*;
- (c) subject to the provisions of section 18, on account of unfitness for his duties or incapacity to perform them efficiently;
- (d) if, for reasons other than those referred to in paragraph (c), his discharge will, in the opinion of the Minister, promote efficiency or economy at the school in question;
- (e) subject to the provisions of section 17, on account of misconduct as defined in section 16.

(5) Any person referred to in subsection (1) who without the permission of the Director-General or the head of the governing body of the school in question-

- (a) is absent from duty for a period exceeding 30 consecutive days; or
- (b) is absent from duty and has accepted other employment, shall, subject to the provisions of subsection (6), be deemed to have been discharged on account of misconduct in terms of subsection (4) with effect from the date immediately following the last day on which he was on duty.

(6) If any person referred to in paragraph (a) of subsection (5) at any time within 120 days after the expiry of the period of 30 days referred to in that paragraph, in writing applies for reinstatement in his former post, the Minister may, on such conditions as he may think fit, reinstate such person in his former post or appoint him to any other post referred to in subsection (1), and in such event the period of absence from duty shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as the Minister may determine."

Substitution of section 19 of Act 61 of 1965, as amended by section 12 of Act 39 of 1979 and section 4 of Act 100 of 19X6

7. The following section is hereby substituted for section 19 of the principal Act:

"Powers of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, and of persons in professional posts, in respect of acceptance of other employment or remuneration

19. (1) Any person referred to in subsection (1) of section 15 and any person appointed on a full-time basis in a temporary capacity at any school referred to in that subsection-

- (a) shall, as far as is practicable, place the whole of his time at the disposal of the school at which he is employed *or, if appointed to a professional post, utilize it to the advantage of the division of Education of the Department;*
- (b) shall not, without the permission of the Director-General, perform or bind himself to perform other remunerative work; and
- (c) shall not be entitled to additional remuneration in respect of any duty or work performed by him by order of a competent authority, unless his conditions of service provide otherwise or, in the case contemplated in paragraph (c), the Director-General determines otherwise.

(2) If any person referred to in subsection (1) receives any remuneration or allowance otherwise than in terms or by virtue of the provisions of this Act or any other law or in so far as the Minister may determine otherwise, he shall pay it into the State Revenue Fund, and if he fails to do so, the Minister of the Budget may recover it from him by legal proceedings or in such other manner as the said Minister may deem fit, and pay it into that fund.

(3) The provisions of this Act shall not be so construed as to prohibit any person referred to in subsection (1) from being a member or serving on the management of a lawful political party or from attending any public political meeting.

(4) Any person referred to in subsection (1) who **in terms of the provisions of the Electoral Act for Indians, 1977 (Act No. 122 of 1977)** is nominated as a candidate for the election of members of the House of Delegates, shall be deemed to have relinquished his post on the date on which he is so nominated."

Amendment of section 33 of Act 61 of 1965, as amended by section 3 of Act 9 of 1981 and section 6 of Act 100 of 1986

8. Section 33 of the principal Act is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:

" (g) as to the appointment of persons for duty at State schools, schools of industries and reform schools and State-aided schools, *and of persons to professional posts*, and the grading, remuneration, promotion, transfer, discharge, discipline, behaviour, powers, duties, hours of attendance, leave privileges and other conditions of service of, and the occupation of teachers' quarters

by, and the payment of travelling, subsistence and other allowances and remuneration for services outside the prescribed hours of attendance to, such persons and persons deemed to be appointed in terms of this Act;".

Transitional provision

9. Persons appointed to posts under the Public Service Act, 1984 (Act No. 111 of 1984), immediately prior to the commencement of this Act which are professional posts in terms of the Indians Education Act, 1965 (Act No. 61 of 1965), shall be deemed to be appointed to those posts in terms of section 8(2) of the last-mentioned Act, with the retention of their remuneration, allowances and other benefits, and the establishment of such posts shall be deemed to be determined in terms of section 8(1) of the Indians Education Act, 1965.

Short title and commencement

10. This Act shall be called the Indians Education Amendment Act (House of Delegates), 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.