

## CHAPTER III

### Registration of Recruiting Agents

9. Registering authority. – The Central Government may by notification appoint the Protector-General of Emigrants or any other officer of that Government of a rank higher than that of a Protector of Emigrants to be the registering authority for the purposes of this Act.

#### **Comment**

This section empowers the Central Government to appoint the Protector – General of Emigrants or any officer of a rank higher than that of a Protector of Emigrants to be the registering authority for the registering authority for the purposes of this Act.

**10. No person to function as recruiting agent without a valid certificate.** – Save as otherwise provided in this Act, commence or carry on the business of recruitment except under and in accordance with a certificate issued in that behalf by the registering authority:

Provided that a person carrying on the business of recruiting agent immediately before the commencement of this Act may continue to carry on such business without such a certificate for a period of one month from such commencement, and if he has made an application for such certificate under this Act within the said period of one month and such application is in the prescribed form and contains the prescribed particulars, till the disposal of such application by the registering authority.

#### **Comment**

This section imposes restriction on certain persons from functioning as recruiting agent.

**11. Application for registration.** – (1) An application for registration shall be made to the registering authority in such form and shall contain such particulars as to the applicant's financial soundness, trustworthiness, premises at which he intends to carry on his business facilities at his disposal for recruitment, his antecedents (including information as to whether any certificate has been issued to him under this chapter earlier and if so, whether such certificate had been cancelled) and previous experience, if any, of recruitment and other relevant matters as may be prescribed and shall be accompanied by a receipt evidencing the payment of the prescribed fee and an affidavit giving his current financial standing and an undertaking in the form prescribed to the effect that in the even of any information furnished in or along with the application for registration being found to be false or incorrect in any respect. the certificate shall be liable to be cancelled at any time in accordance with the procedure prescribed:

Provided that no application shall be entertained under this subsection from a person disqualified under sub-section (6) of Sec. 14 till the expiry of the period of such disqualification.

(2) On receipt of such application, the registering authority shall, -

(a) if the application is not in the prescribed form or does not contain any of the prescribed particulars, return the application to the applicant:

(b) if the application is in the prescribed form and contains the prescribed particulars. Inform the applicant that he is eligible for the grant of the certificate applied for and. after giving the applicant an opportunity to be heard, determine, under sub-section (3) the amount of the security which the applicant shall furnish

(3) The registering authority shall, for securing the due performance of the terms and conditions of the certificate proposed to be issued by it under sub-section (2) to an applicant and for securing compliance with the provisions of the Act and the rules made there under and for meeting expenses which may have to be incurred in the even of the repatriation to India of any of the emigrants who may be recruited by the applicant determine, in according in any case less than one lakh of rupees) which shall be furnished by the applicant.

(4) If an applicant furnishes in the prescribed manner the amount of security determined under sub-section (3) within a period of one month from the date on which the registering authority requires him to furnish such security, he shall be issued the certificate applied for by him together with an endorsement thereon to the effect that the security required has been furnished by him.

(5) If an applicant fails to furnish the security required to be furnished by him within the period specified in sub-section (4) his applicant shall be deemed to have been rejected by the registering authority on the date of expiry of that period.

### **Comment**

**Proviso.** – A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacted clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

**12. Terms and conditions of registration.** – A certificate issued under Sec. 11 shall be –

an such form as may be prescribed;

valid for such period not exceeding five years as may be prescribed:

Provide that a certificate may be issued for a period shorter than the prescribed period –

if the person to whom it is issued so desires; or

(ii) if the registering authority, for reasons to be communicated in writing to the applicant for the certificate, should be issued for a shorter period;

(c) subject to such other terms and conditions including in particular, the maintenance by the holder of the certificate of the prescribed records containing details of his financial transactions in regard to recruitment, persons recruited or assisted to emigrate by him.

Employers concerned, contracts and other arrangements entered into in connection with recruitment, as may be prescribed;

Provide that a certificate may contain, in addition to the prescribed terms and conditions, such other terms and conditions as the registering authority may, for securing the purposes of this Act, impose in any particular case.

## **Comment**

This section lays down terms and conditions of registration of recruiting agents.

**13. Renewal of registration.-** A certificate may be renewed from time to time and the provisions of this Act and the rules made thereunder (including provisions as to fees) shall apply to the renewal of a certificate as they apply to the issue thereof:

Provided that no certificate shall be renewed unless, the application for its renewal is made not less than three months prior to the date on which the certificate, would, but for such renewal, cease to be valid:

Provided further that the registering authority may entertain an applicant for the renewal of a certificate which has been made at any time during the period of three months prior to the date on which the certificate would but for such renewal, cease to be valid if the applicant satisfies the registering authority that he had sufficient cause for not making such application before the said period.

## **Comment**

**Marginal note.** – No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to the degree of importance to be attached to a marginal note in a statute. If the relevant provision in the body of the statute firmly points towards a construction which would conflict, with the marginal note the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid to construction.

**14. Cancellation, suspension, etc. of a certificate.** – (1) The registering authority may cancel any certificate on any one or more of the following grounds and on no other grounds, namely. –

(a) that having regard to the manner in which the holder of the certificate has carried on his business or any deterioration in his financial position, the facilities at his disposal for recruiting emigrants for purposes prejudicial to the interests of India or for purposes contrary to public policy;

(b) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted in India for any offence involving moral turpitude;

(c) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted by a Court in India for any offence under this Act, the Emigration Act, 1922 (7 of 1922), or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling and sentenced in respect thereof to imprisonment for not less than six months;

(e) that the holder of the certificate has been issued or renewed on misrepresentation or suppression of any material fact;

(f) that the holder of the certificate has violated any of the terms and conditions of the certificate;

(g) that in the opinion of the Central Government it is necessary in the interests of the friendly relations of India with any foreign country or in the interests of the general public to cancel the certificate.

(2) Where the registering authority, for reasons to be recorded in writing, is satisfied that pending the consideration of the question of canceling any certificate on any of the grounds mentioned in sub-section (1) it is necessary so to do, the registering authority may, by order in writing suspend the operation of the certificate for such period not exceeding thirty days as may be specified in the order and

require the holder of the certificate to show cause, within fifteen days from the date or receipt of such order, as to why the suspension of the certificate should not be extended till the determination of the question as to whether the registration should be cancelled

(3) A Court convicting a holder of certificate for any offence under this Act may also cancel the certificate may be made under sub-section (3) shall become void.

(4) An order of cancellation of a certificate the registering authority or the Court, as the case may be, shall consider the question as to the provisions and arrangements which should be made for safeguarding the interests of emigrants and other persons which whom the holder of the certificate had any transactions in the course of the business as recruiting agent and may make such orders (including orders permitting) the holder of the certificate to continue to carry on his business with respect to all or any such emigrants and other persons) as it may consider necessary in this behalf.

(6) Where a certificate issued to any person has been cancelled under this section such persons shall not be eligible to make any application for another certificate under this chapter until the expiry of a period of two years from the date of such cancellation.