

## **WEST BENGAL LAW CLERKS ACT, 1997**

**6 of 1997**

**[16th April, 1997]**

### CONTENTS

#### **CHAPTER 1 :- Preliminary**

1. Short title, extent and commencement
2. Definitions
3. State Council
4. Functions of State Council
5. Constitution of fund
6. Power to make rules

#### **CHAPTER 2 :- Preparation and maintenance of roll**

7. Class of law clerks
8. Preparation and maintenance of roll
9. Issue of certificate of enrolment
10. Bar to enrolment
11. Application for admission as law clerk
12. Disposal of application for admission as law clerk
13. Removal of name from roll
14. Power to make rules

#### **CHAPTER 3 :- Issue of licence and renewal, cancellation or suspension of licence**

15. Issue of licence
16. Suspension or cancellation of licence

#### **CHAPTER 4 :- Right to act**

17. Right to act
18. Jurisdiction of law clerk
19. Conditions for acting as law clerk

#### **CHAPTER 5 :- Conduct of law clerk**

20. Conduct and discipline
21. Time limit for disposal of complaint
22. Summary enquiry
23. Appeal
24. Disposal of proceeding by Appellate Committee
25. Stay of order
26. Order to be entered in roll
27. Proceeding not to be invalid

28. Realisation of costs

**CHAPTER 6 :- Miscellaneous**

29. Penalty

30. Protection of action taken in good faith

31. Supersession of State Council

32. Power to make rules

**CHAPTER 7 :- Temporary and transitory provisions**

33. Transitory provisions

34. Removal of difficulties

**SCHEDULE 1 :-**Form of Licence under sub-section (3) of section 15 of the West Bengal Law Clerks Act, 1997 (West Bengal Act 6 of 1997)

**WEST BENGAL LAW CLERKS ACT, 1997**

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**[16th April, 1997]**

An Act to provide for the regulation and control of the system of registration and licensing, and the regulation of the practice and training, of law clerks in West Bengal and for matters connected therewith or incidental thereto. WHEREAS it is expedient to provide for the regulation and control of the system of regulation and licensing, and the regulation of the practice and training, of law clerks in West Bengal and for matters connected therewith or incidental thereto; It is hereby enacted as follows

**CHAPTER 1**

Preliminary

**1. Short title, extent and commencement :-**

(1) This Act may be called the West Bengal Law Clerks Act, 1997.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

**2. Definitions :-**

In this Act, unless there is anything repugnant in the subject or context,

(a) "advocate" has the same meaning as in clause (a) of section 2 of the Advocates Act, 1961;

(b) "appointed day", in relation to any provision of this Act, means a day on which that provision comes into force;

(c) "law clerk" means a law clerk entered in the State roll under the provisions of this Act;

**1** (cc) "Licensing Authority" means an authority appointed by the State Government by notification in the Official Gazette for the purposes of this Act, and includes a licensing authority under any law for the time being in force, holding office as such on the date of commencement of this Act till the date of appointment of a Licensing Authority under this Act, and also includes such other authority or authorities as may be prescribed;

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

(e) "right to act" means the right to do one or all of the following acts:

(i) to accept employment under an advocate to assist him in the work of his legal profession or to enter into an agreement with an advocate for the purpose of assisting him in the work of his legal profession;

(ii) to present application signed by an advocate of the parties to a litigation for information, supply of form, return of document,

(iii) to take delivery of copies or information, and to tender money, on behalf of an advocate;

(iv) to identify persons swearing affidavits;

(v) to take notes from the cause lists and books of information regarding dates of hearing, processes, process-fees due, and like matters;

(vi) to file before an officer of any court, tribunal or other authority or person legally authorised to take evidence, whether on oath or not, any document, material or thing required to be filed before such court, tribunal or other authority or person on behalf of a litigant, provided such document, material or thing is accompanied by a list of such document, material or thing and is signed by the advocate of the concerned party;

(vii) to do any other act which may be required by any rules made under any law for the time being in force or by any order issued by the State Government or the High Court;

(f) "roll" means a roll of law clerks prepared and maintained under section 8;

(g) "State Council" means a council of law clerks constituted under section 3.

1. Clause (cc) ins. by W.B. Act 28 of 1997.

### **3. State Council :-**

(1) There shall be a State Council consisting of twenty-seven members elected from amongst the law clerks on the roll in such manner and from such constituencies as may be prescribed.

(2) There shall be a Chairman, a Vice-Chairman, a General Secretary, elected by the State Council from amongst its members in such manner as may be prescribed.

(3) The term of office of the members of the State Council shall be three years from the date of the first meeting of the State Council :

Provided that the members of the State Council shall continue to hold office until the first meeting of the next State Council.

(4) The State Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold properties, both moveable and immoveable, and to contract, and shall by its name sue and be sued.

#### **4. Functions of State Council :-**

(1) The functions of the State Council shall be

(a) to admit persons as law clerks on the roll;

(b) to prepare and maintain the roll;

(c) to issue enrolment certificates;

(d) to entertain and determine cases of misconduct against law clerks on the roll;

(e) to safeguard the rights, privileges and interests of law clerks on the roll;

(f) to organise, conduct and manage training, as may be prescribed, for admitting persons as law clerks on the roll and to promote, encourage and organise refresher courses;

(g) to manage and invest the funds of the State Council;

(h) to provide for the election of its members;

(i) to lay down the standards of professional conduct;

(j) to lay down the procedure to be followed by its disciplinary committee;

(k) to promote and support law reforms relating to the profession of law clerks;

(l) to conduct seminar, and to organise talks, on the profession of law clerks and on legal topics and to publish journals;

- (m) to publish periodicals and papers of interest to law clerks;
- (n) to do all acts to provide aid for the welfare of all or any specified category or group of law clerks;
- (o) to perform all other functions conferred by or under this Act;
- (p) to do all other things necessary for discharging the aforesaid functions.

(2) The State Council shall constitute the following committees:

- (a) one Executive Committee consisting of seven members to be elected by the members of the State Council from amongst themselves;
- (b) one Enrolment Committee consisting of five members of whom four shall be elected by the members of the State Council from amongst themselves and the other shall be an advocate elected by the members of the State Council;
- (c) one or more Disciplinary Committee, each consisting of three members, of whom two shall be elected by the members of the State Council from amongst themselves and the other shall be an advocate elected by the members of the State Council.

(3) The State Council may constitute any other committee with the members from amongst its members as it may deem necessary for the purposes of carrying out the provisions of this Act:

Provided that wherever an advocate is a member of any committee, in whatever name, he shall be the Chairman or the President of that committee.

## **5. Constitution of fund :-**

(1) The State Council may constitute one or more funds in the manner prescribed for the purposes of

- (a) carrying out all or any of the functions of the State Council under sub-section (1) of section 4;
- (b) giving financial assistance to, or organise welfare schemes for, the indigent, disabled or other law clerks.

(2) The State Council may receive any grant, donation, gift or benefaction for all or any of the purposes mentioned in sub-section (1) and such grant, donation, gift or benefaction shall be credited to the appropriate fund or funds constituted under sub-section (1).

(3) The State Council may, for any of the purposes mentioned in subsection (1), raise funds from among the law clerks on the roll by

providing for compulsory payment by each law clerk on the roll of a sum of money, not exceeding thirty rupees, annually:

Provided that no part of the funds so raised shall be utilised for any purposes other than those mentioned in sub-section (1).

**6. Power to make rules :-**

(1) The State Government shall, in consultation with the High Court, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for

(a) the election of members of the State Council by secret ballot, including the condition subject to which a person may exercise his right to vote by postal ballot, the preparation and revision of electoral rolls, and the manner in which the result of election shall be published;

(b) the manner of election of Chairman, Vice-Chairman and General Secretary of the State Council;

(c) the manner in which, and the authority by which doubts and disputes as to the validity of an election to the State Council or the election of Chairman, Vice-Chairman or General Secretary of the State Council shall be finally decided;

(d) the filling of casual vacancy in the State Council or any Committee thereof;

(e) the powers and duties of the Chairman, the Vice-Chairman and the General Secretary of the State Council and the members of various Committees thereof;

(f) the constitution of one or more funds by the State Council for the purpose of carrying out the functions of the State Council under sub-section (1) of section 4;

(g) the summoning and holding of meetings of the State Council, the conduct of business thereat, and the number of members necessary to constitute a quorum;

(h) the constitution and functions of any committee of the State Council and the term of office of the members of any such committee;

(i) the summoning and holding of meetings of a committee of the State Council, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

(j) the qualifications and the conditions of service of the employees of the State Council;

(k) the appointment of auditors, and audit of the accounts of the State Council;

(l) the maintenance of books of account and other books by the State Council;

(m) the management and investment of the funds of the State Council.

## CHAPTER 2

Preparation and maintenance of roll

### **7. Class of law clerks :-**

There shall be one class of law clerks for the purposes of this Act.

### **8. Preparation and maintenance of roll :-**

(1) The State Council shall prepare and maintain a roll of law clerks in which shall be entered the name and address of

(a) any person who on the appointed day, has been working, or had previously worked for at least five consecutive years, as an advocate's clerk or licensed clerk under, and in accordance with, a licence or registration certificate granted by or under any rule, or order of a presiding officer, of a court or tribunal, and has been attached to any advocate or pleader:

Provided that such person shall make an application for such enrolment in the prescribed form and shall deposit the prescribed fee within one year from the appointed day;

(b) any other person who is admitted to be a law clerk on the roll on or after the appointed day:

Provided that no person shall be enrolled as a law clerk unless he has paid, in respect of such enrolment, an enrolment fee of two hundred rupees to the State Council:

Provided further that the State Council shall not entertain any application for enrolment unless the applicant produces a receipt showing payment of one hundred rupees as admission fee to the State Government and the original licence of law clerk granted according to law by a competent licensing authority.

(2) Entries in the roll shall be in alphabetical order and shall be subject to any rule that may be made by the State Government in this behalf.

### **9. Issue of certificate of enrolment :-**

(1) There shall be issued a certificate of enrolment in the prescribed form by the State Council to every person whose name is entered in the roll. Every person whose name is so entered in the roll shall notify any

change of place of his permanent residence to the State Council within ninety days of such change.

(2) Subject to the provisions of this Act and the rules made thereunder, after the appointed day, a person shall be qualified to be admitted as a law clerk on the roll, if he fulfils the following conditions:

(a) he is a citizen of India;

(b) he has, on the date of application, completed the age of eighteen years, but has not exceeded the age of forty years;

(c) he has passed the Madhyamik Examination of the Board of Secondary Education, West Bengal, or its equivalent examination;

(d) he has completed a period of probation for one year under a law clerk acting as such for not less than five years in any court in West Bengal under a licence granted by a competent authority;

(e) he fulfils such other conditions as may, on the recommendation of the State Council or otherwise, be specified by the State Government.

(3) Notwithstanding anything contained in sub-section (2), any person, who has been a law clerk duly licensed under any law for the time being in force, may be admitted on the roll, if he makes, within one year from the appointed day, an application for such enrolment in accordance with the provisions of this Act, and pays to the State Council two hundred rupees as enrolment fee.

**10. Bar to enrolment :-**

No person shall be admitted as a law clerk on the roll if he has been convicted of an offence involving moral turpitude:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of three years has elapsed since such person has served the sentence.

**11. Application for admission as law clerk :-**

An application for admission as a law clerk shall be made in the prescribed form to the State Council.

**12. Disposal of application for admission as law clerk :-**

Every application for admission as a law clerk shall be referred by the State Council to its Enrolment Committee and, subject to any direction that may be given in writing by the State Council in this behalf, such committee shall dispose of the application in the prescribed manner:

Provided that the State Council may, if it is satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll by misrepresentation of any essential fact



or by fraud or undue influence, remove the name of such person from the roll after giving him an opportunity of being heard.

**13. Removal of name from roll :-**

The State Council may remove from the roll the name of any law clerk on his death or on the request made in writing by a law clerk to remove his name.

**14. Power to make rules :-**

(1) The State Government may make rules for carrying out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for

(a) the time within which and the form in which a law clerk shall express his intention for the entry of his name in the roll under section 8;

(b) the form in which an application shall be made to the State Council for admission as a law clerk on the roll, and the manner in which such application shall be disposed of by the Enrolment Committee of the State Council;

(c) the condition subject to which a person may be admitted as a law clerk on the roll;

(d) the manner, including instalments, if any, in which the enrolment fee may be paid.

**CHAPTER 3**

Issue of licence and renewal, cancellation or suspension of licence

**15. Issue of licence :-**

(1) Every person who desires to be licensed to act as law clerk in any court, tribunal or other competent authority, shall apply in his own hand-writing to the Licensing Authority and submit the following documents with such application:

(a) document regarding educational qualifications,

(b) document regarding age and date of birth,

(c) certificate from an advocate recommending issue of licence in favour of him,

(d) document regarding his permanent address and usual place of residence,

(e) a character certificate from a responsible person, and

(f) treasury challan showing deposit of fee of fifty rupees in favour of the

State Government under the appropriate Head of Account.

(2) After receiving the application with the documents mentioned in clauses (a) to (f) of sub-section (1), the Licensing Authority or any person appointed by it for the purpose shall scrutinize the application and the documents and, if necessary, make an enquiry about the bonafide of the application and the genuineness of the documents. If, on such scrutiny and enquiry, the Licensing Authority or the person appointed by it is satisfied about the bonafide of the applicant and genuineness of the documents, the Licensing Authority or such person, as the case may be, shall issue a letter to the applicant to appear before it or him on a day to be mentioned in the letter for such test, both oral and written, as may be prescribed.

(3) When the Licensing Authority is of the opinion that the applicant is a fit and proper person to be employed as a licensed law clerk, it shall enter his name in the register to be maintained for the purpose and issue to him a licence <sup>1</sup> [in the Form set out in the Schedule to this Act]. The licence shall be non-transferable and shall be renewable every five years on payment of a renewal fee of fifty rupees. The fact of renewal of a licence shall be endorsed on the back of the form of the previous licence.

(4) Each Licensing Authority shall, at the beginning of the year, send a copy of the register referred to in sub-section (3) and of all subsequent alterations and additions therein immediately after they are made, to the State Council and also to the other Licensing Authority, if any, at the same station, for information and for incorporation of the same in its register.

(5) Every application of a law clerk for renewal of licence shall be supported by the following documents:

- (i) a treasury challan showing deposit of renewal fee of fifty rupees;
- (ii) a certificate from an advocate to whom he is attached or engaged.

1. Words subs, for the words "in the prescribed form" by W. B. Act 28 of 1997.

#### **16. Suspension or cancellation of licence :-**

(1) The Licensing Authority, of its own or on receiving any recommendation of the State Council or the advocate to whom a law clerk is attached or engaged, for suspension or cancellation of the licence of the law clerk, may, by order, suspend him or remove his name from the register and cancel his licence, for reasons to be recorded in writing, after giving him a reasonable opportunity of being heard in his defence, if he is found guilty of any such misconduct as may render him unfit for

the exercise of his duties as law clerk or if he is convicted for any offence involving moral turpitude. Every order of suspension of a law clerk or removal of his name from the register and every order of cancellation of licence shall be communicated forthwith by the Licensing Authority to the State Council and also the other Licensing Authorities of the district concerned. A copy of the order of such suspension or removal of name from the register and cancellation of the licence shall be given forthwith free of cost, to the law clerk concerned.

Explanation. Any proceeding taken against a law clerk under this subsection shall be deemed to be administrative, and not judicial, proceeding.

(2) Where the order of suspension or removal of name from the register and cancellation of licence is passed by a court subordinate to the District Judge, there shall be a right to appeal to the District Judge and where such order is passed by the District Judge, the appeal shall lie to the Secretary to the Government of West Bengal in the Judicial Department.

(3)

(a) The termination of agreement of attachment or engagement of a law clerk by an advocate shall not be itself result in suspension, or removal of name from the register, and cancellation of licence, of the law clerk, or removal of his name as law clerk, or removal of his name as law clerk from the roll.

(b) Notwithstanding such termination of agreement by the advocate, the law clerk shall continue to be a licensed law clerk unless and until his licence is suspended or cancelled by the Licensing Authority in accordance with the provisions of this Act and the rules made thereunder in that behalf, if any, and such law clerk shall be at liberty to enter into a fresh agreement with any other practising advocate on the strength of his existing licence:

Provided that for renewal of such licence, a certificate from an advocate shall be submitted with the application for renewal together with such other documents as may be required for such renewal under this Act.

#### CHAPTER 4

Right to act

### **17. Right to act :-**

Subject to the provisions of this Act and the rules made thereunder, the class of law clerks referred to in section 7 shall have the right to act with effect from the appointed day.

### **18. Jurisdiction of law clerk :-**

Subject to the provisions of this Act and the rules made thereunder, every law clerk whose name is entered in the roll, shall be entitled to act throughout West Bengal, provided he holds a licence or certificate of registration as law clerk granted by a competent authority.

**19. Conditions for acting as law clerk :-**

The State Government may by rules provide for the conditions subject to which a law clerk may act as law clerk before any court, tribunal, or other authority or before any person legally authorised to take evidence or before the Registrar or the Sub-Registrar appointed under the Registration Act, 1908, or any other office.

Explanation. The right to act as law clerk shall not cease only because the State Government has not made any rules.

**CHAPTER 5**

Conduct of law clerk

**20. Conduct and discipline :-**

(1) Where, on receipt of a complaint or otherwise, the State Council has reason to believe that any law clerk on the roll has been prima facie guilty of professional or other misconduct, it shall refer the case to its Disciplinary Committee for disposal.

(2) The State Council may, either of its own or on application made to it by any person interested, withdraw a proceeding pending before a Disciplinary Committee of the State Council and direct the enquiry to be made by any other Disciplinary Committee of the State Council.

(3) The Disciplinary Committee of the State Council, after giving the law clerk concerned an opportunity of being heard, may make any of the following orders:

(a) dismiss the complaint or, where the proceeding was initiated at the instance of the State Council, direct that the proceeding be filed;

(b) reprimand the law clerk;

(c) suspend the law clerk for such period as the Disciplinary Committee may deem fit.

(4) Where a law clerk is suspended from practice under clauses (c) of sub-section (3), he shall have no right to practise during the period of suspension.

**21. Time limit for disposal of complaint :-**

The Disciplinary Committee of the State Council shall dispose of the complaint received by it expeditiously and in each case the proceeding shall be concluded within a period of one year from the date of initiation

of the proceeding before the Disciplinary Committee of the State Council.

**22. Summary enquiry :-**

In deciding any proceeding the Disciplinary Committee of the State Council shall make summary enquiry and take such evidence in such form as may be prescribed.

**23. Appeal :-**

(1) Any person aggrieved by an order of the Disciplinary Committee of the State Council made under section 20 or by an order of the State Council to admit a person as law clerk may, within ninety days of the date of the communication of the order to him, prefer an appeal to the State Government.

(2) The State Government shall form an Appellate Committee with persons who, for at least seven years, held a judicial post under the State Government or who, for at least seven years, have been practising advocate enrolled in the Bar Council of West Bengal constituted under section 3 of the Advocates Act, 1961.

(3) Every such appeal shall be heard by the Appellate Committee which may dismiss the appeal and uphold the order or reverse or alter, in any manner, the decision of the Disciplinary Committee or the State Council, as the case may be, and such decision of the Appellate Committee shall be final:

Provided that the Appellate Committee shall not pass any order so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

**24. Disposal of proceeding by Appellate Committee :-**

The Appellate Committee shall also hear and dispose of any proceeding which a Disciplinary Committee of the State Council fails to dispose of within a period of one year under section 19.

**25. Stay of order :-**

(1) On admission of an appeal, the Appellate Committee may, for sufficient cause, direct the stay of any order passed by the Disciplinary Committee of the State Council on such terms and conditions as it may deem fit.

(2) On application made to it, the Disciplinary Committee of the State Council, after it passes the final order in any proceeding may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.

**26. Order to be entered in roll :-**

(1) All orders passed by the Disciplinary Committee of the State Council or the Appellate Committee punishing a law clerk shall be entered against his name in the roll and communicated to the Licensing Authority and the advocate to whom he is attached or engaged:

Provided that where the name of a law clerk is removed from the roll, his name shall be struck off the roll.

(2) Where any law clerk is suspended or removed from practice, the certificate granted to him under section 9 in respect of his enrolment shall be recalled.

**27. Proceeding not to be invalid :-**

Notwithstanding the absence of any member other than the Chairman of a Disciplinary Committee of the State Council or the Appellate Committee on a day fixed for the hearing of a case before such committee, the Disciplinary Committee of the State Council or the Appellate Committee, as the case may be, if it so thinks fit, hold or continue the proceeding and no order made by the Disciplinary Committee of the State Council or the Appellate Committee in any such proceeding shall be invalid merely by reason of the absence of any such member thereof on any such date:

Provided that no final order shall be made in any proceeding unless the Chairman and other members of the Disciplinary Committee of the State Council or the Appellate Committee, as the case may be, are present.

**28. Realisation of costs :-**

The Disciplinary Committee of the State Council or the Appellate Committee may make such order as to the costs of any proceeding before it as it may deem fit and any person ordered to pay such costs shall be deemed to be a "certificate debtor" under the Bengal Public Demands Recovery Act, 1913, and shall be realised under the said Act.

**CHAPTER 6**

**Miscellaneous**

**29. Penalty :-**

Any person who acts as a law clerk, although he is not entitled to act so under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

**30. Protection of action taken in good faith :-**

No suit or other legal proceeding shall lie against the State Council or any committee thereof or a member of the State Council or any committee thereof for any act which is in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

### **31. Supersession of State Council :-**

(1) Where the State Council is unable to perform its functions for any reason whatsoever or mismanages its affairs, the State Government may, after making an enquiry and hearing the State Council supersede the State Council and appoint an Administrator to perform all or any of the duties and exercise all or any of the powers of the State Council for a period not exceeding six months:

Provided that the Administrator shall complete the election of the State Council within four months from the date of his appointment in accordance with the provisions of this Act and the rules made thereunder:

Provided further that any person having the custody of funds or documents of the State Council shall within fifteen days from the date of appointment of the Administrator, make over all documents or funds in his custody or charge.

(2) Any person who, having custody of documents or funds, fails to make over to the Administrator within fifteen days from the date of his appointment such documents or funds and any person who, on receipt of a requisition from the Administrator to make over documents or funds of the State Council, fails without sufficient cause to make over such documents or funds within fifteen days from the date of receipt of the requisition, shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees.

### **32. Power to make rules :-**

The State Government may, unless otherwise required by this Act, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

#### **CHAPTER 7**

Temporary and transitory provisions

### **33. Transitory provisions :-**

(1) Notwithstanding anything contained in this Act, the first State Council shall be appointed by the State Government from amongst the law clerks who, on the date of appointment, are entitled to practise as law clerk at any place within West Bengal.

(2) Notwithstanding anything contained in this Act, the term of office of the first State Council appointed by the State Government shall be two years from the date of the first meeting of the State Council:

Provided that such members shall continue to hold office until the State

Council is reconstituted in accordance with the provisions of this Act.

**34. Removal of difficulties :-**

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the Official Gazette.

(2) Any order made under sub-section (1) may have retrospective effect from a date not earlier than the date of commencement of this Act.

**SCHEDULE 1**

Form of Licence under sub-section (3) of section 15 of the West Bengal Law Clerks Act, 1997 (West Bengal Act 6 of 1997)

**SCHEUDLE**

[See section 15(3).]

**Form of Licence under sub-section (3) of section 15 of the West Bengal Law Clerks Act, 1997 (West Bengal Act 6 of 1997)**