

Karnataka Advocates Welfare Fund (Amendment) Act, 2010

28 of 2010

[26 July 2010]

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An Act further to amend the Karnataka Advocates' Welfare Fund Act, 1983. Whereas, it is expedient further to amend the Karnataka Advocates' Welfare Fund Act, 1983 (Karnataka Act 2 of 1985) for the purposes hereinafter appearing; Be it enacted by the Karnataka State Legislature in the sixtyfirst year of the Republic of India as follows:-

1. Short Title And Commencement :-

- (1) This Act may be called the Karnataka Advocates' Welfare Fund (Amendment) Act, 2010.
- (2) It shall come into force on such date as the State Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act.

2. Amendment Of Section 2 :-

In the Karnataka Advocates' Welfare Fund Act, 1983 (Karnataka

Act 2 of 1985) (hereinafter referred to as the principal Act) in section 2,-

(i) in clause (d), for sub-clause (iii), the following sub-clause shall be substituted, namely:- "(iii) voluntary retirement on attaining an age of seventy five years or on completion of fifty years of practice whichever is earlier;"

(ii) for clause (ga), the following clause shall be substituted, namely:-

"(ga) permanent disability" means disability incurred by an advocate after becoming a member which renders him totally incapable from practicing as an advocate and certified as such by the District Surgeon of the District where the advocate is practicing;"

(3) after clause (j), the following clause shall be inserted, namely:- "(jj) "schedule" means the schedule appended to this Act;"

3. Amendment Of Section 4 :-

In section 4 of the principal Act, in sub-sections (4) and (5), for the words "four years", the words "three years" shall be substituted.

4. Amendment Of Section 9 :-

In section 9 of the principal Act, in sub-section (2), in clause (e), for the words and figures "in accordance with section 16", the words " in accordance with this Act" shall be substituted.

5. Amendment Of Section 13 :-

In section 13 of the principal Act, in sub-section (2), for the words "rules or bye-laws of the association", the words, figures and brackets "rules or bye-laws of the association made by adopting model by-laws circulated by the Bar Council, and registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960)" shall be substituted.

6. Amendment Of Section 15 :-

(1) In section 15 of the principal Act,-

(1) in sub-section (1),-

(a) after the words "Every Advocate on the roll of the Karnataka State Bar Council" the words "and every person holding pleadership certificate" shall be inserted;

(b) for the words "in such form as may be prescribed along with an

admission fee of rupees two thousand within one month" the words "in such form along with such admission fee as may be prescribed" shall be substituted.

(c) clauses (i) and (ii) and the provisos shall be omitted;

(2) sub-section (1A) shall be omitted;

(3) for sub-sections (4) and (5) including the provisos, the following shall be substituted, namely:- "(4) Every member who has completed fifteen years of practice shall pay a fee of rupees one thousand to the fund and who has not completed fifteen years of practice shall pay a fee of rupees five hundred to the fund on or before the thirty first day of December of every year, next after the year of becoming member, failing which, he shall be deemed to have voluntarily suspended practice for the purpose of this Act:

Provided that a member may pay such fee within six months from the expiry of the due date along with a penalty of rupees fifty per month, in which case it shall not be construed as deemed voluntary suspension of practice:

Provided further that a member who has completed fifteen years of practice may, in lieu of payment of fee every year, pay in a lumpsum rupees fifteen thousand.

(5) Notwithstanding anything contained in sub-section (4), a member who is enrolled as an advocate before attaining an age of forty years, fails to pay fees under subsection (4) after attaining an age of seventy years shall be eligible to claim benefit under sub-section (1) of sub-section 16, so however, arrears of fee due under subsection (4) shall be deducted in the amount payable under sub-section (1) of subsection 16."

(4) in sub-section (6),-

(i) for the words "rupees three thousand", the words "rupees five thousand" shall be substituted,

(ii) the following proviso shall be inserted, at the end, namely:- "Provided that where a deemed suspension under sub-section (4) is consecutively for a period of five years and more, amount payable under sub-section (1) of section 16 shall not exceed one lakh rupees."

7. Amendment Of Section 16 :-

In section 16 of the principal Act,-

(1) for sub-section (1) including the provisos, the following shall be substituted, namely:-

"(1) Where the cessation of practice,-

- (i) is due to death of a member, his nominee and if there is no nominee, to his dependents or heirs as the case may be; or
- (ii) is due to reasons other than death, the member, shall be entitled to receive an amount specified in the schedule, from out of the fund:

Provided that the following categories of members shall be entitled to receive an amount at the rate of five thousand rupees for every completed year of practice subject to a maximum of rupees one lakh fifty thousand namely:-

- (i) an advocate who becomes member after attaining an age of forty years except those who have become members prior to the commencement of the Karnataka Advocates' Welfare Fund (Amendment) Act, 2010;
- (ii) an advocate enrolled after attaining an age of forty years;
- (iii) an advocate who has voluntarily suspended practice for a period exceeding two years for the purposes of any employment, avocation or business;
- (iv) an advocate enrolled after retirement, dismissal or removal from service or employment;
- (v) an advocate who has become member on or after the first day of August 2000 and has attained an age of sixty years on the date of becoming member;
- (vi) an advocate who becomes member on transfer from other states, after attaining an age of forty years:

Provided further that an advocate who had become member prior to the second day of April, 1997 and has failed to pay balance fee due and has not been re-admitted to the fund after the second day of April, 1997, shall be entitled only to an amount at the rate of three thousand rupees for every completed year of practice but not exceeding an amount of rupees fifty thousand and this amount shall be paid to him or to his nominees, and where there are no nominees to his dependants or heirs as the case may be on cessation of practice."

(2) in sub-section (2), for the words "in equal share" the words "in accordance with the law of inheritance applicable to such member" shall be substituted.

(3) for sub-section (4) including the provisos, the following shall be substituted, namely:-"(4) While calculating period of completed years of practice for the purpose of payment under this Act,-

- (i) fraction of three months and more shall be treated as one full year; and
- (ii) the period of suspension practice as a result of misconduct

under section 35 of the Advocates Act, 1961 (Central Act 25 of 1961) shall be excluded.

(4A) In case of an advocate enrolled prior to the second day of April 1997 and admitted to the fund after the Second day of April 2002, every four years of practice before admission as a member to the fund shall be computed as one year of completed year of practice and added on to the number of completed years of practice after such admission for the purpose of payment under this Act."

(4) sub-section (5) including the proviso shall be omitted.

(5) after sub-section (7), the following sub-section shall be inserted, namely:-(8) If a claim made by any applicant under sub-section (6) is found to be false or incorrect by the trustee committee after making payment to him based on such claim, the trustee committee may, after holding such enquiry as it deems fit and after giving an opportunity of being heard to the applicant, direct him to refund the amount paid in excess of the amount due to him, and in case of default it shall be recoverable as an arrear of land revenue".

8. Insertion Of New Sections 16 A And 16 B :-

After section 16 of the principal Act, the following sections shall be inserted, namely:-

"16A. Medical relief.-

(1) If any member suffering from such serious ailment as may be prescribed undergoes treatment for the prescribed ailment, he may apply to the Trustee committee in such form along with such documents as may be prescribed for payment from the fund towards the amount actually incurred for the treatment:

Provided that, the amount payable under this section shall not exceed rupees one lakh or fifty percent of the amount payable under section 16, whichever is less.

(2) The member should have completed five years of practice as a member of the fund on the date of treatment.

(3) The application should be made within three months from the date of initial hospitalization and this may be extended by the trustee committee for a further period of three months on the member showing sufficient cause for delay in making the application.

(4) The benefit under this section shall be available only once in the life time of the member.

(5) Total number of applications which may be considered for

payment under this section during a financial year shall be fixed by the trustee committee having regard to its financial position, feasibility of future operation of the fund, need of the applicant and other relevant factors.

(6) The trustee committee may after making such enquiry as it deems fit, either grant or reject the application. The application shall be considered strictly according to the date of their filing.

(7) The amount paid under this section shall be deducted at the time of making final payment under section 16.

(8) Where an applicant has received amount in respect of his ailment under the Bar Council of India Advocate's Welfare Fund Scheme, the trustee committee shall while granting amount under this section deduct the amount so received under that scheme.

(9) If any statements or particulars given by the applicant or documents produced in support of his claim are found to be false by the trustee committee, it shall make a report to the Bar council and the Bar council may after holding such enquiry as it deems fit and after giving an opportunity of being heard to the applicant call upon him to refund the entire amount received under this section along with an interest at the rate of twelve percent per annum. If the applicant fails to comply with the direction of the Bar council, the entire amount received under this section along with an interest at the rate of twelve percent per annum shall be deducted while making final payment under section 16.

16B. Part payment from the fund during financial hardship.-

(1) A member who has attained the age of seventy years and has completed twenty years of practice as an advocate and twelve years as a member of the fund is facing a financial hardship may apply in a prescribed form to the trustee committee seeking part payment from the fund. The Situation leading to such financial hardship shall be such as may be prescribed.

(2) If the trustee committee is satisfied with the claim of the applicant it may, with the prior approval of the Bar Council, sanction an amount equivalent to fifty percent of entitlement of the applicant under section 16 or one lakh rupees whichever is less.

(3) The applications shall be considered strictly according to their dates of filing.

(4) The amount paid under this section shall be deducted at the time of making final payment under section 16.

(5) Total number of applications which may be considered for payment under this section during a financial year shall be fixed by the trustee committee having regard to its financial position,

feasibility of future operation of the fund and need of the applicant and other relevant factors as may be prescribed."

9. Omission Of Section 26A :-

Section 26A of the principal Act shall be omitted.

10. Insertion Of New Schedule :-

In the principal Act, the following schedule shall be inserted at the end, namely:-

Schedule	
(see sub-section (1) of section 16)	
Completed years of practice	Entitlement
(1) Not exceeding ten years	Rupees one lakh fifty thousand
(2) Exceeding ten years but not exceeding twenty years	Rupees two lakhs
(3) Exceeding twenty years but not exceeding thirty years	Rupees two lakhs fifty thousand
(4) Exceeding thirty years but not exceeding forty years	Rupees three lakhs fifty thousand
(5) Exceeding forty years	Rupees four lakhs

11. Transitional Provision :-

Notwithstanding anything contained in the principal Act as amended by this Act where any claim for amount from the fund made during the period on or after the first day of June 2005 and before the commencement of the Karnataka Advocates' Welfare Fund (Amendment) Act, 2010, by a member who defaulted in payment of fees under sub-section (4) of section 15 of the principal Act as in force prior to such commencement, is pending on the date of such commencement, an amount at the rate of rupees three thousand for each year of the default shall be deducted in the amount payable under sub-section (5) of section 16 of the principal Act as in force prior to such commencement.