

Himachal Pradesh Advocate's Clerks Welfare Fund Act, 2015

(Act No. 28 Of 2015)

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(Received the assent of the Governor on the 17th October, 2015 and was published both in Hindi and English in R.H.P. dated 20th October, 2015 at p. 4804-4826).

An Act to provide for the constitution of a Welfare Fund and utilization thereof for promotion of the Advocate's clerks in the State of Himachal Pradesh and for matters connected therewith or incidental thereto.

Himachal Pradesh Advocate's Clerks Welfare Fund Act, 2015

(Act No. 28 Of 2015)

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-sixth Year of the Republic of India as follows:—

1. Short title and commencement.

(1) This Act may be called the Himachal Pradesh Advocate's Clerks Welfare Fund Act, 2015.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions.

In this Act, unless the context otherwise requires,—

(a) "Advocate" means a person whose name has been entered in the State roll of Advocates prepared and maintained by the Bar Council of Himachal Pradesh under section 17 of the Advocates Act, 1961 and who is a member of a Bar Association or an Advocates Association;

(b) "Advocate's clerk" means a clerk employed by an Advocate and recognized by such authority and in such manner as may be prescribed and who is a member of an Advocate's Clerks Association;

(c) "Advocate's Clerks Association" means an Association of Advocate's clerks recognized and registered under section 13;

(d) "Bar Association" means an association of Advocates recognized and registered by the Bar Council under section 14 of the Himachal Pradesh Advocates Welfare Fund Act, 1996;

(e) "Bar Council" means the Bar Council of Himachal Pradesh constituted under section 3 of the Advocates Act, 1961;

(f) "cessation of employment" means removal of the name of an Advocate's clerk from the State roll maintained by the Committee on account of his retirement;

(g) "Committee" means the Himachal Pradesh Clerks Welfare Fund Committee constituted under section 4;

(h) "dependant" means any of the following relatives of a deceased member of the Fund, namely :—

(I) widow, minor legitimate son, unmarried legitimate daughter or widowed mother; and

(II) major legitimate son or legitimate married daughter who by virtue of infirmity is wholly dependant on the earnings of the member at the time of his death;

(i) "Fund" means the Himachal Pradesh Advocate's Clerks Welfare Fund constituted under section 3;

(j) "Government" means the Government of Himachal Pradesh;

(k) "Member of the Fund" means an Advocate's clerk admitted to the benefit of the Fund and continuing to be a member thereof under the provisions of this Act;

(l) "notification" means a notification published in Rajpatra, Himachal Pradesh and the word 'notified' shall be construed accordingly;

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

(n) "retirement" means stoppage of employment as an Advocate's clerk for reason other than joining service or

for carrying on any other gainful occupation, communicated to and recorded in the prescribed manner;

(o) "Schedule" means Schedule appended to this Act;

(p) "stamp" means the Himachal Pradesh Advocate's Clerks Welfare Fund stamp printed and distributed under section 12; and

(q) "vakalatnama" means a vakalatnama, memorandum of appearance or any other document by which an Advocate or any other local practitioner is empowered to appear and plead before any court, tribunal or other authority.

3. Advocate's Clerks Welfare Fund.

(1) The Government shall, by notification, constitute a Fund to be called "the Himachal Pradesh Advocate's Clerks Welfare Fund".

(2) There shall be credited to the Fund,—

(a) all amounts collected by way of sale of stamps under section 12;

(b) any voluntary donations or contribution made to the Fund by the Bar Council, any Bar Association, any other Association or Institution, any Advocate or any other person;

(c) any sum borrowed under section 10;

(d) all sums received from the Life Insurance Corporation of India or any other Insurance Company on the death of a member of the Fund under a Group Insurance Policy;

(e) any profit or dividend received from the Life Insurance Corporation of India

or any other Insurance Company on the death of a member of the Fund under a Group Insurance Policy;

(f) any interest or dividend or other returns on any investment made of any part of the Fund; and

(g) all sums collected under section 15.

4. Establishment of Welfare Fund Committee.

(1) The Government shall, by notification, establish with effect from such date as may be specified therein, a Committee to be called the Himachal Pradesh Advocate's Clerks Welfare Fund Committee.

(2) The Committee shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall, by the said name, sue or be sued.

(3) The Committee shall consist of the following, namely:—

(a) the Chairman of the Himachal Pradesh
ex-officio Chairman; -ex-

Bar Council

(b) the Secretary (Law) to the Government
ex-officio Member; -ex-

(c) the Secretary (Home) to the Government
ex-officio Member; -ex-

(d) the Secretary (Finance) to the
ex-officio Member; -

Government

(e) the Registrar General of Himachal
ex-officio Member; -ex-

Pradesh High Court

(f) three members to be nominated from amongst the Advocate's clerks by such authority and in such manner as may be prescribed, of whom one shall be nominated by the Committee as the State Treasurer of the Fund; and

(g) the Secretary to be appointed by the Chairman in accordance with such regulations as may be made by the Committee in respect of the recruitment and conditions of service of the Secretary:

Provided that the Secretary so appointed shall not have the right to vote at the meetings of the Committee.

(4) In case the Secretary (Law), Secretary (Home) or Secretary (Finance) to the Government is unable to attend the meeting of the Committee for any reason, he may depute any officer of his Department not below the rank of Deputy Secretary to attend the meeting.

(5) In case the Registrar General of Himachal Pradesh High Court is unable to attend the meeting of the Committee for any reason, he may depute any officer not below the rank of Deputy Registrar to attend the meeting.

(6) A member nominated under clause (f) of sub-section (3) shall hold office for a term of three years from the date of such nomination or until he ceases to be a member of the Advocate's Clerks Association, whichever is earlier.

(7) The Secretary shall be paid such remuneration out of the Fund as may be prescribed.

5. Disqualification and removal of nominated members of the Committee.—(1) A member nominated under clause (f) of sub-section (3) of section 4 shall be disqualified to be a member of the Committee and shall cease to be such member if he—

(a) becomes of unsound mind; or

(b) is adjudged as insolvent; or

(c) remains absent without leave of the Committee for more than three consecutive meetings of the Committee:

Provided that the member ceasing to hold office under this clause may be restored by the Committee, if such member makes an application for condonation of absence; or

(d) is a defaulter to the Fund (if he is a member of the Fund) or has committed breach of trust; or

(e) is convicted by a criminal court for an offence involving moral turpitude, unless such conviction has been set aside.

(2) The Chairman may remove any member who is or has become disqualified under sub-section (1) from the membership of the Committee:

Provided that no order removing any member shall be passed unless the member has been given an opportunity of being heard.

6. Resignation by nominated members of the Committee and filling of casual vacancies.

(1) Any member nominated under clause (f) of sub-section (3) of section 4 may resign his office by giving three months notice in writing to the Chairman and on such resignation being accepted he shall be deemed to have vacated his office.

(2) Any casual vacancy in the office of a member referred to in sub-section (1) shall be filled as soon as possible and a member so nominated to such vacancy shall hold office for the residue of the term of his predecessor.

7. Act of the Committee not to be invalid by defect, vacancy etc.

No act done or proceeding taken under this Act or the rules made thereunder by the Committee shall be invalidated merely by reason of—

(a) any vacancy or defect in the constitution of the Committee; or

- (b) any defect or irregularity in nomination of any person as a member thereof; or
- (c) any defect or irregularity in such act or proceeding not affecting the merits of the case.

8. Vesting and application of Fund.

The Fund shall vest in and be held and applied by the Committee subject to the provisions and for the purposes of this Act.

9. Functions of the Committee.

- (1) It shall be the function of the Committee to administer the Fund.
- (2) In the administration of the Fund, the Committee shall, subject to the provisions of the Act and the rules made thereunder—
 - (a) hold the amounts and assets belonging to the Fund;
 - (b) receive application for admission or readmission to the Fund and dispose of such applications within sixty days from the receipt thereof;
 - (c) receive applications from the members of the Fund, their nominees or legal representatives, as the case may be, for payment out of the Fund;
 - (d) conduct such inquiry as it deems necessary, for the disposal of such applications and dispose of the applications within five months from the date of receipt thereof;
 - (e) record in the minutes book of the Committee its decision on the applications;
 - (f) pay to the applicants amount at the rates specified in the Schedule;
 - (g) maintain such accounts and books and send such periodicals and annual reports to the Bar Council, as may be prescribed;
 - (h) communicate to the applicants under certificate of posting the decision of the Committee in respect of applications for admission or re-admission to the Fund or claims to the benefit of the Fund; and
 - (i) do such other acts, as are or may be, required to be done under this Act and the rules made thereunder.

10. Borrowing and investment of Fund.

- (1) The Committee may, with the prior approval of the Bar Council, borrow, from time to time, any sum required for carrying out the purposes of this Act.
- (2) The Committee shall deposit all moneys and receipts forming part of the Fund in any Scheduled Bank as defined under the Reserve Bank of India Act, 1934 or invest the same in loans to any Corporation owned or controlled by the Central Government or the State Government or in any other manner as the Bar Council may, from time to time, direct with prior approval of the Government.
- (3) All amount due and payable under this Act and all expenditure relating to the management and administration of the Fund shall be paid out of the Fund.

(4) The accounts of the Committee shall be audited annually by a Chartered Accountant appointed by the Committee.

(5) The accounts, as certified by the auditor together with the audit report thereon, shall be forwarded to the Bar Council by the Committee and the Bar Council may issue such directions as it deems fit to the Committee in respect thereof.

(6) The Committee shall comply with the directions issued by the Bar Council under subsection (5).

11. Powers and functions of the Secretary.

The Secretary of the Committee shall—

(a) be the Chief Executive Authority of the Committee and responsible for carrying out its decisions;

(b) represent the Committee in all suits and proceedings for and against the Committee;

(c) authenticate by his signature all decisions and instructions of the Committee;

(d) operate the Bank Accounts of the Committee jointly with the Treasurer;

(e) convene meetings of the Committee and prepare their minutes;

(f) attend the meetings of the Committee with all necessary records and information;

(g) maintain such forms, registers and other records, as may be prescribed, and do all correspondence relating to the Committee;

(h) prepare an annual statement of business transacted by the Committee during each financial year; and

(i) do such other acts as may be directed by the Committee.

12. Himachal Pradesh Advocate's Clerks Welfare Fund Stamp.

(1) There shall be printed or caused to be printed by the Bar Council in such form and in such manner as may be prescribed, stamp inscribed "the Himachal Pradesh Advocate's Clerks Welfare Fund" each of the value of five rupees.

(2) Every vakalatnama or memorandum of appearance filed before any court, authority or tribunal shall be affixed with a stamp as specified in sub-section (1) in addition to the court fees stamps, if any, and stamp to be affixed under any other Acts and vakalatnama or memorandum of appearance shall not be valid unless it is so stamped:

Provided that this sub-section shall not apply to any vakalatnama or memorandum of appearance filed on behalf of the Central or State Government.

(3) The person or authority receiving vakalatnama with such stamp shall forthwith effect cancellation of the stamp by punching out the same.

(4) The custody of the stamps printed under this section shall be with the Bar

Council and the supply and sale of stamps shall be in such manner as may be prescribed

13. Recognition and registration of Advocate's Clerks Association.

(1) An Association of Advocate's Clerks constituted after the commencement of this Act may, within two months from the date of such constitution and an Association of Advocate's Clerks constituted before the commencement of this Act may, within two months from the date of commencement of this Act, apply to the Committee in such form and in such manner as may be prescribed, for recognition and registration as an Advocate's Clerks Association under this Act.

(2) Every application for recognition and registration shall be accompanied by the rules or bye-laws of the Association, names and addresses of the office bearers of the Association and an up-to-date list of the members of the Association with name, address, age and the ordinary place of employment of such member.

(3) The Committee may, after such inquiry as it deems necessary, recognize the Association as an Advocate's Clerks Association and issue a certificate of recognition in such form as may be prescribed.

(4) The decision of the Committee regarding the recognition of Association shall be final.

14. Duties of Advocate's Clerks Association.

(1) Every Advocate's Clerks Association shall, on or before 15th April every year, intimate to the Committee a list of its members as on 31st March of the year.

(2) Every Advocate's Clerks Association shall intimate to the Committee of,—

(a) any change of the office bearers of the Advocate's Clerks Association within fifteen days from such change;

(b) any change in number of members including admission and re-admission within thirty days of such change;

(c) the death or retirement of any of its members within thirty days from the date of occurrence thereof; and

(d) such other matters as may be required by the Committee from time to time.

15. Membership of the Fund.

(1) Every Advocate's Clerks in the State may apply to the Committee, in such form and in such manner as may be prescribed, for admission as a member of the Fund.

(2) On receipt of an application under sub-section (1), the Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or for reasons to be recorded in writing, reject the application :

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(3) Every applicant shall pay an application fee of rupees one hundred along with application to the account of the Committee.

(4) Every applicant shall pay to the Fund an admission fee of rupees one hundred at the time of admission or re-admission.

(5) Every person admitted as a member of the Fund shall pay a membership fee of rupees one thousand five hundred payable in two equal half yearly instalments.

(6) Every member of the Fund shall, at the time of admission, make a nomination conferring on one or more dependants of his family the right to receive the amount from the Fund in the event of his death. However, that if he has no family he may nominate any person he likes.

(7) If more than one person is nominated, the amount of share payable to each nominee shall be specified in the nomination.

(8) A member of the Fund may at any time cancel a nomination by sending a notice in writing to the Committee along with a fresh nomination.

(9) Where on receipt of a complaint or otherwise, the Committee has reason to believe that an Advocate's clerk secured admission as a member of the Fund by misrepresentation, fraud or undue influence, the Committee shall have power to remove the name of such Advocate's clerk from the membership of the Fund :

Provided that no such order shall be passed unless the person, likely to be affected adversely, has been given an opportunity of being heard.

16. Payment from the Fund on cessation of employment.

(1) A member of the Fund shall, on cessation of employment, be entitled to receive from and out of the Fund an amount at the rate specified in the Schedule.

(2) In the event of death of a member, a consolidated amount of rupees fifty thousand shall be paid to the nominee or, where there is no nominee, to his dependants.

(3) A member of the Fund may withdraw his membership at any time after five years of his admission as a member of the Fund and on such withdrawal he shall be entitled to receive from and out of the Fund an amount at the rate specified in the Schedule and he may also be eligible for re-admission to the Fund as a new member subject to such conditions as may be prescribed :

Provided that a member suffering from permanent disablement may withdraw his membership at any time.

(4) For calculating the period of completed years of employment for the purpose of payment under this Act, every four years of employment under an Advocate, if any, before admission of a member to the Fund, shall be computed as one year of employment and added to the number of years of employment after such admission.

(5) An application for payment from the Fund shall be made to the Committee in such form as may be prescribed.

(6) An application received under sub-section (5), shall be disposed of by the Committee after such enquiry as it deems necessary.

17. Restriction on alienation, attachment etc. of interest of members in the Fund.

(1) The interest or the right of a member of the Fund or his nominee or legal heirs to receive any amount from the Fund, shall not be assigned, alienated or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.

(2) No creditor shall be entitled to proceed against the Fund or the interest therein of any member of the Fund or his nominee or legal heirs.

Explanation.—For the purpose of this section, “creditor” includes the State, or any official assignee or official receiver appointed, under the law relating to insolvency for the time being in force.

18. Group Life Insurance and other benefits for members.

The Committee may, for the welfare of the members of the Fund,—

(a) take from the Life Insurance Corporation of India or any other Insurance Companies, policies of Group Insurance on the life of the members of the Fund; and

(b) provide for medical and educational facilities and such other benefits, as may be prescribed for the members of the Fund and their dependents.

19. Meetings of the Committee.

(1) The Committee shall meet at least once in three months or more often if found necessary to transact its business under this Act or the rules made thereunder.

(2) Five members shall form the quorum for a meeting of the Committee.

(3) The Chairman or in his absence, a member, elected by the members present at the meeting, shall preside over a meeting of the Committee.

(4) Any matter coming before the Committee in the meeting shall be decided by a majority of the members present and voting at the meeting and in case of tie, the Chairman shall have a casting vote.

20. Travelling and daily allowance to the members of the Committee.

The nominated members of the Committee shall be eligible to get such travelling allowance and daily allowance, as may be prescribed.

21. Review.

The Committee may, suo-motu, at any time or on an application from any interested person, within ninety days of any order passed by it, review any such order:

Provided that the Committee shall not pass any order adversely affecting a person, unless such person has been given an opportunity of being heard.

22. Protection of action taken in good faith.

(1) No suit, prosecution or other legal proceeding shall lie against any person for

anything which is, in good faith, done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceeding shall lie against the Committee or the Bar Council for any damage caused or likely to be caused by anything which is, in good faith, done or intended to be done in pursuance of this Act or any rules made thereunder.

23. Bar of jurisdiction of civil courts.

No civil court shall have jurisdiction to settle, decide or deal with any question or determine any matter which is under this Act required to be settled, decided or dealt with or determined by the Committee.

24. Power to summon witnesses and take evidence.

The Committee shall, for the purposes of any enquiry under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

- (a) enforcing the attendance of any person examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit; and
- (d) issuing commission to the examination of witnesses.

25. Power to make rules.

(1) The Government may, by notification, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised of one session or two successive sessions and if, before the expiry of the session in which it is so laid or the next session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rules shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Schedule

[See sections 2(o), 9(2) (f), 16 (1) and (3)]

Rupees

One year as a member of the Fund	—2,000/
Two years as a member of the Fund	—4,000/
Three years as a member of the Fund	— 6,000/
Four years as a member of the Fund	— 8,000/

Five years as a member of the Fund	— 10,000/
Six years as a member of the Fund	— 12,000/
Seven years as a member of the Fund	— 14,000/
Eight years as a member of the Fund	— 16,000/
Nine years as a member of the Fund	— 18,000/
Ten years as a member of the Fund	— 20,000/
Eleven years as a member of the Fund	— 22,000/
Twelve years as a member of the Fund	— 24,000/
Thirteen years as a member of the Fund	— 26,000/
Fourteen years as a member of the Fund	— 28,000/
Fifteen years as a member of the Fund	— 30,000/
Sixteen years as a member of the Fund	— 32,000/
Seventeen years as a member of the Fund	— 34,000/
Eighteen years as a member of the Fund	— 36,000/
Nineteen years as a member of the Fund	— 38,000/
Twenty years as a member of the Fund	— 40,000/
Twenty one years as a member of the Fund	— 42,000/
Twenty two years as a member of the Fund	— 44,000/
Twenty three years as a member of the Fund	— 46,000/
Twenty four years as a member of the Fund	— 48,000/
Twenty five years as a member of the Fund	— 50,000/
Twenty six years as a member of the Fund	— 52,000/
Twenty seven years as a member of the Fund	— 54,000/
Twenty eight years as a member of the Fund	— 56,000/

Fund	
Twenty nine years as a member of the Fund	— 58,000/
Thirty years as a member of the Fund	— 60,000/