

Kerala Advocates' Clerks Welfare Fund Act, 2003

(Act 27 of 2003)

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LEGISLATIVE HISTORY 6

An Act to provide for the constitution of a Welfare Fund for the Benefit of Advocates' Clerks in the State of Kerala and for matters connected therewith or incidental thereto.

Preamble. - Whereas it is expedient to provide for the constitution of a Welfare Fund for payment of retirement and other benefits to Advocates' Clerks in the State of Kerala and for matters connected therewith or incidental thereto;

Be it enacted in the Fifty-fourth year of the Republic of India as follows:-

1. Short title and commencement. - (1) This Act may be called the Kerala Advocates' Clerks Welfare Fund Act, 2003.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, 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 Kerala under

section 17 of the Advocates Act, 1961 (Central Act 25 of 1961) and practising as an Advocate, whether he is a member of a Bar Association or not.

- (b) "Advocates' Clerk" means a Clerk employed by an Advocate and recognised as such by such Authority and in such manner as may be prescribed and who is a member of an Advocates' Clerks Association;
- (c) "Advocates' Clerks Association" means an association of Advocates' Clerks recognised and Registered under section 15;
- (d) "Advocate Clerks Welfare Fund Scheme" means the Advocate Clerks Welfare Fund Scheme, 1985 constituted by the Government as per G.O.(P)No.3/1985/Fin. dated 1st January , 1985;
- (e) "Bar Association" means an Association of Advocates recognised and registered by the Bar Council under section 13 of the Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980);
- (f) "Bar Council" means the Bar Council of Kerala;

- (g) "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;
- (h) "Committee" means the Kerala Advocates' Clerks Welfare Fund Committee constituted under section 4;
- (i) "Dependent" means wife, husband, father, mother, minor sons and unmarried or widowed or divorced daughters;
- (j) "Fund" means the Kerala Advocates' Clerks Welfare Fund constituted under section 3;
- (k) "Government" means the Government of Kerala;
- (l) "Member of the Fund" means an Advocate's Clerk admitted to the fund and continuing to be a member thereof by paying the subscriptions under the provisions of this Act;
- (m) "Notification" means a notification published in the Kerala Gazette and the word "Notified" shall be construed accordingly;

- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "retirement" means stoppage of employment as Advocate Clerk for reasons other than for joining service or for carrying on any other gainful occupation communicated to and recorded in the manner prescribed;
- (p) "Secretary" means the Secretary of the committee;
- (q) "stamp" means the Kerala Advocates' Clerks Welfare Fund Stamp printed and distributed under section 14;
- (r) "vakalath" means a vakalathnama, memorandum of appearance or any other document by which an advocate is empowered to appear and plead before any court, tribunal or authority.

3. Advocates' Clerks Welfare Fund. - (1) The Government shall, as soon as may be after the commencement of this Act, by notification, constitute a fund to be called the Kerala Advocates' Clerks Welfare Fund.

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

- (a) all amounts collected by way of sale of stamps under section 14;
- (b) any voluntary donation or contribution made to the Fund by the Bar Association or by any other Association or Institution or any Advocate or any other person;
- (c) any sum borrowed under section 12;
- (d) application fee, admission fee and annual subscription realised under section 17;
- (e) all sums that may be received from the Life Insurance Corporation of India or any other recognised Insurance Companies on the death of a member or beneficiary of the Fund under any Group Insurance policy;
- (f) any profit or dividend that may be received from the Life Insurance Corporation of India or any other Insurance Companies in respect of policies of Group Insurance of the members of the Fund;
- (g) any interest or dividend or other returns on any investment made of any part of the Fund; and

- (h) any amount transferred from the legal benefit fund under sub-section (3) of section 76 of the Kerala Court Fees and Suits Valuation Act, 1959;
- (i) any grants, loans or advances granted by the Central Government or the State Government or any institution or organisation.

4. Establishment of Welfare Fund Committee. - (1) The Government may, by notification, establish with effect from such date as may be specified therein, a Committee to be called "the Kerala Advocates' 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 and be sued.

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

- (a) the Secretary to Government, Law Department - ex-officio who shall be the Chairman of the Committee;
- (b) an officer from the Finance Department not below the rank of a Deputy Secretary to be nominated by the Government - Member;

- (c) an Advocate nominated by the State Bar Council - Member;
- (d) an officer of the Law Department not below the rank of a Joint Secretary to be nominated by the Government - Member;
- (e) three members to be nominated by the Government from among the Advocates' Clerks;
- (f) the Secretary of the Committee to be appointed by the Government under section 13:

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

(4) A member nominated under clause (e) of sub-section (3) shall hold office for a term of three years or until he ceases to be a member of the Advocates' Clerks Association whichever is earlier;

(5) A member nominated under clauses (b) and (d) and appointed under clause (f) of sub-section (3) shall hold office during the pleasure of the Government;

5. Disqualification and removal of nominated members of the Committee. - (1) A member nominated under clause (e) 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) is 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 the condonation of his absence and the Committee is satisfied that there was sufficient cause for such absence; or

(d) is a perpetual defaulter to the Fund (in case 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 on appeal.

(2) The Government may remove any member who is or has become disqualified under subsection (1), from 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 member of the Committee and filling up of casual vacancies. - (1) Any member nominated under clause (e) of sub-section (3) of section 4 may resign his office by giving one month notice in writing

to the Chairman of the Committee and from the date of acceptance of resignation by the Chairman, 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 up, as soon as may be and a member so nominated to fill such vacancy shall hold office only for the remaining portion of the term of his predecessor.

7. 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.

(2) Four members of the Committee 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 up before a meeting of the Committee shall be decided by a majority of the members present and voting at the meeting and, in the case of any equality of votes, the Chairman or the member presiding over the meeting shall have and exercise a casting vote.

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

9. Act of Committee not to be invalidated by defect etc. - No act done or proceedings 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 the election of any person as a member thereof; or
- (c) any defect or irregularity in such act or proceedings not affecting the merits of the case.

10. Vesting and application of Fund. - The Fund shall vest in and be held by the committee in such manner as may be prescribed and, subject to the provisions of this Act and the rules made thereunder, be utilised only for the purposes of granting pension benefits and other benefits.

11. 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 this Act and the rules made thereunder, -

- (a) hold the amounts and assets belonging to the Fund;
- (b) receive applications for admission or re-admission as a member of the Fund and dispose of such

applications, as far as possible, within sixty days from the date of 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, conduct such enquiry as it deems necessary for the disposal of such applications, and dispose such applications, as far as possible, within five months from the date of receipt thereof ;
- (d) pay to the applicants amounts at the prescribed rates;
- (e) maintain such accounts and registers and send such periodical and annual reports to the Government as may be prescribed;
- (f) control and supervise the Kerala Advocate Clerks Welfare Fund Scheme, 1985;
- (g) do such other acts as are, or may be required to be done under this Act and the rules made thereunder.

(3) The Committee may delegate any of its functions entrusted to it under this Act to the Secretary or any other officer appointed by the Committee.

12. Borrowing and investment of Funds. - (1) The Committee, may with the prior approval of the Government, 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 the Treasury Accounts or in any Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (Central Act 2 of 1934) or invest the same in loans to any corporation owned or controlled by the Central Government or the State Government or in loans floated by the Central Government or State Government, with the approval of the Government or in any other manner as may be prescribed.

(3) All amounts 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, with the prior approval of the Government.

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

respect thereof and shall place such accounts and the audit report thereon before the Legislative Assembly.

(6) The Committee shall comply with the directions issued by the Government under sub-section (5).

13. Appointment, powers and duties of Secretary. - (1) The Government may appoint an officer of the Law Department not below the rank of Deputy Secretary, on deputation basis, as Secretary of the Committee.

(2) The Secretary of the Committee shall,-

- (a) be the Chief Executive authority of the Committee and he shall be responsible for carrying out its decisions, represent the Committee in all suits and proceedings by and against the Committee;
- (b) authenticate by his signature all decisions and instructions of the Committee;
- (c) operate the bank accounts of the Committee;
- (d) convene meetings of the Committee and prepare its minutes and implement the decisions;
- (e) attend the meetings of the Committee with all necessary records and information;

- (f) maintain such forms, registers and other records, as may be prescribed from time to time and do all correspondence relating to the Committee;
- (g) prepare an annual statement of business transaction by the committee during each Financial Year; and
- (h) do such acts as may be directed by the Committee.

(3) The Committee may appoint such number of officers as are necessary for the functioning of the Committee in such manner and in accordance with such terms and conditions as may be prescribed or on deputation basis.

14. Kerala Advocates' Clerks Welfare Fund Stamp. - (1) There shall be printed at the Government Press by the Committee in such form and in such manner as may be prescribed stamps [of the value of six rupees] inscribed as "the Kerala Advocates' Clerks Welfare Fund Stamp".

(2) Every Vakalath filed before any court, authority or tribunal shall be affixed with a stamp as specified in sub-section (1), in addition to the court fee stamps, if any, and the stamps to be affixed under any other Act and no Vakalath shall be valid unless it is so stamped:

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

(3) Every stamp affixed in Vakalaths filed before any court, tribunal or other authority shall be cancelled in the manner provided in the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960).

(4) The custody of the stamps printed under this section shall be with the Committee and, the supply and sale of stamps shall be in such manner as may be prescribed.

15. Recognition and Registration of Advocates' Clerks Association. - (1) All association of Advocates' Clerks functioning on the date of commencement of this Act, in any court headquarters may, before a date to be notified by committee in this behalf apply to the Committee in such form and in such manner as may be prescribed, for recognition and registration as an Advocates' Clerk Association under this Act and any association of Advocates' Clerks constituted after the commencement of this Act may apply for such registration within three months from the date of its constitution.

(2) Every application for recognition and registration shall be accompanied by the rules or bye laws of the association, name and address 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 recognise the Association as an Advocates'

Clerks Association and issue a certificate of recognition and registration in such form as may be prescribed.

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

16. Duties of Advocates' Clerks Association. - (1) Every Advocates' Clerks Association shall, on or before 15th April of every year, intimate to the Committee a list of the members as on 31st March of that year.

(2) Every Advocates' Clerks Association shall intimate in writing to the Committee of,-

- (a) any change of the Office bearers of the Advocates' 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 changes;
- (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.

(3) Every Advocates' Clerks Association shall, when required by the Committee, collect and remit to the Fund in such manner as may be prescribed the subscription payable by its members to the Fund.

17. Members of the Fund. - (1) Every Advocates' Clerk 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:

Provided that no person employed as an Advocates' Clerk after retiring from the service of the Central Government or the State Government or any Public Sector Undertaking with any retirement benefit, shall be eligible for membership to 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;

Provided further that any person aggrieved by an order rejecting his application for membership may prefer an appeal to the Government.

(3) Every applicant shall pay an application fee of one hundred rupees along with the application in such manner as may be prescribed.

(4) Every applicant shall pay to the Fund an admission fee of two hundred and fifty rupees at the time of admission in such manner as may be prescribed.

(5) Every member of the Fund shall pay to the Fund an annual subscription of [four hundred rupees] on or before 30th June of every year.

(6) Any member of the Fund who fails to remit the annual subscription for a year before 30th June of that year shall be liable to be removed from the membership of the Fund.

(7) A person removed from the membership of the Fund under sub-section (6) shall be readmitted to the Fund on payment of the arrears with interest at twelve per cent per annum within six months from the date of such removal.

(8) Every member of the Fund shall, at the time of admission, make a nomination conferring on one or more dependents the right to receive the amount from the Fund in the event of his death.

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

(10) 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.

(11) Where on receipt of a complaint or otherwise, the Committee has reason to believe that an Advocates' Clerk secured admission as a member of the Fund by misrepresentation, fraud or undue influence, it shall be

competent for the committee to remove the name of such Advocates' Clerk from the membership of the Fund:

Provided that no order under this sub-section shall be passed unless the person likely to be adversely affected has been given an opportunity of being heard.

18. 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 a consolidated amount and pension based on his number of years of employment as an Advocates' Clerk at such rates as may be prescribed.

(2) In the event of death of a member, a consolidated amount as may be prescribed shall be paid to the nominee or where there is no nominee to his dependents.

(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 a consolidated amount, based on his number of years of employment as an Advocates' Clerk at such rates as may be prescribed. Such persons shall be eligible for readmission 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 within five years of his admission to the Fund.

(4) For calculating the period of completed years of employment for the purpose of payment under this Act, every two years employment as an Advocates' Clerk, if any, before the admission as a member to the Fund shall be computed as one year of employment and added on 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) The Committee shall dispose of an application received under sub-section (5) after such enquiry, as it deems necessary.

19. Restriction on assignment, alienation etc., of interest of member 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.

(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 official assignee or official receiver appointed under the law relating to insolvency for the time being in force.

20. Group Life Insurance for members and other benefits. - The Committee may for the Welfare of the members of the Fund,-

- (a) take from the Life Insurance Corporation of India or any other recognised Insurance Company policies of Group Insurance in the name of the members of the Fund, and
- (b) Provide for medical and educational facilities, and such other benefits including pension as may be prescribed for the members of the Fund and their dependents:

Provided that no schemes in respect of pension shall be made by the committee, except with the prior approval of the Government.

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 any person unless such person has been given an opportunity for making his representation.

22. Protection of action taken in good faith. - (1) No suit, prosecution or other legal proceedings shall lie against any person or anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

(2) No suit or other legal proceeding shall lie against the Committee 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 rule 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 by or 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 (Central Act V of 1908) in respect of the following matters, namely:-

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit; and
- (d) issuing Commission for 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 14 days which may be comprised in one session or in 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 rule 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.

26. Control and supervision of the existing Kerala Advocates' Clerks Welfare Fund Scheme. - On and from the date of commencement of this Act the control and supervision of the existing Kerala Advocates' Clerks Welfare Fund Scheme shall be with the Committee.

27. Amendment of Act 10 of 1960. - Notwithstanding anything contained in section 76 of the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), an amount equal to twenty percent of the legal benefit fund collected under the said section shall be transferred every year to the Fund constituted under this Act.

