

Punjab State Mediation Rules, 2019

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Rule PUNJAB-STATE-MEDIATION-RULES-2019 of 2019

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Part III – Government of Punjab

No. G.S.R.06/C.A.5/1908/S.89/2019. - In exercise of the Rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the Punjab State Legal Services Authority hereby makes the following rules for court annexed mediation and for pre litigative matters referred to mediation.: -

1. Short title, commencement and interpretation.

(1) These Rules shall be called as the "Punjab State Mediation Rules, 2019". (2) These Rules shall come into force with effect from the date of approval by the Executive Chairman of Punjab State Legal Service Authority. (3) If any of these Rules are in conflict with any mandatory provision of the applicable law of Mediation from which the parties cannot derogate, that provision shall prevail.

2. Definitions.

- In these Rules, unless the context otherwise requires - (a) "Advocate" means advocate as defined under Section 2(a) of the Advocates Act, 1961. (b) "Attorney" means a person duly appointed as such in accordance with the Powers-of-Attorney Act, 1882 and the Rules framed there under. (c) "Chairperson" means the District Judge mentioned under Section 9 of the Legal Services Authorities Act, 1987. (d) "Decree" means decree as defined under Section 2(2) of the Code of Civil Procedure, 1908. (e) "District Legal Services Authority" means District Legal Services Authority constituted under Section 9 of the Legal Services Authorities Act, 1987. (f) "Empanelled" means empanelled as Mediator with the Punjab State Legal Services Authority or the District Legal Services Authority. (g) "Executive Chairman" means Executive Chairman of Punjab State Legal Services

Authority as defined under sub section 2(b) of section 6 of Legal Services Authorities Act, 1987.(h)"Legal practitioner" means Legal Practitioner as defined under Section 2(i) of the Advocates Act, 1961.(i)"Mediation Centre" means a centre established at the State, District and Sub-Divisional Level for conducting Mediation proceedings by the Punjab State Legal Services Authority.(j)"Mediator" means a qualified person trained by the Punjab State Legal Services Authority to conduct Mediation, including Mediator on the panel of and/or Accredited by Punjab State Legal Services Authority.(k)"Member Secretary" means Member Secretary of Punjab State Legal Services Authority as defined under section 6(3) of Legal Services Authorities Act, 1987.(l)"Nodal Officer" means an officer appointed by the Punjab State Legal Services Authority responsible for the functioning of the Mediation Centre and also for entrustment of cases to the Mediators.(m)"Order" means order as defined under Section 2(14) of the Code of Civil Procedure, 1908.(n)"Pre-litigative matter" means a matter regarding which litigation has not yet started in any Court of Law and falls in the category of cases approved by Executive Chairman to be taken in Mediation at pre-litigative stage.(o)"Punjab State Legal Services Authority" means State Legal Services Authority constituted under Section 6 of the Legal Services Authorities Act, 1987, for the State of Punjab.(p)"Settlement" means Written Settlement arrived at in between the parties after the successful Mediation duly signed by parties, concerned with the dispute in any manner, and countersigned by the Mediator.

Chapter-1 Mediator's Qualification, Training and Removal Rule -

3. Qualifications of person(s) to be empanelled as Mediator.

- The following person(s) shall be treated as qualified and eligible for empanelment as Mediators: -

1. Serving Judicial Officers;

2. Legal practitioners with at least five years' standing at the bar in the Supreme Court/ High Court/District Court;

3. Experts or other professionals with at least fifteen years' standing;

4. Retired Judicial Officer;

5. Retired Gazetted Civil or Police Officers; and

6. Any other person with the approval of Executive Chairman, Punjab State Legal Services Authority.

4. Disqualification of person(s) to be empanelled as Mediator.

- Any person against whom criminal charges are framed by a criminal court and are pending. Any person who has been convicted by a criminal court for any offence. Any person against whom Disciplinary Proceedings have been initiated by the appropriate Disciplinary Authority which are

pending or have resulted in a punishment. Provided that Member Secretary shall be competent to permit the inclusion of a Mediator in the Panel where the charges framed by a criminal court or the conviction by the Criminal Court or the Punishment by the disciplinary authority has been on minor grounds not involving moral turpitude, corruption, cheating, misappropriation of funds, forgery etc.

5. Temporary Disqualification.

- Every person appointed as a mediator in a dispute or in a prelitigative matter shall inform the Nodal Officer and all the parties to the dispute, if he is in anyway interested either directly or indirectly, in any of the parties to the dispute or interested in the subject matter of dispute, at the earliest point of the time of his discovery of such interest and not to accept the relevant conflict/dispute for resolution. If he fails to inform/disclose such information, such a failure would amount to misconduct. The Nodal Officer shall on receipt of any information from any of the parties or their representative that the Mediator appointed is interested or related to any of the parties or interested in the subject matter of the dispute, appoint a new Mediator provided such information is substantiated with the prima facie evidence. A Mediator who is temporarily disqualified in a particular matter, is not entitled to any remuneration in the said matter. If a Mediator is a party to any Civil/Criminal litigation pending at the District of his/her empanelment.

6. Training as Mediator.

- The candidates selected for the panel shall be imparted 40 Hours Mediation Training by the Trainers of Mediation.

7. Accreditation of a Mediator.

- A Mediator shall be considered for his certification as "Accredited Mediator" on completion of 50 successful mediations and after the expiry of one year from his/her induction in the panel.

8. Removal of Mediators.

- A mediator can be removed from the panel of mediators by the Chairperson, District Legal Services Authority at any time during the initial term of 3 years by recording reasons on any of the following grounds: a. mis-conduct b. violation of any of the ethics or code of conduct for mediator c. punishment awarded by the appropriate disciplinary authority d. having become a person of unsound mind e. convicted by a criminal court for an offence of moral turpitude, corruption, cheating, misappropriation of funds, forgery etc. f. Mediators whose names have been removed from the Panel for Mediators would have no right to claim compensation or damages; nor would they be entitled to seek reinstatement of their names on the panel of Mediators. However, a mediator can be removed from the panel of mediators as well as his/her accreditation can be cancelled by the Executive Chairman, Punjab State Legal Services Authority, at any time by recording reasons. Chapter-2 Code of Conduct for Mediators

9. Code of Conduct For Mediators.

- Before commencing the Mediation process, the Mediator shall disclose to the parties, his interest in the outcome of the dispute or interest in any of the parties and/or any circumstances that are likely to give rise to justifiable doubt as to his independence or impartiality. In the event that any party expresses his reservation about any Mediator's neutrality or independence, the Mediator shall recuse himself from the matter and report the same to the coordinator or Registrar of the Centre. Every Mediator shall, without delay, on his discovery of any conflict of interest during the process of Mediation, disclose to the parties such an interest and forthwith recuse himself from the matter. Wilful failure to disclose his or her interest to the parties would amount to misconduct. No Mediator shall compel any Party to settle a dispute in a specific manner against the wishes of any of the Parties. No Mediator shall demand any favour or consideration or accept any gifts or inducement from any of the parties in any manner, before, during or after the completion of the process of Mediation, other than the fee prescribed or approved by the Centre. No Mediator shall represent any of the parties to the dispute in any case or advise, in any professional capacity, any parties to a dispute for a period of three years on conclusion of the Mediation, irrespective of whether the Mediation resulted in a settlement or not. No Mediator shall disclose any Confidential Information given by the parties during the course of Mediation to any court or any third parties or disclose any Confidential Information of one party to another party without the prior written consent of the disclosing party. No Mediator shall, after the commencement of the Mediation process, sit as arbitrator or conciliator or as judge in the same or connected case that has been referred for Mediation. No Mediator, after giving specific dates for Mediation, absent himself persistently without any justifiable cause. Every Mediator shall conduct himself with dignity and decorum and be polite with the parties. A Mediator shall not conduct local investigation. No Mediator shall visit the house or place of business/ office of any parties to a dispute that has been referred for Mediation before him. The Mediator shall not accompany any parties to the dispute, to any place, without notice and written consent of the other parties to the dispute. No Mediator shall be a custodian or act as an escrow agent of any properties or money in a matter under Mediation without the consent of the Nodal Officer of the concerned Mediation Centre.

Chapter-3 Empanelment and Mediation Process

10. Panel of Mediators.

- With the approval of Executive Chairman, Member Secretary shall prepare a panel of Mediators, who are qualified under these rules and are fit to be empanelled, based on the recommendation of the Chairpersons of all the Districts. The panels shall be prepared for all the Mediation Centres under the supervision and control of the Punjab State Legal Services Authority. The panel of names shall also maintain their respective qualification and professional or technical experience. All the in service Judicial Officers, who have received 40 Hours Mediation Training shall be deemed to be on the panel of mediators for the respective District/Sub-division of their place of posting.

11. Initiation of Mediation Process.

- In court annexed Mediation, the mediation process shall initiate by referral order of the court where the matter is pending; and in prelitigation matter on reference by the authority where the matter is pending or application by any of the party if no matter is pending before any authority.

12. Appointment of Mediator for a matter.

- The Nodal Officer while entrusting a matter to the mediator, may at his or her discretion, give preference to those who have special qualification or expertise in the specific domain area.

13. Venue for conducting Mediation.

- The Mediator shall conduct the Mediation at the Mediation Centre. However, the Nodal Officer can fix any venue outside the Mediation Centre taking into the consideration the convenience of the parties having special circumstances due to which any of the party cannot travel to the Mediation Centre and subject to the acceptance of the said venue by the Mediator.

14. Procedure of Mediation.

- The Mediator shall follow the procedure hereinafter mention, namely:(a)he/she shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all the parties have to be present;(b)each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect of those issues and all information reasonably required for the mediator to understand the issues such memoranda shall also be mutually exchanged between the parties;(c)each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.(d)The Mediator shall have the authority to adjourn proceeding; restrict admission to guests/relatives/friends accompanying the parties to the session; convene private session or joint session and assist in drafting settlement.

15. Mediator to guard the interest of minor.

- In the case of a minor being a party to the mediation process, the mediator shall ensure to comply with the provisions of Order XXXII, Rule 7, CPC.

16. Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

- The Mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of equity, justice and good conscience, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

17. Representation of parties.

- The parties shall ordinarily be present personally or through authorised attorney at the sessions notified by the Mediator. They may also be represented by an Advocate with permission of the Mediator in such sessions.

18. Consequences of non-attendance of parties at sessions on due dates.

- If a party fails to attend a session notified by the Mediator on account of deliberate or wilful act, the other party or the Mediator can apply to the Court in which the suit or proceeding is pending, in which case Court shall be empowered to issue appropriate directions as it deems fit having regard to the facts and circumstances of the case.

19. Role of Mediator.

- The mediators shall attempt to facilitate voluntary resolution of the dispute(s) by the parties. He/she shall assist them in understanding the problems, identifying the underlying issues, reducing mis- understandings, generating the options and developing option which are mutually acceptable to both the parties.

20. Parties alone responsible for taking decision.

- The parties shall be made to understand that the Mediator only facilitates in arriving at a decision to resolve dispute(s) and that he/ she will not and cannot impose any settlement nor does the Mediator give any assurance that the mediation will result in a settlement. The Mediator shall not impose any decision upon the parties.

21. Time limit for completion of mediation.

- On the expiry of Ninety days from the date fixed for the first appearance of the parties before the Mediator, the mediation shall stand terminated, unless the Court, which referred the matter or the Nodal Officer in pre- litigative matter, as the case may be, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

22. Parties to act in good faith.

- All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute(s), as far as possible.

23. Confidentiality, disclosure and inadmissibility of information.

- Any information whether oral or documentary received by the Mediator during the process of Mediation is confidential and the Mediator shall not part with that information to anyone or before any authority. Similarly the proposals or admissions made by any party during the process of Mediation shall also be confidential. Mediation proceedings shall not be recorded through any audio, video or mechanical process.

24. Communication between Mediator and the Court.

- In order to preserve the confidence of parties in the Court and the neutrality of the Mediator, there should be no communication between the Mediator and the Court, except as stated in sub-rules (2) and (3) of this Rule. If any communication between the Mediator and the Court is necessary, it shall be in writing, through the Nodal Officer, and copies of the same shall be given to the parties or their constituted attorneys or the Advocate. All communication between the Mediator and the Court shall be made only by the Mediator and in respect of the following matters: (a) the failure of a party or parties to attend; or (b) the Mediator's assessment that the case is not suited for settlement through mediation; or (c) Upon settlement of dispute(s) arrived at between parties.

25. Settlement agreement.

- When an agreement is reached between the parties with regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced into writing and signed by the parties or their constituted attorney and countersigned by the Mediator. If any Advocate has represented the parties, the Mediator may obtain his/her signature also on the settlement agreement. The agreement of the parties so signed shall be submitted to the Nodal Officer, Mediation Centre, who shall forward the same to the Court in which the matter is pending. Where no agreement is arrived at in between the parties or where the Mediator is of the view that no settlement is possible the Mediator will return the matter to the Nodal officer reporting "Not Settled"/"Case Un-fit for Settlement" etc. And the Nodal Officer would forward the same to the Court where Matter is pending. In case the settlement agreement is signed by the parties the Nodal Office shall supply a certified copy of the settlement of agreement under the seal of the Mediation Centre, to the parties free of cost. A register shall be maintained in the Mediation Centre for issuance of such certified copies.

26. Court to record settlement and pass decree.

- On receipt of settlement agreement, if the Court is satisfied that the parties have settled their disputes voluntarily, the Court may pass appropriate order/decreed on the basis of settlement, if the same is not found collusive/illegal/unworkable. However if the settlement disposed of only certain issues arising in the matter, the Court may record settlement in respect of the issues settled in the mediation and may proceed to decide other issue(s) which are not settled. Settlement so approved by the Court between the parties shall be final in respect of the proceedings pending before the Court.

27. Honorarium of the Mediators.

- The honorarium to the Mediator shall be paid as fixed by the Executive Chairman.

28. Clarification.

- If any question arises requiring a clarification of these Rules, the decision of the Executive Chairman, shall be final.