

Bihar Family Courts Rules, 2011

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Rule BIHAR-FAMILY-COURTS-RULES-2011 of 2011

- Published on 25 March 2011
- Commenced on 25 March 2011
- [This is the version of this document from 25 March 2011.]
- [Note: The original publication document is not available and this content could not be verified.]

Bihar Family Courts Rules, 2011Published vide Notification No. No. 7/Astha-1

-15-04/2010/GAD-3336, dated 25.03.2011Last Updated 1st February, 2020No. 7/Astha-1

-15-04/2010/GAD-3336. - In exercise of the powers conferred by Section 23 read with Sections 4, 5 and 6 of the Family Courts Act, 1984 (Central Act No. 66 of 1984), the Governor of Bihar, in consultation with the Patna High Court, Patna is hereby pleased to make the following Rules : -

1. Short title, extent and commencement.

(1)These Rules may be called "The Bihar Family Courts Rules, 2011"(2)It shall extend to the whole of the State of Bihar.(3)It shall come into force on the date of its publication in the Official Gazette.

2. Definition.

- In these Rules, unless the context otherwise requires: -(a)'Act' means the Family Courts Act, 1984;(b)'Citizen of India' means such person, who is or is deemed to be a Citizen of India; under part 2 of the Constitution of India.(c)'Governor' means the Governor of Bihar.(d)'Government' means the State Government of Bihar(e)'High Court' means the Patna High Court, Patna.(f)'Post' means the Post of Judge;(g)'Section' means the Section of the Family Courts Act, 1984;(h)Words and expressions used but not defined in these Rules will have the same meanings which are assigned to them in the Family Courts Act, 1984.

3. Appointment of Judges.

(1)Appointment of a judge shall be made : -(a)by deputation of member of the Bihar Superior Judicial Service or of a person who has held for 7 years the office of a member of a Tribunal or any post under the Union Government or State Government, requiring special knowledge of law; or(b)by re-appointment of a retired member or a person referred to in clause (a); or(c)by appointment of a person eligible under clauses (b) and (c) of subsection (3) of Section 4 of the

Act.(2)For the purpose of making an appointment under clause (c) of sub-rule (1), the Patna High Court, Patna shall invite applications from eligible candidates and appoint a Committee of such number of judge of the High Court as it may think proper. The Committee, so appointed, shall scrutinise the applications received, interview such of the applicants as are thought proper and place its recommendations to the High Court. The High Court Shall there Upon send its recommendations to the State Government for making such appointments:Provided that appointment of the post of principal Judge, Family Court from external sources would only be considered on rare occasion, if there is no one available from the Bihar Superior Judicial Service. Such an appointment would be an exception rather than the Rule. If such appointment is made, it would be purely of contractual nature for a fixed term. The terms of service will be negotiable.

4. Salary, allowances and other terms and conditions of judges.

(1)The terms and conditions of service of a Judge appointed by deputation under clause (a) of sub-rule (1) of Rule 3 shall: -(a)If such Judge belongs to the Bihar Superior Judicial Service be regulated by the Rules applicable to the members of the service:Provided that the pay and allowances of such Judge shall be as are admissible to a District Judge on deputation and his service conditions shall not be varied to his disadvantage after such appointment, and(b)If such Judge belongs to a service other than the Bihar Superior judicial Service, be regulated by the Rules applicable to the members of that service:Provided that the pay and allowances of such Judge shall be as are applicable to an Officer on deputation under the provisions of the Bihar Service Rules and his Service conditions shall not be varied to his disadvantage after appointment.(2)The terms and conditions of Service of a Judge appointed under clause (c) of sub-rule (1) of Rule 3 shall be the same as are applicable to a member of the Bihar Superior Judicial Service and shall be paid such pay and allowances as admissible to a selection grade member of that service. On his appointment as Judge, his pay will be fixed at the minimum Scale of Selection Grade of that service.(3)No person shall be appointed as Judge before he has attained the age of 35 years and after he has attained the age of 62 years.(4)If any person appointed as a Judge was in service under the Central or State Government he shall, on completion of age of Superannuation applicable in his parent Department, stand retired from the Service:Provided that the State Government may, with concurrence of the High Court, re-appoint him on the post of a Judge for a period not exceeding two years, which can be further extended, but not beyond the age of 62 years. On his reappointment, He will get the Salary and Allowances as admissible to a retired Government Servant on his re-appointment as per provisions of Bihar Service Rules.(5)Any member of the Bihar Superior Judicial Service who has reached the age of superannuation will be eligible for re-appointment as a Judge of the Family Courts for a period not exceeding two years, which can further be extended, but not beyond the age of 62 years, by the State Government with the concurrence of the Hight Court. On his re-appointment, he will get salary and allowances as are admissible to a retired Government Servant as per Law.(6)The pension of a person appointed otherwise than from members of Bihar Superior Judicial Services or other Service shall be governed by the contributory Pension Rules' or any other Pension Rule enacted by the State Government from time to time".(7)The Hight Court may transfer any Judge from One Family Court to another such Court in the State of Bihar.(8)The Judge of Family court shall work under administrative control and superintendence of the High Court.(9)The Dress of a Judge of Family Court Shall be similar to that of District and Session Judge.(10)The

maintenance of the Court building of Family Courts and its office shall be looked after by the Registrar/Judge-in-Charge of Civil Court of that District.(11)(i)The allotment of fund on all heads including heads of fees and honoraria to be paid to experts, counsellors or amicus curae shall be made available to the Principal Judge of the Family Court and the accounts of receipts and expenditure shall be maintained as per prevailing Rules and practices by the Registrar or the Judge-in-Charge of the Judgeship separately.(ii)The Registrar or the Judge-in-Charge shall be drawing and disbursing officer in respect of the officers and employees of the Family courts.(iii)In case a Family Court is established outside in addition to the one already existing at the headquarters of the Judgeship, in officers posted at the outlying station and authorized to act as the Registrar or Judge-in-charge there by the District and Session Judge, Shall also act as such for all purposes in respect of the Family Court.(iv)In case of the office of the Principal Judge, lying vacant or in case the Principal Judge is unable to discharge his function due to his absence or illness or for any other cause, the Additional Principal Judge, if any posted in the Family Court, Shall discharge the functions of the Principal Judge.(v)In case the Family court is lying vacant, the District Judge of the Judgeship shall act as the Principal Judge to discharge all the functions of the Principal Judge of the Family Court.(12)The Family Court shall observe holidays and vacation as declared by the High Court for Civil Courts.(13)A Staff Car shall be provided to each Judge of Family courts with 100 liters of petrol per month, or actual consumption of petrol which ever is less. An amount equal to the amount sanctioned for maintenance of a Staff Car or Civil Court shall be sanctioned for maintenance of the Staff Car of Family Courts.(14)Every Judge of Family Court shall be provided Telephone at the residence and in Chamber in Court premises as per Rule applicable to District Judge.(15)A Library shall be attached with every family Court and an annual grant shall be sanctioned for books, and Journals in the Library. Seristedar of Family Court shall be Incharge of Library.

5. Filing of Application.

(1)The filing of all applications except those governed by sub-rule (2), shall be governed by Rule 212 and Rule 214 of the Civil Court Rules framed by the High Court of Judicature at Patna in so far as they may be applicable to suits or proceedings under the above Rules:Provided that contents of all applications filed under the Rules shall be verified by the applicant by appending a certificate that the same were true to the applicant's belief and knowledge.(2)An application or petition under Chapter X of the Code of Criminal Procedure, 1973.(Act 2 of 1974) shall be presented before the Family Court and shall be dealt with, in the manner Provided by the Chapter X aforesaid.(3)The Service of notices and summons issued by the Family Courts shall be served through Nazarat of Civil Court as per relevant Rules laid down by the High Court as also in the manner as laid down by Order V of the Code of Civil Procedure, 1908.

6. Terms and conditions of service of officers and Employees.

(1)Such number and categories of officers and employees shall be provided to a Family Court, which are admissible to such a court of that level.(2)The appointment of Officers and employees of Family Courts shall be generally by appointment in the District Civil Court as per applicable Rules or by deputation from District Civil Court.(3)In case the District Judge is unable to appoint/depute any Officer or Employee to the Office of Family Courts, then the Principal Judge/Judge of Family Court

may appoint officer and employee on temporary/contract basis in accordance with manner of appointment provided in Bihar Civil Court Staff (Class III and IV) Rules, 1998, in consultation with the High Court.(4)The salary and allowances and other terms and conditions of service of the Officers and Employees of the Family Court shall be similar to the Officers and Employees working in the Civil Court.

7. Medical Expert.

- (i) The Family Court may secure services of Medical expert or any other expert in order to discharge its duty effectively.(ii)Such medical expert or other expert shall be paid a consolidated sum of Rs. 250/- per day for the purpose of giving his expert opinion/evidence in Family Court. But Medical experts or other experts who are not local shall be paid a sum of Rs. 750/- per day and shall also be paid T.A. at the rate admissible to official or nonofficial witnesses, as the case may be, for appearing before the Sessions Judge, preferably on the same day or in any case within a month. The aforesaid fees shall be revisable from time to time and at least after five years.

8. Amicus curiae.

- (i) The Judge of Family Court, in appropriate cases may appoint any Advocate, having experience of not less than 7 years, as Amicus curiae for assisting the Court.(ii)The Amicus curiae shall be entitled to such fee to be paid by State Government as admissible to the Additional Public Prosecutor working in Civil Court as per prevailing Rules governing such payment to an Additional Public Prosecutor.

9. Appointment of Counsellor and other persons.

(1)The State Government shall in consultation with the High Court, determine and notify a Panel for specified district or area, of institutions, organizations and persons (preferably women where available) engaged or working in the field of social welfare and promoting welfare of the family to associate with or to assist the Family Court of each specified district or area. For such determination, names of suitable institutions, organizations and persons will be obtained from the Welfare Department of the State Government and also from concerned District Magistrate (s) who shall make recommendations in consultation with the concerned District Judges and Principal Judges. The notified Panel may be revised or modified any time by exclusion or inclusion of names by the State Government in consultation with the High Court which may, for this purpose, consider reports of the concerned Family Courts.(2)No person shall be appointed as counsellor below the age 30 Years.(3)The Court may appoint a Counsellor from the list of authorized persons notified under sub-rule (1).(4)Such counsellor may, if permitted by the Court in a particular, suit or proceedings, assist the Court as Welfare expert in discharge of its functions imposed by the Act.(5)The Court may assign any work to a Counsellor for assisting it in discharging its functions under the Act.(6)A Counsellor or a person associated under sub-rule (3) may be paid a sum of Rs. 750/- per case only as honorarium by the State Government, appropriate stage to be decided by the Principal Judge in his own wisdom but in any case before passing of the Judgment. Such honorarium shall be revisable from time to time and at least after every five years.

10. Duties and Functions of Counsellors.

- (i) The Counsellor shall assist the Court and advise the parties for settling their disputes, and he will do his best for reconciliation between the parties. (ii) The Counsellor may visit the house of any of the parties and may interview their relatives, friends, acquainted persons or employees in connection with settlement of disputes between them. (iii) No Counsellor shall visit the house of a lone female in connection with his duties without obtaining prior permission of the family Court. (iv) Every information collected by Counsellors, every statement made before the Counsellors and every note or report prepared by Counsellors, shall be confidential and not to be disclosed to any person, except with the previous consent of both the parties to the suit or proceedings followed by the leave of the Family Court. (v) No Counsellor shall give evidence in any Court in respect of such information, statement, notes or report. (vi) In any suit or proceeding, if required by the Family Court, the Counsellor may submit a report to it, in respect of environment of house. Relationship of spouses and their children, income and standard of living of the concerned family. (vii) The Counsellor shall not accept any fee or expenses from any of the parties, nor shall he act or plead for any of the parties. He shall only assist the Family Court in settling or deciding the dispute in peaceful and amicable manner. (viii) The Counsellor shall submit his report regarding his efforts of reconciliation made for peaceful and amicable settlement of disputes between parties. The report shall be objective without blaming any of parties in case of failure of reconciliation. A copy of such report shall be given to the party on its request. Any party shall have right to make its submission on such report. (ix) The Counsellor may advise, guide and assist the reconciled parties even after peaceful settlement arrived in between them.