

The Jharkhand Education Tribunal Act, 2005

JHARKHAND

India

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Act 6 of 2005

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The Jharkhand Education Tribunal Act, 2005(Jharkhand Act 6 of 2005)Published in Jharkhand Gazette (extraordinary), dated 14.8.2005.An Act to make suitable provisions for constitution of a statutory forum, to be known as Appellate Tribunal for looking into the grievances of teachers of aided, affiliated and Private Educational Institutions and that of the parents/guardians of the students studying therein and to comply with the order of the Hon'ble Supreme Court in the matter of TMA Pal vs. Karnataka State and the ruling dated the 5th August, 2003 passed by the Division Bench of the Honourable Jharkhand High Court in the matter of WP (PIL) No. 2744 of 2003.Be it enacted by the Legislature of the State of Jharkhand in the fifty sixth year of the Republic of India as follows :-

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Jharkhand Education Tribunal Act, 2005;(2)It extends to the whole of State of Jharkhand;(3)The provisions of this Act shall come into force with effect from the date fixed by the State Government, by notification.

2. Definition.

- In this Act, unless the context otherwise requires-(a)"Administrative Member" means a member of a Tribunal who is not a Educationist Member within the meaning of Section 4(i);(b)"Application" means an application made under Section 9;(c)"Appointed day" in relation to a Tribunal, means the date with effect from which it is established, by notification, under Section 3;(d)"Bench" means a Bench of the Tribunal;(e)"Jharkhand Education Tribunal" means the Tribunal established under Section 3;(f)"Chairman" means the Chairman of the Tribunal;(g)"Educationist Member" means a

Member of the Tribunal appointed as such under this Act, who possesses any of the qualifications specified in sub-section 4 (ii) of Section 4;(h)"Member" means a Member (Whether Educationist or Administrative) of the Tribunal, and includes the Chairman;(i)"Notification" means a notification published in the Official Gazette;(j)"Prescribed" means prescribed by rules made under this Act;(k)"Rules" means rules made under Sections 20 and 21 of this Act;(l)"Service" means service rendered to the educational institutions is specified in Section 2(n);(m)"Service matter in relation to a person", means all matter relating to the conditions of his service in connection with the affairs of the educational institution, other than Govt, institution;(n)"Educational institution" means any educational institution managed and administered by private management located within the State of Jharkhand.

Chapter II

3. Establishment of Jharkhand Education Tribunal.

- The State Government may by education establish an Education Tribunal, to be known as Jharkhand Education Tribunal.

4. Composition of Tribunal and Benches Thereof.

(1)The Tribunal shall consist of a Chairman and two members, one of whom shall be the Administrative member and the other shall be the Educationist member.(2)Notwithstanding anything contained in the foregoing provisions of the section it shall be competent for the Chairman or any other member or members authorized by the Chairman in this behalf to function as a Bench consisting of a single member or two members and exercise the jurisdiction, power and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify.(3)Subject to other provisions of this Act, the Tribunal shall normally have its sitting at Ranchi. But it may hold its sitting at any district headquarter of the State of Jharkhand as decided by the Chairman and members.(4)Qualifications for appointment of Chairman and Member :-(i)A person shall not be qualified for appointment as the Chairman unless he is a retired Judge of a High Court or retired offices of Indian Administrative Service of the rank of Secretary to the State Government.(ii)A person shall not be qualified for appointment as an Educationist member unless he;(a)Is, or has been a Vice-Chancellor of any university; or(b)Is, or has been a University Professor for a period of 5 years; or(c)Is, or has been a member of the State Education Service (Class-1) for period of 15 years.(iii)A person shall not be qualified for appointment as an administrative member unless he has for at least two years, held the post of at least an Additional Secretary to the Government of Jharkhand or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of Jharkhand and shall have adequate administrative experience. ,(iv)Subject to the provision of sub-section (4) of Section 4 the Chairman and every other member of the Jharkhand Education Tribunal shall be appointed by the State Government.

5. Term of Office.

- The Chairman or other Member shall hold office as such for a term of three years from the date he joins the office provided that no Chairman or other Member shall hold office as such after he has attained, the age of sixty five years.

6. Salaries, allowances and other terms and conditions of service of Chairman and other Members.

- The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman and other Member shall be such as may be prescribed by the State Government. Provided that neither the salary and allowances nor other terms and conditions of service of the Chairman or other Member shall be varied to his disadvantage after his appointment.

7. Staff of the Tribunal.

(1)The State Government shall determine the nature and categories of the officers and other employees, required to assist the Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employee as it thinks fit. These posts will be filled by either on deputation or contract basis.(2)The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Chairman.(3)The salaries, allowances and conditions of service of the officers and other employees of a Tribunal shall be such as may be specified by rules made by the State Government.

Chapter III

Jurisdiction, Power and Authority of Tribunal

8. Jurisdiction, power and authority of the Jharkhand Education Tribunal.

(1)Save as otherwise expressly provided in this Act, the Jharkhand Education Tribunal shall exercise on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before that day by all Courts (Except the Jharkhand High Court and Supreme Court of India) regarding:- (a)Matters concerning recruitment to any post in connection with the affairs of the educational institution; (b)All matters concerning the service conditions of employees of the educational institutions; (c)Grievances of the employees against the management of the educational institutions; (d)Grievances of the guardians and parents of students against the management of the educational institutions regarding teaching standards, fee structure, infrastructural facilities, development works and allied matters related thereto; (e)Such matters relating to educational institutions as may be referred to the Tribunal by the State Government by notification from time to time.

9. Application to Tribunal.

(1) Subject to other provisions of this Act, a person aggrieved by an order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievances. Explanation. - For the purposes of this sub-section "Order" means an order made:- (A) by the Management of an aided, affiliated and private educational institution; (B) by an officer, committee or other body or agency of such educational institution referred to in Clause (A) (2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee, if any, in respect of the filing of such an application and by such other fees for the service or execution of processes as may be prescribed by the State Government; (3) On receipt of an application under sub-section (1) the Tribunal shall, if satisfied "that the application is fit for adjudication or trial by it, admit such an application. Where the Tribunal is not satisfied, it may summarily reject the application after recording its reasons. (4) Where an application has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

10. Limitation.

(1) A Tribunal shall not admit an application, unless-(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date of the establishment of this Tribunal; and (b) no proceeding of the redressal of such grievance had commenced before the said date before any High Court. (2) Besides cases admissible for adjudication under sub-section (1), an application may be admitted within a period of six months from the date of the issue of the order by an educational institution. This limitation may be condoned by the Tribunal if it is satisfied that there exists sufficient cause for not making the application within such period.

11. Procedure and powers of Tribunal.

(1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the State Government. The Tribunal shall have power to regulate its own procedure including the fixing of places and time of its inquiry and whether to sit in public or in private. (2) The Tribunal shall decide every application made to it as expeditiously as possible. Ordinarily every application shall be decided after a perusal of relevant documents and written representations and hearing such oral arguments as may be advanced. After hearing the parties, the Tribunal shall adjudicate the dispute and pass such order/direction as thought fit and proper. (3) The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 .. (5 of 1908), while trying a suit, in respect of the following matters, namely-(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the production of

documents;(c)receiving evidence on affidavits;(d)subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;(e)issuing commissions, for the examination of witnesses or, documents;(f)reviewing its decisions;(g)dismissing a representation for default or deciding it ex parte;(h)setting aside any order of dismissal or other punishments passed by an educational institution;(i)any other matter, which may be referred by the State Government.

12. Right of applicant to take assistance of legal practitioner.

- A person making an application to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

13. Conditions for the making of interim order.

- Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (Whether by way of injunction or stay or any other manner) shall be made on or in any proceedings relating to any application unless:-(a)a copy of such application and that of all documents in support of the plea for the such interim order is furnished to the party against whom such application is made or proposed to be made; and(b)opportunity is given to such a party to be heard in the matter:Provided that a Tribunal may dispense with the requirements of Clause (a) and (b) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary to do so for preventing any loss being caused to the applicant which cannot be averted otherwise.

14. Decision to be by majority.

- If the members of a Bench differ in opinion on a point, the point shall be decided according to the opinion of the majority. The Chairman of the Tribunal will take steps to ascertain the majority view in such cases by a suitable Constitution of the Bench.

15. Appeal.

- Appeal against the order/directions/judgements passed by the Tribunal will be before the Jharkhand High Court.

16. Proceeding before a Tribunal to be judicial proceedings.

- All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

17. Member and Staff of Tribunal to be public servants.

- The Chairman, Members, officers and employees provided under Section 7 to a Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

18. Protection of action taken in good faith.

- No suit, prosecution or legal proceedings shall lie against the Chairman and Members of the Education Tribunal, or any other person authorized by such Chairman and Members for anything which is done in good faith or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. Act to have overriding effect.

- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or an instrument having effect by virtue of any law other than this Act.

20. Power of the State Government to make rule.

- The State Government may, by notification, make rules to provide for all or any of the following matters, namely:-(a)the financial and administrative power, which the Chairman of a Tribunal may exercise;(b)the salaries, allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (3) of Section 7; and(c)any other matter relating to the implementation of the provisions of this Act.

21. Power to make rule retrospectively.

- The State Government shall make rules retrospectively but the State shall not make such any rules prior to the date of the effect of this Act.

22. Execution of Orders/Judgments.

(a)The Tribunal shall, be deemed to be a Court within the meaning of the Contempt of Court Act, 1971.(b)have all the powers under Civil Procedure Code for executing any of its orders/directions and judgments.

23. Laying of rules.

- Every rule made under this Act by the State Government shall be laid, as soon as possible before the State Legislature.