

The Jammu and Kashmir State Commission for Backward Classes Act, 1997

JAMMU & KASHMIR

India

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Act 12 of 1997

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The Jammu and Kashmir State Commission for Backward Classes Act, 1997(Act No. 12 of 1997)An Act to provide for the constitution of a State Commission for Backward Classes other than the Scheduled Castes and the Scheduled Tribes, and for matters connected therewith or incidental thereto.Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows :-Chapter-I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Jammu and Kashmir State Commission for Backward Classes Act, 1997.(2)It extends to the whole of the State of Jammu and Kashmir.(3)It shall be deemed to have come, into force with effect from May 24th, 1995.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"backward classes" for the purpose of this Act mean such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Government in the lists;(b)"Commission" means the State Commission for Backward Classes constituted under section 3;(c)"Government" means the Government of the State of Jammu and Kashmir;(d)"Lists" means lists prepared by the Government from time to time for purposes of making Provision for the reservation of appointments or posts in favour of backward classes of citizens which in the opinion of the Government are not adequately represented in the services under the Government and any local or other authority within the territory of the State of Jammu and Kashmir or under the control of the Government;(e)"Member" means a Member of the Commission and includes the Chairperson;(f)"Prescribed" means prescribed by rules made under this Act.Chapter-II The State Commission for Backward Classes

3. Constitution of the State Commission for Backward Classes.

(1)The Government shall constitute a body to be known as the State Commission for Backward Classes to exercise the powers conferred on, and to perform the functions assigned to it under this Act,(2)The Commission shall consist of the following members nominated by the Government :-(a)[a Chairperson who has for at least two years held the post of a Commissioner/Secretary to the Government or equivalent;] [Substituted by Act No. 9 of 2016, dated 23.7.2016.](b)an eminent educationist;(c)[an eminent lawyer who has an experience of ten years at Bar in the Supreme Court or the High Court and having knowledge of matters pertaining to social justice and empowerment of weak and underprivileged classes;] [Substituted by Act No. 9 of 2016, dated 23.7.2016.](d)two persons preferable belonging to Backward Classes who has special knowledge in matters relating to backward classes.(3)There shall also be a Secretary to the Commission who shall be person with adequate administrative experience and holding a post of additional Secretary or its equivalent.

4. Term of office and conditions of service of Chairperson and Members.

- [(1) The Chairperson and every Member shall hold office for a term of five years from the date he/she assumes office ;(1A)Notwithstanding anything to the contrary contained in any order fixing term of office and conditions of service of Chairperson, and Members of the Commission, the Members including the Chairman who are holding these positions on the date of commencement of the Jammu and Kashmir State Commission for Backward Classes (Amendment) Act, 2018 shall have a tenure of five years from the date he/she assumed the office.] [Substituted by Act No. 7 of 2018, dated 27.2.2018.](2)A Member may, by writing under his hand addressed to the Government, resign from the office of Chairperson or, as the case may be, of Member at any time.(3)The Government shall remove a person from the office of Member if that person-(a)becomes an undischarged insolvent;(b)is convicted and sentenced to imprisonment for an offence which in the opinion of the Government, involves moral turpitude;(c)becomes of unsound mind and stands so declared by a competent court;(d)refuses to act or becomes incapable of acting;(e)is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or(f)has, in the opinion of the Government, so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the interests of backward classes or the public interest :Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.[4A. Filling of vacancy and Member to act as Chairperson in certain circumstances. - (1) A vacancy caused in the Commission under section 4, or otherwise, shall be filled by the Government as soon as possible.(2)In the event of occurrence of vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Government may, by notification, authorise the Member nominated under clause (c) or sub-section (2) of section 3 of the Act, to act as the Chairperson until the nomination of a new Chairperson to fill such vacancy :Provided that the nomination of new Chairperson under the Act shall take place within two months after the vacancy is caused.(3)When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the Government may, by notification, authorise the Member nominated under clause (c) of sub-section (2) of section 3 of the Act, to discharge the functions of the Chairperson until the Chairperson resumes his duties.

4B. Salary, allowances and other conditions of service of the Chairperson and Members.

- [(1) The Chairperson and members shall be entitled to such salary, allowances and other conditions of services as may be prescribed.] [Substituted by Act No. 9 of 2016, dated 23.7.2016.][***] [Omitted '(2)' by Act No. 9 of 2016, dated 23.7.2016.](2)[] [Renumbered '(3)' by Act No. 9 of 2016, dated 23.7.2016.] The terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after his appointment.(3)[] [Renumbered '(4)' by Act No. 9 of 2016, dated 23.7.2016.] Notwithstanding anything contained in sub-section (1), (2) and (3), if the Chairperson or a Member at the time of his appointment was in receipt of a pension in respect of any previous service under the Government of India or Government of the State, his salary in respect of services as a Chairperson or as a Member, as the case may be shall be reduced-(i)by the amount of that pension;(ii)if he has, before assuming office, received in lieu of a portion of pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and(iii)by any other form or retirement benefits being drawn or availed of or to be drawn or availed of by him.]

5. Officers and other employees of the Commission.

(1)The Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the function of the Commission(2)The salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. Salaries and allowances to be paid out of grants.

- The salaries and allowances payable to the Chairperson and Members and the administrative expenses including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 12.

7. Vacancies etc. not to invalidate proceedings of the Commission.

- No act or proceeding of the Commission shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

8. Procedure to be regulated by the Commission.

(1)The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.(2)The Commission shall regulate its own procedure.(3)All orders and decisions of the Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Secretary in this behalf.Chapter-III Function and Powers of the Commission.

9. Function of the Commission.

(1)The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of ever-inclusion or under inclusion of any backward class in such list and tender such advice to the Government as it deems appropriate.(2)The advice of the Commission shall ordinarily be binding upon the Government.

10. Powers of the Commission.

- The Commission shall, while performing its function under sub-section (1) of section 9, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely :-
(a)summoning and enforcing the attendance of any person from any part of the State of Jammu and Kashmir and examining him on oath;
(b)requiring the discovery and production of any document;
(c)receiving evidence on affidavits;
(d)requisitioning any public record or copy thereof from any court or office;
(e)issuing commission for the examination of witnesses and documents;
and(f)any other matter which may be prescribed.

11. Periodic revision of lists by the Government.

(1)The Government may at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.(2)The Government shall, while undertaking any revision referred to in sub-section (1), consult the Commission.
Chapter-IV Finance, Accounts and Audit

12. Grants by the Government.

(1)The Government shall, after the appropriation made by State Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilised for the purposes of this Act.(2)The Commission may spend such sums as it think fit for performing the functions under this Act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

13. Accounts and Audit.

(1)The Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Accountant General.(2)The accounts of the Commission shall be audited by the Accountant General at such intervals as may be specified by him and any expenditure incurred in connection with such an audit shall be payable by the Commission to the Accountant General.(3)The Accountant General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in

connection with such audit as the Accountant General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

14. Annual report.

- The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving full account of its activities during the previous financial year and forward a copy thereof to the Government.

15. Annual report and audit report to be laid before State Legislature.

- The Government shall cause the annual report together with a memorandum of action taken on the advice tendered by the Commission under section 9 and the reasons for the non-acceptance, if any, of any such advice and the audit report to be laid as soon as may be after they are received before each House of State legislature. Chapter-V Miscellaneous

16. Chairperson, Member and employees of the Commission to be public servants.

- The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

17. Power to make rules.

(1) The Government may, by notification in the Government Gazette, make rules for carrying out the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely :- (a) salaries and allowances payable to and the other terms and conditions of service of the Chairperson and Members under [sub-section (1) and (2) of section (4-B)] [Substituted by Act XI of 2007.] and of officers and other employees under sub-section (2) of section 5; (b) the form in which the annual statement of accounts shall be maintained under sub-section (1) of section 13; (c) the form in, and the time at, which the annual report shall be prepared under section 14; (d) any other matter which is required to be, or may be, prescribed. (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of State Legislature while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule or both House agree 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.

18. Power to remove difficulties.

(1) If any difficulty arises in giving effect to the provisions of this Act the Government may by order published in the Government Gazette, make provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient, for removing the difficulty. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of State Legislature.

19. Repeal to remove difficulties.

(1) The Jammu and Kashmir State Commission for Backward Classes Act, 1995 (President's Act No. 2 of 1995) is hereby repealed. (2) Notwithstanding any such repeal, anything done, any action taken, any rule made, any order or notification issued under any of the provisions of the law repealed under sub-section (1) shall be deemed to have been done, taken, made or issued under the corresponding provisions of this Act. [Inserted by Act XI of 2007.]