

Jharkhand Advocates Clerks Welfare Fund Act, 2018

JHARKHAND

India

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Act 16 of 2018

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Jharkhand Advocates Clerks Welfare Fund Act, 2018(Jharkhand Act No. 16 of 2018)[Dated 7.12.2018]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 Jharkhand and for matters connected there with or incidental there to.Be it enacted by the Legislature of the State of Jharkhand in the Sixty-Ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1)This Act may be called The Jharkhand Advocates Clerks Welfare Fund Act, 2018.(2)It extends to the whole of the State of Jharkhand.(3)It shall come into force on such date as the State Government may, by notification, appoint in this behalf.

2. Definitions.

- In this Act unless the context otherwise requires -(a)"Advocates" means a person whose name has been enrolled on the State Roll of the Advocates' prepared and maintained by the State Bar Council of Jharkhand under section 17 of the Advocates' Act, 1961 read with relevant provisions of the Bar Council of India Rule,1975 and amended from time to time.(b)"Advocate Clerk" means a clerk employed by Advocate and recognized 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 recognized and registered under section 13;(d)"Advocates Association" means an association of Advocates/Bar/Lawyer recognized/affiliated by the State Bar Council;(e)"Bar Council" means the State Bar Council of Jharkhand constituted under the the Advocates' Act, 1961;(f)"Cessation of Employment" means removal of the name of an Advocates' Clerk from the State roll maintained by the Committee on account of his retirement;(g)"Committee" means the Jharkhand Advocates' Clerks Welfare Fund Committee constituted under section 4;(h)"Dependant" means wife, husband, father, mother and unmarried minor child or children below the age of 18 years of age of a member of the Jharkhand Advocates' Clerks Welfare

Fund.(i)"Fund" means the Jharkhand Advocates' Clerks Welfare Fund constituted under section 3;(j)"Government" means the State Government of Jharkhand;(k)"Member of the Fund" means an Advocates' Clerk admitted to the benefits of the Fund and continuing to be a member thereof under the provisions of this Act;(l)"Notification" means a notification published in the Jharkhand official Gazette, and the word "notified" shall be construed accordingly;(m)"Prescribed" means prescribed under the rules framed under this Act;(n)"Retirement" means stoppage of employment as an Advocates' Clerk for reason other than joining service or for carrying on any other gainful occupation, communicated to an recorded in the manner prescribed;(o)"Secretary" means the the Secretary of the Committee.(p)"Stamp" means the Jharkhand Advocates' Clerks Welfare Fund stamp printed and distributed under section 12; and(q)"Vakalatnama" means vakalatnama and includes memorandum of appearance or any other document by which an Advocate is empowered to appear or plead before any court, tribunal or other authority. But it shall not include memorandum of appearance filed on behalf of the State Officer representing State Government.

3. Advocates' Clerks Welfare Fund.

(1)The Government shall, by notification, constituted a Fund to be called the Jharkhand Advocates' Clerks Welfare Fund.(2)There shall be credited to the Fund-(a)all amounts collected by way of sale of stamps under section 12;(b)any voluntary donations or contribution made to the Fund by the Bar Council, any Bar Association, any other Association or Institution, any Advocate or any other person;(c)any sum borrowed under section 10;(d)all sum received from the Life Insurance Corporation of India or any other Insurance Companies on the death of a member of the Fund under a Group Insurance Policy;(e)any profit or dividend 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;(f)any interest of dividend or other return on any investment made of any part of the Fund; and(g)all sums collected under section 15.

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 Jharkhand 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 Chairman of the Bar Council;(b)The Principal Secretary to Government, Law Department;(c)The Principal Secretary to Government, Home Department;(d)The Principal Secretary to Government, Finance Department;(e)The Registrar General of Jharkhand High Court;(f)Three members to be nominated from among the Advocates' Clerks by such authority and in such manner as may be prescribed, of whom one shall be nominated by the Committee as the treasurer of the Fund; and(g)A Secretary to be appointed by the Chairman in accordance with such regulation as may be made by the Committee in respect of the recruitment and conditions of service of such Secretary;Provided that the Secretary so appointed shall not have the right to vote at the meetings of the Committee.(4)The Chairman of the Bar Council shall be the ex- officio Chairperson of the Committee.(5)The Principal Secretary to Government, Law Department, the Principal Secretary to Government, Home

Department, the Principal Secretary to Government, Finance Department and the Registrar General of Jharkhand High Court shall be ex-officio members of the Committee.(6)In case the Principal Secretary to Government, Law Department, the Principal Secretary to Government, Home Department or the Principal Secretary to Government, Finance Department, is unable to attend the meetings of the Committee for any reason, he may depute any officer not below the rank of Deputy Secretary to Government to attend the meetings.(7)In case the Registrar General of Jharkhand High Court is unable to attend the meetings of the Committee for any reason, he may depute any officer of his Department, not below the rank of Deputy Registrar to attend the meetings.(8)A member nominated under clause (f) of sub-section (3) shall hold office for a term of three years from the date of such nomination or until he ceases to be a member of Advocates' Clerks Association whichever is earlier.(9)The Secretary shall pay such remuneration out of the Fund, as may be prescribed.

5. Disqualification and removal of nominated members of the Committee.

(1)A member nominated under clause (f) 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)remains absent without leave of the Committee for more than three consecutive meetings of the Committee,Provided that the members ceasing to hold under this clause may be restored by the Committee, if such member makes an application for the condonation of the absence; or(d)is a defaulter to the Fund (if 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.(2)The Government may remove any member who is or has become disqualified under sub-section (1), from the membership of the Committee.Provided that the 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 (f) of sub-section (3) of section 4 may resign his office by giving three months notice in writing to the Chairperson of the Committee and no such resignation being accepted by the said Chairperson 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 possible and a member so nominated to such vacancy shall hold office for the residue of the term of his predecessor.

7. Act of the committee not be invalid by defect, vacancy, etc..

- No act done or proceeding taken under this Act or the rule made thereunder by the Committee shall be invalidated merely by the reason of -(a)any vacancy or defect in the constitution of the Committee; or(b)any defect or irregularity in nomination of any person as a member thereof; or(c)any defect or irregularity in such act or proceeding not affecting the merits of the case.

8. Vesting and application of the Fund.

- The fund shall vest in and be held and applied by the Committee subject to the provisions, and for the purposes of this Act.

9. Functions of the Committee.

(1)It shall be the function of the Committee to administer the Fund.(2)The Fund shall be administered by the Committee, subject to the provisions of this Act and rules made thereunder in the following manner:-(a)hold the amounts and assets belonging to the Fund;(b)receive applications for admission or readmission to the Fund and dispose of such applications within ninety days 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;(d)conduct such enquiry as it deems necessary, for the disposal of such applications and dispose of the applications within five months from the date of receipt thereof;(e)record in the minutes book of the Committee its decision on the applications;(f)pay to the applicants amount at the rates specified in the schedule;(g)maintain such accounts books and send such periodicals and annual reports to the Bar Council, as may be prescribed;(h)communicate to the applicants under certificate of posting the decision of the Committee in respect of applications for admission or re-admission to the Fund or claims to the benefit of the Fund; and(i)do such other acts, as are or may be, required to be done under this Act and the rule made thereunder including making provisions of minimum number of staff for the office of the Committee.

10. Borrowing and investment of Fund.

(1)The Committee may , with the prior approval of the Bar Council, 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 any Scheduled Bank as defined in the Reserve Bank of India Act,1934 or invest the same in loans to any Corporation owned or controlled by the Central Government or the State Government or in any other manner as the Bar Council, may from time to time, direct with prior approval of the Government.(3)All amount 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.(5)The accounts, as certified by the auditor together with the audit report there on, shall be forwarded to the Bar Council by the Committee and the Bar Council may issue such direction as it deems fit to the Committee in respect thereof.(6)The Committee shall comply with the directions issued by the Bar Council under sub - section(2).

11. Power and duties of Secretary shall.

(a)be the Chief Executive Authority of the Committee and responsible for carrying out its decisions;(b)represent the Committee in all suits and proceedings for and against the Committee.(c)authenticate by his signature all decisions and instructions of the

Committee.(d)operate the bank accounts of the committee jointly with the Treasurer;(e)convene meetings of the Committee and prepare their minutes;(f)attend the meetings of the the Committee with all the necessary records and information;(g)maintain such forms, registers and other records as may be prescribed from time to time, and do all correspondences relating to the committee;(h)prepare an annual statement of business transaction by the committee during each financial year, and(i)do such acts as may be directed by the Committee.

12. Stamp of Jharkhand Advocates' clerk welfare Fund.

(1)There shall be printed or caused to be printed by the Bar Council in such form and in such manner as may be prescribed, stamp inscribed "the Jharkhand Advocates' Clerk Welfare Fund"each of the value of five rupees.(2)Every Vakalatnama or Memorandum of appearance filed before any Court, authority of tribunal shall affixed with a stamp as specified in sub-section (1) in addition to the Court fee stamps, if any, and stamp to be affixed under any other Acts and no Vakalatnama or Memorandum of appearance shall be valid unless it is so stamped.Provided that this sub-section shall not apply to any Vakalatnama of Memorandum or appearance filed on behalf of the Central or State Government.(3)The person or authority receiving Vakalatnama with such stamp shall forthwith effect cancellation of the stamp by punching out the same.(4)The custody of the stamps printed under this section shall be with the Bar Council and, the supply and sale of stamps shall be in such manner as may be prescribed.

13. Recognition and registration of Advocates' Celrks Association.

(1)An Association of Advocates' Clerk constituted after the commencement of this Act may, within two months from the date of such constitution, and an Association of Advocates' Clerk constituted before the recommencement of this Act may, within two months from the dated of commencement of this Act, 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.(2)Every application for recognition and registration shall be accompanied by the rules or bye-laws of the Association, names and addresses 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, recognize 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 Association shall be final.

14. Duties of Advocates' Clerks' Association.

(1)Every Advocates' Clerks' Association shall, on or before the 15th April of every year, intimate to the Committee a list of its members as on the 31st March of that year -(2)Every Advocates' Clerks' Association shall intimate 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 change;(c)the death or retirement of any of its members within thirty days from the date of occurrence there of; and(d)such other

matters as may be required by the Committee from time to time.

15. Membership 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. (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 rejection an application shall be passed unless the applicant has been given as opportunity of being heard. (3) Every applicant shall pay an application fee of Rupees One Hundred along with the application to the account of the Committee. (4) Every applicant shall pay to the Fund an admission fee of Rupees One Hundred at the time of admission or re-admission. (5) Every person admitted as a member of the Fund shall pay a membership fee of Rs. 2000/- payable in two equal half yearly installments. (6) Every member of the Fund shall, at the time of admission make a nomination conferring on one or more dependents of his family the right to receive the amount from the Fund in the event of his death; Provided that if he has no family he can nominate any person he likes. (7) If more than one person is nominated, the amount of share payable to each nominee shall be specified in the nomination. (8) 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. (9) A person retired from any service and drawing pension shall not be admitted to the Membership of the Fund. (10) Where on receipt of a complaint of otherwise, the Committee has reason to believe that an Advocate' clerk secured admission as a member of the Fund by misrepresentation, fraud or undue influence, the Committee shall have power to remove the name of such Advocates' clerk from the membership of the Fund; Provided that no such order shall be passed unless the person, likely to be affect adversely, has been given an opportunity of being heard.

16. 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 an amount at the rate specified in the Schedule. (2) In the event of death of a member, a consolidated amount of rupees fifty thousand 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 an amount at the rate specified in the Schedule and he may also be eligible for re-admission 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 employment for the purpose of payment under this Act, every four years of employment under Advocate, if any, before the admission of a member to the Fund, shall be computed as one year of employment and added 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) An application received under sub-section (5), shall be disposed of by the Committee after such enquiry as it deems necessary.

17. Restriction on alienation, attachment, 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 charge and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.(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 an official assignee or official receiver appointed under the law relating to insolvency for the time being in force.

18. 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 Insurance Companies, policies of Group Insurance on the life of the members of the Fund; and(b)Provide for medical and educational facilities, and such other benefits, as may be prescribed for the members of the Fund and their dependents.

19. 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 under this Act or the rule made there under.(2)Five members of the Committee shall form the quorum for a meeting of the Committee.(3)The Chairperson or in his absence, a member, elected by the members present at the meeting, shall have power to exercise a casting vote.(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 equality of votes, the Chairperson or the member presiding over the meeting shall have power to exercise a casting vote.

20. Travelling and daily allowance to members of the Committee.

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

21. Review.

- The Committee may, sou-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 person unless such person has been given an opportunity of making his representation.

22. Protection of action taken in good faith.

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done in pursuance of this Act or any rule made there under. (2) No suit or other legal proceeding shall lie against the Committee or the Bar Council 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 there under.

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 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 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 fourteen days which may be comprised of one session or 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 rules 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 rules.