

The Bihar State Bar Council Advocates' (Welfare) Pension Scheme, 2008

BIHAR

India

The Bihar State Bar Council Advocates' (Welfare) Pension Scheme, 2008

Rule

THE-BIHAR-STATE-BAR-COUNCIL-ADVOCATES-WELFARE-PENSION of 2008

- Published on 1 January 2008
- Commenced on 1 January 2008
- [This is the version of this document from 1 January 2008.]
- [Note: The original publication document is not available and this content could not be verified.]

The Bihar State Bar Council Advocates' (Welfare) Pension Scheme, 2008

1. Object of the Scheme.

- To provide the pension and other welfare benefits to the deserving Advocates and their needy family members in the State of Bihar on their retirement or death or permanent disability etc. in order to ensure the maximum financial assistance as their security and future protection during crisis.

2. Short Title, Extent and Commencement.

(a) This scheme may be called as "The Bihar State Bar Council Advocates' (Welfare) Pension Scheme, 2008" (in short- "Advocates' Pension Scheme") framed in exercise of power conferred under Sections 6 and 15(1)(3) of the Advocates Act, 1961 read with Rule 31 (iii)(e) & (i) of the Uniform Model Rules (for affiliated Bar/Advocates'/Lawyers' Associations of Bihar), 2003. (b) It extends to the whole of the State of Bihar. (c) This scheme shall come into force with effect from the date decided by the Bihar State Bar Council after getting prior approval of this scheme by the Bar Council of India. (d) This scheme shall not apply in case of death of an Advocate-member by way of committing suicide and also not apply to the Advocates' Association which is not recognised/affiliated by the Bihar State Bar Council and has not remitted the contribution of 5% share in terms of Rule 31(iii)(e)(i) of the Uniform Model Rules, 2003 and/or under Rules 4(2)(ix) of this Scheme in time to the Bihar State Bar Council Advocates Welfare Fund.

3. Definitions.

- In this, scheme unless the context otherwise requires :- (i) "Act" means the Bihar State Advocates' Welfare Fund Act, 1983 (Act No. 16 of 1983). (ii) "Advocate" means a person who has been entered on the State Electoral Roll of the Advocates prepared and maintained by the State Bar Council of Bihar under Rule 17 of the Advocates Act, 1961 read with relevant provisions of the Bar Council of India Rules, 1975 and amended from time to time. (iii) "Advocates' Association" means an Association of Advocates/Bar/ Lawyers recognised/ affiliated by the Bar Council and has adopted the Uniform Model Rules. (iv) "Bank" means any scheduled/nationalised/corporate Bank of India. (v) "Bar Council" means State Bar Council of Bihar constituted under the Advocates Act, 1961. (vi) "BBCJ" means Bihar Bar Council Journal printed and published by the Bar Council. (vii) "Cessation of Practice" means removal of the name of an advocate from the State Roll maintained by the Bar Council on account of his final retirement or death. (viii) "Council Fund" means Bihar State Bar Council Advocates Welfare Fund constituted by the Bar Council. (ix) "Court" includes any Tribunal or Authority before whom an advocate is by or under any law for the time being in force entitled to practice. (x) "Dependents" means wife, husband, father, mother and also unmarried minor child of a member of the Council Fund. (xi) "Member of the Council Fund" means an Advocate who is member of the Trustee Fund constituted u/s- 3 of the Act is admitted to the benefits of Council Fund and he has never been punished either by the Bar Council or by the competent Court of law in professional or other misconduct or case. (xii) "Member of the Trustee Fund" means an advocate who is a regular member of the Trustee Fund under the provisions of the Act. (xiii) "Pension" means the pension of Advocate- member of the Council Fund on his death or retirement after completion of 30 years of practice or permanent disablement from the Trustee Fund, will be entitled to get monthly rated pension amount decided or fixed by the Bar Council from time to time. Pension includes 50% of pension as family pension payable to his wife or her husband of deceased/retired Advocate-member of the Council Fund. (xiv) "Pension Committee" means a Bihar State Bar Council Advocates' (Welfare) Pension Committee constituted by the Bar Council under this scheme. (xv) "Permanent Disablement" means an advocate member is found unfit for legal practice on account of 80% or more physical and/or mental disability based on medical certificate granted by the Govt.'s Civil Surgeon/Chief Medical Officer of the District. (xvi) "Prescribed" means prescribed by the Bar Council for regulating and monitoring of this scheme. (xvii) "Retired member of the Trustee Fund" means the advocate who after completion of 30 years of practice on attaining the age of 70 years and/ or on account of his/her permanent physical or mental disability rendering him unfit for legal practice, retired from the Advocates Welfare Fund u/s- 2(c) and 17 of the Act. (xviii) "Staff of the Council Fund" means such staff posted/appointed on such terms and conditions in Council Fund as decided by the Bar Council. (xix) "State" means the State of Bihar. (xx) "Trustee Committee" means the Committee established under Section 5 of the Act. (xxi) "Trustee Fund" means the Advocates' Welfare Fund constituted under Section 3 of the Act. (xxii) "Uniform Model Rules" means the Uniform Model Rules for affiliated Bar/Advocates/Lawyers Association of Bihar, 2003 passed by the Bar Council of Bihar and approved by the Bar Council of India. (xxiii) "Vigilance Committee" means and includes the Vigilance Committee constituted by the Trustee Committee of Trustee Fund under the Act in each Advocates' Association.

4. Bihar State Bar Council Advocates Welfare Fund.

(1)The Bihar State Bar Council shall constitute a Fund called as the Bihar State Bar Council Advocates Welfare Fund (in short- "Council Fund").(2)There shall be credited to the Council Fund :
(i)All amount paid by the Advocates' Association/s under Rule 31 (iii)(e) & (i) of the Uniform Model Rules.(ii)Any voluntary contribution or donation or grant or aid made to the Council Fund by the Bar Council of India, Bar Council, Trustee Committee of Trustee Fund, Advocates' Associations or other Associations or institutions, any Advocate or other persons.(iii)Any grant made by the Central/State Govt. and local authorities to the Council Fund.(iv)All sums or any profit or dividend or other return/interest received on any investment to the reputed financial institution.(v)All sums collected by way of application fees and annual subscriptions, other charges and interest thereon as prescribed by the Bar Council.(vi)From other sources prescribed and decided by the Bar Council.(vii)From donation amount of Rs. 5,000/- received from each of the candidates at the time of enrolment as an Advocate by the Bar Council. The admission fee payable by such candidate at the time of his admission to this pension scheme, shall be adjusted from this donation amount.(viii)Any other sources as decided by the Bar Council.(ix)5% of gross profit of Advocates'/Bar/Lawyers' Association, Patna High Court and other Advocates' Associations (where hazri and pairvi system is not applicable) to be sent in the month of June of each year to the Council Fund.(3)(i)The accounts of the Council Fund shall be well maintained through latest/advanced technology in such transparent manner as may be prescribed by the Bar Council.(ii)The amounts due and payable under this scheme and all expenditures relating to management and administration of the Fund and scheme shall be paid out of this Fund.

5. Constitution of Pension Committee.

- 1. (i) The Bar Council will constitute one Bihar State Bar Council Advocates (Welfare) Pension Scheme Committee which shall consist of Vice Chairman of Bar Council who shall be the Chairman of this Committee Ex-officio, the Secretary of the Bar Council who will be the member Secretary of this Committee-Ex-officio and Four elected members of the Bar Council and two renowned Advocates having social background nominated by the Bar Council shall be the members of this Committee. The Secretary of the Trustee Committee will be ex-officio member of this Pension Committee. The terms of such nominated members will be for atleast 3 years.(ii)In absence of the Chairman of this Pension Committee, the senior elected member of the Bar Council-cum-member of such Committee will preside-over the meeting as its Chairman. In case of constitution of Special Committee of the Bar Council by the Bar Council of India u/s- 8A of the Advocates' Act, 1961, the Chairman of the Special Committee shall be the Ex-officio Chairman of the Pension Committee & two members of the Special Committee shall also be the members of this Pension Committee.(iii)In case of vacancy of the member, the Bar Council will fulfil such vacancy by way of nominating another member.(iv)The Bar Council, at any point of time, can change the nominated members of such Committee assigning valid reason.(v)The Pension Committee will hold its regular meeting at least once in a month.(vi)One third members of the Fund shall form the quorum of the meeting of the Committee.(vii)The non-officials and the members of elected Bar Council practicing outside the Patna town, shall be entitled to get such T. A. for attending the meeting of the Pension Committee as decided by the Bar Council.

2. The amount of Council Fund shall be deposited in the Bank/s which shall be operated by the joint signatures of the Chairman of the Pension Committee and the Secretary of the Bar Council.

6. Function of the Pension Committee.

- (i) The Committee shall maintain the Fund in the manner prescribed by the Bar Council and will be custodian of the Fund. (ii) The Committee shall be responsible/answerable to the Bar Council with respect to entire matter of the scheme. The Committee shall work as per direction and guideline of the Bar Council. (iii) To hold the amounts and assets belonging to the Council Fund. (iv) To receive application in prescribed form duly filled-up by the concerned Advocate and his wife or her husband (as the case may be) with all relevant papers and authentication through proper channel of Advocates Association alongwith prescribed fee, charge, etc. (v) To receive application from the desirous members of the Trustee Fund and the Advocates' Association for Admission to be a member of the Council Fund in prescribed forms and dispose of such application within 90 days from the date of receipt of it and intimate the same through Registered/Speed post with A/D or courier and/or substituted service by publication in BBCJ etc. without delay. (vi) To hold and conduct such enquiry as it deems necessary for disposal of such application relating to the affairs of Pension scheme and Council Fund and other connected matter thereto. (vii) To record its decisions of the applications and proceedings in the minutes book. (viii) To pay the monthly based pension amount prescribed by the Bar Council or Pension Committee to its members or their nominee-husbands or wives through the Bank or Post office or another means decided by the Pension Committee, unanimously. (ix) To send such periodical and/or annual reports as may be prescribed by the Bar Council. (x) To do such acts as are or may be required to be done under this Scheme and to suggest the Bar Council to improve the Scheme for betterment of its members. (xi) The account of the Council Fund shall be audited annually by a registered/ reputed Chartered Accountant appointed by the Bar Council and on such audit report, the Bar Council may issue any suitable direction. The audit report shall annually be published in BBCJ for due information to advocates in Bihar.

7.

(i) Any Advocate-member of the Council Fund or applicant being aggrieved by the decision of the pension Committee, may file an appeal before the Bar Council in 27 typed copies with the prescribed fee of Rs. 200/- within 60 days from the date of knowledge of the order/decision under appeal. (ii) However, the Bar Council can condone the delay on the valid ground/s raised by the appellant in its separate limitation petition with or without any condition. (iii) The decision of the Bar Council on such appeal, shall be final.

8.

The decision of the Pension Committee and in case of dispute, the matter may be referred to by the Pension Committee on its own motion or suo-motu to the Bar Council whose decision shall otherwise be final on the concerned persons as also Advocate- members of the Council Fund or the

Trustee Fund and Advocates' Associations in the State of Bihar.

9.

The Secretary of the Pension Committee or Council Fund shall act as its treasurer and he will be the Chief Executive Authority and responsible for carrying out the decisions of Pension Committee. He will also represent the Fund in all suits and proceedings for and against the Committee. He will also operate the Bank Account of the Pension Scheme/Council Fund jointly with the Chairman of the Council Fund/Pension Committee. He will convene meeting of the Pension Committee atleast once in a month and prepare its minutes. He will present in the meeting with all concerned records and informations. He will maintain all concerned records/ forms/registers as required and prescribed.

10.

(i)The Trustee Committee of the Bihar Advocates' Welfare Fund shall furnish a list of its members of each affiliated Advocates' Association to the Pension Committee, annually.(ii)Every Advocates' Association will also furnish a list of its members and office bearers just after conclusion of its election under Uniform Model Rules.It will also intimate to the Bar Council and/or Pension Committee about death, retirement, removal of membership of any of its member within 30 days and also about those matters as may be required by the Bar Council or Pension Committee from time to time.

11. Membership of the Pension Scheme of Council Fund.

- (i) Every Advocate-member of the Trustee Fund may apply to the Pension Committee for admission as a member of the Pension Scheme in prescribed Form No. A supplied by the Bar Council and on receipt of such filled-up application alongwith required information and admission fee of Rs. 3000/- (Three Thousand) only in one lump sum payable to the account of the Bihar State Bar Council Advocates Welfare Fund, the Pension Committee will issue an admission certificate in prescribed Form No. B at the earliest but in case of doubt, the Committee will make necessary enquiry before taking such admission and if required, the application may be rejected for the reason to be recorded after giving an opportunity of being heard to the applicant. The Admission fee for senior Advocate- member of Trustee Fund practicing at Patna High Court or other places in Bihar shall be Rs. 7000/- (Seven Thousand) only.(ii)Limitation period- All Advocate- members of the Trustee Fund within 3 years from the date of implementation of this Pension scheme or from the date of admission as a member of the Trustee Fund, which ever is suitably applied, can apply for admission as a member of this Council Fund otherwise Pension Committee will decide after due enquiry and/or hearing of such applicant with appropriate late fee with or without fine for each three months delay.

12. Payment of Pension From the Fund on Cessation of Practice.

- 1. (i) A member of the pension scheme of the Council Fund on cessation of practice after

retirement of 30 years of completed practice on or after attaining the age of 70 years or on account of his/her permanent disability under the Act, 1983, shall be entitled to get full pension of Rs. 5000/- (Five Thousand) per month through Bank/Post office after proper verification through concerned Advocates' Association for maximum period of 20 years or till he/she is alive (which ever is earlier). In special circumstances, the period can be extended suitably by the Bar Council.(ii)In the event of death of a member of the Council Fund, 50% of full pension i.e. family pension shall be paid to the surviving nominee i.e. wife or husband till she/ he is alive or for a maximum period of 20 years (whichever is earlier) on proper verification. In special circumstances, this period can be extended suitably by the Bar Council.(iii)In the event of death of both Advocate- member of the Council Fund and his wife or her husband- nominee, the Pension Committee, on the basis of unanimous decision of the General body of the concerned Advocates' Association, can make payment of a lump-sum amount to the dependents- minor child/children or unmarried daughter/s of such deceased parents through legal and proper guardian in the manner prescribed or decided by it after approval by the Bar Council in the emergent and rare cases. Concerned Association will also suggest about quantum of amount and mode of payment in such cases.

2. (i) The payable pension amount shall from time to time be regularly enhanced atleast once in Five years by the Bar Council on availability of sufficient fund and in case of deficiency of fund, the pension amount may also be reduced by the Bar Council giving reason and prior information to all concerned/Advocates' Associations.

(ii)The claim for full pension shall be made by the member of this Council Fund in prescribed Form No. C alongwith relevant testimonials/papers through proper channel i.e. concerned Vigilance Committee, its Advocates' Association and Trustee Fund in triplicate copies.(iii)The claim of family pension by the nominee- wife/husband of the deceased member of the Council Fund, shall be made in Form No. D alongwith relevant testimonials or papers through the concerned Vigilance Committee, its Advocates' Association and Trustee Fund.(iv)On physical verification report in Form No. E furnished by the end of March of each year by the concerned Advocates' Association, the full/half pension amount shall be released by the Pension Committee otherwise in absence of such report, pension amount shall not be released by the Pension Committee.(v)The benefit of pension in all genuine cases will be given from the date of submission of the claim before the Council Fund.

13. Termination of Membership of Council Fund.

(1)The membership of this Council Fund shall be liable to be terminated in the following cases :-(i)If his/her practice license has been cancelled on account of punishment for professional or other misconduct by the Bar Council or the Bar Council of India.(ii)If he/she has been found guilty of any offence and punished by a competent (criminal) Court of law and there is no stay of such punishment by Appellate Court.(iii)If his/her name has been finally removed from the Advocates' Association on the ground of non-regular in practice or misconduct.(iv)If the affiliation of the concerned Advocates' Association is cancelled by the Bar Council.(v)If his/her concerned Advocates' Association who is realising the money from the client/litigant, has failed to remit the prescribed 5%

share of the Bar Council to its Council Fund under Rule- 31 of the Uniform Model Rules for more than three consecutive months in one calendar year or if Advocates' Association has failed to remit the amount of 5% of gross profit to the Council Fund under Rule- 4(2)(ix) of this Scheme in time.(vi)If he/she is found making false statement in his/her information in order to gain undue advantage or has misled the Fund or the Bar Council and for that he/she may also be liable to be prosecuted under law.(vii)If the member of Council Fund fails to make payment of subscription or charges or to comply such conditions as decided by the Bar Council or Pension Committee.(2)(i)The Pension Committee will pass such order of termination of membership on any of the foregoing grounds after hearing the concerned member of the Fund.(ii)Such terminated member can be re-admitted afresh on such terms and conditions as may be prescribed and decided by the Pension Committee or by the Bar Council.

14.

(i)The interest or title or right of the member of Council Fund or his/her nominee wife/husband shall not be assigned/alienated/charged from the Fund and shall not be liable to be attached under any decree or order of any Court, Tribunal or Authority.(ii)No creditor or State or receiver appointed under the law, can proceed against the member or his/her nominee of the Council Fund for attachment of such pensionary amount.

15.

The Bar Council will finally be full controlling and administrative authority of the Council Fund and it shall take proper step and final decision with respect to the Pension (Welfare) Scheme or other connected affairs thereto in the larger interest of its members. The Bar Council may from time to time constitute the Sub-Committee/s of the member/s of the Bar Council and Advocates for supervision and execution of this scheme. The decision of the Bar Council shall be final and binding precedent on all Advocates' Associations and its members.

16. Power to Make Rule.

- The Pension Committee may, with the prior approval of the Bar Council by notification in BBCJ and giving information to all concerned Advocates Associations, make this scheme modified or changed in the larger interest of the Advocates of the State in general and members of the Council Fund in particular in consonance with the aims and objects of this Scheme.