

The Jammu and Kashmir Legal Services Authorities Rules, 1998

JAMMU & KASHMIR

India

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Rule

THE-JAMMU-AND-KASHMIR-LEGAL-SERVICES-AUTHORITIES-RULES of 1998

- Published on 2 January 1998
- Commenced on 2 January 1998
- [This is the version of this document from 2 January 1998.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Legal Services Authorities Rules, 1998 Published vide Notification No. SRO-1, 2.1.1998 Government of Jammu and Kashmir Civil Secretariat-Law Department SRO-1. - In exercise of the powers conferred by section 26 of the Jammu and Kashmir Legal Services Authorities Act, 1997 (Act No. XXXIII of 1997) the Government, in consultation with the Chief Justice of the High Court of Jammu and Kashmir, make the following rules, namely :-

1. Short title and commencement.

(1) These rules shall be called the Jammu and Kashmir Legal Services Authorities Rules, 1998. (2) These rules shall come into force on and with effect from the date of their publication in the Government Gazette.

2. Definitions.

(1) In these rules, unless the context otherwise requires, - (a) "Act" means the Jammu and Kashmir Legal Services Authorities Act, 1997 ; (b) "aided person" means a person to whom legal service is provided in accordance with the provisions of these rules ; (c) "eligible person" means a person who is eligible for legal services under these rules ; (d) "Government" means the Government of Jammu and Kashmir State ; (e) "High Court" means the High Court of Jammu and Kashmir ; (f) "Legal Practitioner" shall have the same meaning as assigned to this expression in the Advocates Act, 1961 (Central) ; (g) "Legal proceedings" means civil, criminal, revenue or any other proceeding arising under any law for the time being in force from its inception to final disposal in a court of law and includes preparatory steps for institution of such proceedings and also includes quasi-judicial and administrative proceedings before any tribunal or authority established under any law. (h) "Member"

means the State Authority, High Court Legal Services Committee, District Authority or Tehsil Legal Service Committee, as the case may be.(2)All other words and expressions used in these rules, but not defined shall have the meaning as assigned to them in the Act.

3. The number, experience and qualifications of other members of the State Authority.

- Besides, the Chief Justice of the High Court as its Patron-in-Chief and a serving or retired Judge of the High Court nominated by the Governor in consultation with the Chief Justice of the High Court as its Executive Chairman of the State Authority shall consist of the following members, namely:-(A)Ex-officio Members :-(i)Additional Chief Secretary/Commissioner/Secretary to Government, Home Department ;(ii)Additional Chief Secretary/Commissioner/Secretary to Government, Finance Department ;(iii)Advocate General, J&K ;(iv)Secretary to Government, Information Department ;(v)President, Bar Association, Jammu/Srinagar.(B)The following other members to be nominated by the Government in consultation with the Chief Justice of High Court (hereinafter referred to as the nominated members), namely :-(i)two Chairman of the District Authorities ;(ii)five eminent Social Workers (of which at least three shall be women) who are engaged in the upliftment of the weaker sections of the society including Scheduled Castes, Women, Children and rural and urban labour ; and(iii)one member out of the following persons, by rotation in the order given below, namely :-(a)Head of the Law Department, Kashmir University ; and(b)Head of the Law Department, Jammu University.(C)Secretary to Government, Law Department shall be the ex-officio Member-Secretary of the State Authority.

4. Headquarters of the State Authority.

- The office of the State Authority shall be located at Jammu/Srinagar.

5. Special Provisions far Patron-in-Chief, the Executive Chairman and Chairman, High Court Legal Services Committee.

- The Patron-in-Chief, the Executive Chairman and the Chairman, High Court Legal Services Committee, being a sitting Judge of the High Court, shall be entitled to payment of travelling 'allowance and daily allowance in respect of journeys performed in connection with the work of the State Authority and be paid by the State Authority in accordance with the provisions of the High Court Judges (Travelling Allowance) Rules, 1959 as amended from time to time.

6. Conditions of service of Executive Chairman in case of retired Judge.

- Where the Executive Chairman is a retired Judge of the High Court, his terms and conditions of service be such as are specified by the Government, as may be applicable to the retired Judges of the High Court appointed on Commissions or Committees.

7. Member-Secretary, State Legal Services Authority.

- Member-Secretary of the State Authority constituted under these rules shall exercise the following powers and shall perform the following duties, namely :-(a)to give free legal services to the eligible persons and weaker sections of the society ;(b)to work out modalities of the Legal Services Schemes and Programmes approved by the State Authority and ensure their effective monitoring and implementation ;(c)to exercise the powers as Member-Secretary in respect of Administrative House keeping, Finance and Budget matters as Head of the Department of Legal Services ;(d)to maintain true and proper accounts of the State Authority including periodical checking and auditing in respect thereof ;(e)to manage the properties, records, and funds of the State Authority ;(f)to prepare Annual Income and Expenditure Accounts Balance Sheet of the State Authority ;(g)to liaison with the Social Action Groups, District Authorities and Tehsil Committees ;(h)to maintain up to date complete statistical information including progress made in the implementation of various Legal Services Programmes from time to time ;(i)to process proposals for financial assistance and issue Utilization Certificate thereof ;(j)to organize various legal services programmes as approved by the State Authority and convene meeting or seminars and workshops connected with ;(k)to produce video or documentary films, publicity material, literature and publication to inform general public about the various aspects of the; legal services programmes ;(l)to lay stress on the resolution of rural disputes and to take extra measures to draw schemes for effective and meaningful legal services for settling rural disputes at the door steps of the rural people including organizations of Mediation Centres in the rural as well as urban areas ;(m)to perform such other functions as are necessary to give effect to the policy and directions of the State Authority ; and(n)to perform such other duties as may be expedient for efficient functioning of the State Authority or as may be assigned to him by the Executive Chairman.

8. The term of office and other conditions of Members of the State Authority.

(1)The term of office of the members nominated under clauses (B) of rule 3 of the State Authority shall be two years and they shall be eligible for re-nomination.(2)A member of the State Authority nominated under clause (B) of rule 3 may be removed by the Government, if-(a)he fails, without sufficient cause, to attend three consecutive meetings of State Authority or five meetings held within the space of two years ; or(b)has been adjudged as insolvent ; or(c)has been convicted of an offence which in the opinion of the Government involves moral turpitude ; or(d)has become physically or mentally incapable of acting as a member ; or(e)has so abused his position as to render' his continuance in the State Authority prejudicial to the public interest.(3)Notwithstanding anything contained in sub-rule (2), no member shall be removed from the State Authority on the grounds specified therein unless a reference in this behalf is received by the Government from the Executive Chairman after holding such an enquiry as he deems fit.(4)A member may, by writing under his hand addressed to the Executive Chairman, resign from the State Authority and such resignation, shall take effect on the expiry of a period of thirty days from the date of tendering resignation.(5)If any nominated member ceases to be member of the State Authority for any reason, the vacancy shall be filled up in the manner and from the source from which the same was originally filled under clause (B) of the rule 3 and a person so nominated to fill a 'casual' vacancy shall continue to be a member for remainder of his predecessor's term.(6)All nominated 'members shall be entitled to

payment of travelling allowance and daily allowance in respect of journeys performed in connection with the meetings of the State Authority and shall be paid by the State Authority in accordance with the rules as are applicable to the Class I Officers of the Government as amended from time to time.(7)The ex-office members shall be entitled to travelling allowance and daily allowance either from his parent Department, or as the case may be, from the State Authority.

9. The number of officers and other employees of the State Authority.

- The State Authority shall have such number of officers and other employees for rendering secretarial and field assistance and its day to day functions as may be sanctioned by the Government from time to time.

10. The conditions of service and the salary and allowances of officers and other employees of the State Authority.

(1)The officers and other employees of the State Authority shall be entitled to draw pay and allowances in the scales of pay admissible to the Jammu and Kashmir Government employees holding equivalent posts and shall also be entitled to same status, privileges and facilities.(2)In all other matters like age of retirement and disciplinary matters, the officers and other employees of the State Authority shall be governed by the Jammu and Kashmir Civil Service Regulations as are applicable to the employees holding equivalent posts.

11. Qualification of Secretary of the High Court Legal Services Committee.

- A person shall not be qualified for appointment as Secretary of the High Court Legal Service Committee unless he is a member of the Jammu and Kashmir (Gazetted) Judicial Service.

12. The number of officers and other employees of the High Court Legal Services Committee and the conditions of service and Salary and allowances payable to them.

(1)The High Court Legal Services Committee shall be provided with such number of officers and other employees for rendering secretarial assistance and its day to day functions as may be sanctioned by the Government from time to time.(2)The officers and other' employees of the High Court Legal Services Committee shall be entitled to draw pay and allowances and other benefits in the scale of pay at par with the Government employees as the case may be, holding equivalent posts and shall also be entitled to, the same status, privileges and facilities.(3)In all other matters like age of retirement and disciplinary matters the officers and other employees of the High. Court Legal Services Committee shall be governed by the Service Rules of the Government and if belonging to the establishment of the High Court, then the rules of the High Court.

13. The number experience and qualifications of members of the District Authority.

(1)The District Authority shall consult of the following members, namely :-(A)Ex-officio members-

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| (i) District and Sessions Judge | Chairman |
| (ii) Deputy Commissioner | Member |
| (iii) Additional District and Sessions Judge | Member |
| (iv) Senior Superintendent of Police | Member |
| (v) Chief Judicial Magistrate | Member |
| (vi) President, District Bar Association | Member |

(B)Nominated members-(2)Three members from amongst eminent social workers (of which at least one shall be women) who are engaged in the upliftment of the weaker sections of the society including Scheduled Castes and Backward Classes to be nominated by the Government in consultation with the Chief Justice of the High Court.(3)The Assistant Commissioner (R) of the District shall be the Member-Secretary of the District Authority.

14. The number of officers and other employees of the District Authority.

- The District Authority shall have such number of officers and other employees for rendering secretarial and field assistance in its day to day functions as may be sanctioned by the Government from time to time.

15. The conditions of service and the salary and allowances of the officers and other employee of the District Authority.

(1)The officers and other employees of the District Authority shall be entitled to draw pay and allowances in the scales of pay admissible to the Government employees holding equivalent posts and shall be entitled to same status, privileges and facilities.(2)In all other matters, like age of retirement and disciplinary matters, the officers and other employees of the District Authority shall be governed by the State Government rules as are applicable to persons holding equivalent posts.

16. The number, experience and qualifications of the members of the Tehsil Legal Services Committee.

(1)The Tehsil Legal Services Committee shall consist of the following members, namely :- (A)Ex-officio members-

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| (i) Sub-Judge/Chief Judicial Magistrate/Munsiff | Chairman |
| (ii) Sub Divisional Magistrate | Member |
| (iii) Deputy Superintendent of Police Senior Police Officers in the Tehsil | Member |

(iv) Tehsildar	Member
(v) All Block Development Officers and Panchayat Officers in the Tehsil	Member
(vi) President, Tehsil Bar Association	Member

(B) Nominated members. (2) Three members from amongst the eminent social workers (of which at least one should be women) interested in the uplift-ment of the weaker sections of the society including Scheduled Castes and Backward Classes, Women, Children and rural labour, to be nominated by the Government in consultation with the Chief Justice of the High Court. (3) The Naib-Tehsildar of the Tehsil shall be the Member-Secretary of the Tehsil Legal Services Committee.

17. The number of officers and other employees of the Tehsil Legal Services Committee.

- The Tehsil Legal Services Committee shall have such number of officers and other employees for rendering secretarial and field assistance and for its day to day functions as may be sanctioned by the Government from time to time.

18. The conditions of service and the salary and allowances of officers and other employees of the Tehsil Legal Services Committees.

(1) The officers and other employees of the Tehsil Legal Services Committee shall be entitled to draw pay and allowances in the scale of pay admissible to Government employees holding equivalent posts and shall also be entitled to same status, privileges and facilities. (2) In all other matters like age of retirement and disciplinary matters, the officers and other employees of the Tehsil Legal Services Committee shall be governed by the Government rules as are applicable to persons holding equivalent posts.

19. The upper limit of annual income of a person entitling him to legal services.

(1) In addition to the persons mentioned in clauses (a) to (g) of section 12 of the Act, a Citizen of India whose annual income from all sources does not exceed to [one lac rupees if the case is before a Court other than the Supreme Court, and does not exceed rupees one lac twenty five thousand if the case is before the Supreme Court;] [Words deleted and substituted vide SRO-458 dated 10-12-2010][Provided that the State Legal Services Authority, High Court Legal Service Committee, District Legal Services Authority and the Tehsil Legal Services Committee, as the case may be, may grant legal services to any other person irrespective of his income :-(i) To Transgender People ; or(ii) To Senior Citizens](2) In cases where the High Court or Supreme Court provide legal service under any order, legal service should be deemed to have been provided by an Authority or a Committee in relaxation of the conditions laid down in these rules.

20. Matters on which legal service is admissable.

- In addition to the cases covered under sections 12 and 15 of the Act, legal services may also be provided in all matters where such services shall be aimed at (a) amicable settlement of the dispute by bringing about conciliation between the parties to the disputes ; and (b) rendering assistance in complying with various legal requirements in order to secure the benefits under various schemes sponsored by the State Government or any other public authority or for the welfare of the general public or any section thereof.

21. Modes of providing legal services.

- Legal services may be given in all or anyone or more of the following modes, namely :-(a) by payment of Court fee, process fee, expenses of witnesses, preparation of the paper book, lawyers fee and all other charges payable or incurred in connection with any legal proceedings ;(b) through representation by a legal practitioner in legal proceedings ;(c) by supplying certified copies of judgements orders, notes or evidence and other documents in legal proceedings ;(d) by preparation of appeal paper book, including printing, typing' and translation of documents in legal proceedings ;(e) by drafting of legal documents ;(f) by giving legal advice on any legal matter; and through Mediation Centres or Family Counselling Centres.

22. Procedure for providing free legal services.

(1) A person desiring any legal service shall furnish an application-cum-affidavit addressed to the Member-Secretary of the State Authority, Secretary High Court Legal Services Committee, Chairman of the District Authority or the Tehsil Legal Services Committee (here in after referred to as Authority or Committee), as the case may be in a form. approved by the State Authority. (2) The Member-Secretary, Secretary or the Chairman of the Authority as the case may be shall maintain a register of applications wherein all applications for legal services received under sub-rule (1) shall be entered.

23. Disposal of application.

(1) On receipt of an application cum-affidavit, the Member Secretary, the Secretary or the Chairman of the Authority or the Committee, as the case may be; shall scrutinize the application for the purpose of deciding whether the applicant is entitled to get legal services in accordance with the provisions of these rules, and for the purpose of arriving at such a decision he may, if necessary and required, give personal hearing to the applicant but in doing so, the Member- Secretary, the Secretary or the Chairman of the Authority or the Committee as the case may be shall have regard to the fact that the applicant is a poor person or belongs to a weaker section of the society and deserved to be assisted. The application shall be processed as early as possible and preferably within fifteen days of its receipt. (2) The decision of the Member-Secretary, the Secretary and the Chairman of the Authority or the Committee to provide legal services shall be subject to the confirmation by the concerned Authority or the Committee. (3) Where it is decided not to provide legal services to an

applicant, the reasons for doing so shall be recorded in the register of applications maintained by the Authority or the Committee, as the case may be, and information in writing to that effect shall be communicated to the applicant.(4)No legal service shall be allowed to continue after the legal service is granted, if the Authority or the Committee is satisfied that-(a)the applicant knowingly made false statement or has furnished false information as regards his eligibility ;(b)in legal proceedings other than the one relating to criminal prosecution, there is no prima facie case to institute, or as the case may be, to defend the case ;(c)the application is frivolous and fictitious or the applicant is not entitled to the same under the provisions of these rules ;(d)having regard to all the circumstances of the case, it is otherwise not reasonable to grant it.

24. Panels for legal services.

(1)Every Authority or the Committee, as the case may be, shall prepare such number of panels of legal practitioners as it may consider necessary.(2)Every panel prepared under sub-rule (1) shall remain in force till it is revised or modified by the Authority or the Committee, as the case may be ;(3)Appointment of a legal practitioner for legal services under these rules, shall be made as far as possible from the panel of legal practitioners prepared under sub.rule (1) by the Authority or the Committee, as the case may be :Provided that the Executive Chairman may appoint a legal practitioner not included in the panel and in a special case, the Chairman of the Authority or the Committee may do so with the prior permission of the Executive Chairman.(4)Every person included in the panel shall be required to communicate, in writing to the Member-Secretary, the Secretary or the Chairman of the Authority or the Committee, as the case may be, his willingness to serve on the panel.(5)If any person after having agreed to serve on a panel neglects or does not discharge the duties properly the Authority or the Committee, may delete his name from the panel and may also disassociate him forthwith from the legal services being provided by him.(6)If any person after having agreed to serve on a panel is guilty of misconduct or violates any of the provisions of these rules, he shall be liable to be removed from the panel besides any appropriate legal proceedings.(7)Save as otherwise directed by the Authority or the Committee, as the case may be, a legal practitioner who ceased to be on the panel whether on account of resignation or otherwise, shall as soon as practicable after he so ceases to be on the panel deliver within seven days all the papers pertaining to cases entrusted to him by the Member-Secretary, Secretary or Chairman of the Authority or Committee failing which he shall forfeit any claim to the legal fee or other dues, if any, besides appropriate civil or criminal legal action.

25. Duties of legal practitioners on the panel.

(1)A legal practitioner appointed for rendering legal services to an aided person under these rules shall-(a)if the case is not concerning any legal proceedings hear the aided person, or any other person representing him and examine the papers and documents relating to the case and shall give his advice, in writing to the aided person and also send a copy of the advice so recorded to the Member-Secretary, the Secretary or the Chairman of the Authority or the Committee, as the case may be ; and(b)if the case relates to any legal proceedings represent aided person to act and plead for him in the legal proceedings and shall forthwith make a report to the Member-Secretary the Secretary or the Chairman of the Authority or Committee, as the case may be, on the action taken by

him and also make monthly report to them in regard to the progress of the legal proceedings besides a report, in writing, within two days of the final conclusion of proceedings to the concerned Authority or Committee.(2)The legal practitioner, so long as he remains on the panel, shall act in accordance with such instructions, as may be given to him from time to time by the Authority or the Committee as the case may be.

26. Honorarium payable to legal practitioner on the panel.

(1)The legal practitioners brought on the panel in terms of rule 24, shall be paid by the concerned Authority or the Committee such honorarium, as may be determined from time to time by the State in respect of the legal proceedings conducted and advice tendered by them under these rules.(2)No legal practitioner to whom any case is assigned for legal service shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.(3)In case of final judgement or order is rendered by the court against the aided person, the concerned legal practitioner shall also submit along with his fee bill, his opinion, in writing with reasons as to whether the case is fit for further appeal or revision, as the case may be, within seven days of the receipt of the certified copy of final judgement or order.

27. Duties of aided person.

(1)A person seeking legal service shall comply with the requisition or direction that may be made upon him by the Authority or the Committee on the date of application made for legal service till the completion or cessation of legal service or cancellation of eligibility.(2)Every aided person shall execute an agreement agreeing to the effect that in the event of the court passing a decree or order in his favour awarding costs to him or other monetary benefit or advantage (except an order of maintenance) to repay by way of reimbursement to the Authority or the Committee, as the case may be, the amount of costs, charges and expenses of legal proceedings incurred by the Authority or the Committee in rendering him legal service and to facilitate such reimbursement, he shall also execute an irrevocable power of attorney authorising the Member-Secretary, the Secretary or the Chairman of the Authority or Committee, as the case may be, to do all such acts and things, as may be necessary for recovery or realisation of the amount decreed or ordered to be paid to him.(3)The costs, charges and expenses which may be recovered by the Authority or the Committee under sub-rule (2), shall be credited to the Government.

28. Operation of Bank Account.

- The Member-Secretary, the Secretary or the Chairman of the Authority or the Committee, as the case may, be, shall operate the account of the Authority or the Committee.

29. The experience and qualification of other persons of the Lok Adalats.

- A person shall not be qualified to be included in the Bench of a Lok Adalat unless he is-(a)an

eminent social worker, who is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, women, children, rural and urban labour ; or(b)a lawyer of at least ten years standing ; or(c)a person of repute, who is specially interested in the implementation of the Legal Services Schemes and Programmes ; or(d)a medical or any other expert as deemed fit by the Authority or Committee, as the case may be.

30. Transfer of assets of the Jammu and Kashmir State Legal Services board.

(1)On and with effect from the constitution of the State Legal Services Authority under the provisions of section 3 of the Act-(i)the Jammu and Kashmir State Legal Services Board constituted under rule 3 of the Jammu and Kashmir State Legal Aid to the Poor Rules, 1987 (hereinafter referred to as the said Board) shall stand dissolved ;(ii)all property, movable or immovable, belonging the said Board shall vest in the State Authority and shall be applied by the State Authority to the objects and purposes of the Act and the rules framed thereunder ; and(iii)all the debts and liabilities of the said Board shall be transferred to the State Authority and shall thereafter be discharged and satisfied by it out of the aforesaid property.(2)On and with effect from the-constitution of the High Court Legal Services Committee under section 6 of the Act, the District Legal Services Authority under section 7 of the Act and the Tehsil Legal Services Committee under section 10 of the Act, all properties and assets of the District and Tehsil Legal Aid Authorities constituted under the provisions of the Jammu and Kashmir State Legal Aid to the Poor Rules, 1987 shall stand transferred and vest in the corresponding aforesaid committees or authority, as the case may be.

31. Transitory provisions.

- Notwithstanding anything contained in these rules, the Jammu and Kashmir State Legal Aid and Advice Board and the District and Tehsil Legal Aid Authorities constituted-under the Jammu and Kashmir State Legal Aid to Poor. Rules, 1987 shall continue to function till the Authorities and Committees are constituted under the Act and the rules framed thereunder.

32. Interpretation.

- If any question arises as to the interpretation of these rules, the decision of the Government thereon, shall be final.

33. Repeal and Saving.

(1)The Jammu and Kashmir State Legal Aid to the Poor Rules, 1987 are hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken (including applications admitted or legal aid granted) by the Jammu and Kashmir State Legal Aid Board or District and Tehsil Legal Aid Authorities (hereinafter referred as Board and Authority as the case may be) immediately before the commencement of these rules in the exercise or purported exercise of its powers and authority conferred by or under the rules so repealed, shall be deemed to have been

validly done or taken as if these rules had been in force at all material times and accordingly, anything done or any action taken by the Board or authority, as the case may be, shall be deemed to have been done or taken by the State Authority, or as the case may be, by the corresponding Legal Services Authority or Committee constituted under the Act.(Sd.)Secretary to Government Law Department[Vide SRO-162 dated 26-05-2011.]