

Haryana Lokayukta Act, 2002

HARYANA

India

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Act 1 of 2003

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Haryana Lokayukta Act, 2002 Haryana Act No. 1 of 2003 Statement of Objects and Reasons. - The necessity of this institution of Lokayukta was realised by the state of Haryana and the Haryana Lokayukta Act, 1997 was passed. However, this act was found wanting to fulfil the purpose for which it was enacted. After repealing this Act, an expert Committee was constituted to examine the subject and to make suggestions for introducing a Bill to enact the law on the appointment and working of the Lokayukta. 2. The Lokayukta will enquire into allegations or grievances made against a public servant including past and present members of Council of Ministers, MLAs, Chairman/Vice-Chairman of Zila Parishad/Panchayat Samiti, Mayor/Senior Deputy Mayor/Deputy Mayor of the Municipal Corporation(s), President/Vice-President of Municipal Council/Committee, Chairman/Vice-Chairman or a Member/Director of Statutory or Non-Statutory Companies/Corporations/Apex Cooperative Institutions or Boards under the State Government, Vice-Chancellor/Pro-Vice-Chancellor of the Universities. The Lokayukta shall be a person who is or has been a Judge of the Supreme Court or a Chief Justice or a judge of a High Court in India. With a view to ensuring that the Lokayukta is able to act independently and discharge his functions without fear or favour the Bill provides that the Lokayukta shall not be removed from his office except on the grounds of proved misconduct or incapacity as per the provision of the Judges (Inquiry) Act, 1968 and after an address by the State Vidhan Sabha supported by a majority of the total membership of the House and a majority of not less than two thirds of the members present and voting. Published vide Haryana Government Gazette (Extra), page 2557 dated 14.11.1999. No. Legislative 1/2003. - The following Act of the Legislature of the State of Haryana received the assent of the President of India on the 6th January, 2003, and is hereby published for general information :- An Act to provide for the appointment and functions of a Lokayukta for inquiry and investigation into the allegations and grievances against public servants and for matters connected therewith. Be it enacted by the Legislature of the State of Haryana in the Fifty-third Year of the Republic of India as follows :-

1. Short title, content and commencement.

(1) This Act may be called the Haryana Lokayukta Act, 2002. (2) It extends to the whole of the State of

Haryana.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"act" means administrative action taken by a public servant by way of decision, recommendation or finding or in any other manner and shall include wilful failure to act, and all other expressions relating to such action shall be construed accordingly;(b)"allegation" in relation to a public servant means any affirmation that such public servant -(i)has knowingly and intentionally abused his position as such to obtain any undue gain or favour to himself or to any other person or to cause undue hardship or harm to any other person;(ii)was actuated in the discharge of his functions as such public servant by personal interest, or improper or corrupt motives;(iii)is guilty of corruption, lack of integrity in his capacity as such public servant; or(iv)is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property held by the public servant personally or by any member of his family or by some other persons on his behalf;(c)"Chief Minister" means head of the Council of Ministers;(d)"competent authority" in relation to a complaint against -(i)Chief Minister : The Governor in his discretion.(ii)All other Public Servants : Chief Minister;(e)"complaint" means a complaint wherein act of any allegation or grievance is alleged to have been committed by a public servant;(f)"corruption" includes any act punishable under chapter IX of Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988, or under any law for the time being in force for prevention of corruption;(g)"Governor" means the Governor of the State of Haryana;(h)"grievance" means the claim by a person that a right to which he is entitled to is denied to him or is unreasonably delayed by the act of omission or commission of a public servant or the act complained of amounts to mal-administration;(i)"Lokayukta" means a person appointed as a Lokayukta under section 3;(j)"mal-administration" means an act, which is unjust, unfair, unreasonable, oppressive, improperly discriminatory or not supported by law;(k)"Minister" means a member of the Council of Ministers, other than the Chief Minister by whatever name called, for the State of Haryana, that is to say, Cabinet Minister of State, Deputy Minister and shall also include the Chief Parliamentary Secretary and Parliamentary Secretary;(l)"prescribed" means prescribed by rules made under this Act;(m)"public servant" includes a person defined in section 21 of the Indian Penal Code, 1860 and also means a person, who is or has been -(i)Chief Minister;(ii)a Minister;(iii)a Member of the Legislative Assembly of Haryana including the Speaker and the Deputy Speaker of Haryana Legislative Assembly;(iv)a Chairman, Vice-Chairman or member of the Board of Directors, by whatever name called, of a Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one percent of the paid up share capital is held by the State Government;(v)a Chairman, Vice-Chairman or member, by whatever name called, of any statutory or non-statutory body incorporated, registered or constituted by the State Government;(vi)a Mayor, Senior Deputy Mayor, Deputy Mayor of a Municipal Corporation constituted or deemed to have been constituted by or under the Haryana Municipal Corporation Act, 1994;(vii)a President, Vice-President of a Municipal Committee or Municipal Council constituted or deemed to have been constituted by or under the Haryana Municipal Act, 1973;(viii)a President, Vice-President of a Zila Parishad and a Chairman, Vice-Chairman of a Panchayat Samiti constituted by or under the Haryana Panchayati

Raj Act, 1994;(ix)a President or Vice-President of any managing committee of a society incorporated or registered under the law relating to cooperative societies for the time being in force;(x)a President, Vice-President, Managing Director of the Board of Directors of such other cooperative societies incorporated or registered by or under law relating to cooperative societies for the time being in force;(xi)a Vice-Chancellor or a pro Vice-Chancellor or Registrar of a University;(n)"State" means the State of Haryana;(o)"State Government" means the Government of the State of Haryana.

3. Appointment of Lokayukta.

(1)For the purposes of conducting investigations in accordance with the provisions of this Act, the Governor shall, by warrant under this hand and seal, appoint a person to be known as the Lokayukta :Provided that the Lokayukta shall be appointed on the advice of the Chief Minister who shall consult the Speaker of Haryana Legislative Assembly, Leader of Opposition and the Chief Justice of India in case of appointment of a person who is or has been a Judge of the Supreme Court or Chief Justice of the High Court, and Chief Justice of the Punjab and Haryana High Court in case of appointment of a person who is or has been a Judge of a High Court :Provided further that the result of consultation shall have persuasive value but not binding on the Chief Minister.(2)A notification by the State Government about the consultation having been held as envisaged in sub-section (1) shall be conclusive proof thereof.(3)Every person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the Schedule.

4. Qualifications for Lokayukta.

- A person shall not be qualified for appointment as Lokayukta unless he is or has been a Judge of the Supreme Court or a Chief Justice or a Judge of a High Court in India.

5. Lokayukta to hold no other office.

- The Lokayukta shall not be a member of Parliament or member of Legislature of any State and shall not hold any office of profit or trust or carry on any business or practice any profession or be connected with any political party and accordingly, before he enters upon his office shall -(a)if he is a member of Parliament or of the Legislature of any State, resign such membership; or(b)if he holds any office of profit or trust, resign from such office; or(c)if he is connected with any political party, sever his connection with it; or(d)if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or(e)if he is practising any profession, suspend practice of such profession.

6. Term of office and other conditions of service of Lokayukta.

(1)Every person appointed as the Lokayukta shall hold office for a term of five years from the date on which he enters upon his office :Provided that -(a)the Lokayukta may, by writing under his hand addressed to the Governor, resign his office, and such resignation shall be effective as soon as it is

accepted; and(b)the Lokayukta may be removed from the office in the manner specified in section 7.(2)A vacancy occurring in the office of the Lokayukta shall be filled in within three months.(3)On ceasing to hold office, the Lokayukta shall be ineligible for reappointment as Lokayukta or any other employment in any capacity under the State Government or any local authority, cooperative society, government company, university, statutory corporation under the administrative control of the State Government.(4)The salary, allowances payable to, and other conditions of service of Lokayukta shall be same as may be available from time to time to a sitting Judge of the Supreme Court or Chief Justice or Judge of the High Court, as the case may be, in accordance with the office held by him :Provided that the salary, allowances and other privileges available to the Lokayukta shall not be negotiable :Provided further that the allowances payable and other conditions of service of the Lokayukta shall not be varied to his disadvantage after his appointment.(5)The salaries and allowances payable to, or in respect of, the Lokayukta shall be the expenditure charged on the Consolidated Fund of the State.

7. Removal of Lokayukta.

(1)The Lokayukta shall not be removed from his office except by an order of the Governor passed after an address by the Haryana Legislative Assembly, supported by a majority of the total membership of the Legislative Assembly and by a majority of not less than two-thirds of the members thereof, present and voting has been presented to the Governor in the same session for such removal on the grounds of proved misconduct or incapacity.(2)The procedure for the presentation of an address and for the investigation and proof of the misconduct, or incapacity of the Lokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokayukta as they apply in relation to the removal of a Judge.

8. Matters which may be inquired into by Lokayukta.

(1)Subject to the provisions of this Act, the Lokayukta may on receipt of a reference from Government proceed to inquire into the allegations or the grievances made against a public servant.(2)The Lokayukta may inquire into any act or conduct of any person other than a public servant in so far as he considers it necessary so to do for the purpose of his enquiry into any allegation of misconduct against a public servant provided that the Lokayukta shall give such a person reasonable opportunity of being heard and to produce evidence in his defence.

9. Matters not subject to inquiry.

- The Lokayukta shall not inquire into any matter -(a)in respect of which an inquiry has been ordered under the Public Servants (Inquiries) Act, 1850; or(b)which is not connected with the discharge of functions as public servant of the person against whom allegation is made;(c)relating to "grievance of mal-administration", any administrative act involving the exercise of discretion except where he is satisfied that the elements involved in the exercise of discretion were absent to such an extent that discretion would not be regarded as having been properly exercised or was exercised for

corruption.

10. Provisions of relating to complaints.

(1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokayukta - (a) in case of grievance by the person aggrieved; (b) in case of allegation by any person : Provided that where the person aggrieved is dead or, is for any reason, unable to act for himself the complaint may be made by any person who in law represents his estate or, as the case may be, by any person permitted to act on his behalf. (2) Every complaint involving an allegation or grievance shall be made in such form, and in such manner and shall be accompanied by such affidavit as may be prescribed. (3) Notwithstanding anything contained in this Act or any other law for the time being in force, any letter written to the Lokayukta by a person in police custody or in a jail or in any asylum or any other custodial place, shall be forwarded to the Lokayukta unopened and without delay by the police officer or the person in charge of such jail, asylum or any other custodial place. If the Lokayukta is satisfied, that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

11. Provisions for holding preliminary inquiry.

- The Lokayukta on receipt of a complaint may before proceeding to investigate such complaint or case, make such preliminary inquiry or direct any other person to make such preliminary inquiry as he deems fit for ascertaining whether there exists reasonable ground for conducting the investigation. If on such preliminary inquiry, he finds that there exists no such ground he shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.

12. Procedure in respect of inquiry.

(1) Subject to the provisions contained in sub-section (2), the Lokayukta shall devise his own procedure for conducting inquiry or investigation but in so doing shall ensure that the principles of natural justice are satisfied. (2) The Lokayukta shall complete the inquiry within one year. (3) Every inquiry under the Act shall, unless the Lokayukta for reasons to be recorded in writing determines otherwise, be conducted in camera.

13. Power to summon record.

- The Lokayukta shall have the power to summon record of the State Government, local authority, corporation, government company, society, university, any college affiliated to or constituent of a university or from any other persons in connection with any inquiry or investigation against public servant undertaken by him : Provided that the State Government may withhold the production of any record or document relating to affairs of the State on grounds of security or in public interest in accordance with the provisions of the Indian Evidence Act, 1872, or the Indian Official Secrets Act, 1923.

14. Evidence.

(1) Subject to the provisions of this section, for the purpose of any inquiry or investigation, the Lokayukta or any person authorised by him in this behalf, -(a) may require any public servant or any other person, who, in his opinion, is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document; (b) may enter upon any land and survey, demarcate or prepare a map of the same; (c) shall have all the powers of civil court while trying a suit under Code of Civil Procedure, 1908, in respect of the following matters, namely :- (i) summoning and enforcing the attendance of any person and examining him on oath; (ii) requiring the discovery and production of any document; (iii) receiving evidence on affidavits; (iv) requisitioning any public record or copy thereof from any court or office; and (v) issuing commissions for the examination of witnesses or documents : Provided that no person, without the prior permission of the appropriate Government shall be required or authorised by virtue of the provisions contained in this Act to furnish any such information or answer any such question or produce so much of any document as might involve the disclosure of any information or production of any documents which is punishable under the provisions of the Official Secrets Act, 1923. (2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of Indian Penal Code, 1860.

15. Power of search and seizure.

(1) Where in consequence of information in his possession or after such inquiry as he thinks necessary, the Lokayukta, -(a) has reason to believe that a person -(i) to whom a summons or notice under this Act, has been or might be issued, will not or would not produce or cause to be produced any property, document or thing which will be necessary or useful or relevant to any inquiry or other proceedings to be conducted by him ; (ii) is in possession of any money, bullion, jewellery, or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents wholly or partly income or property which has not been disclosed to the authorities for the purpose of any law or rule in force which requires such disclosure to be made ; or (b) considers that the purposes of any inquiry or other proceedings to be conducted by him will be served by a general search or inspection, may issue a search warrant and he or any person authorised by him may, by that search warrant -(I) enter and search any building or place where he has reason to suspect that such property, document, money, bullion, jewellery or other valuable article or thing is kept ; (II) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i) where the keys thereof are not available ; (III) seize any such property, document, money, bullion, jewellery or other valuable article or thing found as a result of such search ; (IV) place a mark of identification on any property or document or make or cause to be made extracts or copies therefrom; or (V) make a note or an inventory of any such property, document, money, bullion, jewellery or other valuable article or thing. (2) The provisions of section 100 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to searches under sub-section (1). (3) A warrant issued under sub-section (1) shall, for all purposes, be deemed to be a warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973.

16. Punishment for false and malicious complaints.

- Notwithstanding anything contained in this Act, any person who wilfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with rigorous imprisonment which may extend to three years or with fine which may extend to ten thousand rupees or with both and the court may order that out of the amount of fine, such sum as it may deem fit, be paid by way of compensation to the person against whom such complaint was made :Provided that no court shall take cognizance of an offence punishable under this section except on a complaint made by or under the authority of the Lokayukta:Provided further that the complaint made by or under the authority of the Lokayukta shall be exclusively tried by a court of sessions which may take cognizance of the offence in such complaint without the complaint being committed to it, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

17. Reports of Lokayukta.

(1)If, after inquiry in respect, of a complaint, the Lokayukta is satisfied -(a)that no allegation or grievance has been substantiated, he shall close the case and intimate the competent authority concerned accordingly ;(b)that all or any of the allegations or grievances have or has been substantiated either wholly or partly, he shall, by report in writing, communicate his findings, appropriate recommendations and suggestions to the competent authority and intimate the complainant and the public servant concerned about his having made the report.(2)The competent authority shall cause the report to be examined and communicate to the Lokayukta within three months of the date of receipt of the report, the action taken thereon.(3)The Lokayukta shall present to the Governor a consolidated annual report on the administration of this Act.(4)The Governor shall cause to be laid on the table of the State Legislature a copy of the annual report referred to in sub-section (3) above within six months of its receipt along with an explanatory memorandum indicating the action taken thereon, and the reasons for not taking action in a given case.

18. Power to issue interim direction.

(1)The Lokayukta may, after receipt of a complaint, issue such interim direction as the case may warrant, so as to avoid grave injustice.(2)The competent authority shall deal with the interim direction in the same manner as provided for final direction.

19. Staff of Lokayukta.

(1)The Lokayukta may appoint in consultation with the State Government, such officers and staff as he may consider appropriate for the discharge of functions under this Act.(2)The categories of officers and staff who may be appointed under sub- section (1) above and their conditions of service shall be such as may be prescribed in consultation with the Lokayukta.

20. Utilisation of services of other person.

(1) Without prejudice to the provisions of sub-section (1) of section 19, the Lokayukta may, in consultation with the State Government, for the purpose of conducting any inquiry or investigation under this Act, utilise the services of any officer or investigating agency of the State Government, or for reasons to be recorded in writing, of any other person or agency. (2) Any officer, agency or persons whose services have been sought under sub-section (1) may - (a) summon and enforce the attendance of any person and examine him; (b) require the production of any document; and (c) requisition any public record or copy thereof from any office. (3) The officer, agency or person whose services have been sought under sub-section (1) shall enquire into the matter and submit a report to the Lokayukta within such period as may be specified by him in this behalf.

21. Secrecy of information.

(1) Any information, obtained by the Lokayukta or members of his staff in the course of, or for the purposes of, any inquiry or investigation under this Act and any evidence recorded or collected in connection with such information, shall be treated as confidential and, notwithstanding anything contained in the Evidence Act, 1872, no court shall be entitled to compel the Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected. (2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars - (a) for purposes of the inquiry or any report to be made thereon or for any action or proceedings to be taken on such report; or (b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923, or an offence of giving or fabricating false evidence under the Indian Penal Code, 1860, or under sub-sections (1) and (3) of section 12 of this Act; or (c) for such other purposes as may be prescribed.

22. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the Lokayukta or against any officer or employee, agency or person acting on his behalf in respect of anything which is in good faith done or intended to be done under this Act.

23. Powers to call for matters pending before State Government.

(1) Where the Lokayukta decides to inquire into a complaint against a public servant, he may ascertain from the State Government whether any complaint containing substantially similar allegations against the said public servant is under investigation, and if so, he may call for the record thereof. (2) If the Lokayukta, on examination of the record referred to in sub-section (1), decides to inquire into the matter himself, he shall inform the State Government accordingly and the complaint, wholly or partly, as the case may be, shall stand transferred to him for inquiry under the provisions of this Act. (3) Whenever the Lokayukta decides not to inquire into the matter himself he shall return the complaint to the State Government.

24. Other remedies not barred.

- The institution of any inquiry or proceedings under this Act shall be no bar to a person seeking a remedy available under any other law, for the time being in force.

25. Repeal, saving and overriding effect.

(1)The Haryana Lokayukta Act, 1997 (Haryana Act No. 21 of 1998) and the Haryana Lokayukta (Repeal) Ordinance, 1999 (Haryana Ordinance No. 4 of 1999) are hereby repealed.(2)Notwithstanding anything contained in any contract, law or rules made thereunder, the Lokayukta shall not be entitled to any compensation for the unexpired period of his tenure.(3)All matters pending before the Lokayukta before the repeal of the Haryana Act No. 21 of 1998 shall be inquired into by the Lokayukta under this Act.

26. Power to make rules.

(1)The State Government may, by notification, in the Official Gazette, 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 State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees 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, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Schedule

[See section 3(3)]I, _____, having been appointed as Lokayukta of Haryana, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and I will, duly and faithfully and to the best of my ability, knowledge, and judgement, perform the duties of my office without fear or favour, affection, bias or ill-will.