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LAW DEPARTMENT

NOTIFICATION

The 4th February 2009

No. 1881/I-Legis. 2/08—The following Act of the Orissa Legislative Assembly having been assented to by the Governor on the 28th January, 2009 is hereby published for general information.

ORISSA ACT 5 OF 2009 *

THE ORISSA ADVOCATES' CLERKS WELFARE FUND ACT, 2008

AN ACT TO PROVIDE FOR THE CONSTITUTION OF A
WELFARE
FUND AND UTILISATION THEREOF FOR PROMOTION OF
WELFARE OF THE ADVOCATES' CLERKS IN THE STATE
OF ORISSA AND FOR MATTERS CONNECTED
THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Legislature of the State of Orissa in the
Fifty-ninth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Advocates' Clerks Welfare Fund Act, 2008.

(2) It extends to the whole of the State of Orissa.

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

Definitions.

2. In this Act unless the context otherwise requires,—

(a) "Advocate" means a person whose name has been entered in the State roll of Advocates prepared and maintained by the Bar Council of Orissa under section 17 of the Advocates' Act, 1961 and who is a member of a Bar Association or an Advocates Association; 25 of 1961.

- (b) "Advocates' clerk" means a clerk employed by an 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) "Bar Association" means an association of Advocates recognized and registered by the Bar Council under section 13 of the Orissa Advocates' Welfare Fund Act, 1987; Orissa Act
18 of 1987.
- (e) "Bar Council" means the Bar Council of Orissa constituted under section 3 of the Advocates' Act, 1961; 25 of 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 Orissa Advocates' Clerks Welfare Fund Committee constituted under section 4;
- (h) "Dependant" means any of the following relatives of a deceased member of the Fund, namely :—
- (i) a widow, a minor legitimate son, an unmarried legitimate daughter or a widowed mother; and
 - (ii) a major legitimate son or a legitimate married daughter who by virtue of infirmity is wholly dependent on the earnings of the member at the time of his death ;
- (i) "Fund" means the Orissa Advocates' Clerks Welfare Fund constituted under section 3 ;
- (j) "Government" means the State Government of Orissa;
- (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 Orissa 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 and recorded in the manner prescribed;
- (o) "stamp" means the Orissa Advocates' Clerk Welfare Fund stamp printed and distributed under section 12; and
- (p) "vakalat" means a Vakalatnama, memorandum of appearance or any other document by which an Advocate or any other local practitioner is empowered to appear and plead before any court, tribunal or other authority.

Advocates'
Clerks
Welfare
Fund.

3. (1) The Government shall, by notification, constitute a Fund to be called the Orissa 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 sums 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 received 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 or dividend or other return on any investment made of any part of the Fund; and
 - (g) all sums collected under section 15.

Establishment
of Welfare
Fund
Committee.

4. (1) The Government may, by notification, establish with effect from such date, as may be specified therein, a Committee to be called the Orissa 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 Secretary to Government, Law Department;
- (c) The Secretary to Government, Home Department;
- (d) The Secretary to Government, Finance Department;
- (e) The Registrar General of High Court, Orissa;
- (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 Bar Council shall be the *ex-officio* Chairperson of the Committee.

(5) The Secretary to Government, Law Department, the Secretary to Government, Home Department, the Secretary to Government, Finance Department and the Registrar General of High Court, Orissa, shall be the *ex-officio* members of the Committee.

(6) In case the Secretary to Government, Law Department, Secretary to Government, Home Department or Secretary to Government, Finance Department, 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 Secretary to Government to attend the meetings.

(7) In case the Registrar General of the High Court, Orissa is unable to attend the meeting of the Committee for any reason, he may depute any officer 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 be paid such remuneration out of the Fund, as may be prescribed.

5. (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,—

Disqualifi-
cation and
removal of
nominated
members
of the
Committee.

- (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 office 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 no order removing any member shall be passed unless the member has been given an opportunity of being heard.

6. (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 on such resignation being accepted by the said Chairperson he shall be deemed to have vacated his office.

Resignation
by
nominated
member of
the
Committee
and filling up
of casual
vacancies.

(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. No act done or proceeding taken under this Act or the rules made thereunder by the Committee shall be invalidated merely by 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.

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

Vesting and
application
of Fund.

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

Functions
of the
Committee.

9.(1) It shall be the function of the Committee to administer the Fund.

(2) In the administration of the Fund, the Committee shall, subject to the provisions of this Act and the rules made thereunder,—

- (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 from the date 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 and 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 rules made thereunder including making provisions of minimum number of staff for the office of the Committee.

Borrowing
and
investment
of Fund.

10.(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 the loans floated 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.

2 of 1934.

(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 thereon, 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 (5).

Powers and
duties of
Secretary.

11. The Secretary of the Committee 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 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.

Orissa
Advocates'
Clerks
Welfare
Fund
Stamp.

12. (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 Orissa Advocates' Clerks Welfare Fund" each of the value of two rupees.

(2) Every Vakalat or Memorandum of appearance filed before any Court, authority or tribunal shall be 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 Vakalat or Memorandum of appearance shall be valid unless it is so stamped:

Provided that this sub-section shall not apply to any Vakalat or Memorandum of appearance filed on behalf of the Central or State Government.

(3) The person or authority receiving Vakalat 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.

Recognition
and
registration
of
Advocates'
Clerks
Association.

13. (1) An Association of Advocates' Clerks constituted after the commencement of this Act may, within two months from the date of such constitution, and an Association of Advocates' Clerks constituted before the commencement of this Act may, within two months from the date 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' Clerks 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, recognise 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.

Duties of
Advocates'
Clerks'
Association.

14. (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 thereof; and
- (d) such other matters as may be required by the Committee from time to time.

Membership
of the Fund.

15. (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 rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(3) Every applicant shall pay an application fee of rupees fifty along with the application to the account of the Committee.

(4) Every applicant shall pay to the Fund an admission fee of rupees fifty at the time of admission or re-admission.

(5) Every person admitted as a member of the Fund shall pay a membership fee of rupees one thousand 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 alongwith a fresh nomination.

(9) Where on receipt of a complaint or otherwise, the Committee has reason to believe that an Advocates' 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 affected adversely, has been given an opportunity of being heard.

Payment
from the
Fund on
cessation of
employment.

16.(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 dependants.

(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 admissions to the Fund.

(4) For calculating the period of completed years of employment for the purpose of payment under this Act, every four years of employment under an 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.

Restriction on alienation, attachment, etc., of interest of member in the Fund.

17. (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 charged 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.

Group Life Insurance for members and other benefits.

18. 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.

Meetings of the Committee.

19. (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 thereunder.

(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 preside over a meeting of the Committee.

(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.

Travelling
and daily
allowance
to members
of the
Committee.

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

Review.

21. 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 an person unless such person has been given an opportunity of making his representation.

Protection of
action taken
in good faith.

22. (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 thereunder.

(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 thereunder.

Bar of
jurisdiction
of Civil
Courts.

23. 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.

Power to
summon
witnesses
and take
evidence.

24. 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 :—

V of 1908.

(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.

Power to
make rules.

25. (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.

SCHEDULE

[See sections 9 (2) (f), 16 (1) and (3)]

1.	year as a member of the Fund	-	1,000
2.	years as a member of the Fund	-	2,000
3.	years as a member of the Fund	-	3,000
4.	years as a member of the Fund	-	4,000
5.	years as a member of the Fund	-	5,000
6.	years as a member of the Fund	-	6,000
7.	years as a member of the Fund	-	7,000
8.	years as a member of the Fund	-	8,000
9.	years as a member of the Fund	-	9,000
10.	years as a member of the Fund	-	10,000
11.	years as a member of the Fund	-	11,000
12.	years as a member of the Fund	-	12,000
13.	years as a member of the Fund	-	13,000
14.	years as a member of the Fund	-	14,000
15.	years as a member of the Fund	-	15,000
16.	years as a member of the Fund	-	16,000
17.	years as a member of the Fund	-	17,000
18.	years as a member of the Fund	-	18,000
19.	years as a member of the Fund	-	19,000
20.	years as a member of the Fund	-	20,000
21.	years as a member of the Fund	-	21,000
22.	years as a member of the Fund	-	22,000
23.	years as a member of the Fund	-	23,000
24.	years as a member of the Fund	-	24,000
25.	years as a member of the Fund	-	25,000
26.	years as a member of the Fund	-	26,000
27.	years as a member of the Fund	-	27,000
28.	years as a member of the Fund	-	28,000
29.	years as a member of the Fund	-	29,000
30.	years as a member of the Fund	-	30,000

By order of the Governor

B.K. NAYAK

Principal Secretary to Government

THE ORISSA ADVOCATES' CLERKS WELFARE FUND ACT, 2008

TABLE OF CONTENTS

PREAMBLE

SECTIONS

1. Short title , extent and commencement.
2. Definitions.
3. Advocates' Clerks Welfare Fund.
4. Establishment of Welfare Fund Committee.
5. Disqualification and removal of nominated members of the Committee.
6. Resignation by nominated member of the Committee and filling up of casual vacancies.
7. Act of the committee not to be invalid by defect, vacancy, etc.
8. Vesting and application of Fund.
9. Functions of the Committee.
10. Borrowing and investment of Fund.
11. Powers and duties of Secretary.
12. Orissa Advocates' Clerks Welfare Fund Stamp.
13. Recognition and registration of Advocates' Clerks Association.
14. Duties of Advocates' Clerks' Association.
15. Membership of the Fund.
16. Payment from the Fund on cessation of employment.
17. Restriction on alienation, attachment, etc., of interest of member in the Fund.
18. Group Life Insurance for members and other benefits.
19. Meetings of the Committee.
20. Travelling and daily allowance to members of the Committee.
21. Review.
22. Protection of action taken in good faith.
23. Bar of Jurisdiction of Civil Courts.
24. Power to summon witnesses and take evidence.
25. Power to make rules.

SCHEDULE