

Twelfth Kerala Legislative Assembly
Bill No. 231

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**THE KERALA HIGH COURT SERVICES (DETERMINATION
OF RETIREMENT AGE) BILL, 2008**

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to determine the retirement age of the officers and servants of the High Court of Kerala.

Preamble.—WHEREAS, it is considered necessary to determine the retirement age of the officers and servants of the High Court of Kerala on par with the officers and servants of other services of the State ;

BE it enacted in the Fifty-ninth year of the Republic of India, as follows:-

1. *Short title and commencement.*—(1) This Act may be called the Kerala High Court Services (Determination of Retirement Age) Act, 2008.

(2) It shall be deemed to have come into force on the 1st day of January, 2007.

2. *Determination of Retirement Age in High Court Services.*—Notwithstanding anything contained in any other law for the time being in force, or in any rule, or in any judgment, decree or order of any court, the compulsory retirement of an officer or servant of the High Court of Kerala shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years.

3. *Special Provision for Payment of Salary.*—Notwithstanding anything contained in section 2, the officers or servants of the High Court of Kerala, if any, continued in service beyond the age of 55 years will be eligible for the salary and allowances for the period during which they actually worked till the 22nd day of October, 2007, but their such service shall not be counted for any other service benefits or pensionary benefits.

4. *Repeal and Saving.*—(1) The Kerala High Court Services (Determination of Retirement Age) Ordinance, 2008 (32 of 2008) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

As per rule 35 of the High Court Services Rules, 1970, the Kerala Service Rules was applicable to the members of High Court Service and accordingly rule 60(a), Part I, Kerala Service Rules relating to compulsory retirement at the age of 55 years was also applicable to them. The Chief Justice of Kerala issued the High Court Service Rules, 2007 repealing these provisions w.e.f. 01-01-2007 by including rule 37(1) providing for the compulsory retirement of a member of the High Court Service at the age of 58 years, which is against the provisions of the Kerala Service Rules.

2. The Hon'ble High Court in its judgment dated 13-08-2007 in W.P(C) No.20158/07 has upheld the above said Rules issued by the Chief Justice of Kerala and the provisions relating to retirement age therein on the grounds that the State Legislature has not made any legislation as envisaged in Art. 229(2) of the Constitution of India and as retirement age is not an aspect relating to salary, allowances, leave or pension and hence previous approval of Governor is not necessary for fixing the age at 58 by the Chief Justice.

3. Enhancement of retirement age of servants and officers in the State service including servants and officers of the High Court of Kerala is against Government policy. Hence it became essential to determine the retirement age of officers and servants of the High Court of Kerala on a par with officers and servants of other services of the State through legislation.

4. In these circumstances, the Government have decided to enact a legislation to determine the retirement age of officers and servants of the High Court of Kerala.

5. As the Legislative Assembly of the State of Kerala was not in session and as the above proposal had to be given effect to immediately, the Kerala High Court Services (Determination of Retirement Age) Ordinance, 2007 was promulgated by the Governor of Kerala on the 20th day of October, 2007 and was published as Ordinance No. 61 of 2007 in the Kerala Gazette Extraordinary No. 1900 dated the 22nd October, 2007.

6. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly during its session, which commenced on the 20th day of February, 2008 and ended on the 19th day of March, 2008.

7. Therefore, in order to keep alive the provisions of Ordinance No. 61 of 2007, the Kerala High Court Services (Determination of Retirement Age) Ordinance, 2008 was promulgated by the Governor on the 1st day of April, 2008 and was published as Ordinance No. 13 of 2008 in the Kerala Gazette Extraordinary No. 653 dated the 1st April, 2008.

8. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly during its session, which commenced on the 23rd day of June, 2008 and ended on the 24th day of July, 2008.

9. Therefore, in order to keep alive the provisions of Ordinance No.13 of 2008, the Kerala High Court Services (Determination of Retirement Age) Ordinance, 2008 was promulgated by the Governor on the 1st day of August, 2008 and was published as Ordinance No. 32 of 2008 in the Kerala Gazette Extraordinary No. 1682 dated the 2nd August, 2008.

10. The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure out of the Consolidated Fund of the State.

KODIYERI BALAKRISHNAN.