

Fourteenth Kerala Legislative Assembly

Bill No. 237

**THE KERALA ADVOCATES' CLERKS WELFARE FUND
(AMENDMENT) BILL, 2020**

©

**Kerala Legislature Secretariat
2020**

KERALA NIYAMASABHA PRINTING PRESS.

Fourteenth Kerala Legislative Assembly

Bill No. 237

**THE KERALA ADVOCATES' CLERKS WELFARE FUND
(AMENDMENT) BILL, 2020**

Fourteenth Kerala Legislative Assembly

Bill No. 237

[Translation in English of “2020-ലെ കേരള അഡ്വക്കേറ്റ് ക്ലർക്ക് ക്ഷേമനിധി (ഭേദഗതി) ബിൽ” published under the authority of the Governor.]

**THE KERALA ADVOCATES’ CLERKS WELFARE FUND
(AMENDMENT) BILL, 2020**

A

BILL

further to amend the Kerala Advocates’ Clerks Welfare Fund Act, 2003.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Advocates’ Clerks Welfare Fund Act, 2003 (27 of 2003) for the purposes hereinafter appearing;

BE it enacted in the Seventieth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Advocates’ Clerks Welfare Fund (Amendment) Act, 2020.

(2) Section 2 and clause (a) of section 7 of this Act shall be deemed to have come into force on the 30th day of April, 2012 and remaining provisions shall come into force at once.

2. *Amendment of section 2.*—In the Kerala Advocates’ Clerks Welfare Fund Act, 2003 (27 of 2003) (hereinafter referred to as the principal Act), after clause (r) of section 2, the following clause shall be inserted, namely:—

“(s) “withdrawal of membership” means the cessation of membership by a member of the Fund for a specific period as per the application submitted in writing by retaining the eligibility to readmit as a member in the Fund.”.

3. *Amendment of section 12.*—In the principal Act, in sub-section (4) of section 12, for the words “by a Chartered Accountant appointed by the Committee, with the prior approval of the Government”, the words “by the Kerala State Audit Department” shall be substituted.

4. *Amendment of section 14.*—In the principal Act, in sub-section (1) of section 14, for the words, “of the value of twelve rupees” the words, “of the value of twenty rupees” shall be substituted.

5. *Amendment of section 17.*—In the principal Act, in sub-section (5) of section 17, for the words, “one thousand two hundred rupees”, the words, “two thousand rupees” and for the words, “shall be paid in three equal instalments” the words, “the entire amount shall be paid in three instalments of not less than six hundred rupees” shall be substituted.

6. *Amendment of section 18.*—In section 18 of the principal Act,-

(a) for sub-section (1) the following sub-section shall be substituted, namely:—

“(1) A member of the Fund shall, on cessation of employment, be eligible to get consolidated amount and pension from the Fund subject to such criteria and rate as may be prescribed.”;

(b) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) A member who had received the eligible pension and other benefits under this section after cessation of employment, shall repay to the Fund the entire amount received from the Fund with twelve per cent interest if he intends to resume the employment as an Advocates’ Clerk.”.

7. *Validation.*—Notwithstanding anything contained in the principal Act or rules made thereunder or in any judgment, decree or order of any Court, any action and order refusing pension as per the provisions of the principal Act to a member of the Fund on or after 30th day of April, 2012 shall be deemed to have been validly done or issued so far as not inconsistent with the provisions of the principal Act as amended by this Act and the rules issued thereunder, and they shall not be questioned in any court.

STATEMENT OF OBJECTS AND REASONS

As the expression 'withdrawal of membership' is not defined in the Kerala Advocates' Clerks Welfare Fund Act, 2003, (27 of 2003) the Government have decided to define the term ' withdrawal of membership'.

2. Sub-section (4) of section 12 of the Act provides for auditing of the accounts of the Welfare Fund Committee by a Chartered Accountant. For auditing the accounts of the Kerala Advocates' Clerks Welfare Fund Committee from 2017-2018 by the Kerala State Audit Department, the Government have decided to amend sub-section (4) of section 12 of the Act.

3. To meet the financial resource required to enhance the pension and retirement benefits of Advocates' Clerks, the Government have decided to amend section 14 of the Act to enhance the annual subscription to be paid by each member to the Welfare Fund from ₹ 1200 to ₹ 2000 and the value of the Kerala Advocates' Clerks Welfare Fund Stamp from ₹12 to ₹20.

4. In order to include a provision in the Act, that a member who had received pension and other benefits on cessation of employment shall repay to the Fund the entire amount including the pension and other benefits received from the Welfare Fund with twelve per cent interest to resume the employment as Advocate Clerk, the Government have decided to amend section 17 of the Act.

5. As per section 18 of the Act, the members of the Advocates' Clerks Welfare Fund, on cessation of employment, is entitled to receive a consolidated amount and pension from the said Fund based on his number of years of employment as an Advocates' Clerk, at such rates as may be prescribed. On the basis of the said provision, the Hon'ble High Court of Kerala in its judgments in W.P.(C) No.27706/11 and W.A. No.2275/15 dated 10-7-2015 and 7-12-2015 respectively, has opined that the provision that a person who had completed eight years of membership in the Welfare Fund would alone be entitled to get pension under rule 11A of the Kerala Advocates' Clerks Welfare Fund Rules, 2004 is not sustainable. As the situation for payment of pension to all members retired in such manner from the Welfare Fund, irrespective of the number of years of employment prevails, the Welfare Fund Board have to face huge financial liability. In order to

avoid this situation, the Government have decided to amend section 18 of the Act to get legal validity from 30th April 2012 onwards to the amendments made in the said rules, to the effect that only members who had completed sixty years of age and eight years of membership are entitled to get pension as provided in rule 11A of the said rules.

6. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State. Further no additional expenses will be incurred from the Kerala Advocates' Clerks Welfare Fund.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (1) of section 18, proposed to be substituted in the principal Act by clause 6 of the bill seeks to empower the Government to prescribe the criteria and the rate for payment of consolidated amount and pension to a member of the Fund on cessation of employment.

2. The matter in respect of which rules may be made are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is therefore, of a normal character.

A. K. BALAN.

EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA
ADVOCATES' CLERKS WELFARE FUND ACT, 2003
(ACT 27 OF 2003)

** ** ** **

2. *Definitions.*—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 Kerala under section 17 of the Advocates Act, 1961 (Central Act 25 of 1961) and practising as an Advocate, whether he is a member of a Bar Association or not;

** ** ** **

(r) "vakkalath" means a vakalathnama, memorandum of appearance or any other document by which an advocate is empowered to appear and plead before any court, tribunal or authority.

** ** ** **

12. *Borrowing and investment of Funds.*— (1) The Committee, may with the prior approval of the Government, borrow from time to time any sum required for carrying out the purposes of this Act.

** ** ** **

(4) The accounts of the Committee shall be audited annually by a Chartered Accountant appointed by the Committee, with the prior approval of the Government.

** ** ** **

14. *Kerala Advocates' Clerks Welfare Fund Stamp.*— (1) There shall be printed at the Government Press by the Committee in such form and in such manner as may be prescribed stamps of the value of twelve rupees inscribed as "the Kerala Advocates' Clerks Welfare Fund Stamp".

** ** ** **

17. *Members of the Fund.*— (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:

Provided that no person employed as an Advocates' Clerk after retiring from the service of the Central Government or the State Government or any Public Sector Undertaking with any retirement benefit, shall be eligible for membership to the Fund.

**

**

**

**

(5) Every member of the Fund shall pay to the Fund an annual subscription of one thousand two hundred rupees and if it is paid in lump sum, shall be paid on or before 30th June of every year and, if not, shall be paid in three equal instalments on or before 30th June, 30th September and 31st December respectively:

Provided that the members who fail to remit the annual subscription in lump sum or in instalments within the specified time limit as aforesaid, shall remit such arrears with interest at twelve per cent on or before 31st December.

**

**

**

**

18. *Payment from the Fund on cessation of employment.*— (1) A member of the Fund shall, on cessation of employment, be entitled to receive from and out of the Fund a consolidated amount and pension based on his number of years of employment as an Advocates' Clerk at such rates as may be prescribed;

**

**

**

**

(7) A member whose membership has ceased and received pension and other benefits shall not be eligible for re-admission in the Fund.

**

**

**

**