

Fourteenth Kerala Legislative Assembly

Bill No. 152

**THE KERALA ADVOCATES' CLERKS WELFARE
FUND (SECOND AMENDMENT) BILL, 2018**

©
Kerala Legislature Secretariat
2018

KERALA NIYAMASABHA PRINTING PRESS.

Published on 14-11-2018

Fourteenth Kerala Legislative Assembly

Bill No. 152

**THE KERALA ADVOCATES' CLERKS WELFARE FUND
(SECOND AMENDMENT) BILL, 2018**

Fourteenth Kerala Legislative Assembly

Bill No. 152

[Translation in English of “2018-ലെ കേരള അഡ്വക്കേറ്റ് ക്ലർക്കു് ക്ഷേമനിധി (രണ്ടാം ഭേദഗതി) ബിൽ” published under the authority of the Governor.]

**THE KERALA ADVOCATES’ CLERKS WELFARE FUND
(SECOND AMENDMENT) BILL, 2018**

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 for the purposes hereinafter appearing;

BE it enacted in the Sixty-ninth 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 (Second Amendment) Act, 2018.

(2) It shall be deemed to have come into force on the 30th day of April, 2012.

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 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) in sub-section (7), for the word “membership”, the word “employment” shall be substituted.

4. *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 under the principal Act to a member of the Fund on or after the 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 per section 18 of the Kerala Advocates' Clerks Welfare Fund Act, 2003, 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. Therefore, as per the judgments dated 10-07-2015 and 07-12-2015 respectively in W.P.(C) No.27706/11 and W.A. No.2275/15, the Hon'ble High Court of Kerala 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. In this manner, as the situation for payment of pension to all retired members of the welfare fund, irrespective of the number of years of employment prevails, the Welfare Fund Board have to face huge financial liability for the payment of pension. In order to avoid this situation, Government have decided to amend section 18 of the Kerala Advocates' Clerks Welfare Fund Act, 2003, 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.

2. Further, Government have decided to define the word "withdrawal of membership" for giving more clarity to the expressions, 'cessation of membership' and 'withdrawal of membership' used in section 18 of the said Act, as these words are not defined, and also to substitute the word "employment" for the word "membership" in sub-section (7) of section 18 of the Act.

3. The Bill seeks to achieve the above object.

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.

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.

* * * *

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.

* * * *