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Fourteenth Kerala Legislative Assembly

Bill No. 25

**THE KERALA ADVOCATES' WELFARE FUND
(AMENDMENT) BILL, 2016**

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further to amend the Kerala Advocates' Welfare Fund Act, 1980.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Advocates' Welfare Fund Act, 1980 for the purposes hereinafter appearing;

BE it enacted in the Sixty-seventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Advocates' Welfare Fund (Amendment) Act, 2016.

(2) It shall come into force at once.

2. *Amendment of section 2.*—In section 2 of the Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980) (hereinafter referred to as the principal Act),—

(i) for clause (a) the following clause shall be substituted, namely:—

“(a) “actual practice” means carrying on the profession of an Advocate other than senior Advocate and filing of at least five vakalaths per year by an Advocate whose name is included in the list of practising Advocates published and maintained by the Bar Council in accordance with the rules made by it under section 27.”;

(ii) after clause (aa), the following clause shall be inserted, namely:—

“(ab) “Advocates Academy” means the academy constituted by the Bar Council for providing training to Advocates to enable them to give efficient legal service to the people.”;

(iii) after clause (g), the following clauses shall be inserted, namely:—

“(ga) “non-practising Advocate” means an Advocate who is not in actual practice.”;

(gb) “practising Advocate” means an Advocate in actual practice.”.

3. *Amendment of section 9.*—In section 9 of the principal Act, in sub-section (2), after clause (gg), the following clause shall be inserted, namely:—

“(gh) provide assistance to the Advocates Academy”.

4. *Amendment of section 15.*—In section 15 of the principal Act,—

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

“(1) Any practising Advocate in any court in the State may apply to the Trustee Committee for admission as a member of the Fund in such form as may be prescribed.”;

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

“(1A) No person enrolled as an Advocate after retirement from an employment shall be admitted as a member of the Fund if such person is eligible for, or availed, himself of any kind of retirement benefit from such employment:

Provided that this sub-section shall not be applicable to a person who was in employment for a period not exceeding five years or if the retirement benefits or pension does not exceed five thousand rupees per month.”;

(c) after sub-section (1B), the following sub-sections shall be inserted, namely:—

“(1C) A member of the Fund who is removed from the list of practising Advocates published and maintained by the Bar Council shall not be entitled to continue as a member of the Fund and during such period, such Advocate whose name is included in the list of non-practising Advocates maintained by the Bar Council shall be deemed to have been suspended from the Fund.

(1D) An Advocate who is included in the list of non-practising Advocates published and maintained by the Bar Council shall be entitled to continue as member of the Fund on inclusion of his name in the list of practising Advocates maintained by the Bar Council and shall be entitled to continue his membership in the Fund.”;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Every member of the Fund shall pay an annual subscription to the Fund on or before the 30th June of every year at the following rates, namely:—

- (i) Where the standing of the Advocate at the bar is less than five years. .. Five hundred rupees
- (ii) Where the standing of the Advocate at the bar is five years and more, but less than ten years. .. One thousand rupees
- (iii) Where the standing of the Advocate at the bar is ten years and more, but less than fifteen years. .. Two thousand rupees
- (iv) Where the standing of the Advocate at the bar is fifteen years and more but less than twenty years. .. Two thousand and five hundred rupees
- (v) Where the standing of the Advocate at the bar is twenty years and more but less than twenty five years. .. Three thousand rupees
- (vi) Where the standing of the Advocate at the bar is twenty five years and more but less than thirty years. .. Three thousand and five hundred rupees
- (vii) Where the standing of the Advocate at the bar is thirty years or above. .. Four thousand rupees:

Provided that an Advocate designated as senior Advocate under the Advocates Act, 1961 (Central Act 25 of 1961) shall pay an annual subscription to the Fund at the rate of six thousand rupees.”;

(e) for sub-section (13), the following sub-section shall be substituted, namely:—

“(13) A member of the Fund who voluntarily suspends his membership in the Fund may on resumption of his practice as an Advocate as allowed by the Bar Council resume his membership in the Fund on payment of two thousand rupees as resumption charges and his date of resumption shall be recorded in his Certificate of Membership.”.

5. *Amendment of section 16.*—In section 16 of the principal Act,—

(a) in sub-section (1), for the words “rupees fourteen thousand two hundred and eighty five” and “rupees five lakhs” the words “rupees twenty five thousand” and “rupees ten lakhs” shall, respectively, be substituted;

(b) In sub-section (2), for the words “five lakhs rupees” the words “ten lakhs rupees” shall be substituted.

6. *Amendment of section 18.*—In clause (b) of section 18 of the principal Act, after the words “and their dependents a maximum amount of five thousand rupees”, the words “and in the case of members of the Fund rupees one lakh during a period of three years in case of hospitalized treatment involving major surgical operation or for cancer treatment and other critical illness” shall be inserted.

7. *Amendment of section 23.*—In section 23 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every vakalath filed by an Advocate shall, in addition to the court fee stamps affixed thereon, be affixed with the welfare fund stamp of the value of fifty rupees in the case of vakalath filed before the High Court and of the value of twenty five rupees in the case of vakalath filed before subordinate courts, tribunals and other authorities. No vakalath shall be valid unless it is so stamped.”

STATEMENT OF OBJECTS AND REASONS

The Government has decided to enhance the maximum amount a member would be entitled to receive from the Advocates' Welfare Fund on completion of fifteen years of continuous membership from 5 lakhs to 10 lakhs and has also decided to enhance the amount to be paid to such members for every completed year of service from rupees 14285 to rupees 25,000. It has also been decided to admit persons enrolled as Advocates after retirement from other service, if his total period of employment in other service does not exceed 5 years or that the retirement benefit or pension does not exceed five thousand rupees per month. It has been further decided to increase the value of Welfare Fund Stamp to be affixed in Vakalath filed before the High Court, Subordinate Courts, Tribunals or other authorities to give financial assistance to the members for hospitalised treatment involving major surgical operations or for cancer treatment, to provide assistance to the Advocates Academy from the Advocates Welfare Fund and also to increase annual subscription to be paid by the members of the Fund. Accordingly the Government has decided to amend the Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980).

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 but would involve expenditure from the Kerala Advocates' Welfare Fund for providing assistance to the Advocates Academy as provided in section 9 of Kerala Advocates' Welfare Fund Act, 1980 proposed to be amended by clause 3 of the Bill and for enhancing the amount entitled to be received by a member of the Fund as provided in section 16 of the Act, proposed to be amended by clause 5 of the Bill, and for providing financial assistance to the members for the hospitalised treatment as laid down in section 18 of the Act proposed to be amended by clause 6 of the Bill. An estimate of the probable expenditure is not possible at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Item (a) of clause 4 of the Bill which proposes to substitute sub-section (1) of section 15 of the Kerala Advocates' Welfare Fund Act, 1980 seeks to empower the Government to prescribe the Form for admission as a member to the Fund to be filed before the Trustee Committee.

The matters in respect of which rules are to be made or notifications are to be issued are either administrative in nature or matters of procedure or routine in nature. Further, the rules, after they are made, will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

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(1B) A person who received retirement benefit from the Fund shall not be re-admitted as member of the Fund.

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(5) Every member shall pay an annual subscription to the Fund on or before the 30th June of every year at the following rates, namely:—

- | | |
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| (i) Where the standing of the Advocate at the Bar is less than five years | three hundred rupees |
| (ii) Where the standing of the Advocate at the Bar is five years and more but less than ten years | seven hundred and fifty rupees |
| (iii) Where the standing of the Advocate at the Bar is ten years and more but less than fifteen years | one thousand and five hundred rupees |
| (iv) Where the standing of the Advocate at the Bar is fifteen years and more but less than twenty years | two thousand rupees |
| (v) Where the standing of the Advocate at the Bar is twenty years and more but less than twenty five years | two thousand and five hundred rupees |
| (vi) Where the standing of the Advocate at the Bar is twenty five years or above | three thousand rupees |

Provided that an Advocate designated as Senior Advocate under the Advocates' Act, 1961 (Central Act 25 of 1961), shall pay an annual subscription at the rate of the five thousand rupees..

(13) A member who voluntarily suspended his membership may on resumption of his practice as an Advocate, resume his membership in the Fund on payment of two thousand rupees as resumption charges unless he is not eligible for or not availed of any kind of retirement benefits for the service under the Central or State Government or any Public or Private Sector Undertakings.

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16. *Payment from the Fund on cessation of practice.*—(1) A member of the Fund shall on cessation of practice on completion of fifteen years of continuous membership in the Fund be entitled to receive from and out of the Fund an amount at the rate of rupees fourteen thousand two hundred and eighty five for every completed actual years of practice subject to a maximum amount of rupees five lakhs in aggregate:

