



THIRTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
SUBORDINATE LEGISLATION
(2014-16)**

TWENTY SEVENTH REPORT
(Presented on 29th July, 2015)

on

SROs issued under various Acts during 2008-2012

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2015**

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COMPOSITION OF THE COMMITTEE ON
SUBORDINATE LEGISLATION

(2014-2016)

Chairman :

Shri M. Ummer

Members :

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Legislature Secretariat :

Shri P. D. Sarangadharan, Secretary

„ S. Thulaseedharan, Additional Secretary

Smt. A. Shaila, Deputy Secretary

Shri D. D. Godfree, Under Secretary.

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation (2014-2016) having been authorised by the Committee, present this Twenty Seventh Report of the Committee on its behalf, on Scrutiny of SROs Issued under various Acts during the period 2008-2012.

This report contains the observations, comments and recommendations of the Committee on SROs issued under the provisions of various enactments.

This Report was finalised by the Committee at its meetings held on 23rd June and 21st July, 2015.

Thiruvananthapuram,
29th July, 2015.

M. UMMER,
Chairman,
Committee on Subordinate Legislation.

REPORT

THE KERALA PUBLIC SERVICES ACT, 1968
(ACT 19 OF 1968)

SRO No. 301/2011 dated 16-5-2011

[G.O.(P) No. 302/2011/H&FWD dated 11-5-2011]

1. By this SRO, Government have issued Special Rules for the Kerala Medical Education (Nursing in Hospital Wing) State Services.

2. The Committee notices that in the preamble of the SRO, the name of the rule is given as "Special Rules for the Kerala Medical Education (Nursing in Hospital Wing) State Services". But in Rule 1(1) it is written as "The Kerala Medical Education Services (Nursing in Hospital Wing) State Services Rules, 2011". *Hence the Committee recommends to correct the name of the Rule 1(1) as "The Kerala Medical Education (Nursing in Hospital Wing) State Services Rules, 2011".*

3. *The Committee recommends to use the word "or" instead of "of" in between the words "University" and "Board of Examinations" for category 3 under the sub heading "Special" in Rule 5 and use the words "in the" instead of "inthe" in the 2nd line of category 3 under Rule 3.*

4. The Committee notices that various posts for the Nursing Wing of the Health Department were created by the Government vide G. O. (Ms.) No. 126/98/H&FWD dated 11-5-1998. Special Rules for the categories were issued by the Government as per G.O.(P) No. 258/2007/H&FWD dated 31-7-2007 but the same was cancelled as per G.O.(P) No. 16/2008/H&FWD dated 8-1-2008. The Committee also observes that Government took nearly 10 years to give statutory validity to the executive order for various posts created in the Nursing Wing. *The Committee deprecates this extraordinary delay in giving statutory validity to the executive order.*

5. The Committee further observes that though the executive order intended for the creation of various posts in Nursing Wing were issued

on 11-5-1998, retrospective effect is not given in the present statutory amendment. *The Committee doubts about the legality of the action already taken on the basis of executive orders without giving retrospective effect to the SRO from 11-5-1998. The Committee urges the Government that if there is any lacuna in the matter, this amendment should be given retrospective effect immediately, after proper examination of the situation.*

6. *The Committee desires that a detailed report should be furnished regarding the dual control system existing in the Department and the changes brought therein by terminating this system within a period of two months.*

SRO No. 302/2011 dated 16-5-2011

G.O. (P) No. 303/2011/H&FWD dated 11-5-2011

7. By this SRO, Government have issued Special Rules for the Kerala Medical Education (Nursing in Hospital Wing) Subordinate Services.

8. The Committee notices that in the preamble of the SRO, the name of the rule is given as "the Kerala Medical Education (Nursing in Hospital Wing) Subordinate Service Rules, 2011". But in Rule 1(1) it is written as "The Kerala Medical Education Services (Nursing in Hospital Wing) Subordinate Services Rules, 2011". *Hence the Committee recommends to correct it as "The Kerala Medical Education (Nursing in Hospital Wing) Subordinate Service Rules, 2011".*

9. *The Committee recommends to correct the name of the rule "The Kerala State and Subordinate Services Rules, 1958" instead of "The Kerala State Subordinate Service Rules, 1958" in Rule 5 and use the words "V.H.S.E." instead of "V.H.S.C." in the note of Rule 7.*

10. Rule 8 deals with probation which reads as follows: "Every person appointed to any of the categories under these rules shall from the date on which he/she joins duty be on probation for a period of two years on duty within a continuous period of three years". The Committee notices that probation period for direct recruitment, by transfer recruitment and seniority promotion are same. The Committee cannot understand the reasons for fixing the same probation period for

different methods of appointment including seniority promotions. Hence Committee suggests that "Every person appointed to any of the categories under these rules, shall from the date on which he/she joins the duty be on probation (i) if appointed by direct recruitment, for a total period of two years on duty within a continuous period of three years, and (ii) if appointed by promotion, for a total period of one year on duty within a continuous period of two years".

11. The Committee notices that qualification and method of appointment to the post of Staff Nurse were prescribed by the Government as per G.O. (Ms.) No. 328/96/H&FWD dated 25-9-1996. The Committee also noticed that Government took nearly 11 years to give statutory validity to the executive order for the post of Staff Nurse in the Health and Family Welfare Department. The Committee deprecates this extraordinary delay in giving statutory validity to this executive order mentioned in the explanatory note.

12. The Committee further observed that qualification and method of appointment to the posts of Staff Nurse Grade II, Staff Nurse Grade 1 and Head Nurse in Kerala Health (Nursing in Hospital Wing) State Services issued as per G.O. (P) No. 257/2007/H&FWD dated 31-7-2007 is adopted to hospital staff in Medical Education Services. The Committee doubts about the legality of the appointments made during the period 1-8-2007 to 3-5-2011 without giving retrospective effect to the SRO from 1-8-2007. *The Committee urges the Government that if there is any lacuna in the matter this amendment should be given retrospective effect immediately.*

SRO No. 315/2010 dated 24-3-2010

G.O. (P) No. 117/2010/H&FWD dated 18-3-2010

13. By this SRO, Government have issued Special Rules for the Kerala Health Services (Nursing in Hospital Wing).

14. The Committee notices that in the preamble of the SRO, name of the rule is written as "Special Rules for the Kerala Health Services (Nursing in Hospital Wing) Subordinate Services". But in Rule 4 it is stated that "The appointing authority in respect of categories 1 to 6 shall be Government and in respect of category 6 shall be Director of Health Services". Hence the Committee

directs the department to substitute the word "state" instead of "subordinate" in the name of the rule and delete the word 'Services' before the bracket both in preamble as well as in Rule 1 (1).

15. *The Committee recommends to delete the serial number (1), Special character '[' in between the words 'Category I' and 'Head Nurse' in the method of appointment for category 6 in the table under Rule 3 and left opening bracket in the left of the word "District" in the method of appointment against category 2 of Rule 3. The Committee directs to insert a comma in between the words Rules and 2007 under Rule 3 category 6.*

16. The Committee notices that various posts for the Nursing Wing of the Health Department were created by the Government as per G.O.(Ms.) No. 126/198/H&FWD dated 11-5-1998. Special Rules for the Categories have been issued by the Government as per G.O. (P) No. 258/2007/H&FWD dated 31-7-2007 but the same was cancelled by G.O. (P) No. 16/2008/H&FWD dated 8-1-2008. The Committee also noticed that Government took nearly 10 years to give Statutory validity to the executive order.

17. The Committee further observed that though executive order intended for the creation of various posts in Nursing Wing were issued on 11-5-1998, retrospective effect is not given to the present statutory amendment. The Committee doubts about the legality of the action taken on the basis of the executive orders without giving retrospective effect to the SRO. *The Committee urges the Government that if there is any lacuna in the matter this amendment should be given retrospective effect immediately.*

18. *The Committee notices that instead of citing "Nursing Superintendent Grade I" and "Nursing Superintendent Grade II" it is cited as 'Nursing Superintendent Gr. I' and 'Nursing Superintendent Grade II'. Hence the Committee recommends to avoid using abbreviation in statutory orders.*

SRO No. 316/2010 dated 24-3-2010

G.O.(P) No. 118/2010/H&FWD dated 18-3-2010

19. By this SRO, Government have issued Special Rules for the Kerala Health Services (Nursing in Education Wing).

20. The Committee finds that in the preamble of the SRO the name of the rule is written as "the Kerala Health Services (Nursing in Education Wing) Subordinate Services". *The Committee observes that the appointing authority of category 1, 2 & 3 is State Government. Hence the Committee recommends to delete the word "Subordinate", from the name of the rule mentioned in the preamble.*

21. As per Rule 7, the qualification for Nursing Tutor is as follows:

"(1) By transfer-M.Sc. Nursing or B.Sc. Nursing (Basic or Post Basic) from a recognised University or Diploma in Nursing Education and Administration.

(2) By Direct Recruitment:

(1) M.Sc. (Nursing) or B.Sc. Nursing (Basic or Post Basic) from a recognized University.

(2) Certificate of Registration with the Kerala Nurses and Midwives Council as Nurse & Midwife in the case of Women Candidates or as Nurse in the case of Male Candidates".

Committee noticed that qualification for 'by transfer' recruitment and direct recruitment is different. During witness examination the Committee enquired whether it is just for mentioning different qualification for the same post and whether Diploma in Nursing Education and Administration is equivalent to B.Sc. Nursing. The witness replied that the qualification insisted by the Nursing Council for the post of Nursing Tutor shall be Degree in Nursing or General Nursing with additional qualification of Diploma in Nursing Education and Administration acquired from Delhi University which is considered as equivalent to B.Sc. Nursing Degree. The Committee opines that in the rule, regarding "the qualification of GNM and additional qualification of Diploma in Nursing Education and Administration from Delhi University is treated as equivalent to B.Sc. Nursing Degree" lacks clarity. *Hence the Committee recommends to insert a note to Rule 7(1) below the qualification for by transfer appointment stating the above mentioned facts.*

22. *Here too the Committee offers the same remarks as offered in the last para of SRO No. 315/2010.*

SRO No. 191/2011 dated 4-3-2011

[G.O. (P) No. 60/2011/ID dated 26-2-2011]

23. Government by this SRO, notified Special Rules in respect of Kerala Industries Service, in exercise of the powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 1968) read with section 3 thereof and in supersession of the notification issued under G.O.(P) No.143/2008/ID dated 17th September, 2008, published as SRO No. 973/08.

24. *The Committee notices that the name of the Act is wrongly written as "Kerala Public Services Act, 1968" in the preamble of the SRO. Hence the Committee recommends to correct the name of the Act as "The Kerala Public Services Act, 1968".*

25. Rule 4(b) deals with qualifications other than age. It states that "No person shall be eligible for appointment to any of the categories specified in column (1) of the appendix to these rules by the method specified in column (2) unless he possesses the qualifications specified in corresponding entry in column (3) thereof". The Committee notices that after the word "method" the words "of appointment" are missing. *Hence the Committee recommends to correct the rule 4 (b) as "No person shall be eligible for appointment to any of the categories specified in column(1) of the appendix to these rules by the method of appointment specified in column (2) unless he possesses the qualifications specified in corresponding entry in column (3) thereof".*

26. Note under Rule 4(b) says that "In the case of direct recruits experience prescribed shall be one gained after acquiring the academic or other qualifications as per General Rules 10 (a,b)". *The Committee finds that 'General Rules 10 (ab)' is wrongly written as 'General Rules 10 (a,b)'. Hence the Committee recommends to correct the "General Rules 10 (a,b)" as "General Rules 10 (ab)".*

27. Rule 5 deals with probation. 2nd para of Rule 5 states that " Persons appointed by direct recruitment or recruitment by transfer through Public Service Commission shall be two years on duty within a continuous period of three years and for persons appointed in a post of category from another post or category in the same service or by appointed by transfer from one service to another within the same department or in other department (where direct recruitment is not resorted to) shall be one year on duty within a continuous period of two years". The Committee notices that by transfer appointment through

Public Service Commission is not seen mentioned under the method of recruitment in the annexure. The Committee is of the opinion that the criteria for appointment to each category should be definite in statutory notifications. The witness informed that by transfer appointment through Public Service Commission is not prevailing in the Department and hence that may be amended as "direct recruitment through Public Service Commission or recruitment by by transfer". *Hence the Committee recommends to correct the 2nd para of Rule 5 as "The probation period for every person appointed through direct recruitment shall be two years on duty within a continuous period of three years and through by transfer shall be for a period of one year within a period of two years."*

28. Note 2 of Rule 5 says that "Probationers in the post of Assistant Director of Industries and Commerce are allowed to complete their probation in the post of Deputy Director/Manager, District Industries Centre also, as a special case, in relaxation of the above rule". The Committee enquired the reason for giving relaxation in probation period for Assistant Director of Industries. The witness replied that number of posts of Assistant Director of Industries is less than the number of posts of Deputy Director of Industries. The result of this anomaly is, lack of qualified probationers to promote as Deputy Director of Industries. The Principal Secretary, Industries Department informed that the anomaly would be examined and the number of posts of both the categories of Deputy Director and Assistant Director would be restructured so as to maintain the pyramidal structure of hierarchy. *Hence the Committee recommends to adjust the number of posts of Assistant Director and the number of posts of Deputy Director accordingly and fix a ratio, so as to maintain the pyramidal structure.*

29. Rule 9 deals with Appointing Authority for different posts. It states that "The Appointing Authority for Categories 1 to 6 (General) and Category 1 to 5 of Branch II (Common Facility Service Center) shall be the Government and for the other categories shall be the Director of Industries and Commerce". The Committee notices that the word and figure "Branch I" is missing in Rule 9. *Hence the Committee recommends to correct the Rule 9 as "The appointing authority for categories 1 to 6 of Branch 1 (General) and category 1 to 5 of Branch II (Common Facility Service Centre) shall be the Government and for the other categories shall be the Director of Industries and Commerce".*

30. In the annexure to these rules, the method of appointment and qualifications for each category is mentioned. The Committee noted that for categories 1 to 4 (Director, Additional Director, Joint Director, Deputy Director) the qualification mentioned is Degree of a recognised University in any branch of Engineering or Technology, Arts Science & Commerce where as for a lower category i.e., category 5 (Assistant Director) the qualification for direct recruitment is a Degree in any branch of Engineering or a post graduate degree of a recognised University in Business Administration and for by promotion, the qualification is degree or diploma. The Committee enquired the propriety of fixing lower qualification for higher post. The Principal Secretary of Industries Department informed that a note stating "Those who are existing in this category with diploma as on a particular date" may be included in the amendment of the rule and the date shall be the date of Government Order. *Hence the Committee directs to correct the qualifications for categories 1 to 4 as stated above.*

31. *The Committee directs the Department to correct the Marginal heading of Column 3, category 8 of Branch I and category 6 of Branch II as "by transfer" instead of "For transfer".*

32. The Committee finds that in the case of category 5, 6, 7 and 8 of Branch I and Category 1 and 5 of Branch II, qualification for direct recruitment and recruitment by promotion are different. The Committee enquired the reasons for fixing different qualifications for the same post. The witness replied that so many posts for Industrial Co-operatives such as Junior Co-operative Inspector, Senior Co-operative Inspector etc. were created during 1970's & 80's and many small Industries were registered at that time. Even though many small scale Industries are not functioning at present, the posts are being maintained by the Department. Recently P & ARD has undertaken a study with a view to rationalising these posts. *Hence the Committee directs to take immediate steps to rationalise the posts of above mentioned categories of Branch I and Branch II.*

33. For category 8, 9, 10 and 11 of Branch II, the method of appointment is given as "By transfer from Kerala Industries Subordinate Service." The Committee observed that the categories of Subordinate Service from which by

transfer appointments were done is not specified in this SRO. Hence the Committee directs the Department to specify the names of categories from which by transfer appointment are done in the Statutory Rules.

34. The Committee directs the department to correct the category number of Foreman (Tool room) as "Category 11" instead of "Category 10".

35. The Committee finds that column 2 of Category 7 in Branch I—the 2nd method is wrongly stated as "(2) In the absence of qualified hands for appointment by promotion from the following categories in Kerala Industries Subordinate Service in the order of preference". Hence the Committee directs the department to correct it as follows: "(2) In the absence of qualified hands for appointment by method (1) above, by transfer from the following categories in Kerala Industries Subordinate Service in the order of preference. "

36. The Committee recommends the department to correct "(iii) in the absence of qualified hands for appointment by promotion methods (i) and (ii) above, by direct recruitment" as "(3) In the absence of qualified hands for appointment by promotion by methods (1) and (2) above, by direct recruitment" in the method (3) of column (2) for category 7 of Branch I.

37. The Committee directs the department to insert a comma between the words "above" and "Diploma for item (b)" for qualification mentioned in column 3 for direct recruitment in category 1 and 2 of Branch II.

38. The Committee noticed that for category 4 of Branch II, Assistant Director (Plastic), one of the qualifications suggested is "B. Tech. Degree in Polymer Science and Rubber Technology of Cochin University of Science and Technology". The Committee is of the opinion that prescribing the degree of a particular University i.e., Cochin University of Science & Technology for qualification is not fair and hence recommends the department to correct it as "B.Tech. Degree in Polymer Science and Rubber Technology from a recognised University or Institution. "

SRO No. 130/2011 dated 16-2-2011

[G.O.(P) No. 44/2011/LSGD 16-2-2011]

39. By this SRO, Government have issued Special Rules for the Kerala State Rural Development Service superseding all existing special rules and orders on the subject, in exercise of the powers conferred by sub-section (1) of section (2) of The Kerala Public Services Act, 1968 (19 of 1968).

40. The Committee notices that this SRO has been issued superseding all special rules and orders on the subject. But the details of SROs published prior to the publication of this SRO has not been mentioned either in the preamble or in the explanatory part of the SRO. The Committee is of the view that even though the numbers of executive orders have been mentioned in the explanatory part, the numbers of previously published SROs should invariably be mentioned in the subsequent SROs. The Committee observes that there are many instances of statutory orders being amended by executive orders, and opined that it is an unhealthy practice. The Committee also finds that many posts were created by executive orders. The Committee is of the opinion that the reason for delay in issuing an SRO after issuing an executive order should be clearly mentioned in the Explanatory Note. *Hence the Committee suggests that the Explanatory notes appended to the SROs should invariably contain the above details and recommends to take effective steps to avoid such lapses in future.*

41. The Committee noticed that the District Women's Welfare Officer can be promoted to State Co-ordinator (Women and Children's Development/Women and Children's Programme) (category 4) as per rule 3 and at the same time can be promoted to Assistant Development Commissioner (category 5) based on the original seniority as Secretary, Block Panchayat (Senior Grade) or Joint Block Development Officer/Extension Officer (Women's Welfare) as the case may be. During witness examination the Committee enquired whether the Department allows the District Women's Welfare Officer to opt their own choice of promotion as Assistant Development Commissioner or State Co-ordinator. The Committee also enquired whether the State Co-ordinator (Category 4) has any further promotion prospects. The witness admitted that an anomaly exists in the case of District Women's Welfare Officers and assured that it would be rectified immediately. The Committee opines that in order to protect the legitimate rights of the incumbents of the Department it would be just and reasonable if there is a

provision for exercising option to the incumbents holding the post of District Women's Welfare Officer for further promotion. *Hence the Committee recommends to modify the rules accordingly on the grounds of reasonableness and justice.*

42. The Committee notices that the Note (3) to the rule for the appointment to the post of Secretary, Block Panchayat says "The post of Senior Superintendent in Rural Development Department and Secretary, Block Panchayat are interchangeable subject to the ratio and number of posts". But the ratio is not seen mentioned in the SRO. *The Committee is of opinion that the proportion of posts allocated to each category should be mentioned clearly and hence recommends to specify ratio of Senior superintendent in Rural Development Department and Secretary in Block Panchayat in the rules.*

43. The Committee enquired whether the Department maintains the ratio $33\frac{1}{3}\%$: 8%, $25\frac{1}{3}\%$: $33\frac{1}{3}\%$ for appointment to the post of Secretary, Block Panchayat between the four categories mentioned as per rule (3). The witness replied that the post of Secretary, Block Panchayat was created on 2011 and appointment to these posts were not done through PSC till date. *Hence the Committee recommends to report the details of arising vacancies to PSC as per rule 3 (8) so that eligible candidates will get a chance for direct recruitment through Public Service Commission.*

44. The Committee notices that the Department fails to comply conditions like educational qualifications and age limit for appointment to the post of Secretary, Block Panchayat. The Committee opines that it is essential to fix conditions like age limit and educational qualification for appointment to every post. *Hence the Committee recommends to fix age limit and educational qualification and to avoid ambiguity in such matters while issuing statutory notifications.*

45. *The Committee recommends to use the words "by promotion" instead of "by transfer" mentioned for the method of appointment in column (3) under category 8 for methods (1) and (2) since the method of appointment resorted to is the method of promotion.*

46. *The Committee recommends to correct the word "Scheduled Caste/Scheduled Tribe" mentioned under the note of Rule 8 as "Scheduled Castes / Scheduled Tribes".*

SRO No. 587/2008 dated 4-6-2008

G.O.(P) No. 113/08/TD dated 4-6-2008

SRO No. 1025/2010 dated 10-11-2010

G.O.(P) No. 264/2010/TD dated 10-11-2010

47. By this SRO, Government have in exercise of powers conferred by sub-section (1) of Section (2) of the Kerala Public Services Act, 1968 (19 of 1968) read with section 3 thereof, issued rules to amend the Special Rules for the Kerala Excise and Prohibition Subordinate Service issued under G.O. (P) No. 112/74/TD dated 9-9-1974 and published as SRO No. 689/74.

48. The Committee notices that date of effect of sub clause (IV) of clause (1) of Rule 2 is from 30th day of March, 2001 onwards and the date of effect of the remaining rules is the date of the order. *The Committee also notices that under sub clause (b) (iv) of clause (1) of rule 2 states that for the existing second proviso the following proviso shall be substituted.*

49. *"Provided that the vacancies shall be filled by promotion from among Excise Guards/Woman Excise Guards, possessing the minimum qualification of SSLC and those who do not possess this qualification in the ratio 1:1.*

50. Provided further that, while promoting the Excise Guard/Women Excise Guard to the category of Excise Preventive Officer, a Senior Excise Guard/Women Excise Guard who possess the minimum qualification of SSLC or its equivalent shall not be superceded by a Junior Excise Guard/Women Excise Guard who do not possess qualification of SSLC or its equivalent.

51. The Committee enquired the reason for giving retrospective effect from 30-3-2001 and also the necessity of substitution of this proviso. The witness replied that an executive order regarding the promotion of Excise guards has been issued on 30-3-2001 and as per SRO 1025/2010 the qualification of Excise Guards has been changed to plus two and 1:1 ratio is not necessary in this context. The witness from Law Department opined that this proviso is added to give validity to

the promotions made during the said period. The Committee notices that it has taken 7 years to give statutory validity for an executive order. Hence the Committee express its concern over the laxity on the part of the department in giving statutory validity for an executive order. The Committee at this juncture pointed out the recommendation made in its 23rd report which states that if an executive order requiring the issuance of an SRO is issued, the SRO in respect of the same should be published in Gazette within 90 days of the issuance of the executive order. In order to give statutory validity to the executive orders, committee recommends to take effective steps to issue SRO related to executive orders observing the above mentioned recommendations in future. The committee observes that the substitution of this proviso is unnecessary in this context since the minimum basic qualification for the same category of posts has been enhanced to plus two or its equivalent as per SRO No. 1025/2010. Hence the Committee recommends to amend the rules for the promotion of Civil Excise Officer (Excise Guard) by retaining the proviso related to promotion in SRO 587/2008 till a convenient date giving retrospective effect so that no incumbent already promoted is not affected and thereby deleting the proviso after such date and thus to amend the rule accordingly.

52. The Committee observes that under rule 2(1) (iv) of SRO 587/2008 the usage "Women Excise Guard" and "Woman Excise Guard" are intermixed. Hence the Committee recommends to use the word " Women Excise Guard" instead of "Woman Excise Guard".

SRO No. 314/2010 dated 24-3-2010

G.O. (P) No. 34/2010/SCSTDD dated 22-3-2010

53. By this SRO, Government have, in exercise of powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968, (19 of 1968) issued Special Rules for the Kerala Scheduled Castes Development Service superseding all existing special rules, orders and regulations on the subject.

54. The Committee observes that in the preamble of the SRO it is stated that this SRO has been issued superseding all existing orders and regulations on this subject. But in the explanatory part of the SRO it is stated that Government have

made the Special Rules of the former Harijan Welfare Department applicable to the Scheduled Caste Development Department till the publication of special rules as per G.O. dated 15th December, 1998. The Committee notices that there is an inordinate delay of 16 years in giving statutory validity to an executive order. The Committee expressed its concern over the delay and enquired how appointments and promotions were made during these 16 years. Therefore *the Committee directs to submit a detailed report citing the cause for this inordinate delay and also suggest to take effective steps to avoid this practice in future.*

55. The Committee having noticed that the Training Officer, mentioned as Category 5 has no chance of promotion to higher post as there is no provision in the rules for promotion of this Category, enquired the reason thereof. The Director, Scheduled Caste Development Department informed that there was a post of Joint Director of Training (Technical) as the promotion post of Training Officer which was abolished subsequently while abolishing excess posts in the Department. The Committee opines that it is not justifiable as the Training Officer with B.Tech. qualification has no chance of promotion, while other categories with mere SSLC as qualification has chance for promotion to higher posts above category 5. *Hence the Committee recommends to include necessary provision in the rules for the promotion of Training Officer (category 5) and amend rules accordingly.*

56. The Committee enquired the relevance of the term Joint Director/Vigilance Officer in the rules and the Principal Secretary informed that "Joint Director" is the correct term. *Hence the Committee recommends to delete the term "Vigilance Officer" from the rules and amend the rules accordingly.*

57. *The Committee recommends to delete the usage "from the category of Scheduled Caste Development Officer Grade I" mentioned against category 1, 2 and 3 in column 4 of the Table under rule 7 Qualifications and the usage "from the category of Scheduled Castes Development Officer Grade II" mentioned against category 4 which are found unnecessary and modify the rules accordingly.*

58. The Committee notices that the usage "from the category of Scheduled Castes Development Department in the cadre of Joint Director/..... Scheduled Castes Development Officer Grade I for a period of not less than 7 year from the

category of Scheduled Caste Development Officer Grade I" as "Administrative and Executive experience for a period of not less than 7 years in aggregate in Scheduled Castes Development Department in the cadre of Joint Director/...../Scheduled Castes Development Officer Grade-I" under the qualifications mentioned for category I, Additional Director under rule 7. *The Committee recommends to make similar Corrections for categories 2, 3 and 4 and amend rules accordingly.*

59. The Committee opines that when the Training Officer is appointed by 'by transfer' from other Departments, the Training Officer may not have experience in the Scheduled Castes Development Department. *Hence the Committee recommends to amend the qualification of Training Officer (By transfer) as follows:—*

Category 5: Training Officer

(2) By Transfer:

(i) *Degree in Engineering from recognised University or Institution and 5 years experience in supervisory works in various Training Centres of Recognised Government Firms.*

(ii) *3 years Diploma in Engineering approved by Government of Kerala or Government of India with 10 years experience in supervisory works in various Training Centres of Recognised Government Firms.*

60. The Committee notices that both the terms "Scheduled Caste" and "Scheduled Castes" are used in various places of the notification. In order to bring uniformity the Committee recommends to use "Scheduled Castes" instead of "Scheduled Caste" in the rules. *The Committee recommends to give periodical training to Training Officers, Inspectors of Training and all officers related to training in accordance with change needs of the time.*

SRO No. 216/2011 dated 15-3-2011

G.O. (P) No. 88/2011/TSM dated 14-3-2011

61. By this SRO, Government have in exercise of powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 1968),

issued the following rules to amend the special rules for the Kerala Tourism Subordinate Services, 1995, issued by notification under G.O. (P) No. 362/95/GAD dated 29th September, 1995 and published as SRO No. 1164/95 in the Kerala Gazette Extraordinary No. 980 dated 29th September, 1995.

62. The Committee notice that category 4, Overseer Grade I (Civil) under rule 2 of the original rules is seen omitted by amendment rule 2 (1) (b) But the entries related to category (4) Overseer Grade I in rule 5 (2) (a) of the original rules is not seen omitted. *Hence the Committee instructs the Department to delete the corresponding entries related to category (4) Overseer Grade I (Civil) under Rule 5 (2) (a) of the original rules and amend the rules accordingly.*

63. The Committee notices from the explanatory note that the posts of Projectionist, Boat Syrang and Boat Driver were abolished as per G.O. (Ms.) No. 338/03/GAD dated 20-11-2003. But in the SRO, though the posts of Overseer Grade I (Civil), Boat Driver and Boat Syrang are seen deleted, nothing is mentioned about the post of Projectionist. While taking evidence, the witness replied that the post of Projectionist was abolished and it was a mistake on the part of the Department for not mentioning the above facts. Since the post of Projectionist, Category 7 is abolished the *Committee recommends to delete the corresponding entries related to Category 7, Projectionist under rule 2 and tables under rule 3 and rule 5 and amend the rules accordingly.*

64. From the explanatory note, the Committee notices that the posts of Projectionist, Boat Syrang and Boat Driver were abolished as per G.O. dated 20-11-2003 and the posts of Hospitality Assistant and Cook were included in the Tourism Subordinate Service as per G.O. dated 27-6-2005. At the same time abolition of the post of Overseer Grade I (Civil) is not seen mentioned in the explanatory note. *The Committee observes that the explanatory note lacks clarity and recommends that in future explanatory notes to statutory rules must be self contained and self explanatory.*

65. The Committee observes that it is necessary to renumber the categories of posts mentioned under rule 2 Constitution since the posts of Overseer Grade I (Civil) Category 4 and Projectionist Category 7 were abolished. *Hence the Committee recommends to renumber the Categories and amend the rules accordingly.*

66. To the query of the Committee about the appointments made after 2005, the Director of Tourism informed that direct recruitments were not made after 2005. The Committee wants to submit a detailed report regarding appointments made after 2005. The Committee recommends to correct the sentence "Persons appointed.....shall be sent for training in Catering Management for not less than 21 weeks at the Food Craft Institute Kalamassery, for any other equivalent training" under rule 6 by inserting 'or' in between the words "Kalamassery" and "for any other equivalent training."

**THE KERALA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT
ACT, 1993
(ACT 3 OF 1993)**

SRO No. 269/2008 dated 11-3-2008

G.O. (P) No. 26/2008/ID dated 3-3-2008

67. The Kerala Industrial Infrastructure Development Act, 1993 (Act 3 of 1993) came into force on the first day of November, 1992. This Act was enacted to expedient to provide for the establishment of Industrial areas and for the organization of Industrial growth centres in the State of Kerala and for setting up infrastructure facilities for industries and for that purpose to constitute an Industrial Infrastructure Development Corporation and for matters connected therewith.

68. In exercise of the powers conferred by sub-section (1) of section 49 of the Kerala Industrial Infrastructure Development Act, 1993 Government have issued 'The Kerala Industrial Infrastructure Development Rules, 2008' as S.R.O. No. 269/2008.

69. The Committee noticed that even though the Industrial Infrastructure Act was published on 27-2-1993, it took a long spell of fifteen years to issue the rules on 11-3-2008. To the query of the Committee on the delay and the procedure that followed for the day to day activities of the corporation without such a rule, the witness replied that KINFRA is a statutory body with Chief Secretary as Chairman and right from the beginning the functioning of KINFRA has been illegal and was in a pathetic situation due to lack of proper rules. The Committee deprecated the way the Government handled the matter and condemned the delay of

fifteen years in issuing the rules. Hence the Committee directs the department to conduct an enquiry regarding the delay and to submit a report in this regard within a month.

70. The marginal heading of Rule (3) is "Term of Office of Director." Since the term of nominated Directors and not that of directors in general, is mentioned in the rule *the Committee recommends to correct the marginal heading of Rule (3) as "Term of office of nominated Directors."* In the same rule the last two sentences deal with term of office of Managing Director i.e. "The term of office of the Managing Director of the Corporation shall be as fixed by the Government in the order of appointment. However, Government may, at any time, terminate the services as such Managing Director, without assigning any reason therefore." The Committee notices that the last two sentences are related to term of office of Managing Director which is mentioned in Rule 4. Hence the Committee recommends to delete the last two sentences of Rule 3 and insert them in Rule 4.

71. The marginal heading of Rule 4 is "Appointment and term of office of Managing Director and conditions of service of the nominated Directors." Since Rule 4 deals with qualification of Managing Director and not the conditions of services of Nominated Directors, *the Committee recommends to delete the words "conditions of service of Nominated Directors" from the marginal heading of Rule 4.*

72. Rule 5 (1) states that "The Managing Director, other than the officer of the Government appointed on deputation on foreign service or an officer appointed from the All India Services, shall draw such pay and allowances as may be fixed by the Bureau of Public Enterprises and duly approved by the Government in the scale of pay applicable to the scale 'A' of the Public Sector Undertakings in the State" But in Rule 5 (2) "The Managing Director shall also be entitled to conveyance, housing and other benefits as are applicable to 'A' Grade Executives of Public Sector Undertakings in the state." Hence the Committee recommends to correct the words "Scale 'A' of the Public Sector Undertakings in the State" in Rule 5 (1) as ".....Scale of pay applicable to A Grade executives of Public Sector Undertakings in the state".

73. The Committee noticed that Rule 10 (3) deals with boarding and lodging expenses of nominated directors. The Committee asked how boarding and lodging expenses of the Directors other than nominated directors are met with. The Principal Secretary informed that for the past fifteen years KINFRA has had only official directors and no nominated Directors have been appointed so far. As per Section 5 (2) of the Act "The remaining Directors shall be representatives of financing institutions and professional bodies nominated by the Government for such term as may be prescribed." *Hence the Committee recommends to include the above provision also in the rules.*

74. The Committee finds that Marginal heading of Rule 13 contains a generic term "etc." The Committee had made it clear in its previous reports that generic terms like "etc." should not find a place in statutory orders and the Government have accepted this stand. *Hence the Committee recommends to delete the word 'etc' in the marginal heading of Rule 13.*

75. The Committee observed that Rule 18 is the replica of Rule 13 except the Marginal heading. The marginal heading of Rule 18 is "Instructions which may be issued for transfer of securities" but the paragraph mentions the amount to be kept in treasuries. The Committee having enquired the reason for the duplication of the same rule under different headings during witness examination, Law Department officials clarified that at the time of vetting, stating the above mentioned facts Rule 18 was quoted as follows: "A register of bonds, debentures and other securities shall be kept by the Corporation in which shall be entered the number and date of every such bond, debentures or other security and the sum secured thereby, and the names of the parties thereto (if any) with their addresses and all other necessary particulars." But the Committee observes that the statement given under Rule 18 is same as under Rule 13 and not as mentioned by the Law Department. The Committee is distressed to note the lackadaisical attitude of the officials in issuing statutory notifications and wants to deal with the matter with due diligence and care.

76. Committee pointed out that it is the responsibility of the parent department to identify the errors in rules before printing stage and to verify the rules after printing. The Committee also enquired whether the Law Department notices the mistakes or errors in the published rules. The Additional Secretary,

Law Department informed that the Law Department publishes the Act and erratum notification and the administrative department publishes the rule. The draft rule is sent to the Law Department for vetting. While the concerned file is with the Administrative Department the Law Department gets only the copy of the published rules at a later stage. Hence they are not in a position to verify the published rules.

77. The Committee observed that after publishing the rules, no such scrutiny or examination was done at the Government levels which has led to the duplication or errors in rules. *Hence the Committee recommends the Law Department to scrutinize the published rules.*

78. *The Committee recommends the department to correct Rule 18 as vetted by the Law Department and the amendment may be issued without further delay.*

79. The Committee finds that in both Form A and Form B of Rule 22, instead of the words "See Rule 22 (2)," "See Rule 23 (2)" have been highlighted. *Hence the Committee recommends the department to correct the words "See Rule 23 (2)" as "See Rule 22 (2)".*

80. *The Committee recommends the department to correct the words "Estimated Expenditure during" as "Estimated Expenditure during" in the 4th column of Form B.*

81. *The Committee recommends the department to correct the words "As per Rule 22 (2) Reason for Increase/decrease" as "As per rule 22 (2) Reason for Increase/decrease" in Form A.*

No. 870/2012

G.O. (P) No. 176/2010/ID dated 16-8-2010

82. In exercise of the powers conferred by Sub-section (1) and (2) of Section 3 of the Kerala Industrial Infrastructure Development Act, 1993 (3 of 1993) the Government has issued the SRO for declaring 66.4862 hectares of land as Industrial Area in Kalliassery and Pappinisseri Village of Kannur District.

83. The Committee finds that this SRO is published as ordinary. The Committee is of the opinion that this type of SRO should be published as Extraordinary.

THE ESSENTIAL COMMODITIES ACT, 1955
(10 OF 1955)

SRO No. 904/2008 dated 3-9-2008

[G.O. (P) No.137/2008/AD dated 29-8-2008]

84. By this SRO, Government have reconstituted the State Fertilizer Committee in exercise of the powers conferred by sub clause (5) of clause 38 of the Fertilizer Control Order, 1985.

85. The Committee noticed that it is provided in serial No. 4 of the notification that Dr. S. S. Ranade or Representatives of the Indian Micro Nutrients Manufacturers Association shall be the member. The Committee observed that the member of a Statutory Committee cannot be appointed on "or basis". As per sub-clause (5) of Section 38 of the Fertiliser Control Order, 1985, Indian Micro Fertilisers Manufacturers Association is to be represented in the Committee. *The Committee pointed out that it is not a a good practise to give the name of the association instead of the name of a person and hence recommend to issue erratum notification after deleting the words "or Representative of the Indian Micro Nutrients Manufacturers Association"*.

86. The Committee noticed that as per sub-clause (5) of section 38 of the Fertilizer Control Order, 1985 'Indian Micro Fertilisers Manufacturers Association' is to be represented in the Committee. The Committee enquired whether the usage 'The Indian Micro Nutrients Manufacturers Association' instead of 'The Indian Micro Fertilizers Manufacturers Association' is correct in this context. On witness examination, Agricultural Additional Director informed that as per the Fertilizer Control Order, 1985, the words representative of Indian Micro Fertilizers Manufacturers Association is to be used. Actually Indian Micro Nutrients Manufacturers Association and the Indian Micro Fertilizers Manufacturers Association are considered as equivalent associations and they are used as synonyms. The Committee is of the opinion that the term used in the Act or Fertilizer Control order should be used in subsequent orders also. *Hence the Committee recommends to use the following wording "representatives from the Indian Micro Fertilizers Manufacturers Association", hereafter.*

87. As per the sub-clause (5) of section 38 of the Fertilizer Control Order, 1985, the State Government may by notification in the Official Gazette, constitute a State Fertilizer Committee on such terms and conditions as may be prescribed. The Committee noticed that no terms and conditions are specified in the notifications and it is not even mentioned who shall convene the meetings of the Committee and at what intervals. *Hence the Committee recommends to specify the authority to convene the meetings and the intervals at which the meetings are to be convened in the notification.*

THE KERALA PRESERVATION OF TREES ACT, 1986

(ACT 35 OF 1986)

S.R.O. No.318/2008 dated 19-3-2008

[G.O.(P) No.15/2008/F&WLD dated 19-3-2008]

88. This SRO was issued in exercise of the powers conferred by sub-section (1) of section 5 of 'The Kerala Preservation of Trees Act, 1986'. By this S.R.O. Government directs that trees standing in land involved in OA.1003/75 of Forest Tribunal, Palakkad shall not be cut, uprooted or otherwise destroyed except on the ground that the tree constitutes a danger to life or property or the tree is dead, diseased or wind fallen.

89. The Committee notices that in the Preamble of the S.R.O. the short title is mentioned as 'Kerala Preservation of Trees Act 1986' But the short title of the Act is "The Kerala Preservation of Trees Act 1986". *Hence the Committee recommends to change the short title in Preamble as "The Kerala Preservation of Trees Act, 1986".*

90. The Committee notices that the enabling provision of the S.R.O. is applicable for tree growth in private forests, Cardamom Hills Reserve and in any areas cultivated with Cardamom. The Committee enquired whether the area described in the schedule belongs to the category of Private Forest, Cardamom Hills Reserve or any area cultivated with Cardamom and asked the reason for not specifying the same in the S.R.O. The witness replied that Private Forest comes under Forest Vesting Act. The Committee opines that the S.R.O. should be self explanatory and recommends to pay more attention while drafting statutory rules in future.

91. The Committee notices that the explanatory note of notification reads as follows: "If the area is restored, it is likely that the available tree growth will be removed soon after restoration which will result in land slides and ecological imbalance". The Committee enquired whether it is scientifically correct that uprooting of trees is a causative factor for land slides in all cases as in the case of soil erosion. The witness replied that intense form of soil erosion is considered as land slides. Since the usage soil erosion is particularly mentioned in the preamble of the Act and some times soil erosion occurs without land slides, *the Committee recommends to include the usage 'soil erosion' in the S.R.O.*

92. *The Committee recommends to correct the word 'land slides' instead of 'land sliders' in the S.R.O.*

General Recommendations

1. The Committee, while examining the SROs, have noticed on several cases that the amendments brought to statutory orders remain as executive orders for years. In many cases in order to issue Statutory notifications, it took two to sixteen years. This lapse on the part of the Government leads to the lack of legal validity to the amendments. The Committee has noticed that in the light of various executive orders issued under the Kerala Public Services Act, 1968 (19 of 1968) the Departments concerned had made appointments and promotions to various posts. The Committee finds that those appointments and promotions have no legal validity till the orders are published as Statutory Orders. If the executive publishes the order as SRO after long delay or not at all published as SRO, it won't come to the notice of the Legislature in time, or it will never come to the notice at all. The Committee considers that it is the misuse of delegated powers and thereby encroaching the privileges of Legislature by issuing an executive order to add, supplement, abrogate or alter the provisions of an already existing rule. *Hence the Committee instructs to put an end to this practice and to publish all amendments as SROs and to place before the Assembly in stipulated time.*

2. The Committee while examining the SROs, have come across a lot of mistakes including clerical errors even in the title of the SROs. This is due to sheer laxity on the part of the executive while framing very important rules. Therefore *the Committee recommends that the Department concerned should set-up necessary arrangements to verify the correctness of the proof before the publication of the Statutory Order.*

3. The Committee noticed that in many SROs explanatory notes do not properly convey the circumstances which had necessitated the issuance of the SRO. Likewise seldom contain references regarding the previous SROs that brought about amendments to the original rules previously. In order to understand the contents of a SRO especially an amendment to an existing rule, regulation, order, it is inevitable to describe the circumstances which led to the issuance of the SRO. *Hence the Committee recommends that in future explanatory notes appended to the SROs should invariably contain the reason for the publication of the SRO and also description of the previous SROs, if any, which have reference to the amendment in question.*

Thiruvananthapuram,
29th July, 2015.

M. UMMER,
Chairman,
Committee on Subordinate Legislation.

ANNEXURE

LIST OF SROs CONSIDERED BY THE COMMITTEE

The Kerala Public Services Act, 1968 (Act 19 of 1968)

SRO No. 301/2011, SRO No. 302/2011, SRO No. 315/2010, SRO No. 316/2010, SRO No. 191/2011, SRO No. 130/2011, SRO No. 587/2008, SRO No. 1025/2010, SRO No. 314/2010, SRO No. 216/2011

The Kerala Industrial Infrastructure Development Act, 1993 (Act 3 of 1993)

SRO No. 269/2008, No. 870/2012

The Essential Commodities Act, 1955 (10 of 1955)

SRO No. 904/2008

The Kerala Preservation of Trees Act, 1986 (Act 35 of 1986)

S.R.O. No. 318/2008 dated 19-3-2008.
