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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL
School Education Department
(Secondary Branch)
Bikash Bhavan, Salt Lake, Kolkata-700 091

NOTIFICATION

No. 214--SE/S/10M-01/18 dated Kolkata, the 8th March, 2018 – WHEREAS the draft notification to frame the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018, was published as required by sub-section (1) of section 45 of the West Bengal Board of Secondary Education Act, 1963 (West Ben. Act V of 1963) (hereinafter referred to as the said Act), *vide* notification No. 984-SE/S/1A-10/2017, in the *Kolkata Gazette, Extraordinary*, PART I, dated the 10th November, 2017, inviting objections and suggestions from all persons likely to be affected thereby, within thirty days from the date of its publication;

AND WHEREAS some objections and suggestions were received from all persons likely to be affected thereby within the given period;

AND WHEREAS all such objections and suggestions have been considered by the State Government;

NOW, THEREFORE, in exercise of the power conferred by sub-section (1), and clauses (d) and (o) of sub-section (2) of section 45, *read* with clause (j) of sub-section (2) of section 27, of the said Act, the Governor is pleased hereby to make, with immediate effect, the following rules, namely:—

Rules

1. Short title.—These rules may be called the West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching staff) Rules, 2018.

2. Definitions.—(1) In these rules, unless there is anything repugnant to the context,—

- (a) "Act" means the West Bengal Board of Secondary Education Act, 1963 (West Ben. Act, V of 1963);
- (b) "Additional District Inspector of Schools" in relation to Secondary Education, means Additional District Inspector of Schools (Secondary Education) of a Sub-Division of a District;
- (c) "Appellate Authority" means the Commissioner;

- (d) "approval of appointment" in respect of service of teacher or non-teaching staff of an institution, means approval of appointment of teacher or non-teaching staff by the District Inspector of Schools or Additional District Inspector of Schools, as the case may be, after joining of teacher or non-teaching staff in the institution against a sanctioned post;
- (e) "Board" means the West Bengal Board of Secondary Education constituted under the West Bengal Board of Secondary Education Act, 1963 (West Ben. Act V of 1963);
- (f) "Commissioner" means the Commissioner of School Education, West Bengal and includes the Director of School Education, West Bengal;
- (g) "Committee" means Managing Committee as defined in clause (d) of section 2 of the Act in respect of the institution referred to in clause (l) of this rule;
- (h) "disciplinary authority" means any officer of the Board not below the rank of Deputy Secretary to Board who has been authorised by the Board to initiate disciplinary proceeding against a Teacher or non-Teaching staff of an Institution;
- (i) "District Inspector of Schools" in relation to Secondary Education means District Inspector of Schools (Secondary Education) of the concerned District;
- (j) "Government" means the Government of West Bengal in the School Education Department;
- (k) "inquiry authority" means an authority appointed by the disciplinary authority not below the rank of the District Inspector of Schools or Additional District Inspector of Schools for the purpose of causing an inquiry into the charges against a teaching or non-teaching staff framed under these rules;
- (l) "institution" refers to a school as defined in clause (n) of section 2 of the West Bengal School Service Commission Act, 1997 (West Ben. Act IV of 1997) and "Head of institution" shall have the same meaning as defined clause (g) of the said Act;
- (m) "misconduct" means and includes any act or omission which runs counter to the code of conduct and discipline of teacher and non-teaching staff under rule 4 of these rules;

Note.—For the purpose of misconduct, "teacher" means "Assistant Teacher", "Assistant Head Master or Assistant Head Mistress" and "Head of institution" unless otherwise specifically mentioned;

- (n) "State" means the State of West Bengal;

(2) Words and expressions used and not defined in these rules, but defined in the Act, shall have the same meanings as respectively assigned to them in the said Act.

3. Powers and duty of the Board.—(1) The Board, subject to any rule, order or direction of the Government or the Commissioner, shall have the following powers and duties:—

- (a) to appoint Headmaster or Headmistress and Assistant Teachers and non-teaching staff including Librarian in any institution.
- (b) to issue confirmation order in respect of service of Headmaster or Headmistress or Assistant Teachers or non-teaching staff including Librarian who has completed 2 (two) years of satisfactory and continuous service under probation upon recommendation of the committee. The Head of Institution shall forward the prayer of confirmation with recommendation of the committee to the Board through the District Inspector of Schools or Additional District Inspector of Schools of the concerned Sub-Division, as the case may be;
- (c) to give effect to the recommendation of transfer of Headmaster or Headmistress or Assistant Headmaster or Headmistress or Assistant Teachers or non-teaching staff including Librarian in accordance with the provision of the West Bengal School Service Commission Act, 1997;

- (d) to take disciplinary action against misconduct of teachers or non-teaching staff;
- (e) to collect vacancy report from the Commissioner in respect of sanctioned vacancies of teacher and non-teaching posts in the State in order to fill up such vacant posts of teacher or non-teaching staff including Librarian in an institution upon recommendation of the West Bengal School Service Commission;
- (f) to maintain, as the appointing authority, reservation rosters of posts as per law in respect of teacher or non-teaching staff including Librarian.

(2) The Board shall obey any other general or specific order of the Government or the Commissioner of School Education in the interest of education.

4. Code of conduct and discipline of teacher or non-teaching staff of the Institutions.— (1) No teacher or non-teaching staff shall behave in a manner, which is improper and unbecoming of a teacher or a non-teaching staff and derogatory to the prestige of the Institution, the State and the Nation.

(2) Every teacher and non-teaching staff shall strictly abide by law relating to the prohibition of gambling, intoxicating drinks or drugs, or smoking during the course of his duty in the premises of the Institution or in any public place.

Explanation—For the purposes of these rules, the expression "public place" means any place or premises (including conveyance) to which the public have, or are permitted to have access, whether on payment or otherwise.

(3) No teacher or non-teaching staff shall, in discharge of his official duties, be guided by his personal interest, if any, affecting discharge of such official duties.

(4) Save as otherwise provided in these rules, no teacher or non-teaching staff shall engage in any business, trade, undertaking or money lending agency and undertake any employment other than his service directly or indirectly, or use his position to help such business, agency or undertaking:

Provided that a teacher or non-teaching staff may, with the permission of the committee, undertake any honorary work of social and charitable nature without hampering his duties in the Institution.

(5) A teacher or non-teaching may, with the permission of the committee, undertake writing or publication of books by himself or jointly with others and may receive reasonable remuneration for such work and the proper account of such remuneration shall be furnished before the authority to whom he is subordinate:

Provided that such work shall not include publication of answer key or note or help books, by whatever names these may be called, in respect of textbooks approved by the Board or the West Bengal Council of Higher secondary Education.

(6) No teacher shall engage himself in any sort of private tuition for personal gain. Provided that, a teacher shall co-operate in the matter of remedial coaching which may be organised by the Institution.

(7) No teacher or non-teaching staff shall employ any subordinate staff in his domestic work or for his personal service.

(8) Every teacher shall practise, promote and encourage collective functioning in the interest of academic and administrative efficiency of the institution and shall attend guardians' meeting when arranged by the Head of Institution.

(9) No teacher shall ask a student to participate in any private programme without permission of his guardian, if the same is held on holidays, and without the permission of the Head of Institution, if the same is held on working days:

Provided that if the guardian or the Head of Institution, as the case may be, permits such participation, the concerned teacher shall be responsible for safety, security and well-being of the student till the student returns to his guardian:

Provided further that no teacher shall force any student against his desire to participate in any programme in which the institution is taking part.

(10) Every teacher or non-teaching staff shall abide by the orders or circulars issued by the concerned authority as to punctuality, regular attendance, attendance at assembly prayer, taking allotted classes, completion of syllabus and other instructions contained in such orders or circulars.

(11) No teacher or non-teaching staff shall remain absent without sanctioned leave or overstay after expiry of leave, or leave the Institution without permission from the Head of Institution during working hours.

(12) Every teacher shall, to the best of his abilities, perform his duties, as may be assigned to him by the competent authority pertaining to the examinations held by the Institution and including preparation of question papers, evaluation of answer scripts, preparation of mark sheets and invigilation. Every non-teaching staff shall faithfully render his services for holding examinations of the institution smoothly. Inducement by any teacher or non-teaching staff in any unfair practices of students in any dishonest activity shall be construed as misconduct on the part of such teacher or non-teaching staff, as the case may be.

(13) Every teacher and non-teaching staff shall perform such duties as may be entrusted to him by the concerned Officer-in-charge of the Centre committee pertaining to Secondary Examination and Higher Secondary Examination. Every teacher shall, if so entrusted by the Board or by the West Bengal Council of Higher Secondary Education, as the case may be, evaluate answer scripts of the examinations conducted by such Board, or the Council and shall strictly follow the guidelines prescribed by it.

(14) A teacher or non-teaching staff shall, with the approval of the Head of the Institution, perform such duties for the conduct of public examinations other than the examinations referred to above, as may be entrusted to him by the concerned authority conducting such examinations. A teacher or non-teaching staff shall be entitled to receive such remuneration as may be sanctioned for discharging duties in such examinations.

(15)(a) Every teacher or non-teaching staff may, if permitted by his respective committees, participate in programmes organised by the State Government or the Board or the Council or the Institution for promotion of education or culture or moral value and may also attend events like workshop or seminar etc. as and when organised by them.

(b) Every teacher and non-teaching staff shall participate collectively and individually in national programmes or events like Republic Day, Independence Day, and cultural events like drama, sports, and exhibitions etc., held within the Institutions, and extend his support to the best of his ability in the interest of joyful learning by the students and to generate a congenial atmosphere in the Institution.

(16) No teacher or non-teaching staff shall inflict any punishment on a student, which is barred under any law or under any order of the Government. Every teacher and non-teaching staff shall be extremely careful in handling student's behaviour so that mental and physical injury to the student is avoided. Every teacher shall, if necessary, make endeavour to take correctional approach towards the students with the help of co-teachers, the Head of Institution and guardians.

(17) Every teacher and non-teaching staff shall endeavour to attain and maintain a mutually respectful atmosphere in and outside the institution with respect to other teaching and non-teaching staff and students and guardians and members of the managing committee. No teacher and non-teaching staff shall induce or influence any student to participate, directly or indirectly, in violent, hateful, secessionist, terrorist or communal activity and no teacher or non-teaching staff shall indulge in any activity which may cause dissatisfaction amongst the teachers, non-teaching staff and students on the basis of religion, caste, gender, community, profession etc.

(18) Every teacher and non-teaching staff shall abide by and follow the provision of law relating to the right to education as laid down in the Right of Children to Free and Compulsory Education Act, 2009, in respect of elementary education, if the institution imparts elementary education.

(19) Every teacher and non-teaching staff shall discharge his duties as entrusted to them by provision of any Act, rules and order of the Government.

(20) Every Assistant teacher and non-teaching staff shall obey any other general or specific order of the Government or the Director of School Education or the Board or the District Inspector of Schools of the district or the Additional District Inspector of Schools of concerned Sub-Division or the Committee or the Head of Institution or the Assistant Headmaster or the Assistant Headmistress, as the case may be, in the interest of education.

(21) Every Assistant teacher or Assistant Headmaster/Headmistress or non-teaching staff shall, in the manner as may be specified by the Government, submit annually, latest by the 30th April of every year, a declaration of his assets as they stood on 1st January of such year, to the Headmaster or the Headmistress of the school who shall forward the same within one month to the respective District Inspector of Schools or the Additional District Inspector of Schools of the concerned Sub-Division. The Head of Institution shall submit his declaration of assets to the District or Additional District Inspector of Schools, as the case may be.

(22)(a) Every teacher or non-teaching staff may, subject to the rules, regulations or orders for the time being in force and with the approval from committee, take part in any democratic process, including contesting election to Parliament, Legislative Assembly, Local Self Government, Statutory body, or voluntary organization.

(b) Every teacher or non-teaching staff may form association for their academic, professional or service interest.

(23) Every teacher or non-teaching staff shall submit an application to the Board for appearing in any examination through the District Inspector of Schools or the Additional District Inspector of Schools of the concerned Sub-Division with the approval of the committee.

(24) The Head of the Institution shall allow a candidate to join on fresh appointment or on transfer in the post of Assistant Teachers or non-teaching staff including Librarian as per the order of appointment or transfer, as the case may be, issued by the Board:

Provided that if the Head of the Institution is, under circumstances beyond his control, unable to allow a candidate to join the Institution, he shall pass a reasoned order explaining the circumstances which prevented him to allow the candidate to join and inform the District Inspector of Schools or the Additional District Inspector of Schools of the concerned Sub-Division and the Board and also to the Regional Commission of the West Bengal School Service Commission. A copy of such order shall also be endorsed to the concerned candidate.

5. Disciplinary proceeding.—(1) The Board may authorize any officer not below the rank of a Sub-Inspector of Schools to conduct preliminary investigation against any teacher or non-teaching staff upon receipt of a complaint pertaining to the misconduct of a teacher and non-teaching staff, from the Committee or the Administrator or Head of an Institution.

(2) If the preliminary investigation report reveals prima facie a case of misconduct, the Board shall issue show cause notice to the concerned teacher or non-teaching staff against whom the complaint has been made in order to enable him to explain his act or omission in question by such date as may be specified in the show cause notice.

(3) If the explanation in reply to the show cause notice is not satisfactory, the disciplinary authority shall initiate disciplinary proceeding against the concerned teacher or non-teaching staff:

Provided that no disciplinary proceeding shall be initiated after three years from the date of alleged misconduct becomes known to the Board. However, the said period may be extended with the approval of the State Government in appropriate cases:

Provided further that in case of retired teaching or non-teaching staff, disciplinary proceeding may, with the approval of the State Government, be instituted within three years from the date of retirement, if the misconduct becomes known to the Board after retirement.

(4) The disciplinary authority shall frame charge(s) containing a statement of imputations of misconduct including any admission or confession made by the teaching and non-teaching staff with annexures of a list of documents and a list of witnesses by which and by whom the charge (s) is/are proposed to be substantiated.

(5) In all cases for the purpose of inquiry, the disciplinary authority, by an order in writing, shall appoint an inquiring authority for holding inquiry into the charge(s) and shall enclose with such order of appointment, a copy of the charge(s) along with all annexures and other relevant documents. The disciplinary authority may also appoint a Presenting Officer to present the case and shall enclose with such order of appointment, a copy of the charge(s) along with all annexures and other relevant documents.

(6) The disciplinary authority shall serve or cause to be served on the teaching or non-teaching staff a copy of the charge(s) containing statement of imputations of misconduct including any admission or confession made by the teaching and non-teaching staff with annexures of list of documents and a list of witnesses by which and by whom the charge (s) is/ are proposed to be substantiated with a direction to file written statement of his defence to the inquiry authority within 30 days from the receipt of the charge sheet if the teaching or non-teaching staff does not admit any of the charge(s). If he pleads guilty to any of charge (s), the inquiring authority shall record the plea, sign the record and obtain the signature of the teaching and non-teaching staff thereon. The inquiring authority shall return a finding of guilt in respect of those charge (s) to which the teaching or non-teaching staff pleads guilty.

(7) The teaching and non-teaching staff against whom disciplinary proceedings have been instituted may take the assistance of any other teaching or non-teaching staff (including retired teaching or non-teaching staff) to present the case on his behalf and the disciplinary authority may allow to engage a legal practitioner for this purpose having regard to the circumstances of the case.

(8) The inquiring authority, for the purpose of inquiry,—

- (a) shall issue notice to the teaching or non-teaching staff or witness or other person to attend hearing on such date as may be specified in the notice;
- (b) may adjourn the hearing after recording reason for it in writing;
- (c) may make requisition of any documents on receipt of the notice for the discovery or production of documents from such authority who holds the custody of the same; or
- (d) may take such other steps for proper and expeditious disposal of the inquiry.

(9) After completion of the inquiry, the inquiring authority shall prepare a final report containing charge(s), the defence of the teaching or non-teaching staff in respect of charge(s), an assessment of the evidence in respect of each charge, his finding on each charge along with the reasons, and send the same to the disciplinary authority;

(10) The disciplinary authority shall consider the aforesaid report of the inquiry authority and may, for reasons to be recorded in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall, thereupon, proceed to hold further inquiry, as far as possible, according to the provisions laid down in these rules;

(11) If the disciplinary authority, having regard to its finding on the charges, is of opinion that any of the penalties specified in rule 9 should be imposed, it shall pass appropriate orders on the case:

Provided that if the disciplinary authority, having regard to its finding on the charges, is of opinion that any of the penalties specified in rule 9(2) except 9(2)(a) should be imposed, he shall cause service upon the delinquent teacher or non-teaching staff a copy of the report of the inquiry authority and give him a notice stating the punishment proposed and grounds thereof and calling upon him to submit representation against the proposed punishment if he likes, and the disciplinary authority then, after considering the representation, if any, shall pass appropriate order:

Provided further that in the order of penalties, the disciplinary authority shall provide the information as to the appellate authority:

Provided also that if the charge is not proved on inquiry, the disciplinary authority may pass appropriate order regarding admissible service benefits.

(12) The Board may *suo moto* initiate disciplinary proceeding against a teaching or non-teaching staff if there is reason to believe that any misconduct has been committed by a teaching or non-teaching staff. In all cases of *suo moto* proceedings, a preliminary investigation has to be conducted, and follow up action is to be taken as mentioned hereinbefore.

(13) In all cases the disciplinary authority shall make all endeavours to complete the proceedings within 180 days from the date of appointment of the inquiring authority.

6. Suspension.—(1)The Board may, for the following reasons, issue order for suspension against a teacher and non-teaching staff:

- (a) if the teacher and non-teaching staff is under detention in lawful custody for more than 48 hours.; or
- (b) for any alleged misconduct; or
- (c) if there is reason to believe that unless the concerned teaching or non-teaching staff is suspended, it may result in tampering or destruction of the evidence or the concerned teacher or non-teaching staff may cause undue influence in disciplinary proceeding, pending or contemplated.

(2) In all cases of suspension, a disciplinary proceeding has to be drawn and concluded as required under rules.

(3) If the disciplinary proceeding is not initiated or contemplated within ninety (90) days from the date of receipt of investigation report or if the teaching or non-teaching employee has been released on bail, the concerned teaching or non-teaching employee may be allowed to resume his duty subject to the condition that such joining of the teacher or non-teaching staff will not hamper the normal running of the institution:

Provided that during suspension period no annual increment, Career Advancement Scheme benefit, revision of pay benefit, any other benefit declared by the government, final pension, gratuity etc. shall be allowed other than subsistence allowance:

Provided further that if any teacher or non-teaching staff is convicted with punishment of imprisonment by a court of law, the service of the convicted teacher or non-teaching staff shall be terminated and the appointing authority shall pass the order to that effect if the Government does not direct otherwise. If final pension has already been allowed in such cases, such payment of pension may be withheld if the Government deems fit.

7. Subsistence allowance during suspension.—The Board may, subject to any order or direction of the Government in this regard, allow the subsistence allowance at the following rates to a teaching or non-teaching staff of an institution placed under suspension.

A teacher or non-teaching staff who is placed under suspension or is deemed to be under suspension in the circumstances mentioned in these rules shall, irrespective of the circumstances which lead to or result in the suspension, be entitled to subsistence allowance, during the period of suspension, at the rate of fifty (50) per cent of the pay and allowances drawn by him immediately before the suspension:

Provided that where the period of suspension exceeds ninety (90) days, the amount of subsistence allowance shall be increased, on expiry of ninety (90) days, to seventy five (75) per cent of the pay and allowances drawn by him immediately before the suspension.

Provided further that the person concerned shall not be entitled to any subsistence allowance if he/she accepts any employment elsewhere during the period of suspension;

Provided also that in a case where a teacher or non-teaching Staff is detained in custody under any law providing for preventive detention, the subsistence allowance, admissible as mentioned hereinbefore, shall be reduced by the amount of allowance, if any, paid to the detainee under the relevant laws or rules for the time being in force.

8. Reinstatement and count of period of suspension against service and fixation of pay.—The Board shall, subject to any order or direction of the Government, count the period of suspension as the period of service of a teaching and non-teaching staff and shall fix his pay on reinstatement:

Provided that if the counting of the period of service and fixation of pay is altered by the appellate authority, the Board may issue necessary order to allow such benefit to the extent as it is allowed by the appellate authority.

9. Penalties.—(1) If a teacher or a non-teaching staff is found guilty of any misconduct, the disciplinary authority may, where the misconduct is not grave or criminal in nature, give him reasonable opportunity for rectification of such misconduct and give him a written warning.

(2) The disciplinary authority may, by final order, inflict any one or more of the penalties, as mentioned below, upon a teacher or a non-teaching staff after going through the procedure as prescribed for disciplinary proceedings:

- (a) Censure;
- (b) Withholding of one or more (not exceeding three) annual increments;
- (c) Stoppage of Career Advancement Scheme benefit;
- (d) Deduction of pension amount or gratuity amount;
- (e) Compulsory retirement with appropriate rate of pensionary benefits;
- (f) Removal from service; or
- (g) Dismissal from service which shall ordinarily be a disqualification for future employment as teaching and non-teaching staff in recognized Institutions;

Note 1.—Penalties should be proportionate to the gravity of misconduct.

Note 2.—Any penalty, except censure, shall be recorded in the Service Book of the concerned teacher or non-teaching staff and the entry in this regard shall be countersigned by the District Inspector of School.

10. Appeal.—(1) A teacher or non-teaching staff may prefer appeal to the Appellate Authority against a final order imposing any of the penalties under rule 9(2) of these rules;

(2) Period of limitation of appeals—An appeal shall be preferred within a period of three months from the date of receipt of the final order:

Provided that the appellate authority may entertain the appeal even after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(3) Form and contents of appeal –

- (a) Every person preferring an appeal shall do so separately and in his own name.
- (b) The appeal shall be presented to the authority to whom the appeal lies, a copy being simultaneously forwarded by the appellant to the authority who made the order against which appeal has been filed. It shall contain all material statements, and arguments on which the appellant relies and shall not contain any disrespectful or discourteous language, and shall be complete in itself.
- (c) The authority who made the order against which appeal has been filed, shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with relevant records to the appellate authority without any delay, and without waiting for any direction from the appellate authority.

(4) In the case of an appeal, the appellate authority shall dispose of the appeal within 90 days from the date of filing of appeal and pass an appropriate order after giving reasonable opportunity of hearing to the appellant and the disciplinary authority. The appellate authority shall serve the certified copy of its decision to the appellant:

Provided that if the appellate authority modifies or alters the decision of the disciplinary authority, the order of the appellate authority shall be final.

11. Interpretation and relaxation.—If any question arises relating to the interpretation of any provision of these rules, such question shall be referred to the Government and the decision of the Government thereon shall be final. Nothing in these rules shall be construed to limit or abridge the power of the Governor to dispense with or relax the requirement of any of these rules to such extent and subject to such conditions as may be considered necessary for dealing with a case or cases in a just and equitable manner.

By order of the Governor,

D. NARIALA

Principal Secretary to the Government of West Bengal.