

GOVERNMENT OF WEST BENGAL
JUDICIAL DEPARTMENT
WRITERS' BUILDINGS, KOLKATA-700001

No. 262-JL Dated, 28th September, 2004

NOTIFICATION

In exercise of the power conferred by the proviso to article 309 of the Constitution and in supersession of all previous notifications on the subject matter, the Governor, in consultation with the High Court at Calcutta under article 233 of the Constitution or, as the case may be, in consultation with the Public Service Commission, West Bengal and the High Court at Calcutta under Article 234 of the Constitution, is pleased hereby to make the following rules, namely:-

Rules

1. Short title and commencement.

- (1) These rules may be called the West Bengal Judicial (Conditions of Service) Rules, 2004.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Application.

- (1) These rules shall be in two parts, namely, Part I and Part II.
- (2) Notwithstanding anything contained in any other rules, orders and notifications for the time in force –
 - (a) Part I of these rules shall apply to the Judicial Officers other than District Judges;
 - (b) Part II of these rules shall apply to the Higher Judicial Officers in the rank of District Judges.

3. Constitution of Service.

There shall be constituted a State Service known as the West Bengal Judicial Service and every member of the service shall be under the administrative control of the High Court at Calcutta.

PART I

Judicial Officers other than District Judges

4. Definition.

In this Part of these rules, unless the context otherwise requires,

- (a) "appointing authority" means the Governor and includes the authority empowered to make appointment to the post which a Judicial Officer for the time being holds or to the grade of the service in which the said officer is for the time being included;
- (b) "cadre" means the Public Service Commission, West Bengal;

- (c) "Commission" means the Public Service Commission, West Bengal;
- (d) "Government" means the Government of West Bengal;
- (e) "Governor" means the Governor of the State;
- (f) "High Court" means the High Court at Calcutta;
- (g) "Judicial Officer other than District Judges" means an officer who is a member of the service under this Part;
- (h) "service" means the West Bengal Judicial Service;
- (i) "rule" means the rule contained in this Part.

5. Member of service.

- (1) On and after coming into force of these rules, the Judicial Officers other than District Judges recruited to any of the posts as mentioned in clause (a) of sub-rule (1) of rule 6, shall be members of the service.
- (2) The Judicial Officers other than District Judges who are holding substantially or in officiating capacity any of the posts mentioned in sub-rule (1) of rule 6 before coming into force of these rules, shall be deemed to be the members of the service.

6. Cadre.

(1) The Judicial Officers other than District Judges of the service as mentioned in Part I, shall include the following posts forming the cadre, namely:-

(a) Civil Judge/Judicial Magistrate/Metropolitan Magistrate/Municipal Magistrate/Magistrate of the Juvenile Board;

(b) Chief Metropolitan Magistrate/Additional Chief Metropolitan Magistrate/Chief Judicial Magistrate/ Additional Chief Judicial Magistrate/Senior Civil Judge/Assistant Sessions Judge/Sub-divisional Judicial Magistrate/Senior Municipal Magistrate/the Judge, Presidency Small Causes Court/the Registrar, District Judge's Court.

(2) The strength of the cadre of the service shall be such as specified in Schedule I and such strength of the cadre may be increased from time to time by the Government in consultation with the High Court.

7. Gradation.

(1) The gradation of the posts as mentioned in Part I shall, for the purpose of Assured Career Progression (ACP), be of the following two main heads:-

(a) Civil Judge (Junior Division) at entry level,

(b) Civil Judge (Senior Division) at intermediary level.

(2) The grade of Civil Judge (Junior Division) at entry level, shall consist of the following sub-heads, namely:-

- (a) Civil Judge,
- (b) Civil Judge, Grade-II
- (c) Civil Judge, Grade-I

(3) The grade of the Civil Judge (Senior Division) at intermediary level shall consist of the following sub-heads, namely:-

- (a) Senior Civil Judge,
- (b) Upper Senior Judge,
- (c) Superior Senior Judge.

8. Appointment.

(1) The appointment to any of the posts as mentioned in clause (a) of sub-rule (1) of Rule 6, shall be made by the Governor in accordance with the West Bengal Civil Service (Judicial) Recruitment Rules, published with this Department notification No.1713-J, dated the 31st March, 1951, as subsequently amended, after consultation with the High Court and the Commission.

(2) The appointment to any of the posts as mentioned in clause (b) of sub-rule (1) of rule 6, shall be made by way of selection through promotion from the posts as mentioned in clause (a) of sub-rule 6, by the High Court, on the basis of merit-cum-seniority:

Provided that the selection to the posts as mentioned in clause (b) of sub-rule (1) of rule 6, shall be made by way selection through promotion from the posts as mentioned in clause (a) of sub-rule (1) of rule 6, on the first day of January of the year in which selection is to be made.

9. List of candidates recommended by Commission.

(1) The Commission shall, on the basis of the examination conducted by it, forward to the Government a list of qualified candidates in order of merit and such list shall be published for the general information.

(2) Subject to any other provision of these rules, each of such candidates shall be considered for appointment to the available vacant posts as mentioned in clause (a) of sub-rule (1) of rule 6, in the order in which their names appear in the merit list.

10. Probation.

(1) A Judicial Officer other than District Judges appointed to any of the posts as mentioned in clause (a) of sub-rule (1) of rule 6, shall be on probation for a period of two years from the date on which he joins duty and shall undergo training and pass the departmental examination conducted by the Commission in accordance with the provisions contained in the Services (Training and Examination) Rules, West Bengal, as amended from time to time.

(2) The High Court may extend the period of probation:

Provided that the total period of probation shall not exceed three years.

Provided further that the High Court may, if it considers necessary to do so in public interest, recommend termination of the service of the Judicial Officer other than District Judges during or at the end of the period of probation.

(3) On successful completion of the period of probation, the training and the departmental examination as mentioned in sub-rule (1), the probationer shall be confirmed in the service or the posts to which he has been appointed, even if no substantive post is available, as per the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979, as amended from time to time.

11. Postings and Transfers.

All postings and transfers of the Judicial Officers other than District Judges shall be made by the High Court.

12. Seniority.

(1) The relative seniority inter se of the Judicial Officers other than District Judges appointed to the posts as mentioned in clause (a) of sub-rule (1) of rule 6 in the service against the vacancies occurring in any particular year, shall be determined according to the order of merit on the result of examination conducted by the Commission.

(2) The relative seniority inter se of the Judicial Officers other than District Judges appointed to the posts as mentioned in clause (b) of sub-rule (1) of rule 6 in the service, shall be according to the order in which their name appear in the merit list approved and issued by the High Court.

(3) Notwithstanding anything contained in this rule, the relative seniority inter se of persons appointed under the West Bengal Civil Service (Judicial) before coming into force of these rules, shall be governed by the West Bengal Civil Service (Judicial) (Determination of Seniority) Rules, 1961, for the time being in force.

13. Pay, allowances and other conditions of service.

Pay, allowances and other service conditions of the service shall be such as specified in Part I and Part III of the West Bengal Judicial Service (Revision of Pay and Allowance) Rules, 2003, as subsequently amended.

14. Interpretation.

If any question relating to the interpretation of these rules or the existing rules, orders or resolutions on the subject-matter prior to coming into force of these rules arises, it shall be decided by the High Court after obtaining the views thereon of the State Government.

15. Compulsory retirement.

Notwithstanding anything contained in these rules, the appointing authority on the recommendation of the High Court, may, if it is of opinion that it is in the public interest to do so and after giving the member concerned a notice of not less than three months in writing thereof or three months' pay and allowance in lieu of such notice, have the absolute right to retire such member of the service who has attained the age of 50 years or has completed 25 years service, whichever is earlier.

16. Declaration regarding age.

(1) Every member of the service shall at the time, and for the purpose of entry into such service submit to the appointing authority a declaration in the Form as mentioned in Schedule II, stating the year, month and date of birth.

(2) The declaration so made shall be binding on such member and he shall have no right to revise it subsequently for any reason whatsoever. Such member shall produce evidence particularly the School Leaving Certificate, in support of such declaration and the date of birth recorded in the School Leaving Certificate shall be binding.

(3) The appointing authority shall consider the declaration made by the member under sub-rule (1) and the evidence produced in support thereof and pass an order fixing the year, month and date of his birth. In doing so, the appointing authority shall take into consideration the year, month and date of birth declared by the member in the application form submitted by him to the Commission and accepted by them.

(4) The appointing authority may, in consultation with the High Court and the Commission and after recording the reasons in writing, modify or revise the order passed under sub-rule (3).

17. Superannuation.

Notwithstanding anything contained in any other law, by law, rule and order for the time being in force, the age of superannuation of a member of the service shall ordinarily be 60 years.

18. Oath.

Every person appointed to the service shall, before joining, make and subscribe before such person as may be specified by the Chief Justice of the High Court, oath or affirmation in the Form as mentioned in Schedule III.

19. Deputation.

Any member of the service may be deputed by the High Court to perform the duties of any post in the Central Government or the State Government or the Union Territory of Andaman and Nicobar Islands or to serve in any organization, which is wholly or partly owned or controlled by the Central or the State Government for a period of 3 years or for such period as the High Court and the borrowing department agree:

Provided that the High Court may withdraw such officer from the borrowing department before the expiry of the term of deputation for administrative convenience or the borrowing Department may release such officer before the expiry of the term of the term of deputation for administrative convenience.

20. Power to relax.

(1) Where the High Court is satisfied that the operation of any of the rules relating to posting, probation, confirmation, transfer, deputation, promotion and leave, cause undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exception and conditions as may be deemed necessary;

Provided that as and when any such relaxation is granted by the High Court, the State Government shall be informed of the same.

(2) Save as otherwise provided in sub-rule (1), where the State Government is satisfied on the recommendation of the High Court that the operation of any of the rules relating to appointment, imposition of major punishments of dismissal, removal and reduction in rank and compulsory retirement, causes undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exceptions and conditions as may be deemed necessary.

21. Application of West Bengal Service Rules.

The provisions of the West Bengal Service Rules, shall so far as they are not inconsistent with these rules, apply mutatis mutandis to the service.

22. Savings.

Any order made or action taken under the existing rules, orders, notifications or resolutions prior to coming into force of these rules, shall be deemed to have been validly made or done under the corresponding provisions of these rules.

PART II

Higher Judicial Officers in the rank of District Judges

23. Definition.

(1) In this Part of these rules, unless the context otherwise requires,-

(a) "appointing authority" means the Governor and includes the authority empowered to make appointment to the post which a Judicial Officer for the time being holds or to the grade of the service in which the said officer is for the time being included;

(b) "direct recruitment" means direct recruitment to the post of District Judges at the entry level in the manner specified under these rules;

(c) "District Judge" includes the District and Sessions Judge, the Additional District and Sessions Judge, the Judge of Special Court, the Chief Judge and Judge of the City Sessions Court, the Chief Judge of Small Causes Court, and any Judicial Officer of this Part posted in any other post or any post equivalent thereof or posted on deputation.

Explanation:- For removal of doubts, it may be stated that notwithstanding any contrary contained in these rules, the person working as the Chief Metropolitan Magistrate, the Additional Chief Metropolitan Magistrate, the Chief Judicial Magistrate or the Additional Chief Judicial Magistrate, before coming into force of these rules, shall continue to be in the West Bengal Higher Judicial Service till they are posted to the post of the Additional District Judge;

(d) "Higher Judicial Officer in the rank of District Judges" means a Higher Judicial Officer who is a member of the service;

(e) "period of service" includes the period of service, if any, under Part I of these rules;

(f) "rule" means the rule contained in this Part unless in the context it includes in Part I;

(g) "service" means the West Bengal Judicial Service.

(2) Words and expressions used and not defined in this Part but defined in the Part I of these rules, shall have the same meanings as respectively assigned to them in such Part I.

24. Cadre.

(1) The Higher Judicial Officers in the rank of District Judges of the service as mentioned in Part II shall include the following posts forming the cadre, namely:-

(a) District Judge;

(b) District Judge in selection grade;

(c) District Judge in super time scale.

(2) The strength of the cadre of the service shall be such as specified in Schedule IV and the Government in consultation with the High Court may vary such strength of the cadre from time to time.

Provided that the number of posts as referred to in clause (b) and clause (c) of sub-rule (1), shall be determined by the Government from time to time depending upon the total strength of the officers in the service.

25. Member of service.

(1) On or after coming into force of these rules, the Higher Judicial Officers in the rank of District Judges recruited to any of the posts as mentioned in sub-rule (1) of rule 24 in accordance with these rules, shall be the member of the service.

(2) Notwithstanding anything contained in the foregoing provisions of this rule, the Higher Judicial Officers in the rank of District Judges holding substantively or in the officiating capacity of the posts

referred to under sub-rule (1) of rule 24, shall, prior to the commencement of these rules, be deemed to be member of the service.

26. Method of recruitment.

(1) On or after the commencement of these rules, the appointment of the Higher Judicial Officers in the rank of District Judge in the post of District Judge as mentioned in clause (a) of sub-rule (1) of rule 24, shall be made-

(a) by direct recruitment from the Bar;

(b) by selection through promotion, on the basis of merit-cum-seniority and on passing of a suitability test, from amongst such Judicial Officers other than District Judges as mentioned in clause (b) of sub-rule (1) of rule 6 of these rules;

(c) by promotion strictly on the basis of merit through limited competitive examination of such Officers other than District judges as mentioned in clause (b) of sub-rule (1) of rule 6 of these rules having not less than five years of qualifying service:

Provided that the number of vacancies to be filled up by direct recruitment as stated in clause (a) shall not be more than 25% of the total permanent strength and such recruitment shall as far as possible be made annually:

Provided further that the number of vacancies to be filled up by promotion as stated in clause (c) shall, subject to the provision of the third proviso, not be more than 25% of the total permanent strength and such recruitment shall as far as possible be made annually;

Provided also that where suitable persons are not available for appointment to the posts of the Judicial Officers in the rank of District Judges under this Part, the number of vacancies required to be filled up by direct recruitment as stated in clause (a) and by promotion as stated in clause (c), shall not be carried forward and such vacancies may be filled up-

(a) in respect of vacancies as required to be filled up by direct recruitment as stated in clause (a)

(i) firstly, from amongst the eligible Judicial Officers in the rank of District Judges as selected by the method as stated in clause (c);

(ii) secondly, from amongst the eligible Judicial Officers in the rank of District Judges selected by the method as stated in clause (b);

(b) in respect of vacancies required to be filled up by promotion on the basis of merit as stated in clause (c), from amongst the eligible Judicial Officers in the rank of District Judges selected by the method as stated in clause (b).

(2) The appointment of the Higher Judicial Officers in the rank of District Judges in the post of District Judge in selection grade and District Judge in super time scale, as referred to in clauses (b) and (c) of sub-rule (1) of rule 24, shall be made by the High Court by selection of the Higher Judicial Officers in the rank of District Judges of the service from posts as referred to in clause (a) and clause (b),

respectively, of that rule and such appointment shall be made by selection on the basis of merit cum-seniority.

27. Qualification for direct recruitment.

(1) No person shall be eligible for appointment by direct recruitment unless-

(a) he is a citizen of India;

(b) he has attained the age of 35 years and has not attained the age of 45 years (relaxation of 3 years on upper age for the candidates belonging to the Scheduled Castes and Scheduled Tribes) on the first day of January of the year in which the applications for recruitment are invited;

(c) he has been practicing for not less than seven years as an advocate; and

(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.

(2) The selection by way of direct recruitment to posts as referred to in clause (a) in sub-rule 24, shall be made by the High Court by way of conducting a written examination and viva voce in accordance with such manner and subject to such guidelines as may be specified by the High Court from time to time.

28. Appointing authority.

(1) All appointments to the post as referred to in clause (a) of sub-rule (1) shall be made by the Governor in accordance with recommendations of the High Court.

(2) All selections to posts referred to in clause (a), clause (b) and clause (c) of sub-rule (1) of rule 24 shall be made by the High Court.

29. Probation.

(1) A Judicial Officer in the rank of District Judges appointed to the posts as mentioned in clause (a) of sub-rule (1) of rule 24 shall be on probation for a period of two years from the date on which he joins duty.

(2) The High Court may, at any time, extend the period of probation but the total period of probation shall not exceed three years.

(3) The High Court may, at any time during or at the end of the period of probation, revert a promote Judicial Officer in the rank of District Judges to his substantive post from which he was promoted and in the case of direct recruitment, the High Court may recommend termination of his service.

(4) On successful completion of probation, the probationer shall, if there is permanent post available, be confirmed in the service and if no permanent post is available, a certificate shall be issued by the High Court to the effect and as soon as a permanent post becomes available, he shall be confirmed.

(5) A probationer shall be deemed to be on probation until confirmed, reverted or terminated, as the case may be.

30. Posting and transfer.

All postings and transfers in the rank of Higher Judicial Officers in the rank of District Judges shall be made by the High Court.

31. Seniority.

(1) The seniority of the Higher Judicial Officers in the rank of District Judges appointed to the posts as referred to in clause (a), (b) and (c) of sub-rule (1) of rule 24 shall, unless reduced in rank on account of punishment, be determined in accordance with-

(a) the date of continuous officiation in case of officers promoted to the posts as referred to in clause (a) of sub-rule (1) of rule 24;

(b) the date of order of appointment in the case of direct recruit to the posts as referred to in clause (a) of sub-rule (1) of rule 24;

(c) the date of order of selection to posts as referred to in clause (b) and (c) respectively of sub-rule (1) of rule 24 or such date, as may be specified by the High Court:

Provided that in the case of direct recruit or promote under clauses (a), (b) or (c), as the case may be, of sub-rule (1) of rule 26 to the post referred to in clause (a) of sub-rule (1) of rule 24, if the date of continuous officiation of the Higher Judicial Officer in the rank of district judges promoted to such post and the date of joining/appointment of the direct recruit in the service be the same, the seniority inter se shall be fixed according to the 40 point roster as determined by the High Court from time to time:

Provided further that seniority inter se amongst the Higher Judicial Officers in the rank of District Judges promoted by an order of the same date or amongst direct recruits appointed by an order of the same date, shall follow the order in which their names have been recommended by the High Court.

Provided also that the relative seniority of the Judicial Officers of the West Bengal Higher Judicial Service appointed prior to coming into force of these rules and governed by the West Bengal Higher Judicial Service (Determination of Seniority) Rules, 1979, shall not be affected.

32. Pay, allowances and other conditions of service.

Pay, allowances and other service conditions of the service shall be such as specified in Part II and Part III of the West Bengal Judicial Service (Revision of Pay and Allowance) Rules, 2003, as subsequently amended.

33. Interpretation.

If any question relating to the interpretation of these rules or the existing rules, orders or resolutions on the subject-matter prior to coming into force of these rules arises, it shall be decided by the High Court after obtaining the views thereon of the State Government.

34. Compulsory retirement.

Notwithstanding anything contained in these rules, the appointing authority on the recommendation of the High Court, may, if it is of opinion that it is in the public interest to do so, have the absolute right to retire any Higher Judicial Officer in the rank of District Judges, who has attained the age of 50 years or has completed 25 years service, whichever is earlier, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

35. Application of West Bengal Service Rules.

The provisions of the West Bengal Service Rules, shall so far as they are not inconsistent with these rules, apply mutatis mutandis to the service.

36. Superannuation.

Notwithstanding anything contained in any other law, by law, rule and order for the time being in force, the age of superannuation of a Higher Judicial Officer in the rank of District Judges, shall ordinarily be 60 years.

37. Re-employment.

If there are vacancies in the cadre of the Higher Judicial Officer in the rank of District Judge and such vacancies cannot be readily filled up for want of suitable candidate, the High Court may provide re-employment to a retiring Higher Judicial Officer in the rank of District Judges holding any of the posts as mentioned in clause (b) and (c) of sub-rule (1) of rule 24, for a period not exceeding one year at a time till he attains the age of 62 years.

38. Declaration of age.

Every direct recruit before entering into the service under clause (a) of sub-rule (1) of rule 26 shall submit to the appointing authority a declaration of his age in the same manner and Form and supported by such evidence as mentioned in sub-rule (1) of rule 16 of Part I of these rules and such declaration shall be subject to such binding, acceptance and review or modification as mentioned in sub-rule(2), sub-rule(3) and sub-rule(4) of the said rule 16.

39. Oath.

Every person appointed to the service shall, before joining, make and subscribe before such person as may be specified by the Chief Justice of the High Court, oath or affirmation in the Form as mentioned in Schedule III.

40. Deputation.

A Higher Judicial Officer in the rank of District Judge may be deputed by the High Court to perform the duties of any post in the Central Government or the State Government or the Union Territory of Andaman and Nicobar Islands or to serve in any organization, which is wholly or partly owned or controlled such Government.

Provided that the High Court may withdraw such officer from the borrowing department before the expiry of the term of deputation for administrative convenience or the borrowing Department may release such officer before the expiry of the term of the term of deputation for administrative convenience.

41. Power to relax.

(1) Where the High Court is satisfied that the operation of any of the rules relating to posting, probation, confirmation, transfer, deputation, promotion and leave, cause undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exception and conditions as may be deemed necessary;

Provided that as and when any such relaxation is granted by the High Court, the State Government shall be informed of the same.

(2) Save and otherwise provided in sub-rule (1), where the State Government is satisfied on the recommendation of the High Court that the operation of any of the rules relating to appointment, imposition of major punishments of dismissal, removal and reduction in rank and compulsory retirement, causes undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exceptions and conditions as may be deemed necessary.

42. Savings.

Any order made or action taken under the existing rules, orders or resolutions prior to coming into force of these rules, shall be deemed to have been validly made or done under the corresponding provision of these rules.

By order of the Governor,

SUBIR GUHA
Secy. to the Govt. of West Bengal