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**PART III**

**Laws, Regulations and Rules passed thereunder.**

GOVERNMENT OF JAMMU AND KASHMIR  
CIVIL SECRETARIAT—DEPARTMENT OF LAW, JUSTICE AND  
PARLIAMENTARY AFFAIRS  
(Judicial Administration Section)

Notification

Jammu, the 24h March, 2016.

SRO-98.—In exercise of powers conferred by section 124 of  
Constitution of Jammu and Kashmir read with section 492 of the Code of  
Criminal Procedure, Samvat 1989 (1933 A. D.), the Government of Jammu  
and Kashmir hereby makes the following rules governing the appointment

and conditions of service of the Law Officers of the State of Jammu and Kashmir :—

## CHAPTER I

### **Preliminary**

1. *Short title and commencement.*—(1) These rules may be called the Jammu and Kashmir Law Officers (Appointment and Conditions of Service) Rules, 2016.

(2) It shall come into force at once.

(3) These rules shall apply to the Advocate General and the following other Law Officers, namely :—

- (a) Additional Advocates General in High Court of Jammu and Kashmir and Supreme Court of India ;
- (b) Deputy Advocates General in High Court of Jammu and Kashmir and Supreme Court of India ;
- (c) Advocates-on-Record, Supreme Court of India ;
- (d) Government Advocates ;
- (e) Public Prosecutors ;
- (f) Standing Counsel in the High Court and Subordinate Courts ;
- (g) Special Counsels.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

- (a) “Advocate General” means the person appointed as Advocate General under section 42 of the Constitution of Jammu and Kashmir ;

- (b) “Government” means the Government of Jammu and Kashmir ;
- (c) “Law Officer” means an Advocate General, Additional Advocate General, Deputy Advocate General, Advocate-on-Record, Government Advocate, Public Prosecutor, Standing Counsel appointed by the Government for the purpose of conducting any civil or criminal case for and on behalf of State in the Supreme Court, High Court of Jammu and Kashmir or any other Civil or Criminal Court in the State ; and
- (d) “State” means the State of Jammu and Kashmir.

3. *Administrative control of Law Officers.*—Save as otherwise provided under section 42 of the Constitution of Jammu and Kashmir, all other Law Officers of the State shall be under the administrative control of the Department of Law, Justice and Parliamentary Affairs. All references to the Government in respect of matters relating to the Advocate General and other Law Officers shall be addressed to the Administrative Secretary of the Department of Law, Justice and Parliamentary Affairs.

## CHAPTER II

### **Appointment of Law Officers**

4. *Applicability of this Chapter.*—In this Chapter, unless the context otherwise requires, the term ‘Law Officer’ shall include Additional Advocate General, Deputy Advocate General, Government Advocate and Standing Counsel appointed by the Government for conducting the cases on behalf of State before the High Court of Jammu and Kashmir.

5. *Appointment of Law Officers.*—(1) No person shall be eligible for appointment as an Additional Advocate General unless he—

- (i) has been in practice as an Advocate for at least ten years ;

- (ii) has at least eight reported judgments to his credit where he has contributed to the growth of law or has substantially contributed in the field of civil, criminal, constitutional, revenue matters including taxation laws before appropriate Courts, Foras, Tribunal of the State ; and
- (iii) is an income tax payee and furnishes income tax return of the previous year.

(2) No person shall be eligible for appointment as a Deputy Advocate General unless he—

- (i) has been in practice as an Advocate for at least eight years ;
- (ii) has at least five reported judgments to his credit where he has contributed to the growth of law or has substantially contributed in the field of civil, criminal, constitutional, revenue matters including taxation laws before appropriate Courts, Foras, Tribunals of the State ; and
- (iii) is an income tax payee and furnishes income tax return of the previous year.

(3) No person shall be eligible for appointment as a Government Advocate unless he has been in practice as an Advocate for at least five years.

(4) No person shall be eligible for appointment as a Standing Counsel for the High Court unless he has been in practice as an Advocate for at least five years.

6. *Term of office.*—(1) All Law Officers shall be appointed by the Government and shall hold office during the pleasure of the Government unless otherwise ordered in the order of appointment, a person appointed as Law Officer shall hold office at a time, for a term not exceeding one year, but shall be eligible for re-appointment after such term.

(2) The services of a Law Officer so appointed shall be liable to be dispensed with at any time, if it appears that the conduct of such Law Officer in the opinion of the Government is contrary to these rules or is incompatible with his duties as Law Officer. In such cases the decision of the Government shall be final.

(3) Save as otherwise provided in sub-rule (2) and subject to other provisions of these rules, the Government may dispense with the services of a Law Officer at any time without assigning any reason.

(4) A Law Officer may resign from his office by giving one months notice in writing to the Government :

Provided that the Law Officer intending to resign the office shall be fully responsible for the conduct of the Government litigation during the period of notice and up to the date of handing over charge of the office. The Law Officer shall be legally accountable for his conduct if the same has resulted in loss to the Government or prejudicial or detrimental to the interests of the Government.

7. *Headquarters.*—(1) The headquarters of the Law Officers appointed for Srinagar Wing of the High Court shall be at Srinagar.

(2) The headquarters of the Law Officers appointed for Jammu Wing of the High Court shall be at Jammu.

(3) The headquarters of the Law Officers appointed for Supreme Court of India shall be at New Delhi.

8. *Review of the work of Law Officer.*—(1) The work of the Law Officer shall be reviewed twice a year. The Law Officer shall be required to furnish half yearly report by 31st of January and 31st of July every year regarding institution, disposal and pendency of all cases assigned to such Law Officer. The reports shall be furnished to the Office of the Advocate General and thereafter a compiled statement shall be sent to the Government in the Department of Law, Justice and Parliamentary Affairs through the Office of Advocate General.

(2) For the purpose of review of work under sub-rule (1) the views of the officers of Department of Law, Justice and Parliamentary Affairs dealing with litigation matters and the concerned department of the Government for which Law Officer has been engaged shall also be considered.

9. *Restrictions.*—A Law Officer shall not—

- (i) except with the special sanction of the Government, hold any brief against the Government, or advise, appear or act in any case against the Government or give advice to private parties in cases in which he is likely to be called upon to advise the Government or any Government servant ;
- (ii) act or appear on behalf of plaintiff in a suit in which the plaintiff has applied for permission to sue in forma pauperis until the application for such permission has been decided by the court ;
- (iii) act or appear on behalf of, or advise, any accused person ;
- (iv) stand for election to any local authority without the previous permission of the Government and in case a Law Officer is member of any local authority at the time of his appointment, he shall resign his membership immediately after such appointment unless he obtains the permission of the Government for continuing as such member ;
- (v) accept any fees from any person in any case or proceeding in any court in which he appears or acts on behalf of Government ;
- (vi) communicate without the previous permission of the Government directly or indirectly to any person any document or information which has come to his possession in the course of his duties, save in so far as it is necessary for the conduct of the case and to safeguard the interest of the Government.

10. *Transfer of Records.*—On the expiry of term of office, whether by efflux of time or otherwise, a Law Officer, shall prepare a list of cases, references and official correspondence pending with him and handover all records to the Law Officer succeeding to him or to such other Law Officer as the Government may specify, obtain a receipt for the same and report the fact to the Government.

11. *Law Officers bound by the rules, orders etc.*—Every Law Officer shall be bound by the provisions of these rules and such other corresponding rules as prescribed by Bar Council of India or the Bar Council of the State and shall also be bound by the orders and directions as the Government from time to time make.

12. *Providing of certified copies and prohibition to concessions by Law Officers.*—(1) Every Law Officer shall apply for certified copy of the judgment or order of the court within three days after the pronouncement of such judgment or order and shall send his report to the concerned department within three days after receiving certified copy of the judgment or order.

(2) No Law Officer shall without the oral or written authority of a responsible officer either in the Department of Law, Justice and Parliamentary Affairs or in the concerned administrative department concede any claim or part thereof against the Government or make any statement detrimental to the interests of the State in any proceedings before any court :

Provided that an oral permission shall be confirmed in writing within three days from the date of such oral permission.

13. *Time limit for preferring claims.*—The claims of remuneration under these rules shall be preferred to the Administrative Secretary, Department of Law, Justice and Parliamentary Affairs within ninety days from the date of disposal of the respective cases :

Provided that Government may, for stated reasons to be in writing by the Law Officer concerned and satisfied, condone the delay :

Provided further that while calculating ninety days, the time taken for obtaining certified copy of the judgment and decree shall be excluded.

14. *Retainership and remuneration.*—The retainership and other remuneration including counsel fee payable to a Law Officer shall be such as may be specified from time to time.

### CHAPTER III

#### **Advocate General**

15. *Advocate General.*—(1) The Advocate General shall be appointed and shall hold office in accordance with section 42 of the Constitution of Jammu and Kashmir.

(2) The Advocate General shall,—

- (a) advise other Law Officers if consulted by them ;
- (b) advise the Government upon such legal matter including legislative proposals as may, from time to time, be referred to him by the Government ;
- (c) represent the Government in such proceedings whether civil, criminal, original, appellate, or otherwise before the High Court of Jammu and Kashmir or any other High Court or the Supreme Court to which the Government is a party, as the Government may, by special or general order require ;
- (d) represent the Government in the Supreme Court and in the High Court in cases in which the Supreme Court or the High Court has directed notice to the Advocate General or in which Advocate General's appearances is required by the High Court or Supreme Court ;
- (e) represent the Government in any proceeding before any tribunal or other authority or in any court subordinate to the High Court, if specially required by the Government.

(3) The Advocate General may, if he is designated as a Senior Advocate under Advocate Act, 1961, call upon the Law Officer to assist him in cases



in which he represents the Government or may propose a panel of suitable Advocates for their engagement.

(4) The Advocate General shall, subject to general or special directions, if any, issued by the Government and the provisions of these rules, supervise and control the work of Law Officers.

(5) The salary and other remuneration payable to Advocate General shall be such as may be specified from time to time.

16. *Headquarters.*—The headquarters of the Advocate General shall be same as that of the seat of the Government.

#### CHAPTER IV

##### **Advocates-on-Record**

17. *Advocates-on-Record.*—(1) The Government may appoint one or more Advocate-on-Record on behalf of the Government to be incharge of cases, both civil and criminal, before the Supreme Court.

(2) If more than one Advocate-on-Record is appointed, the Government cases before the Supreme Court shall be distributed between them.

(3) Advocate-on-Record shall attend to all work connected with the case entrusted to him provided that in cases involving extra drafting or pleading work, he may, with the previous approval of the Government, secure the assistance of any other Advocate.

(4) On instructions by the Government in important cases, the Advocate-on-Record shall take steps to brief the Advocate General or a Senior Counsel included in the Panel of Senior Advocates prepared by the Government and suggested by the Government.

(5) The Advocate-on-Record shall be paid such fees as may be determined by the Government from time to time.

(6) The provisions of rules 9, 10, 11, 12 and 13 shall *mutatis mutandis* apply to the Advocate-on-Record.

18. *Eligibility for appointment of Advocate-on-Record.*—No person shall be eligible for appointment as an Advocate-on-Record unless he—

- (i) has been in practice for at least seven years in the Supreme Court of India out of which three years should be as an Advocate-on-Record ; and
- (ii) is an income tax payee and furnishes income tax return of the previous year.

19. *Additional Advocates.*—(1) The Government may also appoint one or more Advocates on behalf of the Government as Additional Advocate General or as Standing Counsel in cases before the Supreme Court.

(2) The Additional Advocate General or the Standing Counsel shall appear and argue all matters entrusted to him by the Government.

(3) The Additional Advocate General or the Standing Counsel shall also undertake the drafting work which is necessary and incidental to the progress of matter which is entrusted to him.

(4) The Additional Advocate General and the Standing Counsel shall paid fees as may be determined by the Government from time to time.

## CHAPTER V

### **Appointment of Public Prosecutors**

20. *Appointment of Public Prosecutors and Additional Public Prosecutors.*—(1) The number of posts of Public Prosecutors and Additional Public Prosecutors in the State shall be such as may be fixed by the Government from time to time.

(2) No person shall be eligible for appointment as a Public Prosecutor or Additional Public Prosecutor unless he—

- (i) has been in practice as an Advocate for at least seven years ; and
- (ii) has experience of handling criminal cases specially sessions trial.

21. *Term of Office.*—(1) The Public Prosecutors and Additional Public Prosecutors shall be appointed by the Government and shall hold the office during the pleasure of the Government.

(2) A Public Prosecutor or Additional Public Prosecutor shall be liable to be removed from office at any time if he is guilty of an act or conduct which, in the opinion of the Government, is contrary to these rules or is incompatible with his duties as such Public Prosecutor or Additional Public Prosecutor. In such case, the decision of the Government shall be final.

(3) Save as otherwise provided in sub-rule (2) and subject to other provisions of these rules the Government may terminate the appointment of a Public Prosecutor or Additional Public Prosecutor at any time without assigning any reason.

(4) A Public Prosecutor or Additional Public Prosecutor may resign from his office by giving one months notice in writing to the Government :

Provided that the Public Prosecutor or Additional Public Prosecutor intending to resign the office shall be fully responsible for the conduct of the Government litigation during the period of notice and up to the date of handing over charge of the office. The Public Prosecutor or Additional Public Prosecutor, as the case may be, shall make good the loss, if any, cause to the Government due to failure on his part and shall also be liable for legal action for such failure.

22. *Public Prosecutors and Additional Public Prosecutors to be bound by rules and orders.*—Every Public Prosecutor and Additional Public

Prosecutor shall be bound by the provisions of these rules and such other orders or directions as the Government from time to time.

23. *Providing of certified copies by Public Prosecutors and Additional Public Prosecutors.*—Every Public Prosecutor and Additional Public Prosecutor shall apply for certified copy of the judgment or order of the court within three days after the pronouncement of such judgment or order and shall send his report to the Department of Law, Justice and Parliamentary Affairs within three days after receiving certified copy of the judgment or order.

24. *Time limit for preferring claims.*—The claims of remuneration under these rules shall be preferred to the Administrative Secretary, Department of Law, Justice and Parliamentary Affairs within ninety days from the date of disposal of the respective cases :

Provided that Government may, for stated reasons to be in writing by the Public Prosecutor and Additional Public Prosecutor concerned and satisfied, condone the delay :

Provided further that while calculating ninety days, the time taken for obtaining certified copy of the judgment and decree shall be excluded.

25. *Retainership and remuneration.*—The retainership and other remuneration including counsel fee payable to a Public Prosecutor and Additional Public Prosecutor shall be such as may be specified from time to time.

26. *Duties of Public Prosecutor and Additional Public Prosecutor.*— It shall be the duty of a Public Prosecutor and an Additional Public Prosecutor to—

- (i) to conduct the prosecution and proceeding connected therewith in every trial before the Court of Sessions ;
- (ii) to appear before Court of Sessions for the State at the hearing of any appeal against a conviction or an application for the

revision of sentence, or order of discharge or any other order against which an appeal lies ;

- (iii) to assist the Advocate General or any other Law Officer in the High Court whenever either required by them or by the Government in any appeal or other proceedings relating to a case he has conducted in the Court of Sessions ;
- (iv) when specially required in writing by the Government to conduct the prosecution in any case before a Judicial Magistrate in the District for which he is appointed ; and
- (v) in criminal cases where the accused person is a Government servant, to intimate the Head of Department to whom the said Government servant is subordinate about the final order passed by the court, immediately after the said order is passed.

27. *Special Public Prosecutors.*—The Government may appoint, generally, or in any case, or for any specified clause of cases, in any local area one or more Special Public Prosecutors to conduct prosecution on behalf of the State. The fee payable to such Special Public Prosecutor shall be determined by the Government on case to case basis depending upon the nature of each case and standing of the Advocate at Bar.

## CHAPTER VI

### **Standing Counsels for the Subordinate Courts**

28. *Standing Counsel for the subordinate courts.*—(1) The Government may, appoint as many as Standing Counsel for defending Government cases in the subordinate courts, as are considered necessary.

(2) No person shall be eligible for appointment as Standing Counsel for subordinate courts unless he has been in practice as an Advocate for at least two years.

(3) The Standing Counsel shall attend to the cases entrusted to him by the Government.

(4) The provisions of rules 9, 10, 11, 12 and 13 shall *mutatis mutandis* apply to the Standing Counsels for the subordinate courts.

(5) All Standing Counsels shall hold office during the pleasure of the Government.

(6) The retainership and other remuneration including counsel fee payable to a Standing Counsel shall be such as may be specified by Government from time to time.

## CHAPTER VII

### Miscellaneous

29. *Special Counsels.*—(1) Subject to these rules the Government may appoint any Advocate as a Special Counsel either for the conduct of a civil or criminal case or writ petitions or any appeal pending in a court either within the State or in any other State or in the Supreme Court or in any High Court in the Country.

(2) Remuneration payable to a Special Counsel shall be such as may be decided by the Government in each case having regard to the nature of the case and the standing of the concerned Advocate at Bar.

30. *Monitoring Cell.*—There shall be two separate monitoring cells for the purposes of expeditious and effective disposal of the State cases pending in the respective wings of the High Court as well as in other forums. The said monitoring cell shall comprise of the following :—

- |                                                                                                               |   |        |
|---------------------------------------------------------------------------------------------------------------|---|--------|
| 1. Additional Advocate General                                                                                | – | Member |
| 2. Deputy Advocate General                                                                                    | – | Member |
| 3. A representative from the Government/<br>Law Department of the rank of Deputy<br>Secretary/Under Secretary | – | Member |

- |                                                                          |   |        |
|--------------------------------------------------------------------------|---|--------|
| 4. Standing Counsel or any Advocate(s) nominated by the Advocate General | – | Member |
| 5. The Law Officer of the concerned department                           | – | Member |

The Committee shall take all possible steps to ensure speedy and expeditious disposal of the cases pending before the respective wings of the High Court and other forums. The method and procedure for carrying out these functions shall be underlined by the Advocate General. The Committee shall work under the overall supervision of the Advocate General or any person nominated by him.

31. *Power to relax.*—The Government may, for a sufficient and justifiable reasons to be recorded in writing relax any provision of these rules with the prior approval of the Chief Minister.

32. *Removal of difficulty.*—If any doubt or difficulty arises as to the interpretation of any of the provisions of these rules, the decision of the Government thereon shall be final.

By order of the Governor.

(Sd.) MOHAMMAD ASHRAF MIR,

Commissioner/Secretary to Government,  
Department of Law, Justice and Parliamentary Affairs.