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राँची, शुक्रवार 30 सितम्बर, 2005

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28 सितम्बर, 2005

पत्रांक-एल०जी०-9/04-61/लेज०-झारखण्ड विधान मंडल द्वारा यथा-पारित और राज्यपाल द्वारा दिनांक 2 अगस्त, 2005 को अनुमत झारखण्ड शिक्षा न्यायाधिकरण अधिनियम, 2005 (झारखण्ड अधिनियम, 06, 2005) का निम्नांकित संशोधित अंग्रेजी अनुवाद झारखण्ड राज्यपाल के प्राधिकार से इसके द्वारा प्रकाशित किया जाता है, जिसे भारतीय संविधान के अनुच्छेद-348 के खण्ड-(3) के अधीन उक्त अधिनियम का अंग्रेजी भाषा में प्राधिकृत पाठ समझा जायगा।

2. विधि विभागीय अधिसूचना संख्या-एल०जी०-9/2004-55/लेज० को एतद् द्वारा निरस्त किया जाता है।

## **JHARKHAND EDUCATION TRIBUNAL ACT, 2005**

(Jharkhand Act, 06, 2005)

AN ACT, To make suitable provisions for constitution of a statutory forum, to be known as Appellate Tribunal for looking into the grievances of teachers of aided, affiliated and Private Educational Institutions and that of the parents/guardians of the students studying therein and to comply with the order of the Hon'ble Supreme Court in the matter of T.M.A. Pai V/s Karnataka State and the ruling dated the 5<sup>th</sup> August, 2003 passed by the Division Bench of the Honorable Jharkhand High Court in the matter of W.P. (P.I.L) No. 2744 of 2003 and W.P. (P.I.L) No. 2537 of 2002.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF JHARKHAND IN THE FIFTY SIXTH YEAR OF THE REPUBLIC OF INDIA AS FOLLOWS.

## CHAPTER-I

### Preliminary

1. Short title, extent and commencement – (1) This Act may be called the Jharkhand Education Tribunal Act, 2005;
  - (2) It extends to the whole of State of Jharkhand;
  - (3) The provisions of this Act, shall come into force with effect from the date fixed by the State Government, by notification.
2. Definition – In this Act, unless the context otherwise requires-;
  - a. “Administrative Member” means a member of a Tribunal who is not an Educationist Member Within the meaning of Section 4 (i);
  - b. “Application” means an application made under section 9;
  - c. “Appointed day” in relation to a Tribunal, means the date with effect from which established, by notification, under section 3;
  - d. “Bench” means a Bench of the Tribunal;
  - e. “Jharkhand Education Tribunal” means Tribunal established under section 3”
  - f. “Chairman” means the Chairman of the Tribunal;
  - g. “Educationist Member” means a Member of the Tribunal appointed as such under this Act, who possesses any of the qualifications specified in sub-section 4 (II) of Section 4;
  - h. “Member” means a Member (Whether Educationist or Administrative) of the tribunal, and includes the Chairman;
  - i. “Notification” means a notification published in the Official Gazette;
  - j. “Prescribed” means prescribed by rules made under this Act;
  - k. “Rules” means rules made under sections 20 and 21 of this Act;
  - l. “Service” means service rendered to the educational institutions specified in section 2 (n);
  - m. “Service matter”, in relation to a person, means all matter relating to the conditions of his service in connection with the affairs of the educational institution, other than Govt. institution.
  - n. “Educational institution” means any educational institutions managed and administered by private management located within the State of Jharkhand.

## CHAPTER-II

3. Establishment of Jharkhand Education Tribunal :- The State Government may by notification establish an Education Tribunal, to be known as at the Jharkhand Education Tribunal.
4. **Composition of Tribunal and Benches Thereof :**
  - (1) The Tribunal Shall consist of a Chairman and two members, one of whom shall be the Administrative member and the other shall be the Educationist member.

- (2) Notwithstanding anything contained in the foregoing provisions of the section it shall be competent for the Chairman or any other member or members authorized by the chairman in this behalf to function as a Bench consisting of a single member or two members and exercise the jurisdiction, power and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may, by general or special order, specify.
- (3) Subject to the other provisions of this Act, the Tribunal shall normally have its sitting at Ranchi. But it may hold its sitting at any district headquarter of the State of Jharkhand as decided by the chairman and members.
- (4) Qualifications for appointment of Chairman and Member :-
- (i) A person shall not be qualified for appointment as the Chairman unless he is a retired Judge of a High Court or retired officer of Indian Administrative Service of the rank of Secretary to the State Government.
  - (ii) A person shall not be qualified for appointment as Educationist member unless he;
    - (a) Is, or has been a Vice-Chancellor of any university; or
    - (b) Is, or has been a University Professor for a period of 5 years; or
    - (c) Is, or has been a member of the State Education Service (Class-I) for a period of 15 years.
    - (d) Is, or has been a specialist in any sphere such as social, economic and political.
  - (iii) A person shall not be qualified for appointment as an administrative member unless he has for at least two years, held the post not below the rank of an Additional Secretary to the Government of Jharkhand or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of Jharkhand and shall have adequate administrative experience.
  - (iv) Subject to the provision of sub-section (4) of section 4 of this act, the Chairman and every other member of the Jharkhand Education Tribunal shall be appointed by the State Government.
5. Terms of Office – The Chairman or other Member shall hold office as such for a term of three years from the date he joins the office.
6. Salaries, allowances and other Terms and conditions of service of Chairman, and other Members- The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman and other Member shall be such, as may be prescribed by the State Government, Provided that neither the salary and allowances nor other terms and conditions of service of the Chairman or other Member shall be varied to his disadvantage after his appointment.
7. Staff of the Tribunal- (1) The State Government shall appoint and determine the nature, categories and other conditions of service of the officers and other employees, required to assist the Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it thinks fit. These posts will be filled up either on deputation or contract basis.
- (2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairman.

- (3) The salaries, allowances and conditions of service of the officers and other employees of a tribunal shall be such as may be specified by rules made by the State government.

## **CHAPTER-III**

### **Jurisdiction, Power and authority of Tribunal**

8. Jurisdiction, Power and authority of the Jharkhand Education Tribunal- Save as otherwise expressly provided in this Act, the Jharkhand Education Tribunal shall exercise on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all the courts (Except the Jharkhand High Court and Supreme Court of India) Regarding :
- (a) Matters concerning recruitment to any post or posts and the matters related therewith in connection with the affairs of the educational institution;
  - (b) All matters concerning the service conditions of employees of the educational institutions;
  - (c) Grievances of the employees against the management of the educational institutions;
  - (d) Grievances of the guardians and parents of students against the management of the educational institutions regarding teaching standards, fee structure infrastructural facilities, development works and allied matters related thereto;
  - (e) Such matters relating to educational institutions as may be referred to the tribunal by the State Government by notification from time to time.
9. Application to Tribunal – (1) Subject to other provisions of this Act, a person aggrieved by an order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievances.  
Explanation – For the purpose of this sub-section “Order” means an order made :-
- (a) By the Management of an aided, affiliated and private educational institution;
  - (b) By an officer, committee or other body or agency of such educational institution referred to in clause (a) .
- (2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee, if any, in respect of the filling of such an application and by such other fees for the service or execution of processes as may be prescribed by the State Government
- (3) On receipt of an application under sub-section (1) the Tribunal shall, if satisfied that the application is fit for adjudication or trial by it, admit such an application. Where the Tribunal is not satisfied, it may summarily reject the application after recording its reasons.
- (4) Where an application has been admitted by the Tribunal under sub-section (3), every proceeding under the relevant service rules as to the redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

**10. Limitation – (1) A Tribunal shall not admit an application, unless**

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date of the establishment of this Tribunal; and
  - (b) No proceeding for the redressal of such grievances had commenced before the said date before any High Court.
- (2) Besides cases admissible for adjudication under sub-section (1) an application may be admitted within a period of six months from the date of the issue of the order by an educational institution. This limitation may be condoned by the Tribunal if it is satisfied that there exists sufficient cause for not making the application within such period.

**11. Procedure and powers of Tribunal – (1) The Tribunal shall not be bound by the procedure laid down in the code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the State Government. The Tribunal shall have power to regulate its own procedure including the fixing of places and time of its inquiry and whether to sit in public or in camera.**

(2) The Tribunal shall decide every application made to it as expeditiously as possible. Ordinarily every application shall be decided after a perusal of relevant documents and written representations and hearing such oral arguments as may be advanced. After hearing the parties, the Tribunal shall adjudicate the dispute and pass such order/direction as thinks fit and proper.

(3) The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in civil court under the code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely

- (a) Summoning and securing the attendance of any person and examining him on oath;
- (b) requiring the production of documents;
- (c) receiving evidence on affidavits;
- (d) Subject to the provisions of Sections 123 and 124 of Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) Issuing commissions for the examination of witness or documents;
- (f) reviewing its decisions;
- (g) Dismissing a representation for default or deciding it ex-parte;
- (h) Setting aside any order of dismissal or other punishments passed by an educational institution.
- (i) Any other matter, which may be referred by the State Government.

- 12. Right of applicant to take assistance of legal practitioner** – A person making an application to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.
- 13. Conditions for the making of interim order** – Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (Whether by way of injunction or stay or otherwise) shall be made on or in any proceedings relating to, any application unless-
- (a) a copy of such application and that of all documents in support of the plea for such interim order is furnished to the party against whom such application is made or proposed to be made; and
  - (b) opportunity is given to such a party to be heard in the matter;
- Provided that the Tribunal may dispense with the requirements of Clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary to do so for preventing any loss being caused to the applicant which cannot be averted otherwise.
- 14. Decision to be by majority** – If the members of a Bench differ in opinion on a point, the point shall be decided according to the opinion of the majority. The chairman of the Tribunal will take steps to ascertain the majority view in such cases by the constitution of a suitable Bench.
- 15. APPEAL** – Appeal against the order/judgments passed by the Tribunal will lie before the Jharkhand High Court.
- 16. Proceeding before the Tribunal to be judicial proceedings** – All proceeding before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian penal code (15 of 1860).
- 17. Member and staff of Tribunal to be public servant** – The Chairman, Members, officers and employees provided under Section 7 of the Act to Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code ( 15 of 1860).
- 18. Protection of action taken in good faith** – No suit, prosecution or legal proceedings shall lie against the Chairman and members of the Education Tribunal, or any other person authorized by the Chairman and Members for any Act which has been done or is being done in good faith by the Tribunal or intended to be done in pursuance of this Act or any rule or order made thereunder.
- 19. Act to have overriding effect** – The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any other law for the time being in force or an instrument having effect by virtue of any law other than this Act.
- 20. Power of the State Government to make rule** – The State Government may, by notification, make rules to provide for all or any of the following matters, namely;
- (a) the financial and administrative power, which the Chairman of a Tribunal may exercise;
  - (b) the salaries, allowances and conditions of service of the officers and other employees of the tribunal under sub-section (3) of Section 7 of the Act; and
  - (c) any other matter relating to the implementation of the provisions of this Act.

- 21. Power to make rule retrospectively** – The State Government shall make rules with retrospective effect but the State shall not make such rules prior to the date of enforcement of this Act, and shall not put into force any such rules retrospectively that may adversely affect any person for whom they are applicable.
- 22. Execution of Orders/Judgements-**
- (a) The tribunal shall, be deemed to be a court within the meaning of the Contempt of Court Act, 1971.
  - (b) have all the powers under Civil Procedure Code for executing any of its orders/directions and judgements.
- 23. Laying of rules** – Every rule made under this act by the State Government shall be laid, as soon as possible before the state legislature.

झारखण्ड राज्यपाल के आदेश से,

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सचिव-सह-विधि परामर्शो,

विधि (विधान) विभाग, झारखण्ड, राँची।