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PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1605-L.—22nd October, 2008.—The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:—

West Bengal Act XXV of 2008

**THE WEST BENGAL MADRASAH SERVICE
COMMISSION ACT, 2008.**

[Passed by the West Bengal Legislature.]

*[Assent of the Governor was first published in the Kolkata Gazette,
Extraordinary, of the 22nd October, 2008.]*

An Act to provide for the constitution of Madrasah Service Commission in West Bengal and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for the constitution of Madrasah Service Commission in West Bengal and for matters connected therewith or incidental thereto;

It is hereby enacted in the Fifty-ninth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Madrasah Service Commission Act, 2008.

The West Bengal Madrasah Service Commission Act, 2008.

(Section 2.)



(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

(3) This Act shall apply to all Recognized Non-Government Aided Madrasahs in West Bengal.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “*Ad hoc* Committee” means the *ad hoc* Committee of the Madrasah formed by the West Bengal Board of Madrasah Education;
- (b) “Administrator” means the Administrator appointed by the West Bengal Board of Madrasah Education;
- (c) “Appointing authority” means the Managing Committee, *ad hoc* Committee or the Administrator, as the case may be, and includes, in case of absence of Managing Committee, *ad hoc* Committee or the Administrator, the Headmaster, the Headmistress or the Teacher-in-charge, as the case may be;
- (d) “Board” means the West Bengal Board of Madrasah Education established under the West Bengal Board of Madrasah Education Act, 1994;
- (e) “Chairman” means the Chairman of the Commission;
- (f) “Commission” means the West Bengal Madrasah Service Commission constituted under section 3 of this Act;
- (g) “Competent authority” means the West Bengal Board of Madrasah Education, Director, Public Instruction, Director, School Education, Director, Madrasah Education;
- (h) “Council” means the West Bengal Council of Higher Secondary Education established under the West Bengal Council of Higher Secondary Education Act, 1975;
- (i) “Director” means the Director of Madrasah Education;
- (j) “Headmaster” or “Headmistress” means the head of the teaching staff of a Madrasah, by whatever name designated, and includes Superintendent of Senior Madrasah;
- (k) “Madrasah” means a Recognized Non-Government Aided Senior Madrasah, Junior High Madrasah, High Madrasah or Higher Secondary Madrasah imparting instruction in—
 - (i) High Madrasah Education System within the meaning of sub-clause (i),
 - (ii) Senior Madrasah Education System within the meaning of sub-clause (ii),

West Ben. Act
XXXIX of 1994.

West Ben. Act
VIII of 1975.

of clause (g) of section 2 of the West Bengal Board of Madrasah Education Act, 1994; or

(iii) Higher Secondary Education;

Explanation I.—“recognised” with its grammatical variations, used with reference to a Madrasah, shall mean—

- (a) recognized or deemed to have been recognized under the West Bengal Board of Madrasah Education Act, 1994, or
- (b) recognized under the West Bengal Council of Higher Secondary Education Act, 1975;

Explanation II.—“Aided” with its grammatical variations, used with reference to a Madrasah, shall mean aided by the State Government in the shape of financial assistance towards basic pay of the teachers of Madrasah;

The West Bengal Madrasah Service Commission Act, 2008.

(Sections 3, 4.)



Explanation III.—“basic pay” shall mean the monthly pay of a teacher of a madrasah which corresponds to a stage in the timescale of pay of the post held by the teacher in that madrasah;

Explanation IV.—“Madrasah Education” shall have the same meaning as in clause (g) of section 2 of the West Bengal Board of Madrasah Education Act, 1994;

West Ben. Act
XXXIX of 1994.

Explanation V.—“Higher Secondary Education” shall have the same meaning as in clause (d) of section 2 of the West Bengal Council of Higher Secondary Education Act, 1975;

West Ben. Act
VIII of 1975.

- (l) “Managing Committee” means the Managing Committee constituted under the West Bengal Board of Madrasah Education Act, 1994;
- (m) “member” means a member of the Commission, and includes the Chairman;
- (n) “notification” means a notification published in the *Official Gazette*;
- (o) “prescribed” means prescribed by rules made under this Act;
- (p) “recommended” means recommended by the Commission;
- (q) “regulations” means the regulations made by the Commission under this Act;
- (r) “Secretary” means the Secretary of the Commission;
- (s) “Teacher” means an Assistant Teacher, or any other person holding a teaching post of a madrasah recognized as such by the Board or the Council, as the case may be, and shall include the Headmaster, the Headmistress or the Superintendent;
- (t) “vacant post” means a vacancy, caused by—
 - (i) creation of new post by the State Government, or
 - (ii) retirement, death, resignation, removal or dismissal of any person from the post of teacher, the post having been sanctioned by the Competent authority or the State Government,

but shall not include a short-term vacancy due to deputation, leave or lien and that of a part time post or the post of Assistant Headmaster or Assistant Headmistress.

Constitution of
Commission.

3. (1) The State Government shall, with effect from such date as it may, by notification, appoint, constitute a Commission by the name of the West Bengal Madrasah Service Commission.

(2) The State Government may, if it thinks necessary and deems fit, constitute regional commission by the name of the West Bengal Regional Madrasah Service Commission under the West Bengal Madrasah Service Commission for such region as it may consider necessary or open its branch office, if necessary.

(3) The State Government may, by notification, enlarge or reduce the territorial jurisdiction of a Regional Commission.

Composition of
the Commission.

4. (1) The Commission shall consist of one Chairman and four members.

(2) The Chairman shall be an eminent educationist having profound knowledge in Islamic Culture and well-versed in education and teaching experience, either as a teacher of a university, or as a Principal of a college, for a period of not less than twelve years, or as a teacher, other than Principal of a college, for a period of not less than fifteen years, or an officer of the State Government not below the rank of Joint Secretary.

The West Bengal Madrasah Service Commission Act, 2008.

(Sections 5-7.)



(3) Of the four members under sub-section (1), one shall be a person who, not being an educationist, occupies or has occupied, in the opinion of the State Government, a position of eminence in public life or in Legal or Administrative service, one shall be an eminent educationist having profound knowledge in Islamic Theology and Culture, and the others shall have teaching experience, either as a teacher of a university, or as a Principal of a college, for a period of not less than ten years, or as a teacher, other than Principal of a college, or as a Headmaster or Headmistress or Superintendent of a Madrasah, for a period of not less than fifteen years.

Appointment,
terms and
conditions of
service of
Chairman and
members.

5. (1) The Chairman and other members of the Commission shall be appointed by the State Government.

(2) The Chairman and other members, appointed under sub-section (1), shall hold office for a term of four years:

Provided that a person who has held office as Chairman or other members shall, on the expiration of the term of his office, be eligible for further appointment as Chairman or other member:

Provided further that no person who has attained the age of sixty-two years shall be eligible to hold office as Chairman or other member.

(3) If the office of the Chairman or any other member becomes vacant by reason of resignation or otherwise, or if the Chairman is, by reason of absence or for any other reason, unable to perform the duties of his office, then, until a Chairman or other member is appointed under sub-section (1) or until the Chairman resumes his duties, as the case may be, the duties of the Chairman or the other member, as the case may be, shall be performed by such other member as the State Government may appoint in this behalf.

(4) The Chairman or any other member may resign his office by writing under his hand addressed to the State Government, but he shall continue in office until his resignation is accepted by the State Government.

(5) The office of the Chairman and other members shall be honorary:

Provided that the State Government may, if it thinks necessary, by notification, declare the post of Chairman to be whole-time.

(6) The salary or the honorarium, as the case may be, and other perquisites of the Chairman and the honorarium of the other members shall be such as may be determined by the State Government.

(7) Subject to the provisions of sub-sections (5) and (6), other terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

Removal of
Chairman and
members.

6. The State Government may, after making inquiry in such manner as may be prescribed, remove the Chairman and other member from his office on the ground of—

- (a) misconduct involving moral turpitude, or
- (b) insolvency, or
- (c) infirmity of body or mind, or
- (d) financial irregularity, or
- (e) corruption.

Staff of
Commission.

7. (1) The staff of the Commission shall consist of—

- (a) a Secretary who shall be appointed by the State Government, and
- (b) such other employees as the Commission may, with the previous approval of the State Government, appoint from time to time.

The West Bengal Madrasah Service Commission Act, 2008.

(Sections 8-12.)



(2) The salary of the Secretary and of the other employees of the Commission shall be such as may be determined by the State Government.

(3) The other terms and conditions of service—

(a) of the Secretary shall be such as may be prescribed, and

(b) of the other employees of the Commission shall be such as may be provided for by regulations.

Functions of Commission.

8. Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select and recommend persons to be appointed to the vacant posts of teachers in accordance with the provisions of this Act and the rules made thereunder.

Manner and scope of selection and procedure for conduct of business of Commission.

9. (1) The manner and scope of selection of persons for appointment to the posts of teachers in Madrasahs shall be such as may be prescribed.

(2) The procedure for conduct of business of the Commission shall be such as may be provided for by regulations.

Effect of recommendation of Commission.

10. Notwithstanding anything contained in any other law for the time being in force or any contract, custom or usage to the contrary, the Managing Committee, the *ad hoc* Committee or the Administrator, as the case may be, shall be bound to appoint the candidate recommended by the Commission to the post of teacher in the madrasah concerned as per vacancy report:

Provided that in the absence of the Managing Committee, *ad hoc* Committee or the Administrator, the Headmaster or the Headmistress or the Teacher-in-charge is empowered to issue appointment letter to the candidate recommended by the Commission. Such matter should be ratified at the next available meeting of the Managing Committee, *ad hoc* Committee or by the Administrator, as the case may be:

Provided further that the Managing Committee, *ad hoc* Committee, the Administrator or the Headmaster or the Headmistress or the Teacher-in-charge as the case may be, shall, if any error is detected in the recommendation, immediately bring it to the notice of the Commission for removal of such error.

Appointment made in violation of this Act shall be invalid.

11. Any appointment of a teacher made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and teacher so appointed shall not be a teacher within the meaning of clause (s) of section 2.

Penalty.

12. (1) If the Managing Committee, the *ad hoc* Committee or the Administrator of a Madrasah, as the case may be, refuses, fails or delays to issue appointment letter to the candidate recommended by the Commission within the period stipulated in the letter of recommendation by the Commission, without any reasonable ground, the State Government may direct the Board to dissolve the Managing Committee or the *ad hoc* Committee, or discharge the Administrator, as the case may be, or stop all financial assistance to such Madrasah recording reasons thereof and may also issue direction upon the Board or Council, as the case may be, to withdraw recognition or affiliation of such Madrasah.

(2) In case of failure to issue appointment letter to the candidate recommended by the Commission is on the part of the Superintendent, the Headmaster, the Headmistress or the Teacher-in-charge of a Madrasah, he shall be subject to such disciplinary proceedings as may be prescribed.

The West Bengal Madrasah Service Commission Act, 2008.

(Sections 13-19.)



Protection of teachers.

13. Notwithstanding anything contained elsewhere in this Act, the terms and conditions of service of teachers in the employment of a Madrasah immediately before the commencement of this Act, shall not be varied to the disadvantage of such teachers in so far as such terms and conditions relate to the appointment of such teachers to the posts held by them immediately before the commencement of this Act.

Power of Commission to call for records etc.

14. The Commission may call for any record, report or other information from any Madrasah or Board or Council if, in its opinion, such record, report or other information is necessary for efficient discharge of its functions, and the Madrasah or the Board or the Council, as the case may be, shall furnish such record, report or the information to the Commission.

Submission of report to the State Government.

15. It shall be the duty of the Commission to present annually to the State Government a report as to the work done by the Commission and, on receipt of such report, the State Government shall cause a copy thereof to be laid before the State Legislature.

Members etc. to be public servants.

16. The Chairman and other members and persons appointed under this Act shall, while acting or purporting to act under this Act, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

45 of 1860.

Validation.

17. The proceedings of the Commission shall not be invalid by reason of any vacancy in the office of the Chairman or any other member.

Power to make rules.

18. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:—

- (a) the terms and conditions of service of the Chairman and other members under section 5;
- (b) the manner in which an inquiry is to be made for removal of the Chairman or any member under section 6;
- (c) the terms and conditions of service of the Secretary under section 7;
- (d) the manner and scope of selection of persons for appointment to the posts of teachers under section 9;
- (e) any other matter which may be, or is required to be, prescribed.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

Powers to make regulations.

19. (1) The Commission may, with the previous approval of the State Government, make regulations, not inconsistent with the provisions of this Act or the rules made thereunder, for discharging the functions of the Commission under this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:—

- (a) the terms and conditions of service of the employees of the Commission under section 7;
- (b) the procedure for the conduct of business of the Commission under sub-section (2) of section 9.

The West Bengal Madrasah Service Commission Act, 2008.

(Sections 20-23.)



Direction by State Government.

20. In the discharge of its functions, the Commission shall be guided by such directions as may be given to it by the State Government in conformity with the provisions of this Act.

Dissolution of Commission.

21. (1) If the State Government is of the opinion that the Commission has failed to discharge its functions under this Act in accordance with the provisions of this Act, the State Government may, by an order published in the *Official Gazette*, and stating the reasons therefor, dissolve the Commission with effect from such date as may be specified in the order.

(2) Upon the dissolution of the Commission under sub-section (1), all the members of the Commission shall be deemed to have vacated their respective offices with effect from the date of such dissolution.

(3) The State Government may, at any time after the dissolution of the Commission under sub-section (1), reconstitute the Commission in accordance with the provisions of this Act.

Removal of difficulties.

22. If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of this Act, as the State Government may consider necessary for removal of such difficulties.

Cessation of Interim Committee.

23. On and from such date when the Commission starts functioning under section 3 of this Act, the pending and incomplete work of Interim Committee constituted *vide* Notification No. 94-MD, dated the 21st January, 2008, issued by the State Government shall switch over to the Commission which shall have the power to dispose of the same and the Interim Committee shall cease to exist immediately.

By order of the Governor,

ANINDYA BHATTACHARYYA,
Secy.-in-charge to the Govt. of West Bengal,
Law Department.