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LAW DEPARTMENT

NOTIFICATION

The 4th July, 2016

No. 6491-I-Legis-26/2015/L.—The following Act of the Odisha Legislative Assembly having been assented to by the Governor on the 27th June, 2016 is hereby published for general information.

ODISHA ACT 7 OF 2016

THE ODISHA MUNICIPAL SERVICES ACT, 2015

AN ACT TO PROVIDE FOR THE RATIONALISATION, RE-ORGANISATION, INTEGRATION, RECRUITMENT AND CONDITIONS OF SERVICE OF PERSONS APPOINTED TO THE MUNICIPAL SERVICES IN THE STATE OF ODISHA AND ALSO TO PROVIDE FOR THE EXERCISE OF CERTAIN ADDITIONAL FUNCTIONS BY THE ODISHA PUBLIC SERVICE COMMISSION AS RESPECTS SUCH SERVICES AND FOR MATTER CONNECTED THEREWITH AND INCIDENTAL THERETO.

Whereas, in pursuance of the Directives of the constitution (Seventy-fourth Amendment) Act, 1992, it is incumbent on the State to establish one group of dedicated Municipal Service Cadre to strengthen the elected local Self-Government System and for better management of all material resources of the Urban Local Bodies and to subserve the common good;

And, whereas, it is expedient to provide for exclusive Municipal Services for ensuring administrative and financial responsibility and to promote good governance with effective delivery of services and to make provision for other matters connected therewith.

BE it enacted by the Legislature of the State of Odisha in the Sixty-seventh Year of the Republic of India as follows:—

Short title,
extent,
commence-
ment and
application.

1. (1) This Act may be called the Odisha Municipal Services Act, 2016.

(2) It extends to the whole of the State of Odisha.

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

(4) This Act shall apply to the officers and other employees recruited in accordance with the provisions of this Act and the rules in connection with the affairs of the Urban Local Bodies in the State of Odisha except the persons employed in work charged establishment or menial establishment or on daily wages or on contract or on consolidated pay or the employment is casual in nature.

Definitions.

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

(a) "appointing authority" means the authority empowered to make appointments to the posts under the municipal services;

(b) "Commission" means the Odisha Public Service Commission;

(c) "Director" means the Director of Municipal Administration appointed under section 393-A of the Odisha Municipal Act, 1950; Odisha Act, 23 of 1950.

(d) "direct recruitment" in relation to any service or post, means appointment made otherwise than by way of promotion or transfer or on deputation;

(e) "existing employees" means officers and employees serving on regular basis under any Urban Local Body on the date of commencement of this Act;

(f) "Government" means the Government of Odisha;

(g) "municipal services" in relation to Urban Local Bodies means service constituted under section 3;

(h) "officers or employees" means officers and other employees of any group employed in administrative, executive or ministerial capacity in

the services of an Urban Local Body in accordance with the provisions of this Act and the rules and does not include persons employed in the work charged establishment or menial establishment or on daily wages or on contract or consolidated pay or in casual employment;

- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "probationer" means an officer or employee appointed on probation;
- (k) "promotion" means the appointment of an officer or employee from a lower post or lower group of service to a higher post or higher group of service;
- (l) "rules" means rules made under this Act;
- (m) "Service Selection Committee" means the Odisha Staff Selection Commission and any other Committee as notified by the Government; and
- (n) "Urban Local Body" means a Municipal Corporation constituted under the Odisha Municipal Corporation Act, 2003 or a Municipality or a Notified Area Council constituted under the Odisha Municipal Act, 1950;

Odisha Act, 11
of 2003, Odisha
Act 23, of 1950.

(2) Words and expressions used but not defined in this Act shall have the same meaning as respectively assigned to them in the Odisha Municipal Act, 1950 and the Odisha Municipal Corporation Act, 2003

Odisha Act, 23
of 1950.
Odisha Act, 11
of 2003.

Constitution
of Municipal
Service.

3. (1) On and from the commencement of this Act, there shall be constituted the following municipal services for all the Urban Local Bodies, namely:—

- (a) the Odisha Municipal Administrative Service;
- (b) the Odisha Municipal Engineering Service;
- (c) the Odisha Municipal Finance Service;
- (d) the Odisha Municipal Planning Service;
- (e) the Odisha Municipal Community Development Service;
- (f) the Odisha Municipal Ministerial Service;

(g) the Odisha Municipal Public Health Service; and

(h) e-Governance Service.

(2) The services specified in sub-section (1), subject to the provisions of this Act and rules, shall consist of—

- (a) persons appointed to the service after the commencement of this Act in accordance with the provisions of this Act and the rules; and
- (b) persons appointed before the commencement of this Act to any Urban Local Body and absorbed in the service in accordance with the provisions of this Act and the rules.

(3) Notwithstanding anything contained in this Act, a person appointed to the municipal service shall not be deemed to have been appointed to any civil service or post under the Government.

Designation,
classification,
number of
posts for Urban
Local Bodies.

4. (1) Each service shall comprise of such number of posts with designation and their classification as may be prescribed for each category of Urban Local Body.

Explanation.—For the purpose of this section the expression 'category of Urban Local Body' means following categories of Urban Local Body grouped on the basis of population, namely:—

- (a) Category-I—Urban Local Bodies with the population of 10 lakhs and above;
- (b) Category-II—Urban Local Bodies with the population exceeding 6 lakhs but not exceeding 10 lakhs;
- (c) Category-III—Urban Local Bodies with the population exceeding 3 lakhs but not exceeding 6 lakhs;
- (d) Category-IV—Urban Local Bodies with the population exceeding 1 lakh but not exceeding 3 lakhs;
- (e) Category-V—Urban Local Bodies with the population exceeding 50 thousand but not exceeding 1 lakh;

- (f) Category-VI-Urban Local Bodies with the population exceeding 25 thousand but not exceeding 50 thousand;
- (g) Category-VII-Urban Local Bodies with the population exceeding 10 thousand but not exceeding 25 thousand; and
- (h) Category-VIII-Urban Local Bodies with the population exceeding 5 thousand but not exceeding 10 thousand.

(2) For the purpose of rationalization, reorganization and integration of Municipal Service Cadre, the Government may, from time to time, re-designate various categories of existing posts, assign designations to new posts and abolish or sanction any number post either permanently or temporarily for any category of Urban Local Body.

Method of recruitment, qualification, age limit and conditions of service etc.

5. (1) Save as provided in this Act, the method of recruitment to all posts in a municipal service, age limit, minimum qualification, scale of pay, leave, allowances and other conditions of services of employees of the Urban Local Bodies shall be such as may be prescribed.

(2) The direct recruitment to various posts in the municipal service, shall be made on the recommendation of the Commission, or the Service Selection Committee constituted by the Government, as the case may be, at the State level, which shall conduct examination and interview for recruitment to such post, in the municipal service in the manner as may be prescribed.

(3) Promotion to the various posts in different municipal services shall be made subject to passing of departmental examination and on the recommendation of the Departmental Promotion Committee constituted at the State level by the Government in the manner as may be prescribed.

Absorption of existing employees.

6. (1) All the existing employees shall be allowed to give option, within such period and in such manner as may be prescribed, to be absorbed in municipal service at the appropriate level subject to verification of their qualification and experience as may be required for the said post under this Act and rules.

(2) On absorption of such employees in the municipal service, their salary and other service benefits shall not be less favourable than those applicable to such employees immediately before such commencement in

the matter of pay, allowances, leave, pension, gratuity, provident fund, age of superannuation and such other conditions of service as may be decided by the Government.

(3) The existing employees of the Urban Local Bodies who do not exercise option for being absorbed or otherwise found unsuitable for their absorption in the municipal service, they shall continue in their existing posts under the Urban Local Body till their retirement, resignation or cessation in any other manner.

(4) Such existing employees who continue in their service under the respective Urban Local Body without being absorbed shall have their *inter-se* seniority among such other employees as a class.

Function of the
Commission in
respect of
services of Urban
Local Body.

7. (1) Notwithstanding anything contained in any law relating to the appointment and condition of service of officers and employees of the Urban Local Body but subject to the general or special order of the Government, the Commission shall be the authority competent to conduct examinations for appointment to such post of the Urban Local Body.

(2) The Commission shall be consulted, --

- (a) on all matters relating to methods of recruitment to municipal service and post under the Urban Local Body;
- (b) on the principles to be followed in making appointment to services and post and making promotions from one service to another service and on the suitability of candidates for such appointment or promotion,

and it shall be the duty of the Commission to advise on any matter so referred to them and on any other matter relating to employees of Urban Local Body which the Government may refer to them:

Provided that the Governor may make order specifying the matter in which either generally, or in any particular class of cases or in particular circumstances, it shall not be necessary for the Commission to be consulted.

Appointing
Authorities.

8. (1) The Government or the officer authorised by order in this behalf by the Government, shall be the Appointing Authority in respect of all Group-A, Group-B and Group-C posts under any Urban Local Body whether they are included in the municipal service or not and the Government and the officer as so authorised shall be the Cadre Controlling Authority for all those posts.

(2) For the purpose of performing services like cleaning services of drains, latrines, markets, roads, streets, fields, offices, campuses, vehicles including loading and unloading and shifting of waste materials and works relating to gardening, guarding offices or premises belonging to Urban Local Bodies or any other works of the Urban Local Bodies involving physical labour, persons shall be engaged through Service Providing Agencies as may be decided by the Director subject to such financial limit and number as may be decided by the Government, from time to time.

(3) The minimum qualifications and the physical standards required to perform different types of menial services under Urban Local Body and the remuneration to be paid to such individual or Agencies or the rates for payment for the items or quantity of works performed, shall be such as may be prescribed.

Probation.

9. A person appointed to any post in a municipal service shall remain on probation for a period of two years:

Provided that,—

- (a) any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation; and
- (b) any period of officiating appointment shall be reckoned as the period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed, unless he is appointed against a permanent vacancy.

(2) If, in the opinion of the Appointing Authority, the work or conduct of a person appointed to any post in the municipal service *during the period* of his probation is not satisfactory, it may,—

- (a) if such person is appointed by direct recruitment, dispense with his service;
- (b) if such person is appointed by promotion,—
 - (i) revert him to his former post; or

- (ii) deal with him in such a manner as the terms and conditions of the previous appointment permit; or
- (iii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation including extension, if any, shall not exceed three years.

(3) On the completion of the period of probation of a person, the appointing authority may, if his work or conduct has, in its opinion, been satisfactory,—

- (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or
- (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or
- (iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy and in that case the person shall be eligible to be absorbed on the occurrence of a permanent vacancy.

(4) The Government may direct that the persons appointed to any post in the service, as may be specified, shall be required to undergo any induction or refresher course training for such period and the details for such training and the consequences for failure to participate in it within a specified period shall be such as may be prescribed.

Seniority.

10. The seniority *inter-se* of the municipal service employees shall be determined separately for every cadre in the service by the length of their continuous service on a post in the said service cadre:

Provided that in the case of employees appointed by direct recruitment, their *inter-se* seniority shall be in the order of merit determined by the Commission or the Service Selection Committee, as the case may be.

Power to
transfer
officers and
employees.

11. (1) All the officers and employees under Groups "A", "B" and "C" of any municipal service shall be liable to serve at any Urban Local Body in the State of Odisha.

(2) Notwithstanding anything contained in this Act, or in any other law for the time being in force, the Government shall have the power to transfer any officer or employee of any municipal services cadres or the existing employees of one Urban Local Body to another Urban Local Body and shall have the power to issue such general or special directions as they may deem necessary, for the purpose of giving due effect to any transfer order so made.

Disqualification
of officers and
employees of
the Urban Local
Body.

12. (1) No person shall be qualified to be appointed as an officer or employee of any Urban Local Body, if he has directly, or indirectly any interest in any contract made with or in any work being done for the Urban Local Body, except as a shareholder in a registered Company or Joint Stock Company or Co-operative Society under the laws for the time being in force.

(2) Any officer or employee of an Urban Local Body, who acquires directly or indirectly any interest as aforesaid shall cease to be such officer or employee of the Urban Local Body.

Explanation. — A person shall not be deemed to have any interest in any contract or work as aforesaid by reason only of his having a share or interest in,—

- (a) any lease, sale or purchase of immovable property or any agreement for the same; or
- (b) any agreement for the loan of money or any security for the payment of money only.

Effect of
appointment
made in
contravention
of the
provisions of
this Act and
rules.

13. (1) No appointment to any post of an Urban Local Body shall be made in contravention of the provisions of this Act and rules or any order and instruction of the Government and any appointment made in such contravention shall be treated as void.

(2) Where any holder of an elective office or any officer or authority makes any appointment or causes any engagement to be made or allows any

person to receive wages or salary from the Urban Local Body in his name in contravention of the provisions of this Act or rules or orders or instructions issued by the Government,—

(a) it shall be deemed in the case of the holder of an elective office that he has abused his position or power and accordingly the Government shall initiate proceedings for his removal; and

(c) in the case of an officer or authority, it shall be deemed that he is guilty of misconduct and the competent authority shall initiate action under the relevant disciplinary rules,

and such holder of elective office or the officer or authority, as the case may be, shall be punishable with imprisonment for a term which shall not be less than six months but may extend to two years and also with fine which shall not be less than fifty thousand rupees but may extend to one lakh rupees.

(3) In addition to the action taken under sub-section (2), the pay and allowance paid to the person whose appointment is in contravention of the provisions of this Act shall be deemed to be an illegal payment and a loss to the Urban Local Body and the same shall be recoverable from such holder of elective office, officer or authority who made such appointment.

(4) No court shall take cognizance of an offence punishable under sub-section (2) except with the previous sanction of the Government.

Appointment
of
Government
official on
deputation.

14. Notwithstanding anything contained in this Act and rules, the Government may appoint on deputation to any posts in Groups "A" and "B" of the Urban Local Body on such terms and conditions and for such period as may be determined by the Government, from among the persons who are in the service of Government and the concerned Urban Local Body shall bear the expenses towards the pay and allowance of each such officer which he is entitled to receive under the Rules of the Government governing his services to which he belongs and shall also make contribution towards the pension, if any, and leave salary of such officer to which he is entitled in his service under the Government.

Punishment
and appeal.

15. (1) Every officer or employee under the municipal services, shall be liable to have his increment or promotion withheld or to be censured, reduced in rank, suspended, compulsorily retired, removed or dismissed for breach of any departmental rules or regulations or of discipline or for carelessness, unfitness, neglect of duty or official misconduct by such authority as may be prescribed in this behalf:

Provided that no such officer or employee, as aforesaid, shall be reduced in rank, compulsorily retired, remove, or dismissed by an authority subordinate to that by which he was appointed.

(2) No officer or employee as aforesaid shall be dismissed or removed or reduced in rank until he has been given reasonable opportunity of showing cause against the action proposed to be taken against him:

Provided that this sub-section shall not apply —

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause or that in the interests of the security of the State, it is not expedient to give such an opportunity to that person.

(3) If any question arises, whether it is reasonably practicable to give to any person an opportunity of showing cause or whether, in the interests of the security of the State it is not expedient to give to any person such an opportunity under the proviso to sub-section (2), the decision thereon, of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

(4) The procedure for initiation of proceeding, the provisions laid down in the Odisha Civil Services (Classifications, Control and Appeal) Rules, 1962 in so far as they are not inconsistent with this Act shall, *mutatis mutandis*, apply to the officer and employees of every Urban Local Body.

(5) The officer and employee, upon whom a punishment has been imposed under this section, may prefer an appeal within such time, in such manner, and to such officer or authority as may be prescribed.

(6) The authority empowered to impose penalties and the appellate authority in respect of a category of posts in the municipal services shall be such as may be prescribed.

Pension, Gratuity
and Provident
Fund etc.

16. Subject to the rules, the officers and employees joining in the municipal service shall be covered under the provisions of the Pension Scheme, Provident Fund Rules and Rules relating to Death-cum-retirement Benefit which are applicable to employees of the Government of Odisha joining on or after the 1st day of January, 2005.

Delegation of
powers.

17. The Government may, by notification, authorize any officer of the Government or of the Urban Local Body or authority to exercise in regard to any Urban Local Body any one or more of the powers vested in it by this Act, except the power to make rules and may withdraw the authority in the like manner.

Applicability of
other Service
Benefit.

18. The provisions in respect of leave, travelling allowance, joining time, medical facilities, fees, honoraria, house rent allowance, dearness allowance, fixation of pay, grant of increment, deputation, age of superannuation and other matters not expressly provided in this Act, shall be the corresponding provisions contained in the rules applicable to the Government employees which shall apply to the officers and employees of the Urban Local Bodies:

Provided that leave salary shall be payable to an employee by the Urban Local Body where he happens to serve at the time of proceeding on leave:

Provided further that a person on transfer shall draw his travelling allowance and joining time benefits, leave salary if any, from the Urban Local Body to which he is transferred from the date of his relief from the previous Urban Local Body.

Act to have
overriding
effect.

19. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Odisha Municipal Act, 1950 and the Odisha Municipal Corporation Act, 2003.

Odisha Act,
23 of 1950
and Odisha
Act, 11 of
2003.

Penalties.

20. If any officer or employee willfully fails or neglects to comply with any lawful order passed under this Act and rules or contravenes any such order or offers resistance or obstruction to the action taken by the officers or employees in respect of any property which has vested in the Urban Local Body or furnishes information which he knows or has reason to believe to be false or does not believe to be true, he shall, on conviction, be punishable with imprisonment which may extend to two-years or with fine which may extend to fifty thousand rupees or with both:

Provided that no court shall take cognizance of the offence except with the previous sanction of the Government.

Reservation.

21. Nothing contained in this Act shall affect the reservations and other concessions required to be provided for Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes, Ex-servicemen, Persons with Disabilities, or any other class or category of persons in accordance with the provisions of this Act and rules or orders issued by the Government in this regard, from time to time.

Power to make rules.

22. (1) The Government, with previous publication, may make rules for carrying out all or any of the provisions of this Act.

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

- (a) number, classification and designation of posts;
- (b) method of recruitment, age limit for entry into service, minimum qualification, scale of pay, leave, allowances and other conditions of service;
- (c) manner of exercising option for absorption;
- (d) manner of conduct of examinations by the Commission and Service Selection Committee and manner of conducting Departmental Examination and constitution of Departmental Promotion Committee;
- (e) authority to whom, the manner in which and the time within which appeal to be filed; and
- (f) any other matters which are required to be, or may be, prescribed;

Protection of
action taken in
good faith.

23. No suit or prosecution or other legal proceeding shall lie against the Government, any officer of the Government or any officer or employee of the Urban Local Body acting on behalf of them for anything which is, in good faith done or intended to be done in pursuance of this Act, or any rule or order made thereunder.

Power to
remove
difficulties.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the Odisha Legislative Assembly.

Amendment
of the Odisha
Act, 23 of 1950
and the Odisha
Act, 11 of 2003.

25. (1) Chapter-VIII of the Odisha Municipal Act, 1950 and sections 117 to 129 (both inclusive) of Chapter-VIII of the Odisha Municipal Corporation Act, 2003 shall be omitted.

(2) Notwithstanding the amendments of the provisions of the Acts referred to in sub-section (1),—

- (a) any proceeding pending on the date of commencement of this Act and any other proceedings pending before any Court or Tribunal on the aforesaid date under any of the provisions so amended;
- (b) any cause of action arising under any of the provisions of the Acts so amended and the right, if any, of appeal, review or revision arising out of any proceeding with respect to such causes of action; and
- (c) the right of any person or authority to take action as per the provisions so amended, shall continue as if this Act has not come into force.

By Order of the Governor

B. P. ROUTRAY

Principal Secretary to Government.