

The Maharashtra State Legal Aid Centre Rules, 1989

No. LAB. 4889/(28)-XIV, dated 9th May, 1989.- WHEREAS, according to the provisions of sub-clause (4) of clause 12 of the Maharashtra State Legal Aid and Advice Scheme, 1979, every Legal Aid and Advice Committee is required to constitute Legal Aid Centres for the more convenient transaction of the business;

AND WHEREAS, the question of framing certain guidelines in respect of constitution and functioning of the Legal Aid Centres was under consideration of the Maharashtra State Legal Aid and Advice Board for some time past;

Now, therefore, in pursuance of clauses (c), (f), (j), (n) and (v) of subparagraph (2) of paragraph 4 read with sub-paragraphs (1) and (2) of paragraph 16 of the Government Resolution, Law and Judiciary Department No. LAB. 1080/(208)-XIV, dated the 30th October, 1980 the Maharashtra State Legal Aid and Advice Board within previous approval of the State Government hereby makes the following rules for the purposes of establishing and operating the Legal Services Programmes in the State effectively, namely:-

CHAPTER I

PRELIMINARY

1. Short title and commencement.-

- (1) These rules may be called the Maharashtra State Legal Aid Centre Rules, 1989.
- (2) They shall come into force from the date of publication of these Rules in the Official Gazette.

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

- i) 'Board' means the Maharashtra State Legal Aid and Advice Board.
- ii) 'Board rules' means the Maharashtra State Legal Aid and Advice Board Rules, 1981.
- iii) 'Committee' means the Greater Bombay Legal Aid and Advice Committee or the Nagpur Legal Aid and Advice Committee or the Aurangabad Legal Aid and Advice Committee or the District Legal Aid and Advice Committees or the courtwise Legal Aid and Advice Committees in Greater Bombay, or as the case may be, the Taluka Legal Aid and Advice Committees constituted in accordance with the Maharashtra State Legal Aid and Advice Scheme, 1979.
- iv) 'Duty Counsel' means an Advocate or retired Judge who has been appointed to attend the Legal Aid Centre.
- v) 'Legal Aid Centre' means a place designated by the Committee under these rules for the purpose of extending legal assistance to the needy persons through the Advocates or retired Judges.

- vi) 'Legal Aid Scheme' means the Maharashtra State Legal Aid and Advice Scheme, 1979.
- vii) 'Member-Secretary' means the Member-Secretary of the Committee.
- viii) 'Office-bearers' means the Chairman, Vice-Chairman, Member-Secretary and Joint Secretary of the Committee.
- ix) 'Session of Legal Aid Centre' means one day programme of Legal Aid Centre consisting of one or more Duty Counsels sitting separately for extending legal assistance to the needy persons.
- x) The words or expressions used in these rules but not defined shall have the meanings respectively assigned to them in the Maharashtra State Legal Aid and Advice Scheme, 1979.

CHAPTER II

ORGANISATION OF LEGAL AID CENTRES

3. Constitution of Legal Aid Centres.- Every Committee may constitute one or more Legal Aid Centres according to its requirements for particular areas such as slums, colonies, localities, villages, talukas, especially talukas not having permanent Courts, etc., coming within its jurisdiction.

4. Venue of Legal Aid Centre.- The Legal Aid Centre may be organised in the Bar Room or other place in the Court premises or in the primary or secondary schools or colleges or in the premises belonging to the Government or semi-Government bodies or local authorities or social organizations, etc.

5. Supervision over the Legal Aid Centre.-

- 1) The Member-Secretary shall be responsible for the proper organization and running of the Legal Aid Centre.
- 2) The Legal Aid Centre shall be organised and run under the direct supervision of the Chairman of the concerned Committee.
- 3) The concerned District Committee shall supervise the functioning of the Legal Aid Centre through its office-bearers.

6. Working hours of Legal Aid Centre.-

- (1) Normally, the working hours of the Legal Aid Centre shall be from 2 p.m. to 6 p.m. or until, all the persons gathered in the Centre on that day are attended to:

Provided that, the timings may be adjusted by each Committee according to its convenience, subject to the condition that generally the total working hours of the Legal Aid Centre shall not be less than the usual working hours of the Legal Aid Centre.

- (2) The Legal Aid Centre may be organized on any working day:

Provided that, Legal Aid Centres shall not be organized on the day on which the Committee has organized at its place other Legal Services Programmes such as Lok Nyayalaya, Legal Aid Camp or any Legal Literacy Programmes, etc.

7. **Language used in the Legal Aid Centre.-** Marathi language may preferable be used in the Legal Aid Centre.

CHAPTER III

COMPOSITION OF LEGAL AID CENTRES

8. **Composition.-** Each Legal Aid Centre shall consist of one or more Duty Counsels drawn from the panel of Advocates and retired Judges.

9. **Panel of Duty Counsels.-** For the purpose of providing Duty Counsels to the Legal Aid Centre, the Committees shall prepare a panel of Duty Counsels consisting of Advocates and retired Judges of any Court under rule 32 of the Board Rules.

10. **Selection of Duty Counsels.-**

- 1) Before selecting the duty counsels for the Legal Aid Centre, the Member-Secretary shall verify and satisfy himself:-
 - a) that the Duty Counsel is a socially dedicated person imbued with spirit of service and adept in bringing about rapprochement between the parties by appropriate guidance and persuasion;
 - b) that the Duty Counsel is practising in civil, criminal, labour, accident matters or some of them;
 - c) that the Duty Counsel is conversant with Marathi and local languages.
- 2) Every Advocate or retired Judge included in the panel shall express in writing his willingness to serve in the Legal Aid Centre.
- 3) Any Advocate or retired Judge included in the Panel may tender his resignation in writing to the Member-Secretary.
- 4) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Member-Secretary immediately in the same manner as the original appointment and the Advocate or retired Judge so appointed shall continue to be the Duty Counsel for the duration of office of Duty Counsel in whose place he is appointed.
- 5) If any Advocate or retired Judge after having agreed to serve in the Legal Aid Centre neglects or refuses to accept an appointment he shall forthwith cease to be a Duty Counsel in the panel and shall be debarred from being re-appointed as Duty Counsel of the Legal Aid Centre.
- 6) If any Advocate or retired Judge after accepting the appointment neglects or refuses to

discharge his duties properly the Member-Secretary shall remove the name of that Advocate or retired Judge from the panel and appoint another Advocate or retired Judge in his place.

- 7) Any person serving as Duty Counsel of the Legal Aid Centre shall be eligible for re-appointment.
- 8) If more than one Duty Counsel is appointed for a Legal Aid Centre, the cases may be distributed among them equitably.
- 9) The notice of appointment of Advocates or retiring Judges to act as Duty Counsel shall be exhibited on the notice board of the committee of the concerned Legal Aid Centre at least a month before the commencement of the month for which the appointment is made.
- 10) Every Duty Counsel, shall prepare and submit on the next day a report about the work done by him in the Centre alongwith the number of persons assisted on that day.
- 11) No Duty Counsel or any person associated with him, in the practice of law, shall knowingly act in the same matter for a person whom he has represented or advised as Duty Counsel, except with the prior approval of the Member-Secretary; and
- 12) Where, prior Advocate and client relationship, existed between a person and the Duty Counsel or any one associated with him in the practice of law, such Duty Counsel or any one associated with him, shall not act for such person.

11. Roster of Duty Counsels.- The Member-Secretary of the Committee shall prepare a roster of Duty Counsels to work in the Legal Aid Centre for a period of three months at a time indicating the names of Duty Counsels with dates and timings therefor.

CHAPTER IV

WORKING OF LEGAL AID CENTRES

12. Punctuality.-

- 1) Usually the Legal Aid Centre shall be opened exactly at the prescribed time on the prescribed day and kept open until the time prescribed for closure or until all the persons gathered on that day in the Centre are attended to whichever is later.
- 2) Even if persons seeking help turn up late or do not come at all, the Centre shall be kept open and the Duty Counsel shall remain present in the Centre during the working hours of the Centre.

13. Assistance to the Duty Counsels.-

- 1) The Committee shall post a clerk to assist the Duty Counsel in the functioning of the Legal Aid Centre. The Clerk shall keep in touch with Duty Counsel at the Centre and provide necessary clerical assistance to the Duty Counsel.
- 2) In addition to the services of its Clerk, the Committee may take voluntary assistance from

the panel of Assistants constituted under rule 34 of the Board Rules for running the Legal Aid Centre smoothly and efficiently.

14. Procedure for receiving applicants, etc.-

- 1) All the applications for legal aid or advice shall first be received by the Clerk in the Centre. He shall enter all the applications in a register. The register shall contain the following information:-
 - i) Full name and address of the applicants;
 - ii) Whether the applicant is a member of S.C., S.T., V.J.N.T., NayBuddha, woman, children;
 - iii) Profession or occupation;
 - iv) Total annual income from all sources;
 - v) State of domicile;
 - vi) Whether the person has already approached any Court, Tribunal or authority in respect of the subject-matter of the application; if so, the stage of the matter and the name of the Advocate appearing for him;
 - vii) Nature of assistance required by the Applicant;
 - viii) Action taken on the application.
- 2) If the applicant has not brought any application and is unable to supply one, the Clerk shall assist him and have his application recorded with the above details and declaration about them and obtain his signature or as the case may be thumb impression thereon.
- 3) No elaborate proof of the above details may be insisted upon. A brief enquiry of the applicant in the light of the declaration may be sufficient.

15. Placing the papers before Duty Counsels of the Legal Aid Centres.- After collecting the requisite information and the application, the Clerk shall place the same before the Duty Counsel of the Legal Aid Centre.

CHAPTER V

FUNCTIONS AND REMUNERATION OF DUTY COUNSELS

16. Functions of the Legal Aid Centres.- The main function of the Legal Aid Centres shall be to give oral advice to the persons approaching the Centre in respect of any legal problems or grievances.

17. Duties of Duty Counsels.- After giving careful hearing to the parties approaching for legal assistance the Duty Counsels shall give across the table advice in petty matters to the parties.

18. Examination of parties requiring Legal Aid.- As soon as a party approaches a Duty Counsel in the Legal Aid Centre, praying for legal aid in any matter, the Duty Counsel shall examine the party carefully and find out whether the party is eligible for free legal aid under the Legal Aid Scheme. If the party is not eligible for free legal aid he shall record his opinion on the application and return the same to the Clerk for further necessary action.

19. Application involving non-legal matters.-

- 1) If the party is eligible for free legal aid, then the Duty Counsel shall find out the nature of the problem whether it is legal or otherwise and separate the relief to be secured from an administrative authority from the relief to be secured through a Court or Tribunal. If it turns out to be a non-legal one, the Duty Counsel shall give an appropriate advice and close the matter and return the papers to the Clerk.
- 2) In a non-legal problem, if a relief is to be got from an administrative authority and if the applicant is eligible to it under the rules or on principles of equity and fairness, the Duty Counsel shall draw up necessary application, get it signed by the applicant and then record his opinion and send it to the Member-Secretary for forwarding the same to the appropriate authority.

20. Simple legal problem.- If it is a legal problem of simple character, the Duty Counsel shall tender necessary advice outlining relief required and indicate the Departmental Authority or Tribunal or forum from which relief could be obtained.

21. Difficult Legal Problem.- If the Duty Counsel feels that the legal problem is difficult one and that it is necessary to make a reference to the senior lawyer he shall prepare a statement of the case and return the papers to the Clerk for handing over them to the Member-Secretary.

22. Compromise.- After interviewing the applicant and locating the problem if the Duty Counsel feels that the case is fit for compromise he may record his opinion accordingly and ask the Clerk to refer the matter to the Conciliation Cell of the Committee for effecting the compromise. For that purpose, the papers may be returned to the Clerk.

23. Assistance for going before the Court or Tribunal.- After interviewing the party or parties if the Duty Counsel finds that the compromise is not possible and it is a fit case for taking to the Court and the applicant wants Legal Aid then the claim of the applicant may be examined in detail. If the applicant's case is prima facie sustainable, the Duty Counsel may record his opinion in the matter and recommend the case for the assignment of a lawyer for the applicant. The opinion shall also contain the information as to where the matter should be filed.

24. Duty Counsel's recommendations in respect of institutions or defence of an action in Court.-

- 1) If the matter is plain and if the Duty Counsel desires to recommend the same for sanction of legal aid for institution or defence of an action in a Court he shall record in his report to the Committee his findings as to whether the applicant is indigent and whether there is a prima facie case in his favour.

- 2) After examining the applicant if the Duty Counsel finds that –
- i) the applicant is not indigent or;
 - ii) the applicant is not eligible for free legal aid on any other grounds; or
 - iii) there is no prima facie case; or
 - iv) the case falls under the prohibitory categories of cases specified in clause 23 and sub-clause (5) of clause 25 of the Legal Aid Scheme; or
 - v) the applicant is not co-operative with the Duty Counsel, then he may reject the application and record his opinion accordingly.

25. Register of work done at the Centre.- A register of work done at the Legal Aid Centre shall be maintained by the Clerk posted in the Legal Aid Centre. The Member-Secretary shall countersign the register after every session of the Legal Aid Centre.

26. Custody of record during the enquiry.- As far as possible, the case record may remain in the custody of the Clerk in the Centre.

27. Custody of documents.- Since the documents are very important for the party, they shall be returned to the party after necessary scrutiny in the centre.

28. Remuneration to the Duty Counsel.- Duty Counsel shall be paid an honorarium of Rs. 25 per session of the Legal Aid Centre. The honorarium shall be paid to the concerned Duty Counsel at the end of each month by preferring the consolidated bill in that respect:

Provided that, the Duty Counsel may waive the honorarium wholly or partially and may work voluntarily:

Provided further that, if any Advocate or retired Judge desires to serve in the Legal Aid Centre without charging any fees, etc., and if the request appears genuine and if his services are useful and the Member-Secretary is satisfied about that then he may allow the said Advocate or retired Judge to work voluntarily in the Legal Aid Centre as Duty Counsel. The name of such Advocate or retired Judge shall be brought to the notice of the Committee during its monthly meeting for appreciation.

CHAPTER IV MISCELLANEOUS

29. Collection of Applications.-

- 1) At the end of the Session of the Legal Aid Centre, the Clerk managing the Legal Aid Centre shall collect all the Legal Aid applications received in the Centre and hand them over to the Member-Secretary of the concerned Committee for further necessary action.
- 2) The Member-Secretary may process the applications immediately according to the provisions of the Legal Aid Scheme.

30. Publicity.- The concerned Committee shall give wide publicity to the establishment and functioning of Legal Aid Centre in the area through various modes of publicity.

31. Report.- Before the 10th of every month, a report about the working and progress of the Legal Aid Centre shall be forwarded to the Board by the concerned Committee.

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