



TAMIL NADU GOVERNMENT GAZETTE

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Part III—Section 1(a)

General Statutory Rules, Notifications, Orders, Regulations, etc.,
issued by Secretariat Departments.

NOTIFICATIONS BY GOVERNMENT

BACKWARD CLASSES, MOST BACKWARD CLASSES AND MINORITIES WELFARE DEPARTMENT

THE TAMIL NADU WAQF TRIBUNAL (CONDITIONS OF SERVICE AND PROCEDURE) RULES, 2016.

[G.O. Ms. No. 55, Backward Classes, Most Backward Classes and Minorities Welfare (T1), 7th October 2016,
புரட்டாசி 21, துன்முகி, திருவள்ளுவர் ஆண்டு-2047.]

No. SRO A-17(a)/2016.

In exercise of the powers conferred by sub-section (1) and clauses (xxii), (xxiia) and (xxiii) of sub-section (2) of Section 109 of the Waqf Act, 1995 (Central Act 43 of 1995), the Governor of Tamil Nadu hereby makes the following rules, namely:-

RULES

1. Short title and commencement.—

- (1) These rules may be called the Tamil Nadu Waqf Tribunal (Conditions of Service and Procedure) Rules, 2016.
- (2) These rules shall come into force on the 7th day of October 2016.

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

- (a) "Act" means The Waqf Act, 1995 (Central Act 43 of 1995);
- (b) "Board" means a Board established and constituted under Section 13 of the Act;
- (c) "Chairman" means the Chairman of the Tribunal;
- (d) "Government" means the Government of Tamil Nadu;
- (e) "Registrar" means the Registrar of the Tribunal and includes Assistant Registrar or any other person to whom the Registrar may, with the approval of the Tribunal, delegate any function to be exercised by the Registrar;
- (f) "Member" means a member of the Tribunal;
- (g) "Registry" means the Registry of the Tribunal;
- (h) The words and expression used and not defined in these rules, but defined in the Act shall have the same meaning respectively assigned to them in the Act.

3. Composition of Waqf Tribunal.—

Every Waqf Tribunal shall consist of —

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate who shall be a Member;

(c) one person not less than 45 years of age preferably a Muslim possessing Bachelors Degree in Law and having knowledge of Muslim law and jurisprudence including laws relating to Waqf, as member and appointment of every such person shall be made either by name or by designation by notification by the State Government.

4. Salary, allowances and other terms and conditions of service of Chairman and Members of the Tribunal.—

(a) The Chairman shall continue to receive the salary and allowances for which he is entitled as a member of the State Judicial Service.

(b) The member referred to in clause (b) of rule 3 appointed from the State Civil Services shall continue to receive the salary and allowances for which he is entitled as an Officer of the State Civil Service.

(c) Selection of a member referred to in clause (c) of rule 3 shall be made by a Board headed by the Secretary to Government incharge of the administrative department concerned as Chairperson; an Islamic Scholar of repute; and the Chairman of Bar Council of Tamil Nadu or a member of Bar Council of Tamil Nadu nominated by the Bar Council of Tamil Nadu as members.

(d) Orders governing the pay and other allowances including the conditions of service of the members referred to in clause (c) of rule 3 will be issued separately at the time of appointment.

5. Term of Chairman and Members.—The tenure of the member of the Tribunal appointed under clause (c) of rule 3 of these rules shall be three years from the date on which they enter upon his office or till he attains 62 years of age whichever is earlier. The tenure of the Chairman and the Member appointed under clauses (a) and (b) of rule 3 of these rules shall be as per their conditions of service governing their deputation.

6. Filling up of vacancies.—A vacancy in the post of member nominated under clause (c) of rule 3 of these rules shall be filled up by the Government. The newly inducted member shall continue for the remaining period of tenure or till he attains 62 years of age whichever is earlier.

7. Staff of the Waqf Tribunal.—(1) The State Government shall sanction such number of ancillary staff and officers to each Waqf Tribunal as the State Government may consider necessary for the proper functioning of Waqf Tribunal.

(2) The staff and officers of the Waqf Tribunals shall discharge their duties under the administrative control of the Chairman.

(3) The salaries, allowances and other conditions of the service of such staff and officers of the Waqf Tribunals shall be the same as provided in their respective Service rules.

8. Procedure for filing application and limitation.—

(1) Save as otherwise provided in these rules, the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) or the Civil Rules of Practice or as the case may be, shall apply to the proceedings before the Tribunal.

(2) An application to the Tribunal shall be presented by the applicant in person or by a duly authorised legal practitioner to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by registered post with acknowledgement duly addressed to the Registrar of the Tribunal concerned.

(3) If any application is made, it shall be within 90 days from the date of the order in which the applicant is aggrieved or a right of an interested person is denied or any cause of action arises in any matter in relation to a waqf and its properties:

provided that in the case of any delay in filing application before the Tribunal, the applicant may file a supporting application with affidavit for condoning the delay by adducing proper cause for such delay and the Chairman of the Tribunal if satisfied may condone such delay and allow the applicant to file an application for relief sought for on such application.

(4) The application under sub-rule (1) shall be presented in triplicate in the following two compilation:-

(a) application along with the impugned order if any;

(b) all other documents and annexures referred to in the application.

(5) Notwithstanding anything contained in sub-rules (1) to (4) the Tribunal may permit more than one person to join together and file a single application if it is satisfied having regard to the cause and nature of relief prayed for that they have a common interest in the matter.

(6) such permission may also be granted to a Muthawalli or committee representing the persons or Jamath desirous of joining in a single application, however, that the application shall disclose the person on whose behalf it has been filed.

(7) Where the number of respondents is more than one, as many extra copies of the application as there are respondents together with unused file size envelope bearing the full address of each respondent shall be furnished by the applicant:

Provided that where the number of respondents is more than five, the Registry may permit the applicant to file the extra copies of the applications at the time of issue of notice to the respondents.

(8) Every application filed with the Registrar shall be accompanied by a fee of Rs.500/- (Rupees five hundred) to be remitted in the form of demand draft of a Nationalised Bank drawn in infavour of the Registrar of the Tribunal:

provided that where the Tribunal permits a single application to be filed, either by more than one person or by a committee, the fee payable shall be Rs.500/- (Rupees five hundred).

(9) Every application filed shall set forth concisely under distinct heads the grounds for such application. Every application including any miscellaneous application shall be typed in double space on one side on good quality paper.

(10) It shall not be necessary to present a separate application to seek an interim order or direction if in original application the same is prayed for:

Provided that atleast one affected person shall join such an application.

(11) Any applications before the Tribunal relating to suits against the Board which do not comply with the mandatory provisions of two months notice under Section 89 of the Act shall be summarily dismissed.

9. Presentation and scrutiny of the application.–

(1) The Registrar or the officer authorised by him shall endorse on every application the date on which it is presented or deemed to have presented and shall sign the endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number. If the application on scrutiny is found defective and such defect not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit and the applicant shall be informed of the defects, if any and he shall be required to rectify the same within such time as may be stipulated by the Registrar.

(3) If the applicant fails to rectify the defect within the stipulated time, the Registrar may, by order decline to register the application and inform the Chairman accordingly.

10. Service of notice and processes issued by the Tribunal.–

(1) Notices to be issued by the Tribunal may be served by any of the following modes–

- (i) service by the party himself;
- (ii) by hand delivery (dasti) through process server;
- (iii) by registered post with acknowledgement due:

Provided that if the Tribunal does not specify the mode of service, notice may be sent by registered post with acknowledgement due.

(2) Where notice issued by the Tribunal is served by the party himself by 'hand delivery' (Dasti) he shall file in the Registry of the Tribunal, the acknowledgement together with an affidavit of service.

(3) Notwithstanding anything contained in sub-rule (1), the Tribunal may, taking into account the number of respondents and their places of residence or work and other circumstances, direct the notice of the application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears just and convenient to the Tribunal.

(4) Notwithstanding anything contained in sub-rule (1), the Tribunal, may in its discretion, having regard to the nature of the case, direct the service of the notice on the Counsel, authorised to accept the service, for any Department or Organisation of the State and Central Government, or an authority, a corporation, a body owned or controlled by the State or Central Government.

(5) Every notice issued by the Tribunal shall unless otherwise ordered, be accompanied by a copy of the application and a copy of the impugned order.

(6) Every applicant shall pay a fee for the service of execution of processes, in respect of an application where the number of respondents exceeds five, as under:-

(i) a sum of rupees twenty five for each respondent in excess of five respondents;

or

(ii) where the service is in such a manner as the Tribunal may direct under sub-rule (3) such a sum not exceeding the actual charges incurred in effecting the service as may be determined by the Tribunal.

(7) If the Tribunal is satisfied that it is not reasonably practicable to serve notice of application upon all the respondents, it may, for reasons to be recorded in writing, direct that the application shall be heard notwithstanding that some of the respondents have not been served with notice of the application:

Provided that no application shall be heard unless.—

(i) notice of the application has been served on the Central Government or the State Government, if such Government is a respondent;

(ii) notice of the application has been served on the authority which passed the order against which the application has been filed; and

(iii) the Tribunal is satisfied that the interests of the respondents on whom notice of the application has not been served are adequately and sufficiently represented by the respondents on whom notice of the application has been served.

11. Filing of reply and other documents by the respondents.—

(1) Each respondent intending to contest the application, shall file in triplicate the reply to the application and the document relied upon with the Registry within one month of the service of notice of the application on him.

(2) In the reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and may also state such additional facts as may be found necessary for the justification of the case. It shall be signed and verified as a written statement by the respondent or any other person duly authorised by him in writing in the same manner as provided for in Order VI, Rule 15 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

(3) The documents referred to in sub-rule (1) shall also be filed alongwith the reply and the same shall be marked.

(4) The respondent shall also serve a copy of the reply alongwith documents as mentioned in sub-rule (1) on the applicant or his legal practitioner, if any, and file proof of such service in the Registry.

(5) The Tribunal may allow filing of the reply after the expiry of the prescribed period.

(6) The Tribunal may permit the parties to amend the pleadings in the same manner as provided under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

12. Date and place of hearing to be notified.—

The Tribunal shall notify to the parties the date and the place of hearing of the application in such manner as the Chairman may by general or special order direct.

13. Action on application for application's default.—

(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned the applicant does not appear when the application is called for hearing, the Tribunal may in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

14. Substitution of legal representatives.—

(1) In the case of death of a party during the pendency of the proceedings before the Tribunal, the legal representatives of the deceased party or his successor in office may apply within ninety days of the date of such death for being brought on record as necessary parties.

(2) Where no application is received from the legal representatives or his successor in office within the period specified in sub-rule (1), the proceedings against the deceased party shall abate:

Provided that on good and sufficient reasons the Tribunal, on an application, from the legal representatives of the deceased party or his successor beyond the period specified in sub-rule (1) may set aside the order of abatement and substitute the legal representatives.

15. Adjournment of hearing.—

The Tribunal may if sufficient cause is shown at any stage of proceedings grant time to the parties or any of them and adjourn the hearing of the application. The Tribunal may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

16. Order to be signed and dated.—

(1) All final orders shall be decided by the Chairman along with two members of the Tribunal.

(2) In case of division between the members of the Tribunal decision of the majority of the members of the Tribunal shall prevail.

(3) Every order of the Tribunal shall be signed by the Chairman and Members constituting the Tribunal, which pronounced the order.

(4) The order shall be pronounced in open court.

17. Communication of order to parties.—

(1) Every interim order, granting or refusing or modifying interim relief and final order shall be communicated to the applicant and to the concerned respondent or to their Counsels, either by hand delivery or by post free of costs:

Provided that unless ordered otherwise by the Tribunal, a copy of the final order need not be sent to any respondent who has not entered appearance.

Provided further that when the petitioner or the respondent is represented by a Counsel, under a single Vakalatnama, only one copy shall be supplied to such Counsel as named therein.

(2) If the applicant or the respondent to any proceeding requires a copy of any document or proceeding the same shall be supplied to him on such terms and conditions on payment of such fees as may be fixed by the Chairman by general or special order.

18. Inspection of the records.—

(1) The parties to any case or their counsel may be allowed to inspect the record of the case on making an application in writing to the Registrar.

(2) Subject to such terms and conditions as may prescribed by the Chairman by a general or special order a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

19. Orders and directions in certain cases.—

The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

20. Registration of legal practitioner's clerk.—

(1) No clerk employed by a legal practitioner shall act as such in the Tribunal or be permitted to have access to the records and obtain copies of the orders of the Bench of the Tribunal in which the legal practitioner ordinarily practises unless his name is entered in the Register of clerks maintained by the Tribunal. Such clerk shall be known as a "Registered Clerk".

(2) A legal practitioner desirous of registering his clerk shall make an application to the Registrar. On such application being allowed by the Registrar, his name shall be entered in the Register of Clerks.

(3) After registration of the clerk, the Registrar shall direct the issue of an identity card to him which shall be non-transferable and shall be produced by the holder upon request by an officer or other employee of the Tribunal authorised in this behalf. The identity card shall be issued under the signature of the Registrar of the Tribunal.

(4) A register of all the clerks registered under sub-rule (2) shall be maintained in the office of the Registrar of Tribunal.

(5) A legal practitioner shall have at a time not more than two registered clerks.

(6) Whenever a legal practitioner ceases to employ a registered clerk, he shall notify the fact at once to the Registrar by means of a letter enclosing therewith the identity card issued to his clerk by the Registry, and on receipt of such letter the name of the said registered clerk shall be struck off from the register.

21. Working hours of the Tribunal.—

Except on Saturday, Sunday and other public holidays, the office of the Tribunal shall, subject to any order made by the Chairman remain open from 10.00 a.m. to 5.45 p.m.

22. Sitting hours of the Tribunal.—

The sitting hours of the Tribunal shall ordinarily be from 10.30 a.m. to 1.30 p.m. and 2.30 p.m. to 5 p.m. subject to any general or special order made by the Chairman of the Tribunal.

23. Powers and functions of the Registrar.—

(1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or by the Tribunal by separate order.

(2) The Registrar may, with the approval of the Chairman of the Tribunal delegate to any officer of the Tribunal any function or power required by these rules to be performed or exercised by the Registrar.

(3) In the absence of the Registrar, any other officer to whom the powers and functions of the Registrar are delegated by the Chairman of the Tribunal, as the case may be, may exercise the powers and functions of the Registrar.

(4) The official seal shall be kept in the custody of the Registrar.

(5) Subject to any general or special direction by the Chairman the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing of the Registrar or any officer authorised in this behalf.

(6) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

(7) The Registrar shall have the power-

(i) to receive all applications and other documents including transferred applications;

(ii) to decide all questions arising out of the scrutiny of the applications before they are registered;

(iii) to require any application presented to the Tribunal to be amended in accordance with the Act and the rules;

(iv) subject to the direction of the Tribunal, to fix the date of first hearing of the applications or other proceedings and issue notices thereof;

(v) to direct any formal amendment of records;

(vi) to order grant of copies of documents to parties to the proceedings;

(vii) to grant leave to inspect the records of the Tribunal;

(viii) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and for extending the time for filing such applications, to grant time not exceeding 30 days for filing a reply or rejoinder if any, and to place the matter before the Tribunal for appropriate orders after the expiry of the aforesaid period;

(ix) to requisition records from the custody of any court or other authority ;

(x) to receive applications within ninety days from the date of death for substitution of legal representatives of the deceased parties or his successor in office during the pendency of the application;

(xi) to receive and dispose of applications for substitution except where the substitution would involve setting aside an order of abatement ;

(xii) to receive and dispose of applications by parties for return of documents.

24. Qualification of Registrar.—

The persons now officiating in the State Judicial Services and Judicial Ministerial Services shall be appointed on deputation basis with usual terms and conditions. The conditions of service of officers and staff shall be governed by respective service rules / Special rules or Ad hoc rules to be framed separately if any post is not covered by any service rules.

25. Seal and emblem.—

The official seal and emblem of the Tribunal shall be such as the State Government may specify.

26. Dress of the Members and staff of the Tribunal.—

The dress for the Members of the Tribunal (including Chairman) and Members of the staff of the Tribunal shall be such as the Chairman may specify.

27. Dress of the parties.—

A legal practitioner or, as the case may be, a presenting officer shall appear before the Tribunal in his professional dress, if any, and if there is no such dress in a formal closed dress.

A. KARTHIK,
Secretary to Government.