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PART IV—Bills introduced in the West Bengal Legislative Assembly; Reports of Select Committees presented or to be presented to that Assembly; and Bills published before introduction in that Assembly.

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1416-L.—8th December, 2011.—The Governor having been pleased to order, under rule 66 of the

Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly, the publication of the following Bill, together with the Statement of Objects and Reasons and the Financial Memorandum which accompany it, in the *Kolkata Gazette*, the Bill, the Statement of Objects and Reasons and the Financial Memorandum are accordingly hereby published for general information:—

Bill No. 14 of 2011

**THE WEST BENGAL STAFF SELECTION COMMISSION
 BILL, 2011.**

**A
 BILL**

to provide for constitution of the West Bengal Staff Selection Commission for direct recruitment of prescribed categories of posts and services in the State Government establishments and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for constitution of the West Bengal Staff Selection Commission for direct recruitment of prescribed categories of posts and services in the State Government establishments and for matters connected therewith or incidental thereto;

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

1. (1) This Act may be called the West Bengal Staff Selection Commission Act, 2011.

The West Bengal Staff Selection Commission Bill, 2011.

(Clauses 2-4.)

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

Definitions.

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

- (a) “Appointing authority”, in relation to a Government servant, means—
 - (i) the authority empowered to make appointments to the services of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or
 - (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
 - (iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or
 - (iv) where the Government servant having been a permanent member of any other service or having substantially held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to such service or to any grade in that service or to that post,
- whichever authority is the highest authority;
- (b) “Commission” means the West Bengal Staff Selection Commission;
- (c) “Direct recruitment” means the method of recruitment provided under the rules regulating the recruitment to the post and services under the Government of West Bengal as may be specified, by notification;
- (d) “member” means a member of the Commission and includes the Chairperson;
- (e) “notification” means a notification published in the *Official Gazette*;
- (f) “prescribed” means prescribed by rules made under the Act;
- (g) “regulations” means regulation made under section 14;
- (h) “Secretary-cum-Controller of Examinations” means the Secretary-cum-Controller of Examinations of the Commission;
- (i) “State Government” means the Government of West Bengal.

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 Staff Selection Commission.

(2) The West Bengal Staff Selection Commission shall consist of a Chairperson and not more than two members. The Chairperson shall be administrative Head of the Commission and shall have the powers of the Head of the Department.

(3) The place of sitting of the Commission and its jurisdiction shall be such as the State Government may, by notification, specify.

(4) The Commission may have one or more regional offices at such places, which the State Government may, by notification, specify. The functions of the regional offices shall be such as may be specified in the regulations.

(5) The Commission shall function under the administrative control of the State Government in the Department of Personnel and Administrative Reforms.

Appointment, and terms and conditions of service of members.

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

(2) The Chairperson and other members of the Commission shall hold office for a period of five years or till he attains the age of 62 years, whichever is earlier.

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(Clauses 5,6.)

(3) In case an officer appointed as Chairperson or member of the Commission retires on superannuation before completing the tenure of five years, he shall be deemed to be on re-employment for the remaining period of tenure subject to maximum of his attainment of the age of superannuation i.e. 62 years.

(4) If the office of the Chairperson or any other member becomes vacant by reason of resignation or otherwise or if the Chairperson is, by reason of absence or for any other reason, unable to perform the duties of the Chairperson and other members, as the case may be, those duties shall be performed by such other members as the State Government may appoint in this behalf.

(5) The Chairperson and any other member may resign from 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, or the Central Government, as the case may be, in accordance with the provisions of relevant service rules, if any.

(6) The terms and conditions of service of the Chairperson and members shall be such as may be prescribed.

Staff of Commission.

5. (1) The staff of the Commission shall consist of—
 (a) a Secretary-cum-Controller of Examinations who shall be appointed by the State Government, and
 (b) such other employees as the State Government may appoint from time to time against the posts sanctioned by the Government.

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

(3) The other terms and conditions of service of—
 (a) the Secretary-cum-Controller of Examinations shall be such as may be prescribed;
 (b) other employees of the Commission shall be such as may be provided for by the regulations.

Functions of Commission.

6. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (3), it shall be duty of the Commission to select persons for direct recruitment to such categories of posts and services in the State Government establishments as may be prescribed:

Provided that for selection of persons for appointment to the posts and services, the Commission shall be aided by two persons nominated by the concerned appointing authorities at the stage of interview.

(2) It shall be the duty of the Commission to perform such other functions as the State Government may, by notification, specify. These types of functions may include Departmental Examinations for promotion, if any, to the categories of posts for which Commission makes the recruitment, periodical typing test in English and Bengali on computer and advise the State Government on such matter as may be referred to it.

(3) Nothing in this section shall apply to direct recruitments to the posts or services, which are—

- (a) required to be made through the Public Service Commission, West Bengal;
- (b) filled up from the candidates belonging to the exempted categories which has been declared or is declared by the State Government by notification issued in exercise of the power conferred by section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertaking, Statutory Bodies, Government Companies and Local Authorities Act, 1999;
- (c) excluded from the purview of this Act by the State Government by notifications.

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(Clauses 7-13.)

Manner of selection of persons and procedure for conduct of business of Commission, and certain special provisions of intimation of vacancies to Commission and advertisement.

7. (1) The manner of selection of persons for appointment to the posts and services as prescribed under sub-section (1) of section 6, shall be such as may be provided for by the regulations.

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

(3) In particular and without prejudice to the provisions of sub-section (2), the Department of the State Government or the Head of such Departments shall every year intimate the Commission the number of vacancies including those anticipated in course of the year within such time, and in such manner, as may be provided for by regulations.

(4) On receipt of intimations of vacancies under sub-section (3), the Secretary-cum-Controller of Examinations of the Commission shall, in consultation with the Chairperson, issue an advertisement in the leading local newspapers inviting applications from eligible candidates for appearing in the direct recruitment in such manner as may be provided for by regulations.

Effect of recommendations of Commission.

8. Notwithstanding anything contained in any other law for the time being in force, recruitment to the posts and services, except the post or services falling under sub-section (3) of section 6, shall be made on the recommendation of the Commission.

Fees.

9. The Commission may, for the purpose of discharging its functions of selecting persons for direct recruitment to the posts and services in the State Government establishments as prescribed under sub-section (1) of section 6, levy such fees as may be provided for by regulations:

Provided that the candidates belonging to Scheduled Castes and Scheduled Tribes shall be exempted from paying such examination fees.

Power to call for records.

10. The Commission may call for any record, report or information from any appointing authority or the State Government, if in its opinion, such record, report and information is necessary for efficient discharge of its functions and the concerned authorities shall furnish such record, report or information to the Commission.

Members etc. to be public servants.

11. The Chairperson and other members and persons appointed under the 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.

45 of 1860.

Validation.

12. The proceedings of the Commission shall not be invalidated by reasons of any vacancy in the office of the Chairperson or any other member.

Power to make rules.

13. (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 provisions of sub-section (1), such rules may provide for all or any of the following matters:—

(a) the terms and conditions of the service of Chairperson and other members of the Commission under sub-section (6) of section 4;

(b) the terms and conditions of service of the Secretary-cum-Controller of Examinations of the Commission under clause (a) of sub-section (3) of section 5;

(c) any other matter which may be or is required to be prescribed.

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

*The West Bengal Staff Selection Commission Bill, 2011.**(Clauses 14-17.)*

Power to make regulations.

14. (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 matters:—

- (a) the terms and conditions of service of the employees of the Commission under clause (b) of sub-section (3) of section 5;
- (b) the manner of selection of persons for appointment and the procedure for the conduct of business of the Commission under section 7;
- (c) the levy of fee under section 9.

Direction by State Government.

15. In the discharge of its functions, the Commission shall be guided by such directions not inconsistent with the provisions of this Act, as may be given to it by the State Government from time to time.

Dissolution of Commission.

16. (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 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.

Power to remove difficulties.

17. If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of coming into force of this Act.

STATEMENT OF OBJECTS AND REASONS.

According to provisions of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertaking, Statutory Bodies, Government Companies and Local Authorities Act, 1999 (West Ben. Act XIV of 1999), in the cases where the vacancies in the non-Public Service Commission posts and services in the State Government establishments are to be filled up by direct recruitment, other than the vacancies to be filled up from the candidates belonging to certain "Exempted Categories" as notified under the said Act, it becomes mandatory for the appointing authorities to fill up such vacancies after obtaining name of the persons sponsored by various Employment Exchanges. Such provisions has been declared *ultra vires* to the provisions of articles 14 and 16 of the Constitution of India on the ground of denial of equal opportunities in the matter of employment to those candidates who have requisite qualifications but have not been registered themselves in the Employment Exchanges.

2. Consequently, as per the directions issued by the Apex Court and the High Court at Calcutta in its various judgements, the Appointing authorities in the State Government establishments are required to fill up such posts by way of advertising the vacancy in the newspapers as well as by obtaining the names of the candidates sponsored

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by the Employment Exchanges. However, in absence of the proper infrastructure and resources, this may be the uphill task for the appointing authority to deal with the large number of the candidates, which would submit their applications in response to the publication made in the newspaper inviting applications for filling up the vacant posts as well as the candidates, the name of which are sponsored by the Employment Exchanges.

3. In view of above, it has been considered necessary and expedient to set up an authority by the name of West Bengal Staff Selection Commission to select the persons in the State Government establishments through an open advertisement.

4. The Bill has been framed with the above objects in view.

KOLKATA,
The 5th December, 2011.

MAMATA BANERJEE,
Member-in-charge.

FINANCIAL MEMORANDUM.

Financial estimate for implementation of the provisions of the Bill shall be as follows:—

A.	Non-recurring expenditure for acquiring of accommodation, furniture and fixtures, computers etc.	... Rs. 2,00,00,000.00
B.	Recurring expenditure per year for payment of salaries, remuneration and other charges.	... Rs. 3,00,00,000.00

The liability of the State Government shall be met from the appropriate provisions to be made in the Budget in due course.

KOLKATA,
The 5th December, 2011.

MAMATA BANERJEE,
Member-in-charge.

By order of the Governor,

B. K. SRIVASTAVA,

*Secy.-in-charge to the Govt. of West Bengal.
Law Department.*