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APPENDIX-6

QUALIFICATION FOR APPOINTMENT AS A SPECIAL JUDICIAL MAGISTRATE RULES*

Notification No.HC.XI 2/74/7966/RC.— In exercise of the powers conferred under the proviso to sub-section (1) of Section 13 of the Code of Criminal Procedure, 1973, the High Court is pleased to make the following rules, specifying the qualification or experience in relation to legal affairs which a person shall possess for being eligible to be conferred with the powers of a Judicial Magistrate of the Second Class:

(i) These rules may be called "Qualification for Appointment as a Special Judicial Magistrate Rules."

(ii) A person who holds or has held any post under the Government will be eligible for appointment as Special Magistrate if he has the following qualification or experience, namely-a degree in law of a recognised University or some experience of Judicial work as a Magistrate, and age not exceeding sixty five years:

Provided that an I.A.S Officer may be invested with the power of a Magistrate of a Second Class under Section 13 of the Criminal Procedure Code, 1973 without the above requisite being satisfied.[1]

Provided further that the experience of an Executive Magistrate trying cases under Section 107, 145, 133 etc. of the Code of Criminal Procedure for a period of at least one year[2] would be regarded by the High Court as having "some experience of judicial works as a Magistrate.[3]

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* Published in the Assam Gazette, Part II-B, dated 3.7. 1974 at p.935.

Note 1: Inserted vide Correction Slip No. 1 Notification No.HC.XI-2/74/1576/RC., dated 6.2.1980 and published in the Assam Gazette, Part II-B, dated 20.2.1980 at p. 356.

Note 2: Substituted vide Correction Slip No. 3, Notification No.HC.XI-2/74/5092 RC., dated 11.3.1980 and published in the Assam Gazette, Part II-B, dated 26.3.1980 at p.605.

Note 3: Inserted vide Correction Slip No. 2 Notification No. HC.XI-2/64/5091/RC, dated 11.3.1980 and published in the Assam Gazette, Part II-B, dated 26.3.1980 at p.605.

APPENDIX-7

CONTEMPT OF COURTS (GAUHATI HIGH COURT) RULES, 1977

Notification No. HC XI-1/75/7157/HC, dated 16th July, 1977.- In exercise of the powers conferred under Arts. 215 and 225 of the Constitution of India, Section 23 of the Contempt of Courts Act, 1971 and all other powers hereunto enabling, the High Court makes the following rules:

PART I

1. Short title.- These rules may be called the Contempt of Courts (Gauhati High Court) Rules, 1977.

(a) These rules shall extend to the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh.[1]

(b) These rules shall come into force from the date of publication thereof in the official Gazette of the respective States.[1]

2. Definitions.- In these rules unless there is anything repugnant in the subject or the context-

(a) "Act" means the Contempt of Courts Act, 1971 (Act No. 70 of 1971);

(b) "Section" means a section of the Act;

(c) "High Court" means the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh);

(d) "Judge" means a Judge or an Additional Judge of the Gauhati High Court or a Judge appointed thereto under Art.224-A of the Constitution of India;

(e) [deleted][1]

(f) [deleted][1]

(g) "Registrar" means the Registrar of the High Court and shall include the Joint Registrar and such Deputy Registrar or Assistant Registrar as may from time to time be specified by the Chief Justice;

(h) All other words and expressions used in these rules, but not defined herein, shall have the meaning respectively assigned to them in the Act.

Note 1 : The words "and" before the word Tripura "and also the Union Territories of" before the word "Mizoram" in Rule 1 (a), In Rule 1(b) the words after Respective States "or the Union Territories concerned" and In Rule 2(e) and (f) are deleted vide Notification No. HC.XI-04/2009/294/RC dated 18.06.2010

PART II

COGNIZANCE AND PROCEDURE

A - GENERAL

3. (1) Every petition, reference or motion for taking proceedings under the Act shall be registered as civil original petition (contempt) in respect of civil contempt and criminal original petition (contempt) in respect of criminal contempt.

(2) In proceedings initiated by petition, the initiator shall be described as the petitioner and opposite party as the respondent, and in other cases the description of the persons proceeded against shall be as follows:

"In re A son of.. .. .. .. occupation .. .. resident of .. .. .."

4. (a) Every petition under R.3 shall contain-

(i) the name, description and place of residence of the petitioner or petitioners and of the person or persons charged;

(ii) nature of the contempt alleged, and such material facts including the date or dates of the commission of the alleged contempt, as may be necessary for the proper determination of the case;

(iii) if a petition has previously been made by him on the same facts, the petitioners shall give the details of the petition previously made and shall also indicate the result thereof.

(b) The petition shall be supported by an affidavit.

(c) Where the petitioner relies upon a document or documents in his possessing or power, he shall file such document or documents or true copies thereof with the petition.

(d) No Court fee shall be payable on the petition or on any documents filed in the proceedings.

5. (1) Every reference relating to contempt of court subordinate to the High Court shall be scrutinised by the Registrar who shall place the same before the Chief Justice or any other Judge nominated by him in this behalf for obtaining orders after noting there thereon the nature of the contempt.

(2) When any publication, application, letter of intimation is received by post or otherwise called for any action being taken under the Act by the High Court on its own motion, the matter shall be dealt with in the manner prescribed in sub-rule (1). In the case of criminal contempt of a subordinate court, the Chief Justice or the Judge, as the case may be, may direct that the papers be sent to the Advocate-General of the State in which the Subordinate court is situate, or to the law officer, if subordinate court is situate in the Union Territories of Arunachal Pradesh or Mizoram, as the case may be, to move the High Court for taking action under the Act.

6.(1) Every Petition, motion or reference in relation to criminal contempt shall, unless the Chief Justice directs it to be heard by a larger bench, be laid for motion hearing before a Division Bench of at least two Judges.

(2) Every petition, motion or reference in relation to civil contempt shall, unless directed otherwise by the Chief Justice, be laid before a single Bench.

(3) Every notice issued by the High Court shall be in the form appended to these rules and shall be accompanied by a copy of the motion, Petition or reference as the case may be, together with the copies of the affidavits, if any

(4) The notice shall bear the date, the seal of the High Court and shall be issued under the signature of the Registrar.

(5) Notice of every proceedings under the Act shall be served personally on the person charged, unless the High Court for reasons to be recorded, directs otherwise.

(6) The High Court may if satisfied that the person charged is absconding or likely to abscond or is keeping or likely to keep out of the way to avoid service of the notice, order the issue of warrant of his arrest which, in the case of criminal contempt, may be in lieu of or in addition to the attachment of his property under sub-sections (3) and (4) of Section 17 of the Act. Such warrant may be endorsed in the manner laid down in Section 71 of the Code of Criminal Procedure, 1973, in terms of the order of the High Court.

(7) Whenever the High Court issues a notice, it may, if it sees reason so to do, dispense with the personal attendance of the person charged with the contempt and permit him to appear by his pleader, and may, in its discretion, at any stage of the proceedings, direct the personal attendance of such person, and, if necessary, enforce such attendance in the manner hereinbefore provided.

7.(1) When any person charged with contempt appears or is brought before the High Court and is prepared, while in custody or at any stage of the proceedings to give bail, such person shall be released on bail, if a bond for such sum of money as the High Court thinks sufficient is executed with or without sureties on condition that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the High Court.

Provided further that the High Court may, if it thinks fit, instead of taking fail from such person discharge him on his executing a bond without sureties for his attendance as aforesaid, or without executing such bond.

(2) Notwithstanding anything contained in sub-rule (1) where a person fails to comply with the conditions of the bail bond as regards the time and place of attendance, the High Court may refuse to release him on bail, when on a

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subsequent occasion in the same case he appears before the High Court or is brought in custody and any such refusal shall be without prejudice to the powers of the High Court to call upon any person bound by such bond to pay the penalty thereof.

(3) The provisions of Sections 422 to 448 and 450 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to all bonds executed under the rule.

B-CRIMINAL CONTEMPTS

8.(1) Any person charged with criminal contempt referred to in Section 14, may file an affidavit in support of his defence on the date fixed for his appearance or any other date fixed by the High Court in that behalf.

(2) If such person pleads guilty to the charge, his plea shall be recorded and the High Court may, in its discretion, either convict him thereon or accept bail for his appearance at such time, as may be appointed, to receive its judgment.

(3) If such person refuses to plead or does not plead, or claims to be tried or the High Court does not convict him on his plea of guilty, it may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary.

C-CIVIL CONTEMPTS

9. In the case of a civil contempt other than a contempt referred to in Section 14, the High Court may take action-

(a) on its own motion; or

(b) on a Petition presented by the party aggrieved; or

(c) in the case of any civil contempt of a subordinate court on a reference made to it by that court.

10.(1) In a case of civil contempt, other than a contempt referred to in Section 14, the person charged may files his affidavit by way of reply to the charge and shall serve a copy thereof on the Petitioner or his counsel at least seven days before the date of hearing.

(2) No further return, affidavit or document shall be filed except with the leave of the High Court.

11. In the case of a civil contempt, the High Court may determine the matter of charge either on affidavits filed or on such further evidence as may be taken by itself or recorded by a subordinate court in pursuance of a direction made by it, and pass such order as the justice of the case requires, having regard to the provisions of Sections 12 and 13 of the Act.

PART III

APPEALS

12. (1) Every appeal filed under the Contempt of Courts Act, 1971 shall be numbered as Contempt Appeal.

(2) Every such appeal shall be posted before a Division Bench for orders as to whether notice shall issue to the respondent.

(3) The procedure for regulation of such appeals shall be the same as for appeals under Cl.15 of the Letters Patent.

PART IV

MISCELLANEOUS

13. Every person against whom proceedings are initiated under the Act may of right be defended by an advocate of his choice competent to appear before the High Court.

14. A Paper Book consisting of the documents specified in R.4 shall be filed by the petitioner or the Advocate-General or the Law Officer, as the case may be, in triplicate in a case of criminal contempt and in duplicate in a case of civil contempt. Thereafter, as many copies of the Paper Book as there are respondents to whom notice is issued shall also be furnished along with the process fee prescribed in R.16.

15.(1) In a case where any proceedings are taken on a reference by a subordinate court or by the High Court on its own motion, the Registrar shall prepare the paper-book in triplicate in a case of criminal contempt and in duplicate in a case of civil contempt. Such Paper Book shall consist of the following documents:

(i) Reference or motion,

(ii) The objectionable material, if any, alleged to constitute contempt,

(iii) Any other document which the Registrar may deem fit to include or which the High Court may require.

(2) All relevant material brought on the record from time to time shall be included in each paper-book.

(3) In any such case, the Court may, at any stage, appoint an advocate for the conduct of the proceedings.

16. The rules contained in Chapter XI of Part II of the High Court Rules shall, in so far as they may be applicable, govern the processes issued under these rules.

17. The rule relating to the grant of copies and translation of records contained in Chapter XIII of Part IV of the High Court Rules shall, in so far as they may be

applicable, govern proceedings under the Act.

18. When any person is summoned by the High Court to appear as a witness in any proceedings under the Act, the expenses of such witness, as determined according to the rules for the time being in force, shall be paid by the Registrar out of the Contingency Fund; provided that the court may direct any party to such proceedings to expenses.

19. The High Court may direct any party to a proceeding under the Act to pay the costs thereof as determined by it to any other party thereto.

20. It shall be the duty of the Registrar to carry out, enforce and execute the orders passed by the High Court in any proceeding under the Act, and in particular, orders imposing fines or awarding costs.

ANNEXURE

Form of Notice

[See Rule 6(3)]

Notice

CRIMINAL/CIVIL ORIGINAL SIDE

CRIMINAL/ CIVIL[2] ORIGINAL (CONTEMPT) Petition No. .... of 19.....

Proceedings under the Contempt of Courts Act, 1971 (Act No.70 of 1971)

Whereas from the material laid before this Court, it has been made to appear that you are guilty of contempt of court, punishable under Section 12 of the Contempt of Courts Act, 1971, the proceeding in the matter will be laid before this Court for the determination of the charge on the .. .. .. 19.. .. (Actual).

You are hereby directed to attend this Court at 10.00 a.m. on the .. .. .. 19.. .. .. in person/in person or through counsel[3] to answer the charge and to file an affidavit/an affidavit at least 7 days before the said date in support of your defences if any.

Given under my hand and the seal of the Court, this .. .. day of .. .. .. 19 .. .. ..

Registrar
Gauhati High Court
(High Court of Assam, Nagaland,
Meghalaya, Manipur, Mizoram,
Tripura and Arunachal Pradesh)

SEAL

Note 2: This shall be so stated only if an express order in this behalf has been passed by the High Court. In the absence of such an order this alternative shall be deleted.

Note 3: This alternative is to be mentioned only in cases of civil contempt.

APPENDIX-8

INDIGENT PERSON PLEADER (APPOINTMENT AND FEES) RULES, 1981

Notification No. HC.XI-1/77/17486/R.C., dated 1st October, 1985.— In exercise of the powers conferred by sub-R.(2) of R.9-A of Order 33 of the Code of Civil Procedure, 1908, as amended, the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur, and Tripura) with the previous approval of the concerned Governments of the States and Union Territories is pleased to make the following rules for regulating the appointments of pleader to represent indigent persons in civil suits, namely:

1. Short title, extent and commencement — (1) These rules may be called the Indigent Person Pleader (Appointment and fees) Rules, 1981.

(2) These rules shall extend to the States of Assam, Nagaland, Meghalaya, Manipur and Tripura and also to the Union Territories of Arunachal Pradesh and Mizoram.

(3) These rules shall come into force from the date of publication thereof in the official Gazette of the concerned State or Union Territory.

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

(1) 'Code' means the Code of Civil Procedure, 1908 as amended from time to time.

(2) 'High Court' means the Gauhati High Court (The High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura).

(3) 'List' means the list of pleaders prepared and maintained by the District Judge.

(4) 'Pleader' means any person whose name is entered as such in the register maintained by the concerned District Judge and include any person whose name is entered on the rolls of the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, maintained under the Advocate's Act, 1961, and the rules framed thereunder.

3. Assignment of a pleader for an indigent person.— (1) Where a person who is permitted by a court to sue as an indigent person under sub-R.(3) of R.7 of Order XXXIII of the Code is not represented by a pleader the Presiding Officer of the Court, shall, if the circumstances of the case so require, assign a pleader to him from the list.

(2) Before doing so, the court shall endeavour in the first instance to select a suitable pleader from the part of the list which comprises the names of pleaders, if any, willing to appear for undefended indigent persons without charging any