

**THE JAMMU AND KASHMIR PANCHAYATI RAJ
(AMENDMENT) ACT, 2011.**

(Act No. XV of 2011)

[23rd April, 2011]

An Act to amend the Jammu and Kashmir Panchayati Raj Act, 1989.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-second Year of the Republic of India as follows:—

1. Short title and commencement. – (1) This Act may be called the Jammu and Kashmir Panchayati Raj (Amendment) Act, 2011.

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

2. Amendment of section 2, Act XI of 1989. – In section 2 of the Jammu and Kashmir Panchayati Raj Act, 1989 (hereinafter referred to as the ‘principal Act’), in sub-section (1),—

(i) after clause (e), the following clause shall be inserted, namely:—

“(ee) “Commission” means the ‘State Election Commission constituted under section 36 of this Act;”;

(ii) for clause (h), the following clause shall be substituted, namely:—

“(h) “Election Authority” means the ‘State Election Commission’ constituted under section 36 of this Act;”.

3. Substitution of section 36, Act XI of 1989. – For section 36 of the principal Act, the following sections shall be substituted, namely:—

36. State Election Commission.— (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections under this Act shall vest in an Election Authority to be known as the State Election Commission:

Provided that for purposes of holding general elections under the Act in the year 2011, the superintendence, direction and

control of the preparation of electoral rolls for, and the conduct of, all elections under this Act shall continue to vest in the Chief Electoral Officer of the State as heretofore.

(2) Notwithstanding anything contrary contained in this Act or any other law for the time being in force in the State, the Government may, by a notification in the Government Gazette, vest the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, election under any other law for the time being in force in the State in the Commission.

(3) The Commission shall consist of a State Election Commissioner, to be appointed by the Governor on the recommendation of a Committee consisting of the—

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| (i) | Chief Minister | Chairman |
| (ii) | A senior Minister to be nominated by the Chief Minister | Member |
| (iii) | Speaker of Legislative Assembly | Member |
| (iv) | Minister Incharge Panchayats | Member |
| (v) | Leader of Opposition in Legislative Assembly | Member. |

Explanation:— For purposes of this sub-section, the ‘Leader of Opposition in Legislative Assembly’ shall, when no such Leader has been so recognised, include the leader of the single largest group or party in Opposition to the Government, in the Legislative Assembly.

(4) A person shall not be qualified for being appointed as state Election Commissioner unless he is holding or has held a post in the Indian Administrative Service or a post in any civil service of the Union or the State not below the rank of Commissioner/Secretary to Government having knowledge and experience in matters relating to conduct of elections:

Provided that if the person so appointed is in service at the time of his appointment, he shall be deemed to have retired on superannuation from the date of his assumption of office as State Election Commissioner and shall be entitled to receive pension and other post retirement benefits in respect of that service.

(5) The State Election Commissioner shall, before entering upon his office, make and subscribe before the Governor or any other person nominated in this behalf by him, an oath or affirmation in the following manner:—

I, _____ having been appointed as the State Election Commissioner, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India and Constitution of Jammu and Kashmir as by law established ; that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill will.

36A. Term of office and other conditions of service of State Election Commissioner.— (1) The State Election Commissioner shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that he may—

- (a) by writing under his hand addressed to the Governor, resign his office; or
- (b) be removed from his office in the manner provided in section 36B.

(2) On ceasing to hold office, the State Election Commissioner shall be ineligible for, reappointment to that office or, any other assignment or appointment to any office under the Government of India or under the Government of any State.

(3) The salary, allowance and other conditions of the State Election Commissioner shall be such as may be prescribed from time to time:

Provided that if the State Election Commissioner is at the time of his appointment eligible for, or in receipt of, a pension in respect of any previous service, his salary in respect of service as State Election Commissioner shall be reduced,—

- (a) by the amount of that pension ; and
- (b) if he has before such appointment received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that amount of pension.

36B. Removal of the State Election Commissioner.—

(1) Subject to the provisions of sub-section (3), the State Election Commissioner shall not be removed from his office except by an order made by the Governor on the ground of proven misbehaviour or incapacity after an enquiry conducted by a sitting or a retired judge of the High Court, on a reference made to him by the Governor.

(2) The Governor may suspend from office, and if necessary prohibit also from attending the office during inquiry, the State Election Commissioner in respect of whom a reference has been made to the inquiry Officer under sub-section (1) until the Governor has passed orders on receipt of the report of the Inquiry Officer on such reference.

(3) Notwithstanding anything in sub-section (1), the Governor may by order remove from office the State Election Commissioner, if he:—

- (a) is adjudged as insolvent; or
- (b) engages during the term of his office in any employment outside the duties of his office; or
- (c) is unfit to continue in his office by reason of his infirmity of mind or body; or

- (d) is convicted and sentenced to imprisonment for offence which involves moral turpitude.

36C. Officers and staff of State Election Commission.—

- (1) The Government shall make available to the Commission,—
 - (a) an officer not below the rank of Additional Secretary to Government who shall be the Secretary of the Commission;
 - (b) such other officers or employees, as may be requested by the Commission from time to time:

Provided that the Government may designate any officer of the Commission as Deputy Election Commissioner.

- (2) The officers and employees of the Commission shall continue to be governed by the rules and regulations as were applicable to them in their parent services.

- (3) The State Election Commission shall, in consultation with the Government, designate or nominate such of the officers and employees of the Government as various authorities for purposes of preparation and revision of electoral rolls and conduct of elections under this Act, as it may deem fit.

36D. Powers of the State Election Commission.— (1)

The State Election Commission shall be deemed to be a Civil Court under the Code of Civil Procedure, Samvat 1977 and a proceeding before the Commission shall be deemed to be a judicial proceeding.

- (2) The Commission shall have the power to—
 - (a) require any person including an officer or an employee of the Government, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information or any matter which, in the opinion of the Commission, may be useful for, or relevant to, the subject of enquiry;
 - (b) give such directions to the officers and employees of the Government or the panchayat Raj Institutions or any other statutory body or society as it considers necessary to ensure smooth and efficient conduct of elections under this Act ;
 - (c) delegate any of its powers to such officers and employees of the Government, as it may deem necessary;
 - (d) regulate its own procedure including the fixing of time and place of its sittings; and
 - (e) exercise such other powers as may be prescribed by the Government from time to time.”.

