



The Mizoram Gazette

EXTRA ORDINARY

Published by Authority

Regn. No. NE-313(MZ) 2006-2008

Rs. 2/- per issue

VOL - XXXVIII Aizawl, Monday 30.3.2009 Chaitra 9, S.E. 1931, Issue No. 135

NOTIFICATION

No. H. 12018/188/07-LJD/7, the 18th March, 2009. In exercise of the power conferred by section 23 of the Family Courts Act, 1984 (66 of 1984), the Governor, after consultation with the Gauhati High Court is hereby pleased to make the following rules: -

Short title and commencement

1. (1) These rules may be called the Mizoram Family Courts Rules, 2008.
- (2) They shall come into force on the date as may be appointed by a notification in the Mizoram Gazette by the State Government of Mizoram.

Application

2. They will apply to the Family Courts constituted in the State of Mizoram under the Family Courts Act, 1984 (66 of 1984).

Definitions

3. In these rules, unless there is anything repugnant in the subject or context.
 - (a) 'Act' means the Family Courts Act, 1984 (66 of 1984);
 - (b) 'Centre' means a Counselling Centre;
 - (c) 'Counsellor' means a counsellor appointed under these rules and includes a Principal Counsellor;
 - (d) 'Court' means a Family Court established under the Act;
 - (e) 'High Court' means the Gauhati High Court;
 - (f) 'Judge' means the Judge of a Family Court and includes the Principal Judge or other Judge of such court;
 - (g) 'State Government' means the State Government of Mizoram.

Salaries, allowances, etc. Judge's

4. (1) A Serving member of the Mizoram Judicial Service appointed as a Judge shall be entitled to the pay, allowances and other benefits admissible to him as a serving member of the Mizoram Judicial Service.
- (2) A serving member of the Mizoram Judicial Service appointed as a Judge super-annuated on attaining the age of super-annuation during his tenure as such Judge, and but is allowed to continue as such Judge, shall receive the pay and allowances last drawn by him less pension, if any.

- (3) A retired member of the Mizoram Judicial Service appointed as a Judge shall receive the pay and allowances last drawn by him as a member of the said Service, less pension, if any.
- (4) Any other person appointed as a Judge of any such Court shall be entitled to such pay, allowances and other benefits or to such consolidated honorarium as may be determined by the State Government at the time of such appointment.

Other terms and conditions of service of Judges

5. All other terms and conditions of service of a Judge shall be the same as those applicable to a member of the Mizoram Judicial Service from time to time.

Counselling Centre

6. There shall be attached to the Family Court in each city, town or other area a Centre to be known as "The Counselling Centre of the Family Court at _____ (place)".

Composition

7. (1) Each centre may have a Principal Counsellor and shall have such number of counsellors as may be determined by the State Government in consultation with the High Court.
(2) Administration of each such Centre shall vest in the Principal Counsellor.

Different units of Counselling Centre

8. The Counselling Centre may be divided into different units and may be located in the Court premises and or in such place or places as may be determined by the State Government in consultation with the High Court.

Appointment of counsellors

9. (1) The Counsellors attached to the Counselling Centre will be appointed by the State Government in consultation with the High Court from amongst a panel of professionally qualified experts in family and child welfare, preferably from those who have been working with a recognised institution of social science or social work.
(2) The State Government shall recommend a panel of not less than three such Counsellors to the High Court for appointment of one of them as the Principal Counsellor by the High Court.

Qualifications

10. Persons having a Master's Degree in social work with minimum experience of 2 years in Family Counselling will be eligible for appointment as counselor.

Terms and conditions of association of a Counsellor

11. (1) Every Counsellor, other than the Principal Counsellor, associated by a court in any proceeding under the Act shall be entitled to such fee as may be determined and notified by the State Government from time to time.
(2) Every Principal Counsellor shall be entitled to such fee as may be determined and notified by the State Government from time to time.
(3) A Counsellor including a Principal Counsellor shall hold office till he/she attains such age as may be notified by the State Government.

- Engagement of Counsellors*
12. The Principal Counsellor of each centre shall furnish to the concerned court a list of Counsellors of such centre, either suo motu in the beginning of every year or as and when called for by the court to do so, and the Judge may engage a Counsellor in connection with a case from the list as aforesaid.
- Terms and conditions of service of officers and other employees*
13. (1) The member and categories of officers and other employees of a Court shall be such as may be determined and notified by the State Government from time to time in consultation with the High Court.
(2) The terms and conditions of service of the officers and other employees of a court shall be such as may be determined and notified by the State Government from time to time in consultation with the High Court.
- Fees and - Expenses of medical and other experts*
14. (1) A medical expert or a welfare expert not being in government employment shall be entitled to such fee or allowance as may be determined and notified by the State Government from time to time.
(2) Other experts shall also be entitled to the same fee or allowance at the rate admissible to a medical expert or welfare expert.
- Seminars and workshops*
15. The State Government may, in consultation with the High Court make arrangement for holding of seminars and or workshops on the working or functioning of the courts and to create awareness amongst the people from time to time.
- Applications for guardianship*
16. All applications for guardianship other than applications over which the High Court has jurisdiction shall be filed before the Family Court.
- Form*
17. Such applications will be in the form of a petition.
- Assistance of Social Welfare Agency*
18. (1) In deciding a guardianship petition, the Court may take the assistance of a Social Welfare Agency for the scrutiny of the petition.
(2) The Court may also ask such an agency for its report thereon.
(3) The Principal Counsellor shall obtain a list of such recognized Agencies from the State Government in the Social Welfare Department and furnish to the Judge for the purposes of rule 20.
- Fees*
19. The Court may prescribe fees to be paid by the party concerned to the said agency for its work.
- Application to be accompanied by Home Study Report*
20. Every application for guardianship when it is by a person other than the natural parent or natural guardian of the child will be accompanied by a Home Study Report of the persons asking for such guardianship and his/her spouse if any, prepared by an approved family welfare agency or a suitable trained social worker.

- Home Study Report in applications by foreigners* 21. When the petition for guardianship so filed by a foreigner, the Court may accept a Home Study Report prepared by a recognized family welfare agency of the country where the foreigner resides.
- Contents* 22. Every petition for guardianship shall be accompanied by-
- i) Two recommendations from respectable members of the community;
 - ii) A Salary certificate or statement relating to the annual income of the petitioner and his/her financial position;
 - iii) A Health Certificate of the petitioner and his/her spouse signed by a medical practitioner as also a medical report regarding sterility, if any, of the petitioner and or the spouse;
 - iv) A Health Certificate of the child proposed to be taken in-guardianship signed by a medical practitioner;
 - v) A Child study Report of the child proposed to be taken in-guardianship together with a photograph of the child. Such report shall be in a particular form if so prescribed by the High or if so directed by the Court when the child is institutionalized or court committed. The report shall be countersigned by the petitioner;
 - vi) A declaration from the proposed guardian and his/her spouse, if any, expressing their willingness to take the child in guardianship.
- Application by foreigner* 23. When the petitioner applying for guardianship is a foreigner, the petition will also be accompanied by-
- i) Permission from the country where the petitioner resides for the child to enter the country.
 - ii) An undertaking by a recognised family welfare agency of the country concerned to supervise the child in the home of the petitioner until the child is legally adopted.
- Adoption under the law of the country where the foreigner resides* 24. In granting a petition of a foreigner for guardianship, the Court will satisfy itself that the child can be legally adopted by the foreigner under the law of the country where he/she resides.
- Bond* 25. The Court may direct a foreign petitioner to give a bond for such amount as it may think proper for the return of the child to India in case of any difficulty.
- Financial security of the minor* 26. While granting a petition for guardianship, the Court may pass such orders as it may deem proper for the financial security of the minor.
- Consent of natural mother* 27. When the child proposed to be given in guardianship is an abandoned child the Court will satisfy itself that the consent of the natural mother was taken at the time of abandonment of the child or at any time thereafter to the child's being given in guardianship and/or adoption to another person.

- Affidavit of the institution*
28. When the child being placed in guardianship is an abandoned child, the institution will file an affidavit setting out the circumstances under which the child was abandoned. The affidavit shall also set out whether the institution is agreeable to the child being given in guardianship to the petitioner.
- Attempts for placement in India*
29. The Court, in its discretion may not entertain a petition for guardianship by a foreigner unless the court is satisfied that adequate attempts for at least three months or such other period as the Court may deem fit have first been made to place the child in an Indian Home. For this purpose the Court may ask the petitioner to obtain a 'no objection' certificate letter from Voluntary Co-ordinating Agency or any other similar organization working for the placement of children in Indian Homes.
- Application by a related person*
30. When the proposed guardian is related to the child, the court may dispense with any of the above provisions.
- Form of order*
31. A guardianship order shall be in such Form as may be prescribed by the High Court or as the Court may deem fit. A photograph of the child signed by an authorised officer of the Court shall be attached to the order.
- Copy to be forwarded to Ministry of Social Welfare*
32. A copy of every guardianship order appointing a foreigner as a guardian will be forwarded to the Ministry of Social Welfare, Government of India as also the Department of Social Welfare, Government of (the country to which the petitioner for guardianship belongs).
33. The provisions of these Rules will be supplemental and not in derogation of the Family Courts (Gauhati High Court) Rules, 1989.
- Repeal and Savings*
- (1) The Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, is so far as they relate to the matters dealt under the Family Courts Act, 1984 (66 of 1984) and these Rules are hereby repealed from the appointed day.
- (2) Notwithstanding such repeal, every suit, appeal, application for revision, proceedings and other business relating to both Civil and Criminal Justice pending on the appointed day with the village judicial functionaries or before the Mizo District Court at Aizawl and its Subordinate Courts, if such matters or cases fall within the scope of the Family Courts Act, 1984 (66 of 1984) shall stand transferred for disposal to the Family Court which would have been competent to entertain and dispose of such suit, appeal, application for revision, proceeding or business, had the Family Court Act, 1984 and the Rules thereunder been brought into force on the date of institution or commencement of the same and the latter Court or Courts shall deal with and dispose of the same in accordance with law;

Provided that any other suit, appeal, application for revision, proceedings and other business relating to both Civil and Criminal justice and pending before the Mizo District Council Court and its Subordinate Courts on the appointed day, which do not fall within the scope of the Family Courts Act, 1984 and the Rules thereunder, shall be transferred for disposal to the Courts constituted under the Mizoram Civil Courts Act, 2005, which would have been competent under Section 10 of the said Act or to the Courts constituted under the Code of Criminal Procedure, 1973, as the case may be, to entertain and dispose of such suit, appeal, application for revision, proceedings or business, in accordance with law.

Provided further that until a new Central or State law on the subject comes into force, the village Courts as constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 shall continue to function as such and in accordance with the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, as if the said Rules have not been repealed only to this extent, subject to the modification that the Courts of Civil Judges as constituted under the Mizoram Civil Courts Act, 2005 or the Courts of Judicial Magistrates of the First Class, as the case may be, shall be the competent appellate and revisional Court in respect of any appeal or revision, as the case may be, from any decree order or sentence passed by such Village Court.

P. Chakraborty,
Commissioner/Secretary,
Law & Judicial, Govt. of Mizoram.