

Fifteenth Kerala Legislative Assembly
Bill No. 49

**THE KERALA PUBLIC SERVICE COMMISSION
(ADDITIONAL FUNCTIONS AS RESPECTS THE
SERVICES UNDER THE WAQF BOARD) BILL, 2021**

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THE KERALA PUBLIC SERVICE COMMISSION (ADDITIONAL
FUNCTIONS AS RESPECTS THE SERVICES UNDER
THE WAQF BOARD) BILL, 2021

A

BILL

to provide for the exercise of certain additional functions by the Kerala Public Service Commission as respects the Administrative Services under the Waqf Board.

Preamble.—WHEREAS, it is expedient to provide for the exercise of certain additional functions by the Kerala Public Service Commission as respects the recruitment and appointment of officers and employees in the Administrative Services of the Waqf Board and their conditions of service;

BE it enacted in the Seventy-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Act, 2021.

(2) It shall be deemed to have come into force on the 18th day of January, 2021.

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

(a) “Government” means the Government of Kerala;

(b) “Public Service Commission” means the Kerala Public Service Commission;

(c) “services” means the services under the Waqf Board;

(d) “Waqf Board” means the Kerala State Waqf Board established under sub-section (1) of section 13 of the Waqf Act, 1995 (Central Act 43 of 1995).

3. *Functions of the Public Service Commission in respect of Administrative Services under the Waqf Board.*—(1) It shall be the duty of the Public Service Commission to prepare select list of candidates belonging to Muslim Religion for appointment by direct recruitment, of all officers and employees in the Administrative Services of the Waqf Board.

(2) The Waqf Board shall consult the Public Service Commission,—

(a) on matters relating to direct recruitment to the posts under the Administrative Services of the Waqf Board;

(b) on the principles to be followed in making appointments by direct recruitment to the posts under the Administrative Services of the Waqf Board and on the suitability of candidates for such appointments;

and it shall be the duty of the Public Service Commission to advise on any matter so referred to them:

Provided that the Government may make rules specifying the matters in which, either generally or in any particular case or class of cases or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted.

(3) In the case of any difference of opinion between the Public Service Commission and the Waqf Board on any matter, the Waqf Board shall refer the matter to the Government and the decision of the Government thereon shall be final:

Provided that the Government, before taking a decision against the advice of the Public Service Commission, shall refer the matter to the Public Service Commission.

4. *Power to make rules.*—(1) The Government may, in consultation with the Public Service Commission and the Waqf Board make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the procedure to be followed by the Waqf Board for consultation with the Public Service Commission;

(b) any matter which is incidental to, or necessary for, the purpose of consultation with the Public Service Commission.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid, or the session immediately following the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. *Repeal and saving.*—(1) The Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2021 (118 of 2021) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Sub-section (2) of section 24 of the Waqf Act, 1995 (Central Act 43 of 1995) provides that the appointment of officers and employees of the Waqf Board and their term of office shall be such as may be provided by regulations. Section 110 of the Waqf Act, 1995 provides that the Board may, with the previous sanction of the State Government make regulations not inconsistent with this Act or the rules made thereunder for carrying out its functions under this Act. As per sub-regulation (2) of regulation 5(1) of the Kerala State Waqf Board Regulations, 2016, all appointments of officers and employees in the Administrative Service of the Board

for which direct recruitment is resorted to shall be made from a select list of candidates belonging to Muslim religion furnished by the Kerala Public Service Commission. Hence, the Government have decided to bring a legislation in order to make all appointments of officers and employees in the Administrative Service of the Waqf Board through Kerala Public Service Commission.

2. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2020 was promulgated by the Governor of Kerala on the 27th day of June, 2020 and the same was published as Ordinance No.36 of 2020 in the Kerala Gazette Extraordinary No.1620 dated 29th June, 2020.

3. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which convened on the 24th day of August, 2020.

4. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2020 was promulgated by the Governor of Kerala on the 26th day of September, 2020 and the same was published as Ordinance No. 52 of 2020 in the Kerala Gazette Extraordinary No.2200 dated 29th September, 2020.

5. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala in its session which convened on the 31st day of December, 2020 and also during its session which commenced on the 8th day of January, 2021 and ended on the 22nd day of January, 2021.

6. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2021 was promulgated by the Governor of Kerala on the 9th day of February, 2021 and the same was published as Ordinance No.2 of 2021 in the Kerala Gazette Extraordinary No.659 dated 10th February, 2021.

7. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 24th day of May, 2021 and ended on the 10th day of June, 2021.

8. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2021 was promulgated by the Governor of Kerala on the 1st day of July, 2021 and the same was published as Ordinance No.58 of 2021 in the Kerala Gazette Extraordinary No.1919 dated 2nd July, 2021.

9. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 22nd day of July, 2021 and ended on the 13th day of August, 2021.

10. As the provisions of the said Ordinance are to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Public Service Commission (Additional Functions as respects the services under the Waqf Board) Ordinance, 2021 was promulgated by the Governor of Kerala on the 23rd day of August, 2021 and the same was published as Ordinance No.118 of 2021 in the Kerala Gazette Extraordinary No.2468 dated 25th August, 2021.

11. The Bill seeks to replace Ordinance No.118 of 2021 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Proviso to item (b) of sub-clause (2) of clause 3 of the Bill seeks to empower the Government to make rules specifying the matters in which, either generally or in any particular case or class of cases or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted.

2. Sub-clause (1) of clause 4 of the Bill seeks to empower the Government to make rules in consultation with Waqf Board and Kerala Public Service Commission for implementing the provisions of the Act.

3. The matters in respect of which the rules may be made or notifications may be issued are matters of procedure and are of routine or administrative in nature. Further, the rules, are subject to the scrutiny by the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

V. ABDURAHIMAN.