

The 10th June 1986

No.EDN(IREC)3/85/25.—In exercise of the powers conferred under clause (XIV) sub-section (2) of Section 31 of the Meghalaya School Education Act, 1981 (Meghalaya Act 16 of 1981), the Government of Meghalaya hereby publish the following Rules for general information namely :—

THE MEGHALAYA AIDED SCHOOL EMPLOYEES

(Death-cum-Retirement Gratuity) Rules, 1985

1. *Short title and commencement.*—(1) This Rules may be called the "The Meghalaya Aided Schools Employees' Death-cum-Retirement Gratuity Rules 1985.

(2) They shall come into force from the date of their publication in the Gazette.

2. *Definitions.*—In these Rules, unless the context otherwise requires :—

(a) "*Aided School*" means a recognised private school which receives grant-in-aid under the Deficit Scheme, from the State Government or any other authority designated by the State Government ;

(b) "*Appropriate Authority*" means the appropriate authority under the Act ;

(c) "*Act*" means the Meghalaya School Education Act, 1981 (Act 16 of 1981) ;

(d) "*Competent Authority*" means the Competent Authority under the Act ;

(e) "*Director*" means the Director under the Act ;

(f) "*Employee*" means a teacher and every employee working in an aided school ;

(g) "*Enrolments*" means enrolments as defined in Rule 3 of these Rules ;

(h) "*Fund*" means the Meghalaya Aided Schools Employees' Death-cum-Retirement Gratuity Fund established under Rule 15 ;

(i) "*Family*" will include the following relatives of the employee.

- (i) Wife, in the case of a male employee ;
- (ii) Husband, in the case of a female employee ;

- (iii) Sons, including step sons and adopted sons ;
 - (iv) Daughters including step daughters and adopted daughters ;
 - (v) Brothers below the age of 18 years including step brothers ;
 - (vi) Father including adoptive parents in case of individuals ;
 - (vii) Mother including adoptive parents in the case of individuals whose personal law permits adoption ;
 - (viii) Un-married sisters and widowed sisters including step-sisters ;
 - (ix) Married daughters ; and
 - (x) Children of a pre-deceased son or daughter.
- (j) "Government" means the Government of the State of Meghalaya ;
 - (k) "Pay" means the monthly substantive pay of the employees admissible immediately before retirement or death but does not include special pay, personal pay or other emoluments classed as pay ;
 - (l) "Private School" means a private school under the Act ;
 - (m) "Qualifying Service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of gratuities as admissible ;
 - (n) "Recognised School" means recognised school under the Act ;
 - (o) "Service" means service under a recognised private aided school.

3. *Commencement of qualifying Service.*—Subject to the provisions of these rules qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity in the service :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another post in the service.

4. *Emoluments and average emoluments*—(1) The expression "emoluments" means pay as defined in Fundamental Rule 7 (17) of the Meghalaya Fundamental Rules and Subsidiary Rules 1984 which an employee was receiving immediately before his retirement or on the date of his death.

Note 1:—If an employee immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been re-instated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended, shall be the emoluments for the purpose of this rule.

Note 2.—Where an employee immediately before his retirement or death while in service had proceeded on leave for which leave salary is payable after having held a higher appointment whether in an officiating or temporary capacity, the benefit of emoluments drawn in such higher appointment shall be given only if it is certified that the employee concerned would have continued to hold the higher appointment but for his proceeding on leave.

Note 3.—If an employee immediately before his retirement or death while in service had been absent from duty on extraordinary leave, or had been under suspension and the period thereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule.

(2) *Average emoluments.*—Average emoluments shall be determined with reference to the emoluments drawn by an employee during the last complete ten months of his service.

5. *Eligibility to Gratuity Death-cum-retirement Gratuity.*—(1) An employee who has completed five years' of qualifying service shall be granted gratuity not exceeding the amount specified in Rule 5, when he dies or retires from service on superannuation, invalidation or retrenchment and is otherwise eligible for the same under these rules :—

Provided that no gratuity shall be admissible for service under re-employment.

(2) The length of service required in sub-rule (1) shall not apply in case of an employee invalidated on medical grounds.

(3) The Government may, in deserving cases, condone for the purposes of sub-rule (1) of deficiency not exceeding three months in the entire length of service of an employee.

6. *Amount of Gratuity.*—(1) (a) An employee who has completed five years of qualifying service and has become eligible for gratuity under these rules shall on his retirement, be granted death-cum-retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of $16\frac{1}{2}$ times the emoluments or Rs.36,000 whichever is less.

(b) If an employee dies while in service after completing five years' qualifying service, the amount of death-cum-retirement gratuity shall be equal to 12 times of his emoluments or the amount determined under clause (a), whichever is higher and it shall be paid to his family in the manner indicated in sub-rule (2) of Rule 9 and Rule 10.

Provided that the amount of death-cum-retirement gratuity payable under this rule shall, in no case, exceed Rs.36,000.

(2) If any employee, who has become eligible for a gratuity under these Rules, dies within five years from the date of his retirement from service and the sum actually received by him at the time of his death on account of the death-cum-retirement gratuity admissible under sub-rule (1) is less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency may be granted to his family in the manner indicated in sub-rule (2) of Rule 9 and Rule 10.

(3) (a) If an employee dies in the first year of qualifying service a death-cum-retirement gratuity equal to two times of his emoluments at the time of his death shall be paid to his family in the manner indicated in sub-rule (2) of Rule 9 and Rule 10.

(b) If an employee dies after completion of one year of qualifying service, but before completing five years of qualifying service, the amount of death-cum-retirement gratuity shall be equal to six times of his emoluments at the time of his death.

(4) The emoluments for the purpose of gratuity admissible under this rule shall be subject to a maximum of two thousand five hundred rupees per month, and shall be reckoned in accordance with Rule 4 (1):

Provided that if the emoluments of an employee have been reduced during the last ten months of his service otherwise than as penalty, average emoluments as referred to in Rule 4 (2) may, at the discretion of the competent authority be treated as emoluments.

7. *In-admissibility to gratuity.*—No Gratuity shall be admissible to an employee who:—

- (a) is a temporary employee;
- (b) is dismissed from service;
- (c) is removed or called upon to resign on account of misconduct or inefficiency;
- (d) resigns his service of his own volition.

8. *Recovery of dues from gratuity.*—It is permissible to make recovery of Government/Aided School dues from the death-cum-retirement gratuity due in respect of an employee without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased employee, as the case may be.

9. *Application for payment of gratuity.*—(1) An employee who is eligible for gratuity under these rules shall submit an application in quadruplicate, to the Director in the prescribed form (Form No.1).

(2) Where an employee dies while in service or before submitting the application under sub-rule (1) above, his family or such other authorised person(s), who is entitled to receive the gratuity, shall submit the required application (Form-2).

10. *Persons to whom gratuity is payable.*—(1) (a) The gratuity payable under Rules 4 and 5 shall be paid to the persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 14.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated herein below :—

(i) If there are one or more surviving members of the family as in sub-clauses (i), (ii), (iii) and (v) of clause (g) of Rule 2, to all such members in equal shares ;

(ii) If there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in sub-clauses (v), (v') (vii), (viii), (ix) and (x) of clause (g) of Rule 2, to all such members in equal shares ;

(2) If an employee dies after retirement without receiving the gratuity admissible under Rules 5 and 6 the gratuity shall be disbursed to the family in the manner indicated in sub-rule (1) above.

(3) The right of a female member of the family, or that of a brother, of an employee who dies while in service or after retirement, to receive the share of the gratuity shall not be affected if the female member marries or re-marries or the brother attains the age of eighteen years, after the death of the employee and before receiving his share of the gratuity.

(4) Where gratuity is granted under Rules 5 and 6 to a minor member of the family of the deceased employee, it shall be payable to the guardian on behalf of the minor, as indicated below :—

(a) Payment of the minor(s) share of death-cum-retirement gratuity is to be made to the natural guardian of the minor(s) and in the absence of a natural guardian, to the person who furnished a guardianship certificate ;

(b) Payment of death-cum-retirement gratuity to the extent of Rs.5 000 (or the first Rs.5,000 where the amount payable exceeds Rs.5,000) in favour of a minor may be made

to his/her guardian, in the absence of a natural guardian, without the production of formal guardianship certificate but subject to the production of an Indemnity Bond in Form-3 and Form 3A suitable sureties to the satisfaction of the competent authority. The balance in excess of Rs.5,000 if any, would become payable on the production of a certificate of guardianship;

(c) It is essential however, that there should be adequate *prima facie* ground for making payment as in (b) above, to the person claiming it. Such ground can exist only if he has shown by a sworn declaration to be a *de facto* guardian and his *bona fides* have been ascertained. Even if a guardian has not yet been appointed by the Court, if the minor and his property are in the custody of some person, such person is in law a *de facto* guardian. The authorities making the payment should, therefore, require the person who comes forward to claim payment on behalf of the minor to satisfy them by an affidavit that he is in-charge of the property of the minor and is looking after it or that, if the minor has no property other than the gratuity, the minor is in his custody and care. The affidavit so to be produced in addition to the Indemnity Bond with suitable sureties.

(d) The Indemnity Bond which is to be required to be produced by a *de facto* guardian of a minor(s) for payment of death-cum-retirement gratuity to the extent of Rs.5,000 should be properly executed. The Stamp duty required for the purposes, shall be borne by the claimant concerned.

11. *Report of the Examiner of Local Accounts.*—The Gratuity under Rules 5 and 6 shall be paid after report with respect to the amount admissible has been obtained from the Examiner of Local Accounts.

12. *Sanctioning authority.*—The Death-cum-retirement Gratuity or such other claims under these rules shall be sanctioned by the Director, for the purpose it shall be incumbent upon the sanctioning authority that the relevant rules and procedures in this regard have been duly adhered to.

13. *Nomination.*—(1) An employee shall on his initial confirmation or on completion of five years qualified service under the Aided School make a nomination in the prescribed form (Form-4 and 4A), conferring on one or more persons the right to received the death-cum-retirement gratuity payable under Rules 5 and 6:

Provided that if at the time of making the nomination :—

- (i) The employee has a family the nomination shall not be in favour of any person or persons other than the members of his family ; or
- (ii) the employee has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

(2) If an employee nominates more than one person under sub-rule (1) above, he shall specify in the nomination the amount of share payable to each of the nominees in such manner as to cover the entire amount of gratuity.

(3) An employee may provide in the nomination :—

- (i) That in respect of any specified nominee who predeceased the employee, or who dies after the death of the employee but before receiving the payment of the gratuity the right conferred on that nominee shall pass to such other person or persons as may be specified in the nomination :

Provided that if at the time of making the nomination the employee has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family :

Provided further that where an employee has only one member in his family, and a nomination has been made in his favour it is open to the employee to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not ;

- (ii) That the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by an employee who has no family at the time of making it, or the nomination made by an employee, under the proviso to clause (i) of sub-rule (3) above where he has only one member in his family shall become invalid in the event of the employee subsequently acquiring a family, or an additional member in his family, as the case may be.

(5) An employee, may at any time, cancel the nomination by sending a notice in writing to the competent authority :

Provided that he shall, along with such notice, send nomination made in accordance with this rule.

(6) Immediately on the death or nominee in respect whom no special provision has been made in the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that rule the employee shall send to the authority concerned a notice in writing cancelling the nomination together with fresh nomination made in accordance with this rule.

(7) Every nomination made, and every notice of cancellation given by an employee shall, to the extent that it is valid, take effect from the date on which it is received by the competent authority.

CONSTITUTION AND CUSTODY OF THE GRATUITY FUND

14. (1) There shall be established a fund to be called the "Meghalaya Aided Schools Employee Death-cum-Retirement Gratuity Fund" into which shall be credited all receipts and from which all payments shall be made for the purposes of these Rule.

(2) The receipt to the Fund shall be made up of—

- (i) Contribution by the State Government by deduction from the Deficit Grants-in-aid and/or the maintenance grants ;
- (ii) such other sums as the State Government may transfer from the unspent balance of the budget provisions of any year ;
- (iii) any contribution by the Government of India ;
- (iv) any donation contribution by the public, any authority institution, autonomous body, association or body.

(3) The Fund shall be vested in the Director and shall be deposited in a Government Treasury or the State Bank of India or any Nationalised or the Meghalaya Co-operative Apex Bank Ltd. or partly in one and partly in another with the approval of the Government.

(4) The Director may with the approval of the Government set apart and apply of the Fund such sums as may be required to meet the charges on account of the maintenance of the said Fund.

(5) The money lying in excess of the actual requirements may with the approval of the Government be invested in Government approved Securities or such other Investment Funds.

(6) The Director shall maintain for the purpose appropriate books of accounts and records including Cash Book and Cheques.

(7) The Accounts of the Fund shall be audited periodically by the Examiner of Local Accounts of the State Government.

15. *Interpretation.*—Where any doubt arises as to the interpretation of these paragraphs it shall be referred to the Government in the Education Department for decision.

16. *Removal of hardship.*—Where the Director is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Government in the Education Department may, by order for reasons to be recorded in writing dispense with or relax the requirement of any of rules to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

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