

CHAPTER 4

Arbitration

PART A.-ARBITRATION

1. By section 49 (1) and the Third Schedule of the Indian Arbitration Act, 1940 (X of 1940), the whole of the Indian Arbitration Act of 1899, the whole of the Second Schedule to the Code of Civil Procedure, section 89 of the Code of Civil Procedure and Clauses (a) to (f) (both inclusive) of sub-section (1) of section 104 of the Code of Civil Procedure, have been repealed. These provisions have been consolidated in the Indian Arbitration Act, 1940. The instructions contained in this part are only administrative. Statutory rules under section 44 of the Indian Arbitration Act, 1940, are contained in Part B of this Chapter.
2. The following rules have been laid down by the Government of India in regard to the appointment of public officers to act as arbitrators for the settlement of disputes:—

*Extract from proceeding of the Government of India, Home Department (Public) No. 544, dated Fort William, the 12th February 1873.*

- (1)An officer shall not act as an arbitrator in any case without the sanction of his immediate superior, or unless he be directed so to act by a court having authority to appoint an arbitrator.
- (2)No public officer shall act as an arbitrator in any case which is likely to come before him in any shape in virtue of any judicial or executive office which he may be holding.
- (3)If any officer acts as arbitrator at the private request of disputants, he shall accept no fees.
- (4)If he acts by appointment of a court of law, he may accept such fees as the Court may fix.

3. (i) In the event of an officer in any public department being nominated as arbitrator in a civil suit, the Court, before appointing him arbitrator, should refer to the official superior of the officer nominated to ascertain whether his services can be made available.

(ii) The Punjab Government have directed in their circulator letter No. 5795-G-43/64326 (H-Gaz), dated the 14th October, 1943, that their servants should not be allowed to undertake arbitration without the previous permission of the competent authority.

**[19] [Scheme for Appointment of Arbitrators by the Chief Justice of Punjab and Haryana High Court, 2003**

In exercise of the powers conferred on the Chief Justice of the High Court of Punjab and Haryana under sub-section (10) of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) and in supercession to the Notification No. 398 Rules/XVI.A.129, dated 19<sup>th</sup> December, 1996, I hereby make the following scheme:-

**1. Short Title:-** This Scheme may be called the scheme for Appointment of Arbitrators by the Chief Justice of Punjab and Haryana High Court, 2003.

**2. Submission of Request:-** The request under sub-section (4) or sub-section (5) or sub-section (6) of section 11 of the Act shall be made in writing, signed and verified and accompanied by:-

- (a) the original arbitration agreement or a duly certified copy thereof;
- (b) the names and addresses of the parties to the arbitration agreement;
- (c) the names and addresses of the arbitrators, if any, already appointed;
- (d) the names and address of the person or institution, if any, to whom or which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by him;
- (e) the qualifications required, if any, of the arbitrators by the agreement of the parties;
- (f) a brief written statement describing the general nature of the dispute and the points at issue;
- (g) the relief or remedy sought; and
- (h) an affidavit, supported by the relevant documents to the effect that the condition to be satisfied under sub-section (4) or sub-section (5), or sub-section (6) of Section 11 of the Act, as the case may be, before making the request has been satisfied and how it has been so satisfied.

<sup>[20]</sup>**3. Authority to Deal with the Request:-** (1) The request made under para 2 shall be dealt with by the Chief Justice himself or any Judge of the High Court designated by him for this purpose by a general or special order]

**4. Requests and Communications to be sent to Registrar:-** (1) All requests under the Scheme and communications relating thereto, which are addressed to the Chief Justice, shall be presented to Registrar of the High Court, who shall maintain a separate Register of such requests and communications;

(2) The Registrar shall examine the memo of request and submit his report to the Chief Justice or to his designate, as the case may be, as to whether the request has been made in accordance with para 2 and payment of Court fee in accordance with para 10.

**5. Seeking Further Information:-** The Chief Justice or his designate may seek such further information or clarification or documents from the party making the request under this Scheme as he may deem fit and the party making the request shall file as many copies of the written information or clarification or copies of documents as may be required.

**6. Rejection of:-** Where the request made by any party is not in accordance with the provisions of this Scheme the Chief Justice or his designate may reject the same.

**7. Notice to Affected Persons:-** Where the request is not rejected under para 6 the Chief Justice or his designate shall direct that a notice of the application be given to all the parties to the arbitration agreement and to such other person or persons likely to be affected by such request to show cause within the time specified in the notice as to why the appointment of the arbitrator(s) or the measures proposed to be taken should not be made or taken and such notice shall be accompanied by copies of all documents referred to in para 2 or, the information or clarification or copies of documents, if any, sought under para 5, as the case may be.

**8. Intimation of Action Taken on Request:-** The appointment made or measures taken by the Chief Justice or his designate shall be communicated in writing to:-

- (a) the parties to the arbitration agreement;
- (b) the arbitrator, if any, already appointed by the parties to the arbitration agreement;
- (c) the person or the institution referred to in para 2(d); and
- (d) the arbitrator appointed in pursuance of the request.

**9. Delivery and Receipt of Written Communication:-** The provisions of sub-sections (1) and (2) of Section 3 of the Act shall, so far as may be, apply to all written communications received or sent under this Scheme.

<sup>[20]</sup>**10. Cost for Processing Requests:-** A request under para 3 shall be accompanied by Court fee stamps of Rs. 1000.]

**11. Interpretations:-** If any question arises with reference to the interpretation of any of the provisions of this Scheme, the question shall be referred to the Chief Justice whose decision shall be final.

**12. Power to Amend the Scheme:-** The Chief Justice may from time to time amend by way of addition or variation any provision of this Scheme.]