



THE

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Separate paging is given to this part in order that it may be filed as a separate compilation.

PART—III

Laws, Regulations and Rules passed thereunder.

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR.**

Notification No. 7

Dated 03-06-1997.

By virtue of Article 226 of the Constitution of India and Section 102 of the Constitution of Jammu and Kashmir and all other powers enabling in this behalf, and in supersession of the existing rules, the High Court of Jammu and Kashmir, with the previous approval of Governor of Jammu and Kashmir, hereby make the following rules to regulate the proceedings under Article 226 of the Constitution of India and Section 103 of the Constitution of Jammu and Kashmir.

- ✓ 1. (a) These rules may be called "Writ Proceedings Rules, 1997".
(b) These rules shall come into force from the date Rules are published in the Government Gazette.
2. (a) Every petition under Article 226/Section 103 of the State Constitution shall be called "Writ Petition". It shall contain the full name, parentage, age and complete address of the petitioner(s).

- (b) Every such petition shall set out concisely, precisely and chronologically in numbered paragraphs the facts and the grounds on which the petitioner(s) seeks direction, order or writs of the nature specified in the Constitution and shall be concluded with a prayer stating clearly the exact nature of relief sought.
- (c) In every memorandum of writ petition, the petitioner(s) shall state whether he by himself or through some other person(s) had presented a petition, civil suit or any other proceeding(s) for same cause of action and, if so, the result thereof. In addition, it shall also be stated whether the petitioner had moved the Supreme Court of India for similar relief or any other court. If so, the result thereof.
- (d) Petitioner shall also state whether any other remedy for such redress is provided under any law and, if so whether recourse to that remedy has been made and if so, the result thereof and if not the reason thereof.
- (e) In case any of the litigating party furnishes wrong information or suppresses the information required vide clauses (c) and (d), he or she shall be liable to appropriate action including imposition of costs.

3. *Classification of Writ Petition.*—All petitions under Article 226 and Section 103 of State Constitution to be filed in this Court after the issuance of these rules shall be labelled as “Writ Petitions” and shall be registered serially as such. These may be later on Sub-Classified by the Registry.

4. All petitions so filed shall be properly indexed and shall be accompanied by statement of chronological narration of material facts date-wise on which petitioner(s) wants to rely during the course of submission.

5. Every petition shall be signed by the petitioner(s) and his Advocate. In case the petitioner happens to be illiterate, his thumb impression should be attested by the Advocate. The petition shall be supported by an affidavit or affidavits, as in Schedule I appended to these rules, verifying the facts stated therein by reference to the numbers of the paragraphs of the petition containing the facts. It shall be drawn up in the name of first person and shall be attested by an Oath Commissioner.

While administering oath to the deponent, the Oath Commissioner shall indicate that the contents of the petition were read over to the deponent in the language understood by him and were admitted to be correct. He shall attest the affidavit after proper identification of the deponent. All

cuttings on each page of the petition shall be signed/initialled by the Oath Commissioner.

6. The petition shall be presented in the Registry accompanied by three copies of the petition, the affidavit and the documents, if any, annexed to the petition. The documents annexed to the petition shall be legible and shall be attested by either the issuing authority, or any Gazetted Officer or a Notary or the Advocate appearing for the party.

7. Where the Government or an officer or Department of the Government or a Court or a Tribunal, Board, Commission or any other body appointed by the Government is the respondent in the petition, the petitioner shall before presenting the petition, serve notice of motion upon the Advocate-General or Standing Counsel, alongwith as many copies of the petition, affidavit and other papers accompanying it as may be equal to the number of parties to be represented by the Advocate General or the Standing Counsel, as the case may be and one extra copy for the use of the Advocate General or the Standing Counsel naming therein the day for the making of the motion/mentioned in case of urgent early hearing.

8. Where ad-interim relief/interim relief is sought, a separate application shall be made for the purpose. The application shall be supported by affidavit and be filed alongwith the writ petition. In case such an application is filed subsequent to the filing of writ petition, before filing the same in the Registry, copy thereof shall be provided to the parties as provided in rule 6 and those who have already put appearance in the court pursuant to notice issued by it, otherwise the same shall be transmitted to him/them by the registered post making endorsement thereof in the application.

9. (a) Every annexure produced by the petitioner alongwith the writ petition shall be marked in the alphabetical order, namely, as annexure 'A', annexure 'B' and so on (omitting the alphabet 'I' and the marking shall be continued in respect of all additional annexures produced subsequently, alongwith the reply, interlocutory applications etc.
- (b) Every annexure produced by each of the respondents alongwith the objections shall be marked in the numerical order, namely, as annexure '1', annexure '2' and so on, and the numbering shall be continued in respect of all additional annexures produced by that respondent subsequently alongwith the interlocutory applications or additional affidavits etc.
- (c) The office of the High Court shall give continuous page numbers to all the papers filed subsequent to the filing of the

writ petition as and when they are filed, and arrange them in the order in which they are filed.

10. The court may on application made by the parties for that purpose, dispense with the production of any of the papers required by the Rules, on such terms and conditions as it may deem fit.

11. All petitions presented in the Registry shall be duly registered and examined whether they conform to the requirement of these rules. Registry shall report about the petition on form Schedule-II. In case some deficiency is found, the Advocate/petitioner shall be directed by the Registry to remove the deficiency within ten days. On failure to do so, the Registry will post the petition before the court pointing out these deficiencies.

12. *Procedure for filing common/joint petitions.*—Several persons having common cause, but are likely to benefit individually may file a common petition. However, they shall have to pay court fee equal to the number of petitioners in the petition. But this rule shall not apply in a case where the petitioners are agitating with a common cause.

13. Several persons having common or joint interest but not seeking any individual relief (interim or final) may file a single petition. In such case affidavit may be filed by any one of the petitioners.

14. (1) Every writ petition after it has been admitted to register shall be placed for preliminary hearing before a Division Bench to be constituted by the Chief Justice, and after its admission shall ordinarily be heard by a Judge sitting alone unless the bench admitting the petition directs otherwise.

(2) Notwithstanding anything hereinbefore contained the Chief Justice may, if he deems necessary, authorise a Judge sitting alone to hear such petition for admission.

(3) Every petition or application shall be listed in the next regular cause list. However, in case of urgency, the party may approach the court for relaxation of this period. In such case the petition shall be listed as per the direction of the Chief Justice or any other Judge specifically authorised in this behalf by him.

15. (1) Upon being satisfied, the court may either issue rule nisi or notice for rule nisi or dismiss the petition. In case the court decides to adopt either of the two former courses, the opposite side shall file complete reply on the merits of the case within the time fixed by the court. In case no time is fixed by the court, the reply shall be filed within four weeks from the date of the order. The Registrar may, however, grant such further

extension in time as he may deem fit upon being satisfied as to the genuineness of the request made for the purpose by the party concerned.

Provided further that court may allow such further extension as it may deem fit in the circumstances of the case and on being satisfied by the party, subject to conditions it may like to impose.

(2) Every notice issued by the court shall be sent through registered post with acknowledgement due at the expenses of the petitioner or in any other manner as may be directed by the court.

(3) Before filing the reply in the Registry, copy (s) of the same shall be served upon opposite party (s) personally or upon his counsel and signatures obtained on the original copy in token of the same being received.

(4) No rejoinder to the petition shall be filed except with the leave of the court.

(5) Upon making the order for rule nisi, the court may, upon application made, grant *ex parte* adinterim relief to the petitioner as the justice of the case may require, upon such terms, if any, as it may, consider just and proper. Provided that an application for rule nisi involving laws relating to public revenue including taxation laws shall not be moved, unless the court otherwise directs, without serving three days prior notice alongwith a copy of the application under Article 226 of the Constitution of India and section 103 of Constitution of Jammu and Kashmir.

(6) Notice of every such *ex parte* order shall be given to the party affected thereby and, unless the court has appointed a day for the return of the said notice, or otherwise directs, the Registrar shall fix a day for the return of the said notice and the application for interim relief shall be posted before the court for final orders on the date so fixed.

16. Unless otherwise directed by the court, the petitioner shall pay the process fee and supply as many copies of the petition, the affidavit in support thereof and all the annexures thereto, as there are respondents by the day succeeding the date of the order directing issue of notice.

17. When process fee is not paid and/or the requisite number of copies of the petition, affidavit and annexures are not supplied within the time prescribed in Rule 16, the petition shall be placed before the Registrar for orders, who may, if satisfied, grant such further extension, as he may deem fit. In case the party still fails to comply with the direction the case shall be listed before the court for appropriate orders.

18. The notice to be issued to the respondent(s) upon the making of the order for a rule nisi shall be in Form I appended hereto. The rule nisi granted as above and the copies of the petition, the affidavit in support thereof and annexure thereto shall be served on the respondent, if not already served by the petitioner or his Advocate.

19. (1) A party against whom an ex parte order has been made shall be entitled to apply to the court to discharge or vary the said order after giving notice to the party or parties who are likely to be affected by such order of discharge or variation. Such notice may be served on the Advocate for the parties.

(2) Every application made under sub-rule (1) shall be posted for orders before the court in the next Regular Cause List. Such application shall be disposed of within 30 days from this date and if the application is not so disposed of, the interim order shall, on the expiry of that period stand vacated.

20. Whenever an ex parte interim order made in a writ petition is required or directed to be served on any person or authority not impleaded as a party to the petition, a copy of the order to be so served shall be accompanied by a copy of the petition, affidavit and the annexures thereto. The party obtaining the direction or order from the court for service of such order on a person or authority other than the one impleaded in the writ petition, shall file into court for service on such person or authority the copies mentioned above.

21. When a party to the petition files any additional documents into court which he wishes to reply upon in support of his case, he shall file alongwith the memorandum accompanying the documents, an acknowledgement from the Advocate appearing for the opposite side that copies thereof have been served upon him.

22. (1) Cost in the writ petition shall be in the discretion of the court. The court may award exemplary costs/damages in case of frivolous or vexatious litigation.

(2) If costs awarded are not paid, the party entitled to receive the same may apply to the court where upon the court may either effect its recovery by adopting any mode it deems fit in the circumstances of the case or may transmit the order in the writ petition to any subordinate court for execution and such subordinate court shall proceed to execute the same in the manner prescribed for execution of decrees of that court.

PART-II

23. (1) The rules contained in this part shall apply to petitions seeking the issue of a writ in the nature of habeas corpus and shall, as far as

may be read as supplemental to the rules contained in Part-I of these Rules.

(2) A petitioner seeking the issue of a writ in the nature of habeas corpus, shall file into court a petition supported by an affidavit :

Provided that when a petitioner is under restraint, the court may, in its discretion, treat any written representation by him or by any of his relative or friend sent by post or otherwise, as a petition and dispense with an affidavit.

(3) Upon hearing the petitioner or his Advocate, if he appears, the Bench, if satisfied, shall direct a rule nisi to issue to the respondent against whom the order is sought, calling upon him to appear on a date to be fixed therein to show cause why the order sought should not be made and may also further direct him to produce in court the persons or persons alleged to have been illegally or improperly detained, to be dealt with according to law.

(4) On the date fixed for hearing or any subsequent date to which the hearing thereon may be adjourned, the court may dispose of the petition.

(5) An order for release if made by the court under the preceding rule shall be sufficient warrant to any Jailor, public authority or other person for the release of the person under restraint.

(6) The detinue shall be supplied free of cost a copy of final order made by the court under sub-rule (4) above.

SCHEDULE—I

I _____ son of _____ aged _____
 _____ resident of _____ do
 hereby state on oath/solemn affirmation that I have read the petition/the
 petition has been read over and explained to me and that the contents of
 paras _____ to _____ of the petition are true to my personal
 knowledge and those of paras _____ to _____ are true upon
 information received from _____ son of _____
 resident of _____ which I believe to be true and those
 of paras _____ to _____ are true upon information received from the
 records which I believe to be true and those of paras _____ to _____ are
 true upon legal advice received by me which I believe to be true.

I solemnly swear/affirm that this affidavit is true, no part of this is false
 and nothing has been concealed.

Deponent.

SCHEDULE—II

WRITS.

**IN THE HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU/SRINAGAR.**

EXAMINER'S REPORT IN WRIT PETITION.

Presented by Shri _____ Advocate.

Writ Petition No. _____ of _____ ()

()

_____ Petitioners,

Vs.

_____ Respondents.

Subject matter (in brief) _____

1. Date of presentation _____
2. Is the presentation as per the provisions of Writ Proceedings Rules, 1997 _____
3. Provision of Law invoked _____
4. Is the name, parentage, age and complete address of the petitioner/s and respondents/s stated in full ? _____
5. Is the writ petition maintainable under Article 226 of the Constitution/Section 103 of the State Constitution _____

COURT FEE

6. (a) Is it a petition by a single person ? _____

*Sub-classification of the subject matter to be written here.

(b) Is it a joint petition ? Have the petitioners stated satisfactory reasons for filing the joint petition ? _____

(c) Is it a common petition ? _____

(d) Is proper court fee paid ?

Whether the court fee stamps are properly punched and cancelled ? _____

7. Is the petition in the prescribed form ? _____

8. Whether the writ petition is as per rule ? _____

9. Whether the petition is indexed properly and accompanied by statement as required by Rule 4 of the Writ Proceedings Rules _____

and

10. Is the petition assigned by the petitioner and by his Advocate on every page of the petition _____

11. (a) Whether the relief claimed is specific ? _____

(b) Whether any interim relief is prayed for ? _____

AFFIDAVIT.

12. (a) Is it the affidavit in prescribed form ? _____

(b) Is it the affidavit of the petitioner ? _____

(c) If not, whether the affidavit mentions about the authorisation ? _____

ANNEXURES.

13. (a) If the petition is for issue of writ, whether certified or authenticated copy of the impugned order is filed ? _____

(b) If the proceedings have taken place before more than one authority, whether certified or authenticated copies of such orders are filed ? _____

(c) Number of Annexures filed _____

(d) Whether the enclosures are described as annexures and marked ? _____

VAKALATNAMA.

14. Is the Vakalatnama as per Rule _____
15. (a) Are the petitions and annexures typed on strong and durable paper ? _____
- (b) Are the petition and annexures legible ? _____
16. (a) Is there any Caveat pertaining to this writ petition ? _____
- (b) If so, whether a copy of the writ petition has been served on the caveator ? _____

PERMISSION.

17. (a) If the petition pertains to the wing (where it is being presented) _____
- (b) If reply to Cl. (a) is no whether proper permission required by the Rules, has been obtained by the Chief Justice/Senior Judge.

FOR EXAMINER.

18. Any other defect not covered by items 1 to 17 above.

FOR EXAMINER.

19. (a) If the written petition is defective, is it required to be returned to attend to defects shown at Sr. No. _____
- (b) If there is not defect, should the writ petition be numbered ? _____

(The Examiner shall sign while replying to this question).

FOR SECTION OFFICER.

20. (a) Has the Examiner checked the papers correctly ? _____
- (b) If not, state your opinion and suggest the action to be taken (i.e. to register or to return for rectifying the defects). _____

(Section Officer shall sign after checking)

Return the W.P. to rectify the defects stated at items Nos. _____
_____ In two weeks/may be registered.

Assistant Registrar.

Presented : Register this writ petition.
Additional/Deputy Registrar.

FORM NO. I

(Rule 18)

Notice to Respondent on an order of rule nisi.

**IN THE HIGH COURT OF JAMMU AND KASHMIR AT
SRINAGAR/JAMMU.**

Writ Petition No. _____ of 19

Petitioner.

Respondent.

By Shri

To,

Respondent.

Whereas a writ petition filed by the above named petitioner under Article 226 of the Constitution of India/Section 103 of the Jammu and Kashmir Constitution, as in the copy annexed hereto has been registered by this court and upon preliminary hearing, the court has directed the issue of rule nisi/show cause notice why rule nisi should not be issued ;

Notice is hereby given to you that if you wish to contest the writ petition, you may enter appearance within _____ days of the receipt of this notice either in person or by an Advocate appointed by you in that behalf and take such part in the proceedings as you may be advised.

(To be used when the date is not fixed by the Court)

Take further notice that in default of your appearance within the time prescribed, the writ petition will be heard and determined in your absence on any subsequent date and no further notice in relation thereto will be given to you.

Take notice that the above case is directed to be posted for final hearing/for consideration of interim prayer on _____ at _____ you may appear in person or by an Advocate on the said date, if you wish to contest the above matter.

(To be used when the date is fixed by the order of the court either for final hearing or regarding interim prayer).

Take further notice that if you fail to appear on the said date, the matter will be heard in your absence on the said date or on any subsequent date to which the matter may be posted as directed by the court without any further notice.

INTERIM ORDER

Pending disposal of the aforesaid writ petition, it is ordered by this Court on _____ 19 ____ as follows :—

(Interim order of the Court to be extracted).

Issued under my hand and the seal of this Court, this the _____ day of _____ 19 ____

By order of the Court. .

Assistant Registrar.