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ELECTION URGENT

WEST BENGAL STATE ELECTION COMMISSION
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No. 3866(15)-SEC/6D-9/2010

Date : 21.10.2013

From : The O.S.D. & E.O. Joint Secretary,
West Bengal State Election Commission.

To : (1) The District Municipal Election Officer
for Kolkata Municipal Corporation
& District Magistrate, South 24-Parganas.

(2) The District Municipal Election Officer &
District Magistrate, Cooch Behar / Jalpaiguri / Darjeeling /
North 24-Parganas / South 24-Parganas / Howrah / Hooghly /
Purba Medinipur / Paschim Medinipur/ Burdwan / Purulia /
Bankura / Murshidabad / Nadia.

**Sub.: Eligibility and ineligibility for candidature to the Municipal
General and Bye-Elections scheduled to be held on 22nd
November, 2013.**

Sir/Madam,

I am directed to state that the question of eligibility of any category of persons for contesting Municipal General Elections and Bye-Elections should be settled in the light of the provisions, constitutional and statutory, on disqualification. Extracts of such provisions are available in Municipal Elections Manual published by this Commission in 1998.

However, a few conditions specifying eligibility etc. for candidature to the Municipal Elections are given below. Examples are illustrative but not exhaustive.

I. Persons eligible to contest Municipal Elections:

- a) Not less than 21 years of age;
- b) Name appears in the electoral roll pertaining to the Municipality to which the election is being held;
- c) In case of reserved seat, the intending candidate must belong to the category to which the seat belongs;
- d) The person intending to be a candidate does not suffer from any of the disqualifications mentioned below.
- e) Para Teachers are eligible to contest elections if there is no bar in their service regulations;

- f) Chairman, District Primary School Council are eligible only after they resign from said post ;
- g) Teachers and members of the non-teaching staff of educational institutions receiving grants-in-aid from the Govt. can contest municipal elections.
- h) Civil Defence Volunteers are eligible to contest election if there is no bar in their Service Regulation.
- i) Employees of Sishu Siksha Kendra (S.S.K.) and Madhyamaik Siksha Kendra(M.S.K.) are eligible to contest election if there is no bar in their Service Regulation.

II. Persons not eligible to contest in Municipal Elections:

- a) Persons who are convicted for certain offences as specified in Section 8 of Chapter-III Part-II of the Representation of People Act, 1951.
A Person will continue to be disqualified irrespective of whether he is released on bail or not during the pendency of appeal, if any;
- b) Persons found guilty of corrupt practices as specified in Sec.8A of Chapter III, Part-II of the Representation of the People Act, 1951;
- c) Persons who have been dismissed from the service of the Central or any State Government or any Municipality for corruption or disloyalty as specified in Sec.9 of Chapter III, Part II of the Representation of the People Act, 1951 shall be disqualified for a period of 5 years from the date of such dismissal;
- d) Persons in whose favour a contract subsists with the appropriate Government or Municipality in course of his trade or business for supply of goods to or for execution of any works undertaken by that Government or the Municipality as stated in Sec.9A of Chapter III, Part II of the Representation of the People Act, 1951 read with Sec.30 of the West Bengal Municipal Elections Act, 1994;
- e) Persons holding office under a Government Company other than a Co-Operative Society as specified under Sec.10 of Chapter III, Part II of the Representation of the People Act, 1951;
- f) Persons failing to lodge account of election expenses within specified time without any satisfactory reason for such failure shall be disqualified for a period of three years from the date of the order notified by the Commission;
- g) Persons who have been adjudged by a competent court to be of unsound mind;
- h) Persons who are under twenty-one years of age;
- i) Persons who are undischarged insolvents;
- j) Persons who being discharged insolvents are without court certificate stating that their insolvency was caused by misfortune without any misconduct on their part;
- k) Persons who hold any office of profit under the Municipality;

- i) Persons who directly by themselves or by their partners or employers or any employee have any share or interest in any contract or employment with, by or on behalf of the Municipality, or
- m) Persons who are in the service of, or receive remuneration from the Municipality;
- n) Persons who have been elected to, or appointed under, any other Municipality or Panchayat or the Gorkhaland Territorial Administration in the district of Darjeeling;
- o) Persons who are disqualified by or under any law for election to the State Legislature are also disqualified for the purpose of being a member of a Municipality.

III. Also, it is essential to understand the basic principles underlying the tests of eligibility that have evolved through judicial decisions. These are illustrated in the examples given below.

i) School Teachers / Lecturers, Professors of Colleges.

Guest Lecturers/ Lecturers/ Readers /Teachers / Para Teachers and other categories of Staff of Govt.-owned colleges and schools are Government servants. Therefore, they are not repeat not eligible.

A teacher of a Municipal primary school is an employee of that Municipality and hence, is ineligible for election to that Municipality but not to any other Municipality.

ii) Library employees.

Employees of Government-owned libraries are not repeat not eligible. On the other hand, employees of other libraries which are run by societies or clubs which may or may not be receiving Government aid, are eligible.

iii) Anganwari workers

They merely receive honorarium from Government. They are not Government Servants and cannot be said to hold any office of profit under the Government. Therefore, they are eligible.

iv) Home Guards / Daily rated workers

Home Guards directly employed by govt. are not eligible as long as they remain empanelled.

Daily rated workers who receive employment from contractor's agencies appointed by Government are eligible because they do not receive any remuneration directly from the Government.

v) Employees of Govt. Undertaking, Banks etc.

The Chairman, Executive Directors and other Directors of Banks and Public Sector Undertakings appointed / controlled by the Government are clearly not eligible. But other officers and employees of such P.S.U.s, Banks etc. over whom Government have no disciplinary control and / or whose salaries are not paid by the Government, should be regarded as eligible.

vi) Persons employed in KVIC, Tantuja, Tantusri etc.

The principles indicated at (v) above will apply. Thus, if the Managing Director, Directors etc. of KVIC, Tantuja etc. are appointed and controlled by Government and / or paid by the Government they will not be eligible to contest. But other employees not under Govt. control and not paid by the Govt. directly will be eligible.

vii) Municipal Employees

In terms of clause (h) of sub-section (1) of section 30 *ibid*, any person elected to, or appointed under any Municipality or Panchayat or the Gorkhaland Territorial Administration, shall not be eligible for election as a member. In terms of latter provision, therefore, no employee being appointed by a particular Municipality, shall not be eligible to contest election from the said Municipality. Needless to mention that the Chief Executive Officers, Health Officers, Engineers etc. who are appointed by the Government in all Municipalities and are under Government control are clearly ineligible to contest in any Municipality. Also, Members of the Board of Councillors, Govt. Appointees to the Board of Councillors of a Municipality, or similar other representative bodies, are clearly not eligible to contest for election in any other Municipality without resigning from such post.

x) Contractors

In the case of any enlisted contractor or plumber having subsisting contract with a particular Municipality for execution of any work, such contractor or plumber as the case may be shall not be eligible as enjoined under Section 30 (1) (f) of the West Bengal Municipal Election Act, 1994. However, if on the date of filling of nomination such contracts do not subsist for any valid reasons such as legal termination of the contracts, completion of work resulting in termination of contract, such contractors / plumbers not enrolled in the List of Contractors prepared in a lawful manner in this behalf, shall be eligible. However, in case of a contractor who has completed his work but has not received full payment or whose security deposit has not been refunded, his contractual obligations still persist and he/she shall not be eligible to contest.

xi) M. R. Dealers

An M. R. Dealer in the capacity of M. R. Dealer, is eligible to contest. However, if such M. R. Dealer is also a G. R. Dealer or Mid-day Meal storing agent working under the orders and directions of the Municipality, he is not eligible to contest.

- IV.** The principles indicated in the above instructions should be applied with reference to the factual position regarding source of appointment, source of remuneration, nature of posts etc. relevant service rules and regulations in each particular case. **The true test of determination of whether a person holds an office of profit under the Government depends upon the degree of control the Govt. has over it, the extent of control exercised by any other bodies or committees and its composition, the degree of its dependence on the Government for its financial need and the functional aspect, namely whether the body is discharging any important governmental function or just some function which is merely optional from the point of view of the government.**

The payment from out of the Government revenues is another test. But payment from a source other than the Government revenue is not always a decisive factor.

- V. It should also be clearly understood that even categories of persons eligible in terms of Municipal Election Laws may be bound by conditions of their service rules, contracts etc. It will be for them to ensure compliance with such conditions and to suffer consequences if they fail to do so. Municipal Election Officers are not concerned with those aspects of the matter.
- VI. In case of any complexity, clarification may immediately be obtained from the State Election Commission.

All the above illustrations are not exhaustive. In case of any doubt, actual determination of eligibility of a candidate should always be made with reference to the relevant Act and the Rules in force.

All concerned may please be informed accordingly.

Yours faithfully,

O.S.D. & E.O.
Joint Secretary,

West Bengal State Election Commission

No. 3866(15)/1(32)-SEC/6D-9/2010

Date : 21.10.2013

Copy forwarded for information and necessary action to the:

- 1) Smt. Soma Shaw, WBCS(Ex.), Municipal Returning Officer for KMC, Ward No.1 & Assistant Election Officer, District Election Office, 63, N.S. Road, Kolkata-700001.
- 2) Sri Tanay Deb Sarkar, WBCS(Ex.), Municipal Returning Officer for KMC, Ward No.24 & Deputy Director, Panchayats & RD, Salt Lake.
- 3) Municipal Returning Officer & Sub-Divisional Officer, Dinhata / Cooch Behar(Sadar)/ Mal /Jalpaiguri (Sadar) / Siliguri / Barrackpore / Bidhannagar / Barasat / Alipur (Sadar) / Chandernagar / Raghunathpur / Purulia(Sadar) / Egra / Asansol / Lalbag / Bankura (Sadar) / Howrah(Sadar) / Midnapur(Sadar) / Jhargram / Berhampur(Sadar) / Krishnanagar(Sadar).
- 4) President/ Chairman/ General Secretary/ Secretary.

O.S.D. & E.O.
Joint Secretary,

West Bengal State Election Commission