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Government Notice

OFFICE OF THE PRIME MINISTER

No. 97

1990

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 28 of 1990: Judges' Pensions Act, 1990.

ACT

To provide for the payment of pensions and gratuities to judges who retire or are removed from office and for the payment of pensions to the widows or widowers of such judges; and for matters connected therewith.

(Signed by the President on 12 December 1990)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions.

1. (1) In this Act, unless the context indicates otherwise -

“dependant”, in relation to a judge, means any minor child, including any step-child, legally adopted child or child born out of a marriage by customary law, of such judge, who is not self-supporting, or any such a child who is not a minor, but who is not self-supporting by reason of any permanent physical or mental disability;

“gratuity” means a single amount payable from the State Revenue Fund in terms of section 2(1)(b) or 3(2);

“judge” means any person holding the office of Chief Justice or additional judge of the Supreme Court of Namibia or of Judge-President or additional judge of the High Court of Namibia;

“Minister” means the Minister of Finance;

“pension” means any amount payable from the State Revenue Fund in terms of section 2(1)(a) or 3(1) at an annual rate in equal monthly payments;

“pensionable salary” means the amount of the annual salary payable to a judge in terms of section 2 of the Judges' Remuneration Act, 1990;

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“pensionable service” means any period of service, calculated by the year and a portion of a year, performed as a judge in a permanent capacity, as well as such service performed in an acting capacity for any continuous period immediately prior to assuming office as a judge in a permanent capacity, and includes any such period of service so performed as a judge of the former Supreme Court of South West Africa immediately prior to the date of appointment of such judge as a judge of the High Court or the Supreme Court of Namibia, as the case may be;

“pensioner” means any person who is in receipt of a pension; and

“Permanent Secretary” means the Permanent Secretary: Finance.

(2) Any person who, immediately prior to the date of commencement of this Act, was in receipt of an annuity in terms of any provision of any law repealed by section 12, shall from that date be deemed to be in receipt of a pension as applied by this Act.

Benefits payable to judges after retirement or removal from office.

2. (1) There shall be paid to any judge who retires from office in terms of the Supreme Court Act, 1990, or the High Court Act, 1990, or who is removed from office in terms of Article 84 of the Namibian Constitution -

(a) a pension which, in respect of each office held by him or her during his or her pensionable service, shall be calculated in accordance with the formula -

$$\frac{A}{15} \times B$$

in which formula the factor -

A represents the pensionable salary applicable to the office concerned at the time of such judge's retirement from office; and

B represents the period of pensionable service of such judge in the office concerned;

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- (b) a gratuity which, subject to the provisions of subsection (4), in respect of each office held by him or her during his or her pensionable service shall be calculated in accordance with the formula -

$$C \times 2 \times \frac{D}{15}$$

in which formula the factor -

C represents the pensionable salary applicable to the office concerned, at the time of such judge's retirement from office; and

D represents the period of pensionable service of such judge in the office concerned, but not exceeding 20 years.

(2) Any pension shall be supplemented in accordance with such rates or scales and in such circumstances and on such conditions and with effect from such date, which may be a date in the past, as the Minister may determine.

(3) (a) The total amount of the pension payable in terms of subsection (1) of this section to a judge who so retires in terms of the said Supreme Court Act, 1990, or the said High Court Act, 1990, or who is removed from office in terms of Article 84 of the Namibian Constitution, shall not be less than one third of the highest pensionable salary during the period of his or her pensionable service and shall, subject to the provisions of subsection (2), not exceed such pensionable salary.

(b) Subject to the provisions of subsection (2), the total amount of the pension payable in terms of subsection (1) of this section to a judge who retires from office before he or she reaches the retiring age on the ground that he or she has completed the minimum period of pensionable service entitling him/her so to retire in terms of any law, shall not exceed 80 per cent of the highest pensionable salary during the period of his or her pensionable service, plus 4 per cent of

such pensionable salary for every full year of pensionable service, if any, performed after the attainment of the age of 65 years.

(4) The amount of a gratuity payable to a judge in terms of subsection (1)(b) shall not be less than his or her highest pensionable salary during the period of his or her pensionable service and shall not exceed 3 times such highest pensionable salary.

Benefits payable on death of judge or pensioner.

3. (1) If a judge or pensioner dies and he or she is survived by a widow or widower, there shall be paid to such widow or widower, as the case may be -

(a) in the case of the death of a judge, a pension equal to 75 per cent of the pension which would have been payable to such judge in terms of section 2(1)(a) if he or she had not died, but had retired with the approval of the President in terms of any law permitting such retirement on the ground of mental incapacity which disables such judge from the proper discharge of his or her duties of office, or where any other reason exists which the President deems to be sufficient;

(b) in the case of the death of a pensioner, a pension equal to 75 per cent of the pension which was payable to such pensioner immediately prior to his or her death.

(2) If any judge dies, there shall be paid -

(a) to the widow or widower of such judge, as the case may be; or

(b) if there is no widow or widower, to such dependants of such judge as the Minister may designate; or

(c) if there are no dependants to be so designated, to the estate of such judge,

a gratuity equal to the amount of the gratuity which would have been payable to such judge in terms of section 2(1)(b) if he had not died, but had retired as referred to in subsection (1)(a) of this section.

(3) Any gratuity payable in terms of this section to the dependants of a judge, shall be divided among them in such proportions as the Minister may determine.

Payment of gratuity to beneficiaries designated by judge.

4. (1) (a) Any judge may, on such form and subject to such conditions as the Minister may determine, notify the Minister of his or her wish that the gratuity referred to in section 3(2) be paid on his or her death to the beneficiaries mentioned in that form and be divided among such beneficiaries in the proportion mentioned in that form.

(b) A judge may, with the concurrence of the Permanent Secretary, withdraw any such notification or substitute a new notification therefor.

(c) For the purposes of this section "beneficiaries" include the estate of the judge concerned.

(2) Notwithstanding anything to the contrary contained in any other law, the Minister may on the death of a judge who so notified him or her, pay at his or her discretion the gratuity concerned in accordance with the judge's wish.

Payment of benefits to persons other than those entitled thereto.

5. If the Minister is satisfied that for any reason it is undesirable to pay direct to any person the whole amount of any pension or gratuity payable to such person, the Minister may order that such pension or gratuity or any portion thereof be paid to any other person on such conditions as the Minister may determine in regard to the disposal thereof for the benefit of such first-mentioned person or his or her dependants.

Date from which pensions are payable and ceased and method of payment of pensions.

6. (1) A pension payable -

(a) in terms of section 2(1)(a), shall be payable with effect from the first day of the month following the month in which the judge's service as judge terminated;

(b) in terms of section 3(1), shall be payable with effect from the first day of the month following the month in which the judge or pensioner, as the case may be, died,

until the last day of the month in which the person to whom such pension is payable, dies.

(2) All pensions shall be paid on such dates and in such manner as the Minister may determine.

Prohibition of cession and attachment of pension or gratuity.

7. (1) No pension or gratuity, or right in respect of any pension or gratuity, shall be capable of being assigned or transferred, or otherwise ceded or of being pledged or hypothecated or, save as provided in section 11(2) of the Maintenance Act, 1963 (Act 23 of 1963), be liable to be attached or subjected to any form of execution in terms of any judgement or order of any court of law.

(2) Notwithstanding the provisions of subsection (1) or any other law, the Permanent Secretary may from time to time deduct from the pension or gratuity of any person any amount which is due to the State Revenue Fund.

Pension or gratuity not an asset in insolvent estate.

8. Any pension or gratuity received by any person whose estate has been sequestrated, shall not form part of the assets in his or her insolvent estate.

Time limit in respect of certain actions.

9. (1) Any legal proceedings in respect of any act performed in terms of this Act or in respect of any failure to perform any act in terms thereof, shall be instituted within 12 months from the date upon which the plaintiff had knowledge or could reasonably have had knowledge of such act or failure.

(2) No legal proceedings referred to in subsection (1) shall be instituted before the expiry of 30 days after the service of a notice in writing on the defendant stating clearly and fully the intention of instituting such proceedings and particulars in regard to the alleged act or failure constituting the cause of action.

Delegation of powers.

10. (1) The Minister may, on such conditions as he or she may deem fit, delegate to the Permanent Secretary any of the powers conferred upon him or her by this Act, and may authorise the Permanent Secretary to perform any of the functions or to carry out any of the duties which are assigned to or imposed on the Minister by this Act.

(2) The Permanent Secretary may, on such conditions as he or she may deem fit and with the approval of the Minister, delegate to the holder of any post on the establishment of the Ministry of Finance any of the powers conferred upon the Permanent Secretary by or under this Act and may authorise any such holder to perform any of the functions and carry out any of the duties assigned to or imposed on the Permanent Secretary by or under this Act.

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Payment of pensions and gratuities from State Revenue Fund.

11. Any pension or gratuity payable to any person in terms of this Act shall be paid from the State Revenue Fund out of moneys appropriated by the National Assembly for that purpose.

Repeal of Act 11 of 1982 and Proclamation AG. 10 of 1989.

12. The Judges' Pensions Act, 1982 (Act 11 of 1982), and the Judges' Pensions Amendment Proclamation, 1989 (Proclamation AG. 10 of 1989), are hereby repealed.

Short title.

13. This Act shall be called the Judges' Pensions Act, 1990.
