

TAMIL NADU PUBLIC SERVICE COMMISSION

Office Order No. 147, dated 12.01.2021

(Amended vide Commission's orders dated 28.04.2021)

Sub.: Legal Cell Department – Matters relating to Court Proceedings - Filing of Counter Affidavit – Action on Interim / Final Orders - Filing of Writ Appeal / Special Leave Petition / Review Petition – Approval of Files – Maintenance of Registers and Other Records – Appointment of Standing Counsel - Engagement of Senior Counsel – Remuneration to Standing Counsel / Senior Counsel – Review of Cases - Sections dealing with the Subject under Litigation - Regarding.

The following orders are issued with regard to the matters relating to court proceedings, approval of files, filing of counter affidavit, filing of writ appeal / special leave petition, maintenance of registers and other records, sections dealing with the subject under litigation, appointment of Standing Counsel and engagement of Senior Counsel and remuneration to Standing Counsel / Senior Counsel.

A. General

- (1) All officers and staff of the Commission shall bear in mind that effective monitoring of litigation pending before the courts and liaising with the Standing Counsel may entail working beyond office / court hours or on holidays or during court vacation.
- (2) All cases shall be contested by the Commission in the name of the Secretary, including instances where cases are filed against the Chairman / Members / Controller of Examinations / others in their official capacity, the reply shall always be given in the name of Secretary, by the Joint Secretary / Deputy Secretary (LCD). In all such cases, the counter affidavit shall always include the following paragraph:

“It is submitted that the writ petition is not maintainable against the Chairman / Members / Controller of Examinations / (any other) of the Commission. It is submitted that Under Rule 17 of the Tamil Nadu Public Service Commission's Rules of Procedure, the Secretary shall represent the Commission, in his official capacity as the

administrative head of the office of the Commission. The name of Chairman / Members / Controller of Examinations / (any other) of the Commission, may therefore be deleted from the cause title of the writ petition."

- (3) The allocation of cases among the Legal Cell Department (LCD) sections shall be as follows:

Sl. No.	Section	Recruitment-based Allocation
1.	LCD-A	State Service – Technical
2.	LCD-B	State Service – Non-Technical
3.	LCD-C	Subordinate Service – Technical
4.	LCD-D	Subordinate Service – Non-Technical
5.	LCD-E	Miscellaneous and RTI Cases

B. Matters relating to Court Proceedings

- (1) The staff attached to the LCD section entrusted with monitoring the database shall furnish to the Joint Secretary / Deputy Secretary (LCD) the daily list of cases to be heard before the Madras High Court / Madurai Bench of Madras High Court, through the Litigation Management System (LMS) with updated inputs from the Section Officer (SO) / Assistant Section Officer (ASO) / Assistant concerned.
- (2) The Nodal Officer, in the cadre of Assistant Section Officer / Assistant, shall witness the court proceedings at the Madras High Court daily and liaise with the Standing Counsel to obtain updates on cases posted for that day. He shall also liaise with the Standing Counsel at the Madurai Bench of Madras High Court for the same purpose.
- (3) The Nodal Officer, attached to LCD-B section, shall also co-ordinate daily with the SO / ASO / Assistant of the LCD sections concerned and brief / apprise the outcome of the day's hearings. Matters involving sensitive issues shall be brought to the notice of the Secretary / Controller of Examinations immediately.
- (4) In respect of important cases, the SO / ASO / Assistant of the LCD section concerned, shall be present in court to witness the proceedings upon the direction of the Joint Secretary (LCD) / Deputy Secretary (LCD) / Under Secretary (LCD), in order to obtain a first-hand account of the happenings in the High Court.

- (5) In respect of sensitive cases, the SO / ASO / Assistant of the LCD section concerned along with the Joint Secretary (LCD) / Deputy Secretary (LCD) / Under Secretary (LCD) shall also witness the court proceedings, upon the direction of the Secretary / Controller of Examinations and if required, furnish such information to the Standing Counsel, as may be sought for by the court.
- (6) The SO / ASO / Assistant of the LCD section concerned shall invariably be present in the court, in matters where the services of a Senior Counsel are provided to the Standing Counsel and shall certify to that effect in fee bills claimed by the Senior Counsel.
- (7) In any case, the SOs of the LCD sections concerned shall interact with the Standing Counsel at the Madras High Court / Madurai Bench of Madras High Court, regarding furnishing / apprising updated information on matters listed for the day, beforehand or at least on the forenoon of the date of hearing, thus also facilitating obtaining of adjournment / time, to receive instructions from the Commission, if required.
- (8) The Joint Secretary (LCD) / Deputy Secretary (LCD) shall brief the Chairman on a daily basis, preferably before 11.00 am regarding cases listed for hearing on that day, if any and the outcome of cases heard on the previous day, as well as the current status / outcome of cases involving sensitive issues.

C. Filing of Counter Affidavit

- (1) On receipt of writ petitions / writ appeals or interim orders / final orders in cases where the Commission is named a respondent (either main or formal party), the dealing staff shall take prompt action to bring it to the knowledge of the officials concerned and undertake further action to file counter affidavit or other follow-up action in time.
- (2) Whenever a new case is received, it shall be posted in the LMS within twenty four hours. The copy of the affidavit shall be transferred to the sections dealing with the subject concerned immediately and gist of the case shall be obtained, either within a week's time or at once, depending on the urgency, along with copies of the relevant documents and the typed-set of papers.

- (3) The process of drafting counter affidavit shall be initiated immediately upon receipt of the gist of the case from the sections concerned.
- (4) While drafting counter affidavit / rejoinder affidavit / reply affidavit, utmost care shall be taken not to omit essential facts furnished by the sections concerned.
- (5) The history of the case in detail shall be stated in the counter affidavit, in a chronological manner, specifically stating the relevant rules / regulations / instructions in force. The averments of the petitioner and the grounds stated, shall be countered without any omission and the same shall be supported by a typed set.
- (6) Relevant case laws shall also be cited in the counter affidavit. For this purpose, a database of case laws and court orders shall be developed and updated from time to time.
- (7) Whenever an interim order not in favour of the Commission is issued, the officers and the Standing Counsel concerned shall ensure that the counter affidavit contains a plea seeking to vacate or modify such interim order.
- (8) The draft counter affidavit shall be sent to the Standing Counsel for vetting and incorporating case laws, after approval by the Joint Secretary (LCD) / Deputy Secretary (LCD).
- (9) Whenever writ petitions of a similar nature / prayer are filed before the Madras High Court as well as the Madurai Bench of Madras High Court, counter affidavits shall be prepared on similar lines, so as to vindicate the stand of the Commission and sent for vetting to the Standing Counsel both at the Madras High Court as well as the Madurai Bench of Madras High Court. Both Counsel shall finalize the counter affidavit after a discussion among themselves. The Section Officer concerned shall support the Counsel in this regard.
- (10) After receipt of the counter affidavit / rejoinder affidavit / reply affidavit vetted by the Standing Counsel, a clear and neat copy of the same shall be submitted immediately for approval of the Secretary.
- (11) In case the issues in the writ petition / writ appeal, etc., concern subjects dealt by both Secretary and Controller of Examinations, then the approval of the counter affidavit / rejoinder affidavit /

reply affidavit vetted by the Standing Counsel, shall be obtained not only from the Secretary but also from the Controller of Examinations before filing the same.

- (12) In case the issues dealt with in the counter affidavit lie within the purview of the Controller of Examinations, approval shall be obtained from the Controller of Examinations. Final approval shall, in any case, rest with the Secretary, in his administrative capacity as the official respondent with reference to the Commission's Rules of Procedure.
- (13) The counter affidavit shall be formally signed by the Joint Secretary (LCD) / Deputy Secretary (LCD), as the case may be.
- (14) The requisite signatures shall be affixed in black ink, along with the official seal, on each side of the green Bond sheet of the counter affidavit to be filed.
- (15) After approval, the fair copies (green copies) of the counter affidavit shall be forwarded to the Standing Counsel for filing and a copy of the same shall be circulated to the Full Commission for *post facto* approval.
- (16) Every document / rule / orders, etc., cited / relied upon in the counter affidavit shall be filed by way of typed set of papers. **The sections furnishing the gist of the case shall provide the copies of supporting documents, as a typed set of papers.**
- (17) The counter affidavit shall be filed within the time stipulated by the court or within thirty days from the date of receipt of affidavit / case papers, whichever is earlier.
- (18) In all new cases, where the Government or other administrative departments are a party, the counter affidavit shall be filed within thirty days or before the date of next hearing, whichever is earlier. If necessary, an adoption counter affidavit shall be filed by the Commission, after obtaining a copy of the counter affidavit filed by the respective main respondent.
- (19) In cases where the Government or other administrative departments are the main party and the Commission has also been cited as a respondent and the subject matter of litigation is not related to the Commission, a deletion petition shall be filed on behalf of the Commission.

- (20) In case the filing of any new case is reported through the media / press, etc., the Section Officer concerned shall contact the Standing Counsel and obtain the related papers including order copy, if any. Such cases shall be brought to the knowledge of the Joint Secretary / Deputy Secretary / Under Secretary concerned and further action undertaken immediately.

D. Action on Interim / Final Orders

- (1) In case an interim order of stay / injunction / direction is granted in any case, pending disposal of the main petition or final orders are passed in the writ petition / writ appeal, the feasibility of compliance with the said order shall be examined immediately.
- (2) The Assistant / ASO concerned shall obtain a copy of such order immediately for further action. Until such time as the order copy is received, the Assistant / ASO concerned shall strive to obtain the eCopy of the order, by accessing the relevant website, at least once in every week from the date of passing of such order. Such search results shall be filed as part of the main file. The Standing Counsel shall be addressed every week in this regard.
- (3) In cases where compliance with the orders passed which would place the Commission in a disadvantageous position –
- (a) In the case of interim orders, a detailed counter affidavit together with a petition to vacate the interim stay/injunction/ direction shall be filed without any delay. Action towards getting the petition numbered and listed for hearing shall be undertaken, so as to avoid initiation of contempt proceedings citing non-compliance with the interim orders.
- (b) In the case of final orders, the protocol as outlined at **[E]** below shall be followed.
- (4) In case the time granted by the court for compliance with interim or final orders, is felt to be insufficient, the section requiring to initiate action towards such compliance shall instruct the LCD section concerned, to take action to seek extension of time, by filing the relevant affidavit before the court within five working days.

E. Filing of Writ Appeal / Special Leave Petition / Review Petition

- (1) In cases where, on account of decisions made, based on existing Acts / rules / office orders, etc., orders issued are not in favour of the Commission and compliance with such orders is not feasible, the LCD section concerned shall take immediate action to file an appeal / review / Special Leave Petition (SLP), etc.
- (2) In case of a negative outcome, on account of decisions made in the absence of Acts / rules / office orders, etc., the LCD section concerned shall place the file before the Commission and seek orders as to whether the orders of the Court are to be complied with or an appeal is to be preferred with relevant justification and legal opinion from the Standing Counsel. The policy decision taken by the Commission in such cases, shall be incorporated as part of existing office orders or issued in the form of a new office order. In case of emergency, with the approval of Chairman, necessary appeal may be preferred and ratification may be obtained from the full Commission.
- (3) The papers pertaining to the writ appeal / SLP shall be filed within ten working days from the date of receipt of the orders.
- (4) Writ appeals / SLPs to be filed, shall invariably be placed before the Secretary for approval.
- (5) On filing the writ appeal / SLP, effective follow-up action shall be pursued, while ensuring that necessary stay order is obtained. Any difficulty faced in this regard shall be brought to the notice of the Secretary / Controller of Examinations, immediately.
- (6) In order to minimize the delays in the hearing of Special Leave Petitions and Writ Appeals, the numbering and the dates of hearing may be monitored personally by Secretary.
- (7) While filing the Special Leave Petition, the following documents shall be submitted without fail:
 - (i) SLP
 - (ii) Stay Petition
 - (iii) Original order of the High Court
 - (iv) Affidavit
 - (v) Vakalat
 - (vi) Copies of papers in the original file, on the basis of which action has been initiated.

F. Approval of Files

Files submitted by the Legal Cell Department for approval of the Secretary or Controller of Examinations, as the case may be, shall be brought in person, by the Under Secretary / Section Officer concerned and approval obtained across the table, after consultation. In matters of a sensitive and urgent nature, such approval shall be obtained at a joint sitting of the Secretary and Controller of Examinations.

G. Maintenance of Registers and Other Records

(1) Each of the sections in the LCD shall maintain a database of the following items relating to their section. The database shall be reviewed along with the Personal Register, regularly.

- (a) New Cases
- (b) Interim Orders
- (c) Stay Orders
- (d) Final Orders
- (e) Writ Appeal by the Commission
- (f) Writ Appeal by Others
- (g) SLP / Counter Affidavit by the Commission
- (h) SLP / Counter Affidavit by Others
- (i) Contempt Cases
- (j) Follow-up Action Required / Monitored

The LCD sections shall also maintain a database of court orders in the following format:

Sl. No.	C. No.	W.P. No. and Name of the Petitioner	Prayer	Order date	In Favour of or Not	Follow up Action: Complied / Filed Review /Appeal / SLP, etc.	Remarks

(2) The LCD staff concerned shall update the entries in the computer database then and there.

- (3) The designated ASO / Assistant attached to the LCD-C section shall:
- (a) Submit a monthly report in the format as shown in Annexure I to the Secretary, as to the number of new cases accrued and number of cases disposed as on the 10th of every month for the previous month.
 - (b) Maintain a year-wise eStockfile of judgements of all cases, bound and preserved for each year.
 - (c) Prepare and maintain a subject-wise index of the judgements in those cases where the Commission was a party, covering the period from January to December of each year.
 - (d) Upon receipt of final orders, the Assistant / ASO concerned shall initiate a file seeking specific orders of the Secretary with regard to hosting the same in the Commission's website.
 - (e) All unattended files except those in which a lie-over order has been passed, shall be submitted to the Under Secretary on the 10th of every month.
 - (f) All LCD sections shall prepare and update a 'Fact Sheet' as depicted in Annexure II.

H. Appointment of Standing Counsel

- (1) It shall be the responsibility of the LCD parent section to maintain a permanent panel of advocates (five, for Chennai; three, for Madurai), ready to be appointed as Standing Counsel for the Commission. For this purpose, the Secretary shall address the Advocate General from time to time and obtain a list of practicing advocates with not less than ten years of experience, with an excellent track record of handling Constitutional Law and Service matters.
- (2) The Secretary and Controller of Examinations shall conduct interview with the candidates provided by the Advocate General and shortlist the eligible advocates, based on consensus. Such shortlisted names shall be referred to the Commissioner of Police / Director General of Police, for verification of character and antecedents.
- (3) On receipt of the report from the Commissioner of Police / Director General of Police, the shortlisted names shall be included in the panel of advocates. As and when the term of an existing Counsel is not

extended at the end of the term given or for non-performance during the term or any other reason the Commission deems fit, such Counsel may be removed as the Standing Counsel for the Commission and he shall be replaced by an advocate from the permanent panel.

- (4) The tenure of appointment of the Standing Counsel shall normally be one year from the date of appointment or the end of the calendar year, whichever is earlier.
- (5) The Commission may, if so desired, extend the services of the Standing Counsel, based on performance, for a further period of one year (from 1st of January up to the 31st of December).
- (6) The total period of service as Standing Counsel shall, however, not exceed five years.

I. Engagement of Senior Counsel

- (1) In respect of sensitive cases before the High Court / Supreme Court, Senior Counsel shall be engaged with the approval of the Commission.
- (2) In case of emergency, the services of a Senior Counsel shall be engaged with the approval of the Secretary and post-facto approval of the Commission shall be sought for later.
- (3) In cases where the services of a Senior Counsel are engaged to deal with sensitive / important cases, the Deputy Secretary / Under Secretary / Section Officer dealing with the subject under litigation, shall participate in the discussion to facilitate instructions to the Senior Counsel on need basis.

J. Remuneration to Standing Counsel / Senior Counsel

- (1) The fee claimed by the Senior Counsel shall be settled within fifteen days and necessary entries made in the software as well as in the payment register maintained in the LCD sections.
- (2) The file sanctioning monthly payment of retention fee to the Standing Counsel shall be approved on the last working day of the month.
- (3) The bills for payment shall be met out from the concerned head of account in the budget.

K. Miscellaneous

- (1) Upon filing of a writ petition / writ appeal / review, etc., the details required in the LMS software shall be entered in the database by the ASO / Assistant concerned, through the user ID and password assigned to them individually within two working days. Section Officers shall verify the correctness of the details entered by the ASO / Assistant and edit the details, if necessary.
- (2) After such initial entry of a particular case, every subsequent development in the case, i.e., the stages it passed through, like adjournments, interim / final orders, the action taken on such orders, filing appeal / review / revision, etc., shall be entered in the LMS, until issue of final orders and/or compliance therewith.
- (3) The Section Officers shall ensure that the Standing Counsel have filed the counter affidavit/appeal/review/revision promptly before the court, ascertain the date of filing, number assigned to the writ appeal / review, etc., and follow-up the same to ensure issue of favourable orders.
- (4) In case the counter affidavit / appeal / review / SLP have not been filed, the Section Officer concerned shall periodically remind the Standing Counsel to file it immediately. Any abnormal delay shall be brought to the notice of the Under Secretary / Deputy Secretary / Joint Secretary / Controller of Examinations / Secretary, as the case may be.
- (5) The Section Officers shall monitor, through the Standing Counsel, as to whether any appeal, etc., has been preferred by the opposite party, viz., petitioners/respondents.
- (6) In the absence of a copy of the court orders, an eCopy of the same shall be used to take further action in the file. In case of any urgent action required to be taken on the orders of the court, an eCopy with due verification from the High Court website, shall be used for obtaining further orders.
- (7) Copies of interim orders / final orders / papers relating to court cases, if received by sections other than LCD, through Tapal or otherwise, shall be transferred to the LCD sections concerned immediately.

L. Review

- (1) The Under Secretaries shall review the pending / arising litigations pertaining to all sections under their control, on the first working day of the first fortnight, issue instructions as required and monitor the same until issue of final orders / compliance / filing of appeal / review / revision until final disposal.
- (2) The Joint Secretary (LCD) / Deputy Secretary (LCD) shall review the cases on the first working day of the second fortnight and issue instructions to the officials concerned. Lapses / delays adversely affecting the position of the Commission shall be brought to the notice of the Secretary or Controller of Examinations, as the case may be.
- (3) The Secretary shall undertake a review once a month, preferably before the 10th with the LCD sections and once in three months with the Standing Counsel and the Advocate on Record.
- (4) The Secretary shall present the status of cases where Commission is the respondent and performance of the Standing Counsel to the full Commission, in the months of June and December.
- (5) During the course of the review, the Secretary and all other officers shall analyze each case filed, to ascertain whether litigation has arisen due to:
 - (a) Non-adoption or improper adoption of rules / regulations / instructions in force, governing the claim / issue.
 - (b) Non-adoption of other procedures prescribed under the rules / regulations.
 - (c) Denial of a reasonable opportunity to be heard, before making any decision.
 - (d) Handling of issues by an officer who is not competent or unfamiliar with the subject.
 - (e) Dereliction of duty by the officer who is duty bound to handle the case and delegation of work to a subordinate.
- (6) The parent section of LCD shall furnish the list of cases for which the respective LCD sections had sought for gist of the case / particulars and the time taken by the responding sections to furnish the same in the following format:

Sl. No.	Case No.	Responding Section concerned	Date on which gist requested	Date on which gist provided	Time taken in descending order

A periodical in this format shall be submitted to the Secretary and shall be discussed at the monthly 'All Under Secretaries Review' undertaken by the Secretary.

M. Sections dealing with the Subjects under Litigation

The sections dealing with the subjects under litigation and in possession of the original records shall:

- (1) Furnish the gist of the cases along with copy of supportive documents immediately to the LCD section concerned so as to enable follow up action by LCD.
- (2) Attend the court or contact the Standing Counsel through the LCD, only on the direction of Secretary / Controller of Examinations.
- (3) Intimate the latest / subsequent developments in the subject under litigation, that may have an impact on the proceedings pending before the court, to the LCD section concerned immediately.
- (4) Furnish material sought for by the court for perusal, in the course of legal proceedings, to the LCD section concerned immediately.

... Annexures I & II

**K. NANTHAKUMAR, I.A.S.
Secretary**

ANNEXURE I

Monthly Report

List of Files in the LCD sections in the Month of _____ 20xx

Section	Seat Number	No of Pending Files	No. of WPs Pending	No of New Files	No of New WPs	No of Disposed Files	No of Disposed WPs	Total no of Files pending till date	Total No. of WPs Pending
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
A	A1								
A	A2								
A	A3								
B	B								
C	C								
D	D1								
D	D2								
D	D3								
E	E1								
E	E2								
E	E3								
Total									

ANNEXURE II

Fact Sheet

File No. (C. No.)	
WP/WA/Review/SLP No.	
Name of the Petitioner	
Name of the Petitioner's Counsel	
WP/WA/Review/SLP Received on	
Counsel for the Commission	
Prayer of the petitioner (Brief Description of the Case)	
Name of the Recruitment, Notification No. and Date:	
Interim Prayer, if any	Interim Orders, if any (with Date & Direction)
Gist of the case to be furnished by _____ Section(s)	
Copy transferred to _____ Section(s) on	
Gist received from _____ Section(s) on Sec Sec Sec
Draft Counter Affidavit submitted	
DCA sent to Standing Counsel	
Vetted DCA received on	
DCA approved by the Secretary on	
Final Counter Sent to Standing Counsel on	
Date of filing of Counter Affidavit	
Post facto approval - submitted on	
Post facto approval - obtained on	

