

Protocol Regarding State Election Commissioner, Maharashtra:

Constitutional Provisions:

Article 243K {Elections to the Panchayats}

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
2. Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment
3. The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).
4. Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Article 243ZA {Elections to the Municipalities}

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.
2. Subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

Statutory Provisions:



GOVERNMENT OF MAHARASHTRA
LAW AND JUDICIARY DEPARTMENT

Maharashtra Act No. XXII Of 1994

**THE STATE ELECTION COMMISSIONER
(QUALIFICATIONS AND APPOINTMENT) ACT, 1994.**

(As modified upto the 15th August, 2012)

PRINTED IN INDIA BY THE MANAGER, GOVERNMENT PRESS AND STATIONERY
STORES, KOLHAPUR AND PUBLISHED BY THE DIRECTOR, GOVERNMENT
PRINTING, STATIONERY AND PUBLICATIONS, MAHARASHTRA STATE, MUMBAI-
400 004.

2012

[Price : Rs. 6.69]

**THE STATE ELECTION COMMISSIONER
(QUALIFICATIONS AND APPOINTMENT) ACT, 1994**

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[THE STATE ELECTION COMMISSIONER (QUALIFICATIONS AND APPOINTMENT) ACT, 1994.]¹

(This Act received the assent of the Governor on the 22nd April 1994 ; assent was published in the *Maharashtra Government Gazette*. Part IV, on the 22nd April 1994.)

Amended by Mah. 37 of 2000

An Act to provide for the qualifications for and the appointment of the State Election Commissioner and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for the qualifications for and the appointment of the State Election Commissioner and for matters connected therewith or incidental thereto ; It is hereby enacted in the Forty-fifth Year of the Republic of India as follows :—

1. This Act may be called the State Election Commissioner (Qualifications and Short title. Appointment) Act, 1994.

2. In this Act,—

Definitions.

(1) " Government " means the Government of Maharashtra ;

(2) " State Election Commissioner " means the State Election Commissioner appointed under article 243-K of the Constitution of India.

3. The State Election Commissioner shall be appointed from amongst persons who are holding or have held a post not lower in rank than that of a Principal Secretary to Government.

Qualifications for appointment.

²[4. There shall be paid to the State Election Commissioner,—

(a) during the period from the 1st day of January 1996 to the 31st day of May 2000, a salary of Rs. 24,050 per month, in the scale of Rs. 24,050-650-26,000 ; and

Salary.

(b) with effect from the 1st day of June 2000, a salary of Rs. 26,000 (fixed) per month :

Provided that, if a person who, immediately before the date of assuming office as the State Election Commissioner was in receipt of or being eligible so to do, had elected to draw, a pension (other than disability or wound pension), in respect of any previous service under the Government of the Union or under the Government of the State, his salary in respect of service as the State Election Commissioner shall be reduced, by the amount of such pension.]

5. The State Election Commissioner shall not be a member of Parliament or a member of the State Legislature or a member (or Councillor) of any Panchayat or Municipality in the State and shall not hold any office of trust or profit (other than his office as the State Election Commissioner), or be connected with any political party or carry on any business or practice any profession ; and accordingly before he enters upon his office, a person appointed as the State Election Commissioner shall,—

State Election Commissioner to hold no other office.

(a) if he is a Member of Parliament or of the Legislature of the State or of the Panchayat or the Municipality resign such membership ; or

(b) if he holds any office of trust or profit resign from such office ; or

(c) if he is connected with any political party sever connection with it ; or

¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1994, Part V, P. 184.

² This section was substituted by Mah. 37 of 2000, S. 2.

*State Election Commissioner (Qualifications and [1994 : Mah. XXII
appointment) Act, 1994*

(d) if he is carrying on any business sever his connection (short of divesting himself of ownership) with the conduct and management of such business ; or

(e) if he is practising any profession, suspend practice of such profession.

Term of
office.

6. (1) The State Election Commissioner shall hold office ; for a term not exceeding five years from the date on which he enters upon his office ; and he shall not be eligible for re-appointment :

Provided that, the State Commissioner may, at any time, by writing under his hand addressed to the Governor, resign his office.

(2) The State Election Commissioner shall not be removed from office except in the manner specified in the proviso to clause (2) of article 243-K of the Constitution of India.

Leave.

7. The State Election Commissioner shall be entitled to 30 days earned leave in a calendar year and it shall be credited to his leave account, in advance in two instalments of 15 days each on the first day of January and July of every calendar year.

(2) (a) The State Election Commissioner shall be entitled half pay leave on medical certificates or on private affairs at the rate of twenty days in respect of each completed year of service and the leave salary for half pay leave shall be equivalent to half of the leave salary admissible during the earned leave.

(b) Leave on half pay can be commuted to full pay leave at the discretion of the State Election Commissioner, provided it is taken on medical grounds and, supported by a medical certificate from the competent medical authority.

(3) The State Election Commissioner shall be entitled to extraordinary leave without pay and allowance upto a maximum period of one hundred and eighty days in one term of office.

(4) On the expiry of his term of office, the State Election Commissioner shall be entitled to receive cash equivalent of leave salary in respect of the earned leave, standing to his credit.

(5) The State Election Commissioner shall be entitled to receive dearness allowance, as admissible on the leave salary under sub-section (4) at the rates admissible on the date of the relinquishment of the office in the State Election Commission :

Provided that he shall not be entitled for the city compensatory allowance or any other allowance on such leave salary.

(6) The power to grant or refuse leave to the State Election Commissioner and to revoke or curtail leave granted to him, shall vest in the Governor.

Pension payable
to the State
Election
Commissioner.

8. (1) A person, who immediately before the date of assuming office as the State Election Commissioner was in service of Government of India or the State Government, shall be deemed to have retired from service on the date on which he enters upon office as the State Election Commissioner but his subsequent service as the State Election Commissioner shall be reckoned as continuing approved service counting for pension in service to which he belonged.

(2) Where the State Election Commissioner demits office (whether in any manner specified in sub-section (3) or by resignation), he shall, on such demission, be paid in addition to any other pension if any, he may be drawing, a pension at the rate of rupees seven hundred per annum for each completed year of service or a part thereof and irrespective of the number of years of service in the Commission the maximum amount of pension shall not exceed rupees three thousand five hundred per annum :

Provided that, no such pension shall be payable to the State Election Commissioner if he has put in less than two years of service with the State Election Commission.

(3) Except where the State Election Commissioner demits office by resignation he shall be deemed, for the purpose of this Act, to have demitted his office if, and only if,—

(a) he has completed the term of office specified in section 6, or

(d) his demission of office is medically certified to be necessitated by ill-health.

9. The State Election Commissioner shall be entitled to subscribe to the General Provident Fund at his option, and in case of his so opting shall be governed by the provisions of the Maharashtra General Provident Fund Rules :

Right to
subscribe to
General
Provident
Fund.

Provided that, if the State Election Commissioner, was a member of an All India Service or was holding a post under the Central or a State Government immediately before the date of assuming office as the State Election Commissioner, he shall be governed by the rules which were applicable to him immediately before the date of assuming office as the State Election Commissioner.

10. Save as otherwise provided in this Act, the conditions of service relating to the dearness allowance (including on pension), compensatory local allowance and all other allowances including travelling allowance, provision for rent free accommodation, conveyance facilities, medical facilities and such other conditions of service as are for the time being applicable to a member of the Maharashtra Administrative Tribunal under the relevant rules shall, as far as may be, apply to the State Election Commissioner.

Other
conditions of
service.

Precedence of State Election Commissioner, Maharashtra:

The Government of Maharashtra has decided to position the State Election Commissioner, Maharashtra immediately after the High Court Judges of the Mumbai High Court for all State and Ceremonial functions held in Maharashtra and seating arrangements during such functions are made accordingly.

As the Judges of the Mumbai High Court figure at Article 17 in the Table of Precedence issued by the Government of India, the Government of Maharashtra has recommended for including State Election Commissioner, Maharashtra at Article 17 A in the Table of Precedence. (Letter No. WRP 1010/676/XXX Dtd. 12 Sept. 2011)

The status and precedence of the State Election Commissioner, Maharashtra is further clarified by government of Maharashtra's circular क्र. रानिआ 2012/544/प्र.क्र.75/37 dtd. 27th Oct.2016