

*Welcome to:*

**DR.MCR HRD  
INSTITUTE OF AP,  
HYDERABAD**

# COURT CASES

By:

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❖ Generally in Government offices the following cases filed in various legal fora are received.

Original Application (OA)	---	A.P.A.T. (Applicant/Respondent)
Writ Petition (W.P)	---	A.P.HighCourt Petitioner/Respondent)
Complaint	---	A.P. Lokayukta & Upa Lok Ayukata. (Complainant/Public Servant)
Original Suits (O.S.)	---	Civil Courts (Plaintiff/Defendant)

# SOME IMPORTANT LEGAL TERMS

- Admit :
- Averments:
- Allegations:
- Tenable
- Sustainable
- Maintainable
- Without jurisdiction
- Barred by limitation.
- Hit by res judicata.

- Misconstrue
- Misleading
- Misconceived
- Deny
- Dispute
- Dismiss
- Allow
- Devoid of truth and merits.
- Infructuous
- Prematured

- Vacate
- Extend
- Stay
- Suspend
- Status quo
- In limini.
- Question of fact
- Question of law
- Alternative remedies
- Suppression of facts
- False deposition – perjury
- Caveat
- Writ of Mandamus
- Writ of certiorari

- We receive cases from APAT and A.P. High court along with a notice/Rule Nisi.
- A notice before admission (NBA) is given to show cause why the OA or WP should not be admitted. An interim order also accompanies the said notice. In such case, a detailed counter has to be filed by the respondents in time fixed therefor in the said notice so that the case will be disposed of at the stage of admission. If the counter is filed within the time, the matter will be adjudicated at admission stage and disposed of.
- A Rule Nisi is an order of the Tribunal/High Court to show cause why the relief sought for in the OA/WP should not be granted. The rule will be made absolute in case the relief prayed for is granted. If sufficient cause is shown the rule will be discharged by dismissing the OA/WP.

IMPORTANT ASPECT TO BE EXAMINED IN COURT CASES AT THE TIME OF  
PREPARATION OF COUNTER AFFIDAVIT

1. Whether the OA/WP is maintainable under Section 19 of Administrative Tribunals Act or under Article 226 of the Constitution of India.
2. Whether the APAT/High Court has jurisdiction to try the case under Section 14 of AT Act, 1985/Article 226 of COI.
3. Whether the subject matter of the OA/W.P. is will within the limitation under Section 21 of Administrative Tribunals Act , 1985 or Section 109 of CPC for filing W.P. in the High Court.
4. Whether the applicant/petitioner has locus standi to seek the relief prayed for in the O.A./W.P. (**LOCUS STANDI** : The right of a party to an action to appear and be Heard on the questions of any Tribunal)
5. Whether the relief prayed for is hit by resjudicata or not (**RESJUDICATA** : A matter or thing which has already been adjudicated upon.)



6. Whether alternative remedies, if any, are exhausted.
7. Whether multiple remedies are sought for in the OA/WP.
8. Whether any O.A./W.P. is pending on the same subject matter seeking same relief .
9. Whether the OA/ W.P. is prematured.
10. Whether the relief prayed for is ultra vires (Beyond the scope, power or authority of any Company, Corporation or statutory body. to the provisions of constitution or any other provision of law.
11. Whether the main and interim relief are one and same.

DEFINITION OF AFFIDAVIT AND IMPORTANT POINTS/PROCEDURE TO BE  
ADOPTED WHILE DRAFTING AFFIDAVIT.

An affidavit is a declaration as to facts made in writing and sworn before a person having authority to administer oath. Affidavit includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

- It has to reflect the personal knowledge of the deponent touching the facts or it may be drawn on the strength of information borne record .
- It is to be sworn to by a person having authority to administer the oath giving the date of swearing and the designation of the person, before whom it is sworn.
- The affidavit is drafted in the first person.
- The affidavit filed giving replies to the contents of an affidavit is Reply affidavit or Counter Affidavit or reply statement

- on receipt of OA/W.P. the concerned officer should prepare para-wise remarks and the same should be sent to the Government pleader along with the connected records.
- The Government pleader will approve the parawise remarks and return the same to the concerned officer
- On receipt of approved parawise remarks , the same should be got fair typed on one side of thick white paper in double line spacing with 1 ½ “margin on all sides and duly signed and sworn at the end of each page by both the attesting and swearing officers with their designation stamps and send it to Government pleader with five extra copies along with original for filing the in APAT/High Court.
- Fair counter should be accompanied by all the attested copies of documents referred to in the counter affidavit.

# TIME FOR FILING COUNTER AFFIDAVIT

- **High court** --- **six months (R12 (2) of APHC W Progs rules)**
- **APAT** --- **30 days from the date of receipt of notice (Rule 12) .**
  
- **All the respondents included either in a O.A or a W.P. have to file counters. Even if there is no claim of the applicant/petitioner pending with a respondent, he has to state the same by filing a counter in the APAT or the High Court.**
- **In case the employees dies, the LRs should be brought on record within 30 days of the death otherwise the OA will abate. In case of W.P. LRs should be brought on record within 6 months from the date of death, otherwise the OA will abate**

## **ACTION TO BE TAKEN BY THE RESPONDENTS WHEN THE A.P.A.T./HIGH COURT PASSES AN INTERIM ORDER**

- Sometimes the Hon'ble A.P.A.T/High Court may issue an interim order in a particular O.A./WP. (Sec. 24/Section 151 CPC)
- When there is interim order, two courses are open (1) to implement the interim order (2) to file detailed counter affidavit along with praying the Hon'ble A.P.A.T/High court to vacate the interim orders  
This petition is called *“Vacation Miscellaneous Application (V.M.A)”* in *O.A. No..... In W.V.M.P. (Writ Vacation Miscellaneous Petition) in WP”* or for modification of interim order in fitness of *the circumstances*. This will be signed by the concerned G.P. in the A.P.A.T.
- Other wise the contempt proceedings follows

- **When final orders are received and in case there is apparent error such not considering the facts/legal position/ counter affidavit filed, then Review under Rule 19 has to be filed within 30 days from the date of final order.**

**In case, the time of 30 days is lapsed, then WP. against the order of AP AT has to filed within 90 days after taking the opinion of the Government Pleader.**

- **In case of W.P. SLP in Supreme court has to be filed after taking the opinion of the Government Pleader and in case of policy matter, the permission of the Government is to be obtained.**



In case the order of the APAT/HC is not implemented within the time stipulated, if any, and in case no time is stipulated, within one, then the aggrieved party can initiate contempt proceedings under the provisions of Contempt of Courts Act.

In case, the final orders cannot be implemented within the time stipulated, Miscellaneous application or WPMP in case of W.P. are to be filed seeking extension of time for implementation duly satisfactorily explaining the reasons therefor.

# **COMTEMPT OF COURTS CASE AND ITS IMPLICATION**

## **HIGH COURT OF JUDICATURE**

It is to be noted that generally a contempt case will arise for disobedience of a lawful order of a court, deliberately, willfully and knowingly in a matter over which it has jurisdiction.

It will be filled in the court under section 10 to 12 of contempt of courts Act 1971, seeking to commit the Respondent for contempt of court for disobeying the orders of the High Court deliberately, willfully and knowingly on which the High Court will issue notice to the respondent to show cause why, he should not be punished for contempt of court, granting reasonable time to file counter.

Immediately, on receipt of court notice, it is for the Respondent to approach the government pleader with the connected records and enlighten him in writing the reasons/circumstances under which the orders of the High Court could not be implemented, so that he will draft the appropriate counter affidavit and file it in the court.



**If the High court considers that there are satisfactory reasons that there is no case of contempt of court, an order will be passed closing the contempt case.**

**In case, if it is proved beyond reasonable doubt that there is a case of contempt of court against the Respondent for disobeying the orders passed earlier deliberately, willfully and knowingly, then the order is passed by High Court punishing the respondent by way of imprisonment/Fine/Warning.**

**In order to avoid facing contempt of courts, the orders of the courts are either implemented without any undue delay wherever practicable and if it is impracticable or not possible to implement the orders, they should approach the Bench of the High Court or the Supreme Court on Appeal.**

**The scope of contempt is very little.**

## **FILING OF REVIEW PETITION IN THE APAT AGAINST ITS ORDERS IN O.A'S OR W.P'S IN THE A.P.H.C**

- **As per Rule. 19 of the A.P.A.T (procedure) rules, 1989 review application shall be filed within 30 days from the date of order of which the review is sought.**
- **The dept. aggrieved by the orders of the A.P.A.T must seek the opinion of the concerned G.P. in the A.P.A.T, and ascertain whether the case on hand is a fit case for filing the review petition in the A.P.A.T. Based on the written advice of the G.P, further action has to be taken.**
- **In case the orders of the APAT are not in conformity or in consonance with the orders of the Govt. in the matter, a W.P. in the A.P.H.C against the orders of the A.P.A.T has to preferred after taking the written opinion of the concerned G.P in the High Court.**

- **W.P has to be filed within three months from the date of receipt of the order of the A.P.A.T against which w.p is filed.**
- **If the concerned dept. is aggrieved by the orders of the High Court (Single Judge), it can file writ appeal on the advice of the concerned G.P in the High Court.**
- **The next course of appeal open to the dept. is filing of special leave petition in the Supreme Court after taking the written opinion of the Advocate General in this regard.**
- **Writ appeal has to be filed in the High Court within one month from the Date of the order of High Court of which appeal is sought.**
- **In G.O.R.T.No.146 LAW (c) Dept. Dt. 08.02.2001, Govt. have authorized all the secretaries to Govt., H.O.D's and dist. collectors to file appeals by way of S.L.P in the Supreme Court against an adverse judgment of the High Court basing on the advice of the concerned Govt. Law officer without seeking prior permission of the Govt. Where, however, an important policy matter is involved, the case may be circulated before filing S.L.P in the Apex Court.**

## **CONTEMPT CASES**

- **Contempt application (C.A) or contempt case (C.C) is filed by the applicant/petitioner in the Hon'ble tribunal or Hon'ble High Court as the case may be, if the orders of the Hon'ble tribunal/Hon'ble High Court are not implemented by the respondents. It is suggested that, if the orders of either the Hon'ble A.P.A.T or the Hon'ble High Court are not contrary to the orders of the Govt. and if the concerned G.P. feels that there are no grounds for going on an appeal, it would be better for the respondents to expeditiously implement the orders of the court within the stipulated time.**
- **Prompt filing of counters by the respondents either in the O.A's/W.P's or the C.A is called for. Dilly-dallying will not serve the purpose. Contempt cases have to be taken seriously and prompt action should be taken for filing a counter in the matter.**

## **A.P. LOKAYUKTA AND UPA LOKAYUKTA**

The A.P. Lokayukta and Upa Lokayukta act, 1982 came into effect from 23.09.83. It has been set up for the investigation of administrative action taken by certain local and public authorities in the State of Andhra Pradesh. The Act is mainly intended to curb political corruption among certain “Public Servants”

# FUNCTIONS

## Section 9:

The institution of Lokayukta and Upa Lokayukta is a fact finding body. Their main function is to investigate the Administrative Action in respect of which an allegation is made against any “Public Servant”, after following the procedure relating to the specific complaints received as provided under Section 9 and the procedure in respect of investigation as laid down under section 10 of the act.

## **The Lokayukta or Upa Lokayukta shall not investigate any allegation.**

1. In respect of which a formal and Public Inquiry has been ordered under the Public services inquiries Act, 1850.
2. In respect of a matter which has been referred for enquiry under the Commissioner of inquiry Act, 1952 in case where the Lokayukta or Upa Lokayukta as the case may be has given his prior concurrence for such inquiry.

## **Under Section 15 of the Act, the Lokayukta or Upa Lokayukta cannot investigate into allegations against:**

- a) The Chief Justice or any Judge of the High Court or a member of the Judicial Service.
- b) Any officer or servant of any Court in the State.
- c) Advocate General, A.P.
- d) The Chairman or a member of the A.P.P.S.C.
- e) The Chief Election Commissioner the Election Commissioner and the Regional Commissioner referred to in Art. 324 C.O.I and the Chief Electoral Officer of A.P.
- f) The Speaker and Dy. Speaker of the Legislative Assembly.



## **THE A.P. LOKAYUKTA AND UPA-LOKAYUKTA (INVESTIGATION) RULES, 1984.**

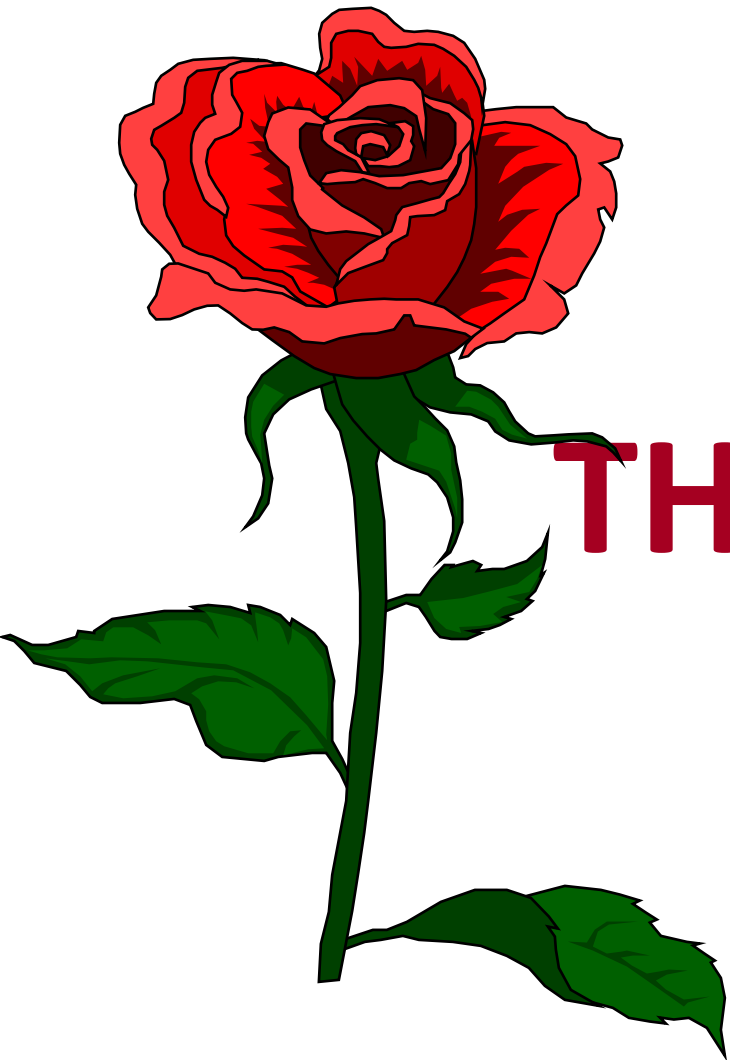
### **Rule 5:**

**Preliminary verification of the complaint commences.**

### **Rule 6:**

**Commencement of investigation into the complaint. A copy of the complaint is sent to the Public Servant concerned against whom allegation is made and the public servant is afforded an opportunity to submit a detailed report in the matter.**

**If the grievance of the complainant stands redressed, the complaint will be closed. Based on the report of the Public Servant concerned if the Lokayukta or Upa Lokayukta is convinced that the complainant has no case, the complaint will be dismissed.**



**THANK YOU**

