

No:EDN-(Ele)B-(1)6/99-2010-Vol-III
Directorate of Elementary Education
Himachal Pradesh, Lalapani, Shimla-1

Dated Shimla-171001, the 31st January, 2013

To

1. All the Deputy Directors of Elem.Edu. in H.P.
2. All the Principals, DIETs in H.P.
3. All the Block Elementary Education Officers in H.P.

Sub:- Payment /recovery of overpayment if any in view of Adhoc/ Tenure benefits, instructions thereof.

Memo:

In continuation to this Directorate letter No.EDN-H(2)B(2)29/2010-11-Adhoc / Tenure Dated 7th January, 2013 vide which the earlier instructions issued vide this Directorate letter of dated 03.01.2012 were withdrawn in view of the instructions issued by the Govt. of H.P. vide letter No.EDN-C-B(15)-9/2011-Loose dated 7th January, 2013 (Copies enclosed)

2. In fact large number of litigation on the issue of payment of arrears to the Adhoc/Tenure incumbents cropped up before the Hon'ble High Court of H.P after verdict of Paras Ram, Thakuri Devi and Ravi Kumar cases etc. The Division Bench of Hon'ble High Court of H.P. in CWP No.9642/2011-E titled as Khem Raj Sharma Vs State of H.P. & Others decided on 3rd April, 2012 vide its directions/ Judgment has been pleased to struck down the instructions dated 15.12.2011 issued by Finance Department, Govt. of H.P. These instructions in the Para-4 provide as under:-

“In view of the above settled position of law, it is requested that as and when a matter relating to grant of financial benefits is decided retrospectively by any Tribunal or Court, the back wages/arrears of pay and allowances, as the case may be restricted to three years prior to the date of filing the claim/petition in the Tribunal or Court. However, it is clarified that, Hon'ble Court has not directed for any retrospective benefits, then only notional pay should be fixed, without giving any back wages/arrears.”

3. However, after striking down the instructions of Finance Department of Govt. of H.P., the Education Department filed Civil Review Petition No. 135/2012 titled as State of HP Vs Khem Ram Sharma before Hon'ble High Court. This review petition on 1.1.2013 has now been allowed by Division Bench in favour of the State of H.P. with following directions:-

“The writ petition was disposed of directing that the writ petitioner would be entitled to the benefit without any restriction on arrears for three years. On the behalf of the State,

Learned Advocate General points out that neither in Sita Ram's case nor in Paras Ram's case was there any direction to grant the actual monetary benefits w.e.f. the date of initial appointment on Ad hoc/Tenure service while granting the increments. Therefore, it is contended that in light of the decisions of Apex Court in Jai Dev Gupta Vs. State of H.P. and another reported in AIR 1998 SC 2819, and Shiv Dass Vs. Union of India and others reported in (2007) SCC 274, the State was well within its right to limit the actual monetary benefits on account of re-fixation by granting increments from the date of initial appointment on tenure/ ad hoc basis, at least to a period of three years prior to the date of filing of the writ petition, though it is vehemently contended by the Learned Advocate General that the benefit should be limited from the date of order by the Court. As rightly pointed out by the learned Advocate general, none of these contentions have been addressed in the Judgment, dated 3rd April, 2012." 4. In the above circumstances we are of the view that the Judgment, dated 3rd April, 2012 requires review and hence the same is recalled. The review petition is allowed."

4. Therefore, you are hereby directed that all cases where arrears have been paid, may be reviewed in consultation with S.O.(F&A) posted in your district and any excess payment made in favour of any Adhoc/ Tenure incumbent(s) in contravention to the instructions issued by the Govt. of H. P. Department of Finance O.M. No. FIN(PR)B(7)-2/2001 dated 15.1.2002, O.M.No. FIN-(PR)B(7)-2/2001 dated 31.5.2010 and No.FIN(PR)-B(7)-16/98-III(Agriculture) dated 15.12.2011 may be recovered from the concerned incumbents posted under your control immediately after serving due notice to the incumbents and also after following due procedure.


5. This may be given TOP PRIORITY AND REPORT COMPLIANCE. These instructions are also available on departmental website www.himachal.nic.in/eleedu .


DIRECTOR

Endst. No. Even Dated Shimla-1, the 31st January, 2013

Copy forwarded for information & necessary action to:-

1. The Principal Secretary(Finance) to the Govt. of H.P. Shimla-2
2. The Secretary(Education) to the Govt. of H.P. Shimla-2 with reference to their letter No. EDN C-B(15)-9/2011-Loose dated 7.1.2013.
3. The Accountant General(A&E) H.P. Shimla-3 with the request that while convening Audit, the recoveries of overpayments if any, may be pointed out.
4. Director, Treasury, Accounts and Lotteries, H..P. Shimla-2
5. The Director of Higher Education Shimla.-1
6. SPD(SSA), H.P. Shimla-1
7. The Branch Officer/Supdt. E-I, E-II, E-III. E-IV, P&D, B&A Branch and Legal Cell(Upper Pry/Lower Pry.) Directorate of Elementary Education, H.P. Shimla-1
8. Guard File.


DIRECTOR

No:EDN-H(2)B(2)29/2010-11-Adhoc/Tenure
Directorate of Elementary Education,
Himachal Pradesh Lal Pani Shimla.

Dated Shimla-171001 the 7th January 2013.

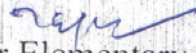
To

- 1.All the Dy. Directors of Elementary Education,
Himachal Pradesh.
- 2.All the Block Elementary Education Officers,
Himachal Pradesh.

Sub: Regarding implementation of orders passed by the Hon'ble High Court in
respect of adhoc service/tenure service benefits.

Memo:

The letters issued by this Directorate vide letter No:EDN-H(2)B(2)29/2010-11-Adhoc/Tenure dated 3.1.2012 are hereby withdrawn. However, the earlier instructions contained in H.P. Govt. Finance (Pay Revision) Deptt. O.M. Fin.(PR)B(7)-2/2001 dated 15.01.2002 and O.M. No.Fin-(PR)B(7)2/2001 dated 31.05.2010 FIN (PR)B(7)-116/98-III (Agriculture) dated 15.12.2011 and 30.12.2011 are directed to be followed strictly while fixing the pay of Adhoc/Tenure incumbents.

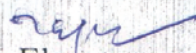


Director Elementary Education,
Himachal Pradesh.

Endst No. As above Dated Shimla-171001 the 7th January 2013.

Copy forwarded for information and necessary action to:-

- 1.The Principal Secretary (Finance) to the Govt, of H.P.
- 2.The Secretary (Education) to the Govt. of H.P.
- 3.The Guard file.



Director Elementary Education,
Himachal Pradesh.

No EDN -C-B(15)-9/2011-loose
Government of Himachal Pradesh
Elementary Education Department

From

The Secretary(Education) to the
Government of Himachal Pradesh
Shimla-171002.

To

1. The Director Higher Education
Himachal Pradesh Shimla-1
2. The Director Elementary Education
Himachal Pradesh Shimla-1


Dated: Shimla-2, the 7th January, 2013

Subject:- Regarding implementation of the orders of Hon'ble High Court in respect
of Ad hoc and Tenure service benefits.
Sir.

In continuation of this department letter of even No dated 27.06.2012, I am directed to refer to the subject cited above and to say that the matter with respect to review petition No. 135/2012 in CWP No. 9642/2011 has been discussed with Principal Secretary (Finance) by the Secretary (Education) on 04.01.2013 and it has decided that the letters issued by Director of Higher Education No. Shiksha - Him (19) B(4) -2/2011 CWP No. (T) 4390/2008 dated 16.11.2011 and by Director Elementary Education No. EDN -H(2) 29/2010 -11 Adhoc/ Tenure dated 03.01.2012 be withdrawn. The excess payments if any released in contravention of the FD instructions in the matter be recovered after serving due notice to the concerned persons and following prescribed procedure.

You are requested to take further action accordingly under intimation to this department immediately.

Yours faithfully,


Spl. Secretary (Edu) to the
Government of Himachal Pradesh

No. FIN(PK)-B(7)-16/98-III (Agriculture)
Government of Himachal Pradesh
Finance (Pay Revision) Department.

From

Principal Secretary (Finance) to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of the Departments in Himachal Pradesh.
3. All the Divisional Commissioners in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.
5. All the Managing Directors/ Secretaries/ Registrars of Boards/ Corporations/ Public Sector Undertakings/ Universities in Himachal Pradesh.

Dated: Shimla-171 002, the 15th December, 2011.

Subject:- Restricting the claims of backwages/ arrears to three years.-Court orders.

Sir/Madam,

I am directed to invite a reference to the subject noted above and to say that a number of employees belonging to various services/cadres are filing writ petitions before the Hon'ble High court for retrospective regularization/ promotion/

Continued Page No. 2/-.

grant of higher pay scales/ selection grade and other financial benefits. In certain cases the Hon'ble High Court has allowed these writ petitions with or without any specific directions relating to the grant of consequential benefits.

2. In this context, it is stated that the Hon'ble Supreme Court of India in Civil Appeal No. 3197/1991- Jai Dev Gupta V/s State of Himachal Pradesh reported in AIR 1998 SC 2819, while allowing the benefit of back wages/arrears has given specific directions to restrict the same to three years prior to the date of filing of claim/petition in the Court. This principle has also been appreciated by the Hon'ble High Court in a catena of cases either on Letter Patent Appeal filed by the Government or on Civil Writ Petition itself. The Division Bench of Hon'ble High Court of Himachal Pradesh vide judgment dated: 14.06.2011 in CWP No. 2435/2011 titled as Sant Ram V/s State of Himachal Pradesh through Secretary (HPPWD) has endorsed the decision of the respondents to allow notional benefit of regularization w.e.f. 01.01.1994 and limiting the actual monetary benefits for a period of 3 (three) years & 2 (two) months in the light of aforesaid decision of the Apex Court. Similarly, the Hon'ble High Court of Himachal Pradesh in Letters Patent Appeals No. 285, 299, 300, 320, 321, 337, 376 & 383 of 2011 has accepted the plea of the State Government to restrict the back wages/ arrears for a period of three years prior to the date of filing the claims/petitions in the Hon'ble Courts.

Continued Page No. 3/-

3. Besides above, the State Government has exclusive jurisdiction to legislate or issue the executive instructions on State Public Services as per Entry 41 of State List of Schedule-7 of the Constitution of India. Thus any instructions issued by the Government of India or any authority with respect to State Public Services are not binding for being followed by the State Government because of its exclusive sole jurisdiction to legislate or issue appropriate executive instructions, being the subject matter falling within the State List as per Entry 41 of State List of Schedule-7 of the Constitution of India. Moreover, the service conditions are decided independently by the State Government and the same are not thrown upon the State as a binding by an authority other than the State Government.

4. In view of the above settled position of law, it is requested that as and when a matter relating to grant of financial benefits is decided retrospectively by any Tribunal or Court, the back wages/arrears of pay and allowances, as the case may be restricted to three years prior to the date of filing the claim/petition in the Tribunal or Court. However, it is clarified that , if Hon'ble Court has not directed for any retrospective benefits, then only notional pay should be fixed, without giving any back wages/arrears.

5. All the Departments are requested firstly to contest strongly the cases of pay arrears/back wages in Courts'

Continued Page No. 4/..

concerned on strong plea/grounds not to admit such cases which have serious/far reaching repercussions on State Exchequer and in case, if the Courts² do not admit the stand taken by Government in denying pay arrears/back wages, the Departments concerned should take defence of Apex Court's decision in Jal Dev Gupta's case and the H.P. High Court's decision in Sant Ram's case, as referred to above, for restriction of pay arrears/back wages.

6. These instructions may please be brought to the notice of all concerned and complied with scrupulously.

7. These orders are also available on <http://himachal.gov.in/finance/PayRevision.htm>

Yours faithfully,

(Ramesh Chander Chauhan)
Joint Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated: Shimla-2, the 15th December, 2011.

Copy forwarded to the following for information and necessary action to :-

1. The Principal Accountant General (Audit), Himachal Pradesh, Shimla-171003.
2. The Accountant General (A&E), Himachal Pradesh, Shimla-171 003.
3. The Resident Commissioner, H.P. Himachal Bhiwan, Sikandra Road, New Delhi.

Continued Page No. 5/-

4. The Ld. Advocate General, State of Himachal Pradesh, Udyog Bhawan, Shimla-171 001.
5. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
6. The Secretary, H.P. Public Service Commission, Nigam Vihar, Shimla-2.
7. The Secretary, H.P. Electricity Regulatory Commission, Khalini, Shimla.
8. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur.
9. All District Treasury Officers/ Treasury Officers in H.P.
10. The Resident Commissioner, Pangi, District Chamba, Himachal Pradesh.

(Ramesh Chandor Chauhan)
Joint Secretary (Finance) to the
Government of Himachal Pradesh.

Praveen/instructions-2011

No. FIN(PR)B(7)- 2/2001
Government of Himachal Pradesh
Finance (Pay Revision) Department.

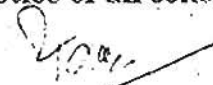
Dated Shimla-171002. the 15th January, 2002

OFFICE MEMORANDUM

It has been observed that various claims regarding allowing of higher pay scale, selection grade, special pay and other financial benefits are being preferred by the employees and such claims are decided by the Hon'ble Tribunal/Courts in favour of the applicants with retrospective effect, causing many problems such as payment of arrears, step up of pay of senior employees etc. etc.

The matter has been examined in consultation with the Law Department in the light of the Judgement delivered by Hon'ble Supreme Court of India in case of Jai dev Gupta Vs. State of Himachal Pradesh, reported in AIR 1998 SC. 2819 and it has been decided that as and when any dispute is taken to Court or Tribunal by an employee in respect of his pay scale or selection grade or other allowances etc. , the replying respondent should invariably take a defence on the strength of Judgement of Hon'ble Supreme Court in case of Jai dev Gupta Vs. State of Himachal Pradesh, reported in AIR 1998 SC. 2819, that the arrears/backwages should be restricted for a period of three years only. In case the Hon'ble Tribunal or Court do not agree with the defence of the Government/Department, the matter should be agitated before the higher Court by way of appropriate remedy.

This may be brought to the notice of all concerned.


Additional Secretary (FIN-PR) to the
Government of Himachal Pradesh.

To

All Secretaries to the
Government of Himachal Pradesh.

No. FIN(PR)B(7)- 2/2001 Dated Shimla-171002. the 15th January, 2002

1. The Accountant General, Himachal Pradesh, Shimla-171003

No. FIN-(PR)B(7)-2/2001
Government of Himachal Pradesh
Finance (Pay Revision) Department.

Dated Shimla-171002, the 31st May, 2010

OFFICE MEMORANDUM

The undersigned is directed to invite your kind attention to this Department's OFFICE MEMORANDUM of even number dated 15th January, 2002 wherein the Administrative Departments were requested that in the matter preferred by the employees for allowing of higher pay scale, selection grade special pay and other financial benefits from a back date, the replying respondents should invariably take a defence on the strength of the Judgment passed by Hon'ble Supreme Court of India in case of Jai Dev Gupta Vs. State of Himachal Pradesh, reported in AIR 1998 SC. 2819, that the arrears/back wages should be restricted for a period of three years only. In case the Hon'ble Court do not agree with the defence of the Government/Department, the matter should be agitated before the higher Court by way of appropriate remedy.

It has been noticed that the instructions are not being adhered by the Departments causing huge financial burden on the State exchequer.

It is, therefore, once again reiterated that as and when any dispute is taken to Court by the employees regarding allowing of higher pay scale, selection grade, special pay and other financial benefits from a back date, the replying respondent should take a defence that the back arrears be restricted to a period of three years only on the strength of judgment referred to above. In case the Hon'ble Courts do not agree with the defence of the Government/Department, the matter should be agitated before the higher Court by way of appropriate remedy.



Special Secretary (Finance) to the
Government of Himachal Pradesh.

To

All Secretaries to the
Government of Himachal Pradesh

No. FIN-(PR)B(7)-2/2001 Dated Shimla-171002, the 31st May, 2010.

Copy forwarded for information and necessary action:

1. The Pr. Accountant General, Himachal Pradesh Shimla 171003.
2. The Senior Deputy Accountant General (A&E), Himachal Pradesh, Shimla-171003.
3. The Resident Commissioner. Himachal Bhawan, Sikandra Road, New Delhi.
4. The Advocate General, Himachal Pradesh, Shimla for necessary action.
5. The Additional Advocate General, Himachal Pradesh, Shimla-2 for necessary action.
6. All Heads of Departments in Himachal Pradesh.
7. All Deputy Commissioners in Himachal Pradesh.
8. All Superintendents of Police in H.P.
9. The Registrar, High Court, H.P. Shimla.
10. All District and Session Judges in Himachal Pradesh.
11. The Director Treasuries and Accounts Organisation, Shimla-9
12. All Distt. Treasury Officers .Treasury Officers in H.P.
13. All Controller/Joint Controller/Deputy Controller/Assistant Controller (F&A) in Himachal Pradesh.
14. The Resident Commissioner Pangi, Chamba, Himachal Pradesh.
15. The Examiner, Local Audit Department, H.P. Shimla-2
16. All Section Officers in H.P. Secretariat, Shimla-2.


Special Secy. (Finance) to the
Government of Himachal Pradesh