

IMPORTANT

**No. FIN(PR)-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/**

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grant of higher pay scale/ 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.

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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'


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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 Jai 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 Bhawan, Sikandra Road, New Delhi.

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

Praveen/Instructions-2011
