No.EDN-H(III)B(2)CWP No. 49541/2012-(Para)Salary
Directorate of Elementary Education,
Lalpani, Shimla, Himachal Pradesh

Dated: Shimla-171001 the 26th July, 2014

To

1. All the Deputy Director Hr. Education, Himachal Pradesh,
2. All the Deputy Director Elem. Education, Himachal Pradesh,
3. All the Principals, Govt. Sr. Sec. Schools in Himachal Pradesh.
4. All the Head Master, Govt. High Schools in Himachal Pradesh.
5. All the Block Elementary Education Officer, Himachal Pradesh,

Subject:- **Payment of emoluments to Para Teachers in compliance to the Judgment Passed by the Hon'ble High Court in CWP No. 4954/2012-Madan Lal and others v/s State of H.P. and other connected CWPs.**

Memo:

On the subject cited above it is informed to you that CWP No. 4954/2012 titled as Madan Lal and others v/s State of H.P. and other connected CWPs pertaining to payment of pay and allowances to the "Para Teachers Category" were listed before the Hon'ble High Court of HP on 07.11.2012 when the Hon'ble High Court has disposed of all these petitions with the following orders through a common judgment:-

"***In these cases, the petitioners have sought for the benefit of the decision of this Court in Nek Ram and others versus State of Himachal Pradesh and others in the matter of merger of 50% D.A. In some of the cases they have also sought for revision of the pay scale. Once the Para Teachers are brought at par with contract teachers w.e.f. 1.4.2007, all the benefits extended to the contract teachers should be available to the Para Teachers w.e.f. 1.4.2007 in the case of merger of D.A. or in the case of revision of pay scale.***

Therefore, these writ petitions are disposed of with a direction to the Director Higher Education to issue appropriate instruction, if not already issued, within a month from today, to see that the Para Teachers are paid same emoluments as are given to the contract teachers in the respective categories w.e.f. 1.4.2007. In any of these cases, the Para teachers have not been paid the vacation salary, the eligible vacation salary shall also be paid to them within a period of three months from the date of production of a copy of this judgment by the petitioner concerned before the competent authority."

Conted-2-

Besides above, Hon'ble High Court has passed following interim order on 16.8.11 in CMP No. 7959/2011 filed in CWP No. 3360/2011, titled as Desh Raj versus State of HP with regard to the payment of vacation salary specifically to Para Teachers category:-

> ***"Correction allowed. Issue corrected copy of the order. The application is disposed of.***
>
> ***It is further clarified that the entitlement for vacation salary would be w.e.f. 1.4.2007 in view of the Notification dated 7th April, 2007 when the para teachers were equated with the contract teachers."***

After passing of above interim order, the CWP No. 3360/2011 along with CWP No. 3378/2011 were listed for final hearing when the same have been disposed of on 21.11.2011, with the following directions:-

> ***"Consequently, the present petitions are disposed of with a direction to the respondents to consider the case of the petitioners in view of the principles laid down in the judgment cited hereinabove, read with Annexure P-1 dated 7th April, 2007, within a period of six weeks after the production of certified copy of this judgment by the petitioner(s). The pending application(s), if any, also stands disposed of."***

Similarly in Civil writ petition No. 24/2011, titled as Bindu Bala versus State of HP was listed on 24.5.2012, when the same was also finally disposed of with following directions:-

> ***"Since that Para Teachers have been equated to the Contract Teachers only w.e.f. 1.4.2007, it is clarified that the entitlement of the writ petitioner for vacation salary will only be after 1.4.2007."***

Thus after considering all the above directions passed by the Division bench of the Hon'ble High Court on various dates **on the issue of admissibility of pay, allowance and vacation salary to Contract and Para Teachers**, and in compliance of directions of Hon'ble High Court dated: 07.11.2012 on the subject cited petitions **henceforth, you are hereby directed to act as under**:-

(1) That since all the Para Teachers have been initially engaged on fixed honorarium in different categories of teachers between the period 2003 to 2005 and have continued to receive fixed honorarium uptil March 2007. Therefore this category in no eventuality shall be entitled for any enhancement in its honorarium prior to 01.04.2007.

(2) That the Finance Department vide its Notification Dated: 07.04.2007 to be applicable w.e.f. 01.04.2007 has equated Para Teachers for the purposes of disbursement of salary as honorarium at par to that of contract teachers (**i.e. initial of pay scale plus dearness pay**). Therefore all these Para Teachers as per order passed in CWP No. 3360/2011 titled as Desh Raj v/s State of HP and CWP No. 24/2011 titled as Bindu Bala versus State of HP, **shall be entitled for vacation salary w.e.f. 1.4.2007 onwards only**. However all these Para Teachers shall also be entitled for the emoluments i.e. initial of the pay scale plus dearness pay as paid to contract teachers' w.e.f. 01.04.2007. The judgment dated 17.11.2009 in the case of Nek Ram as per parity given by Hon'ble High Court therein if relied by Para Teachers for the past period i.e. from the date of initial engagement upto 31.3.2007, in that event it shall not be applicable to them. Therefore in case any of the DDO has released said benefit to Para Teacher for the previous period prior to 01.04.2007 it shall be his/her personal responsibility and the amount of inadmissible benefit will be recoverable from the respective DDO's. Besides this Bill clerk and DDO both shall also be held liable for disciplinary action for the said lapse.

The illustration wise fixation has been prepared since the date of its applicability up till now which is as below:-

(3) <u>For contract teachers (TGTs) who joined on or after 09.05.2006</u>

"Initial of Pay Scale (Year 1996) plus Dearness Pay (i.e. 50% of initial pay) which comes as on 9.5.2006 as under:-

Rs. 5480+2740=8220/-(fixed)

(4) <u>For Para Teachers (TGTs) w.e.f. 1.4.2007 to 31.03.2010</u>

"Initial of Pay Scale (Year 1996) plus Dearness Pay (i.e. 50% of initial pay) which comes at Rs. 5480+2740=8220/- (fixed).

(5) <u>For contract teachers (C&V) who joined on or after 09.05.2006</u>

"Initial of Pay Scale (Year 1996) plus Dearness Pay (i.e. 50% of initial pay) which comes as on 9.5.2006 as under:-

Rs.5000+2500=7500/-(fixed)

(6) <u>For Para Teachers (C&V) w.e.f. 1.4.2007 to 31.03.2010</u>

"Initial of Pay Scale (Year 1996) plus Dearness Pay (i.e. 50% of initial pay) which comes at Rs. 5000+2500=7500/- (fixed).

(7) That the Finance Department vide its Notification dated 3.12.2009 allowed revision of emoluments in new pay scale to contract teachers as applicable to them from the date of execution of new contract agreement in the pay scale of 10300-34800 plus Grade Pay and in respect of Para Teachers similar pay scale benefit of Rs. 10300-34800 plus Grade Pay had been made applicable only w.e.f. 1.4.2010 and in both categories i.e TGTs & C&V, the revision of emoluments are not applicable for the past period i.e. w.e.f. 1.1.2006 to 30.11.2009 or execution of new contract agreement, for contractual appointees and 1.1.2006 to 1.4.2010 for Para Teachers respectively.

Hence, in view of above cited verdict you are hereby **directed that the contract teachers/ Para Teachers(TGTs/C&V) shall also be entitled** w.e.f. 1.12.2009 and 1.4.2010 respectively which shall be as under:-

(i) Minimum of Pay Band + Grade Pay i.e. 10300+3600=13900/-(fixed)(TGTs)

(ii) Minimum of Pay Band + Grade Pay i.e 10300+3200= 13500(Fixed) C&V

(iii) Contract employees already working on a consolidated amount can also continue with the existing formulation (i.e. as per option exercised vide Para No. 5 above).

(iv) Annual increase to Contract Teachers @ 3% of Pay Band plus Grade Pay on completion of twelve months period be allowed w.e.f. 1.12.2009 or execution of new contract agreement .

(8) That with regard to Para Teachers the Govt. of HP vide its instructions bearing letter No. EDN-C-B(2)-1/99-Loose, dated 22.03.2010 followed with correction dated 27.3.2010 conveyed that the category of TGTs/C&V (Para teachers) shall be entitled for enhanced honorarium (i.e. Rs. 8220/- to Rs. 13900/-) and (i.e Rs. 7500 to Rs. 13500/- with immediate effect i.e. 1.4.2010. Therefore, Para Teachers (TGTs/C&V) shall be entitled for Rs. 13900/- & Rs. 13500 only w.e.f. 1.4.2010 and nothing else as directed by the Govt.

(9) That in case any incumbent has not been paid emoluments in consonance with the above illustrations till now then he be paid all his due and admissible benefits, but be disbursed in tune to the instructions issued by Finance Department vide letter No. Fin(PR)-B(7)-16/98-III(Agriculture) dated: 15.12.2011 and Fin-E-1-C(17)-6/08 dated: 07.01.2012. That too, with prior approval of Section officer (Finance) posted in respective Deputy Director of Elementary Education Education.

(10) That the DDO shall furnish a certificate to the effect that payments made to the

(11) Respective incumbents (Contract and Para) are in consonance with the above illustrations to the respective Deputy Director.

(12)That in case of those incumbents who have received over payments which is not covered under above illustrations depicted in Para 1 to 7, the respective DDOs are hereby directed to issue show cause notice to the incumbent(s) within 15 days from the date of issue of these instructions with the directions to them, to file reply thereof within a week time positively. The same be decided by the head of office/ DDO through a reasoned speaking order within a month under intimation to respective Deputy Director and this office. Recovery if any, as per said order be also made to the State exchequer in twelve equal installments failing which both DDO and bill clerk shall be held responsible for the over payment besides disciplinary action against them for said lapse on their part.

This action shall be in consonance to the verdict passed by the Hon'ble Apex Court in Civil Appeal No. 5899/2012 in the case of Chandi Prasad Uniyal & others versus State of Uttarakhand & others dated 17.8.2012 wherein while dismissing the SLP of incumbent filed against over drawl due to wrong preparation of bill. The Hon'ble Apex Court in Para 16 & 17 has been pleased to held as under:-

13. **We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, collusion, favoritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment**.

14. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

This may be **ACCORDED TOP PRIORITY** and action contrary to above guides line shall be viewed seriously by the Govt./Department.

These instructions are also available on departmental website of Elementary Education.

DIRECTOR

Endst. No. Even Dated Shimla-171001 26th July, 2014

Copy is forwarded for information and further necessary action to:-

1 The Principal Secretary(Education) to the Govt. of HP.Shimla-2
2 The Accountant General (A&E) Himachal Pradesh, Shimla-3
3 The Director, Treasury, Accounts and Lotteries, Himachal Pradesh, Shimla-9
4 The Director Higher Education, Himachal Pradesh, Shimla-1
5 Guard file.

DIRECTOR