

No.PER (AP)-C-F-(1)-1/2002  
Government of Himachal Pradesh  
Department of Personnel (AP-III).

Dated Shimla-171002, the 3rd July, 2002.

From

The Chief Secretary to the  
Government of Himachal Pradesh.

To

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

Subject:- The Constitution (Eighty-Fifth Amendment) Act, 2001-- Seniority of SC/ST Government servants on promotion by virtue of rule of reservation/roster-- Supreme Court Orders thereto.

Sir,

I am directed to say that the Government of India has amended Article 16(4A) of the Constitution of India w.e.f. 17.06.1995, with a view to allow the government servants belonging to S.Cs. / S.Ts. to retain the seniority in the case of promotion, by virtue of rule of reservation. Article 16(4A) reads as under:-

"Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

After Amendment, this Article has been amended as under:-

"In article 16 of the Constitution, in clause (4A), for the words "in matter of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted."

Pursuant to the above amendment in the Constitution as made by Eighty Fifth Amendment, the Govt. of India has now issued the instructions vide their O.M.No.20011/1/2001-Estt.(D), dated the 21st January, 2002. The State Government has not issued any instructions in the matter so far, for the reason that the H.P. Secretariat General category employees has challenged the said Constitution Amendment vide W.P.(C) No.295/2002-- Devi Ram Tanwar & Ors. Vs. Union of India & Ors. alongwith other Writ Petitions on the subject filed by various other quarters. The Hon'ble



Supreme Court on 7.05.2002 has passed the following orders in this behalf:-

"Upon hearing counsel the Court made the following  
O R D E R  
Impleadment/Intervention application are allowed.  
Issue Rule.

Issue notice on the prayer for interim relief. List  
alongwith W.P. (C) No. 61 & 62 /2002 which have been referred  
to Constitution Bench.

Insofar as interim relief is concerned the respondents  
shall not revert the petitioners nor affect their standing in  
the seniority list and promotion, pay etc. At the same time,  
it shall be open to the respondents to promote those who are  
benefited by the impugned amendment but so that it does not  
affect the petitioners in any manner and subject to the  
result of the writ petition.  
Hearing of the writ petition is expedited."

This case has now been listed for 22.07.2002 for further  
directions/hearing. It is hoped that the matter will be decided by the  
Apex Court at an early date.

2. It has, however, been brought to the notice of the Govt.  
that promotions are being regularly made by various Departments in their  
respective cadres under the existing instructions on the subject. The  
Sch. Castes/Sch. Tribes Employees Welfare Associations have represented  
that in the light of 85th Constitutional Amendment Act, 2001, no  
promotions should be made in this behalf till the Hon'ble Supreme court  
has given its final orders in the matter. In view of this, it is  
emphasized upon all concerned that extreme care should be taken in the  
matter and such promotions should not be resorted to till further orders.

3. These instructions may kindly be brought to the notice of all  
concerned for compliance.

Yours faithfully,

Secretary (Pers.) to the  
Govt. of Himachal Pradesh.  
Dated Shimla-2, the 3rd July, 2002.

Endst. No. PER (AP)-C-F(1)-1/2002, Dated Shimla-2, the 3rd July, 2002.

- 1. The Secretary, H.P. Vidhan Sabha, Shimla-171004.
- 2. The Registrar General, Hon'ble High Court of H.P. Shimla-1.
- 3. The Registrar, H.P. Administrative Tribunal, Shimla-2.
- 4. The Secretary, H.P. Public Service Commission, Shimla-2.
- 5. The Secretary, H.P. Subordinate Staff Selection Board,  
Hamirpur, H.P.
- 6. 100 spare copies.

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Under Secretary (Pers.) to the  
Government of Himachal Pradesh.