

(Authoritative English text of this Department Notification No. Home-B(B)15-10/2006-HC dated 11.03.2011 as required under clause (3) of Article 348 of the Constitution).

Government of Himachal Pradesh
"Department of Home"

No: Home-B(B)15-10/2006-HC. Dated; Shimla-2, the 11 /03/2011

NOTIFICATION

In exercise of the powers vested in her under Sub-Section (i) of the Section 20 of the Code of Criminal Procedure, 1973, the Governor, Himachal Pradesh is pleased to confer the powers of Executive Magistrates upon such Tehsildar/Naib Tehsildars in the State of Himachal Pradesh, under the said Code, who have passed the Departmental Examination in Criminal Law and Procedure prescribed for them and possesses requisite educational qualification viz-a-viz Graduate in case of direct recruits and Matriculation in case of promotees with at least 5 years of experience as per the instructions and conditions as contained in the Himachal Pradesh Government letter No. Home-B (B)-12-5/84 dated 4-12-84 & 28-12-84.

The powers so vested under the code upon these Tehsildars/Naib Tehsildars shall be exercised by them within the local limits of their respective jurisdiction with immediate effect.

BY ORDER

Principal Secretary (Home) to the
Government of Himachal Pradesh

Endst.No:Home-B(B)15-10/2006-HC.Dated;Shimla-2,the 11/ 03/2011.

Copy for information and necessary action is forwarded to:-

1. The Registrar General, High court of H.P. Shimla.
2. The Principal Secretary(Law) to the Govt. of H.P.
3. Divisional Commissioners, Shimla, Kangra and Mandi.
4. All the Settlement Officers in Himachal Pradesh.
- 5 All the District & Sessions Judges in Himachal Pradesh.
6. All the Deputy Commissioners in Himachal Pradesh
- 7.A hard copy for information with regard to e-gazette uploaded for publication in Raj-Patra.



Under Secretary (Home) to the
Government of Himachal Pradesh

हिमाचल प्रदेश सरकार
गृह विभाग

संख्या: होम-बी (बी) 15-10/06-एच.सी शिमला, 11.03.2011.

अधिसूचना

हिमाचल प्रदेश की राज्यपाल, दंड प्रक्रिया संहिता, 1973 की धारा 20 की उपधारा (1) के अधीन उनमें निहित शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश राज्य में ऐसे तहसीलदार/नायब तहसीलदार को, उक्त संहिता के अधीन कार्यकारी मजिस्ट्रेट की शक्तियां प्रदान करती हैं, जिन्होंने दंडिक विधि और प्रक्रिया में उनके लिए विहित विभागीय परीक्षा पास की हों और अपेक्षित शैक्षित अर्हता रखने के साथ-साथ जो सीधी भर्ती की दशा में स्नातक हों और प्रोन्नत व्यक्तियों की दशा में हिमाचल प्रदेश सरकार के पत्र संख्या: गृह बी (बी) -12-5/84 तारीख 4-12-84 तथा 28-12-84 में यथा अन्तर्विस्त अनुदेशों और शर्तों के अनुसार कम से कम पांच वर्ष की सेवा के अनुभव सहित दसवीं पास हों ।

इन तहसीलदारों/ नायब तहसीलदारों को संहिता के अधीन इस प्रकार निहित शक्तियां उनके द्वारा, उनकी अपनी-अपनी अधिकारिता की स्थानीय सीमाओं के भीतर, तुरन्त प्रभाव से प्रयोग की जाएगी ।

आदेश द्वारा,

प्रधान सचिव (गृह)
हिमाचल प्रदेश सरकार ।

पृष्ठांकन संख्या: यथोपरि शिमला, 11 . 03 .2011.

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्रवाई हेतु:-

1. महापंजीयक, उच्च न्यायालय, हिमाचल प्रदेश, शिमला-1.

2. प्रधान सचिव (विधि) हिमाचल प्रदेश सरकार, शिमला-2.
3. मण्डल आयुक्त, शिमला, मण्डी एवं कांगडा,हि.प्र.
4. समस्त बन्दोबस्त अधिकारी, हिमाचल प्रदेश ।
5. समस्त जिला एवं सत्र न्यायाधीश हिमाचल प्रदेश ।
6. सहायक विधि परामर्शी एवं अवर सचिव (विधि) हि.प्र सरकार।
7. समस्त जिलाधीश, हिमाचल प्रदेश ।
8. हिमाचल प्रदेश राजपत्रा में प्रकाशन हेतू ।



अवर सचिव (गृह)
हिमाचल प्रदेश सरकार ।

NO. HOME-B(B)-12-5/84

Government of Himachal Pradesh
Department of Home.

From

The Secretary (Home) to the
Government of Himachal Pradesh.

To

All the District Magistrates in
Himachal Pradesh.

Dated; Shimla-2, the 4th December, 1984.

Sir,

I am directed to invite your kind attention to this Department letter of even number dated 28th July, 1984 and to state that the Executive Magistrates are required to discharge various functions under various Laws within their jurisdiction. These functions can be broadly summarized as follows :-

- (1) Enquiry and trial of cases under the Criminal Procedure Code;
- (2) Attestation of true copies of certificates;
- (3) Attestation of Affidavits under Indian Oath Act;
- (4) Issue of bonafide residence certificates, certificates of income and certificates of Scheduled Caste and Scheduled Tribe etc. ;
- (5) Functions under the Punjab Police Rules, as applicable to Himachal Pradesh;
- (6) Functions under the Land Acquisition Act;
- (7) Attestation of certificates and forms etc. for admission to educational institutions etc. ;
- (8) Any other miscellaneous functions which do not involve recording of evidence, sifting of evidence, application of mind and writing of order.

2. In so far as functions of the Executive Magistrate under the Criminal Procedure Code are concerned, these involve recording of evidence, sifting of evidence, application of mind and issue of orders.

.....2/-

... 2...

3. It has been decided by the State Government that the Sub Divisional Magistrates, who either belong to the Indian Administrative Services or to the Himachal Pradesh Administrative Services only will take cognizance of cases under the Criminal Procedure Code which involves recording of evidence, sifting of evidence, application of mind and issue of order. They will ordinarily not entrust any such case to any other Executive Magistrate working under them within their jurisdiction unless there are pressing reasons and the officer to whom such cases are transferred, is fully qualified to enquire into and try such cases. Other Executive Magistrates, who are Naib-Tehsildars and Tehsildars working in the interior of the State, shall only perform functions enlisted from Serial No. 2 to 8 above, which do not involve issue of judicial/quasi-judicial orders.

4. The Sub Divisional Magistrates who are also Executive Magistrates, will primarily try and enquire into the cases which involve recording of evidence, appreciation of evidence, application of mind and issue of order and would be only those officers, who have passed the Departmental Examination paper in Criminal Law and Procedure prescribed for them and would have undergone the training either in any institution or otherwise on the job or have gained sufficient experience of work. However, under pressing circumstances such cases may be entrusted to the other Executive Magistrates under them, who will be only such officers who have passed the Departmental Examination in Criminal Law and Procedure prescribed for them and possess requisite educational qualification which would be at least Graduate in case of direct recruits and Matriculation in case of promotes with at least 5 years of experience.

Yours faithfully,

Sd/-

Deputy Secretary (Home) to the
Government of Himachal Pradesh.

IMMEDIATE

No. Home-B(B)-12-5/84
Government of Himachal Pradesh
Department of Home.

From

The Secretary (Home) to the
Government of Himachal Pradesh.

To

All the District Magistrates in
Himachal Pradesh.

Dated; Shimla-2, the 28thDecember,

1984.

Subject:-

Powers of Executive Magistrates.

Sir,

In continuation of this Department letter of even number, dated 4th December, 1984 on the subject cited above, I am directed to state that criminal Writ Petition No. 12 of 1984 (Om Prakash & Others Vs State of H.P. & others) came up before the Hon'ble Himachal Pradesh High Court on 10th December, 1984. A copy of the order passed by the Hon'ble H.P. High Court is enclosed. As directed therein all Sub Divisional Magistrates (who either belong to the IAS or HPAS) may be directed not to transfer cases under Criminal Procedure Code which involve recording of evidence, sifting of evidence etc. except in rare and exceptional cases and for pressing reasons. When such cases are required to be transferred to other Executive Magistrates (who have passed the Departmental Examination in Criminal Law and Procedure prescribed for them and possess requisite educational qualifications which would be atleast Graduate in case of direct recruits and Matriculation in case of promotees with atleast 5 years of experience), the reasons for such transfer should be clearly recorded on the case file as well as in the periodical returns submitted by the Executive Magistrates to the High Court. The cases where such transfer has been effected should be clearly shown by the Sub Divisional Magistrates, who have ordered the transfer, in such periodical returns with the recorded reasons for such transfer.

All concerned should observe these orders faithfully and punctually.

Yours faithfully,

Sd/-
Deputy Secretary (Home) to the
Government of Himachal Pradesh.

No. Home-B(B)-12-5/84. Dated; Shimla-2, the 28th December, 1984.

1. Copy alongwith a copy of enclosures forwarded to all the Sub Divisional Magistrates in H P for strict compliance. These orders should be observed faithfully and punctually as directed by the Hon'ble H.P. High Court.
2. Copy to the Registrar (Vigilance), Himachal Pradesh High Court, Shimla.
3. Copy to the Advocate General, Himachal Pradesh, Shimla, in connection with Cr.W.P.No.12 of 1984 (Sh. Om Prakash & others Vs State of H.P. & others).

Sd/-
Deputy Secretary (Home) to the
Government of Himachal Pradesh.

INTERIM WRIT ORDER.
HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

In the matter of: -

CRIMINAL WRIT PETITION NO. 12 OF 1984.

Om Prakash and others. Petitioners.

Versus

State of H.P. and ors. Respondents.

CORAM: - The Hon'ble Mr. Justice P.D.Desai, C.J.
The Hon'ble R.S.Thakur, J.

For the Petitioners: Shri K.S. Patyal, Advocate.

For the Respondents: Shri P.N.Nag, A.G. for respondents 1 to 3.
Shri K.D.Sood, Advocate for the interveners.

WHEREAS THE petition mentioned above having been registered on the basis of the complaint made by Shri Om Prakash and others and came up for hearing/disposal on the 10th day of December, 1984 and whereas upon hearing Shri K.S.Patyal, Advocate, counsel for the petitioners in support of the petition and S/Shri P.N.Nag and Shri K.D. Sood, Advocate, counsel for the respondents in opposition thereto, this court DOTH ORDER as follows: -

Adjourned to January 1, 1985. The further report of the Notified Area Committee if any, will be placed on the record of the case on or before the said date.

The Court has perused the affidavit dated December 4, 1984, made by the Deputy Secretary (Home) and Annexure R-A to the said affidavit. Having regard to the factors mentioned in para 4 of the Affidavit dated Nov. 10, 1984, filed by the Dy. Secretary (Home), the latest orders dated December 4, 1984, issued as per Annexure R-A, appear to strike a just balance between the need of entrustment of cases involving enquiry and trial under the Criminal Procedure Code to the officers who are duly qualified and experienced and the convenience of people residing in remote areas who might be inconvenienced if they are required to travel a long distance to reach the district/ Sub divisional headquarters. The Court, however, considers it expedient and in the interest of justice to direct that further instructions should issue to the Sub Divisional Magistrates (who either belong to the Indian Administrative Services or Himachal Administrative Services and who now will be required to take cognizance of and enquire into and try the cases arising under Criminal Procedure Code which involve recording of evidence, sifting of evidence, application of mind and issue of orders etc.) that in rare and exceptional cases when, for "pressing reasons", such cases are required to be transferred to other Executive Magistrates (who have passed the Departmental Examination in Criminal Law and Procedure prescribed for them and possess requisite educational qualifications which would be at least Graduate in case of direct recruits and Matriculation in case of promotees with at least 5 years of experience), the reasons for such transfer should be clearly recorded on the case file as well as in the periodical returns submitted by the Executive Magistrates to the High Court. The cases where such transfer has been effected should be clearly shown by the Sub Divisional Magistrate, who have ordered the transfer, in such periodical returns with the recorded reasons for such transfer. The State Government will issue orders accordingly and direct the concerned officers to

observe them faithfully and punctually. A copy of the order issued accordingly will be forwarded to the Registrar (Vigilance) of this High Court.

In view of this order, no other or further orders are required to be made for the present pursuant to the orders made on "July 17, 1984 and July 31, 1984".

This Court, further DOTH ORDER that this order be punctually observed, obeyed and carried into execution by all the concerned.

Witness the Hon'ble Mr. Justice P.D+.Desai, Chief Justice, High Court of H.P., Shimla this 10th day of December, 1984.

Sd/-

DEPUTY REGISTRAR

Sd/-

(JUDL.)

SUPERINTENDENT (JUDL.)