

No.6/83/2008-4PR (FD)

From

The Financial Commissioner & Principal Secretary to
Govt. Haryana, Finance Department.

To

1. All Heads of Departments in Haryana;
2. Commissioner, Ambala, Hisar, Gurgaon & Rohtak Divisions;
3. All Deputy Commissioners and Sub Divisional Officer (Civil) in Haryana;
4. Registrar, Punjab & Haryana High Court, Chandigarh.

Dated Chandigarh, the 10.06.2009

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Subject: - Grant of benefit of Adhoc Service for the purpose of additional increment(s) to Group C & D employees on completion of 8 and 18 years regular satisfactory service.

Ref.: This department instructions No. 6/16/2001-3PR(FD), dated 15.03.2002 and No. 1/35/2002-1PR(FD) dated 23.04.2003.

Sir,

I am directed to refer to the subject captioned above and to say that the instructions bearing No. 6/16/2001-3PR(FD) dated 15.3.2002 and clarificatory letter No. 1/35/2002-1PR(FD) dated 23.4.2003 were challenged before the Hon'ble High Court of Punjab & Haryana through the following CWPs:-

1. CWP No. 15555 of 2003 - Sheela Devi & others V/s State of Haryana.
2. CWP No. 15055 of 2003 - Badal Singh V/s State of Haryana.

2. While disposing a bunch of CWP's in main CWP No. 15555 of 2003- Sheela Devi and others V/s State of Haryana, the Hon'ble Division Branch considered various judgments of Hon'ble Apex Court including the following: -

- (i) State of Haryana V/s Haryana Veterinary and AHTS Association.
- (ii) State of Punjab V/s Gurdeep Kumar Uppal.
- (iii) Bharat Singh & ors V/s State of Hayana & ors 2002(3) RSJ 472 (Decided by Hon'ble Pubjab & Haryana High Court.)

3. After considering all the facts and circumstances relevant to the case, the Hon'ble High Court dismissed all these Writ Petitions vide order dated 27.04.2004 with certain observations amounting in specific case to be a bar on recovering the amount paid in excess as well.

4. While disposing of CWP No. 15055 of 2003 – Badal Singh V/s State of Haryana, the Hon'ble Court has observed as under: -

“Accordingly, petitioner No. 24- Smt. Santosh Sharma and all other petitioners similar situated were issued show cause notice regarding fixation of their pay. The show cause notice had quoted the aforementioned para from the letter dated March 15, 2002 (P- 4) and has called upon to show cause why the re-fixation in the cases of the petitioners be not ordered. The aforementioned petitioner duly filed the reply to the show cause notice. As the decision had already been taken by the respondents, the petitioners had approached this Court. It is appropriate to mention that a clarificatory order dated April 23, 2002 was also issued by the respondents. The operative part of the order shows that no recovery of over payment involved after the period upto March 14, 2002 was to be made. The pay of all such employees was to be re-fixed notionally from the date of grant of benefit upto March 14, 2002 and actually from March 15, 2002. The aforementioned para 3 from the letter is reproduced hereunder for facility of reference: -

“3. The matter has been considered at length and it has been observed that the adhoc service was not to be counted for the purpose of grant of additional increment (s) and given benefit has been withdrawn vide

instructions dated 15.3.2002, which are based on the judgments of Hon'ble Punjab and Haryana High Court and the Hon'ble Supreme Court of India. The Government has now decided that the granted benefit on account of adhoc service may be treated to have been withdrawn from the date it was earlier granted. However, no recovery of over payment involved after the period up to 14.3.2002, the day preceding the issuance of instructions dated 15.3.2002 is to be made. In other - words, pay of all such employees will be re-fixed notionally from the date of grant of benefit upto 14.3.2002 and actually from 15.3.2002. Legal course of action, warranted in a case, if any, may also be followed by the department in this regard."

The respondents have filed a detailed written statement by referring to various steps taken for breaking stagnation of pay scale and by ensuring that atleast two steps be provided to hike the pay scale of Group 'C' and 'D' employees. Para 5 of the written statement under the preliminary submissions categorically state that the Government letter dated March 15, 2002 (P-4) was issued after the reversion of the judgment of the Full Bench of this Court in Rakesh Kumar Singla's case (supra) by the Hon'ble Supreme Court in the case of Haryana Veterinary and AHTS Association's case (supra) and thereafter even a clarificatory letter was issued on April 23, 2003, which has clarified that the benefit of adhoc service for the purposes of 8/18 years additional increment has been withdrawn and the excess amount paid to an employee by counting adhoc service was not to be recovered.

The precise issue raised before us is whether service rendered by an adhoc appointee on the basis of appointment made de hors the recruitment rules could be counted for earning the benefit of higher scale of pay under the Government instructions or they are to be granted the benefit on being regularly appointed, in accordance with the recruitment Rules. As is already noticed that the matter is no longer res integra and in the case of Haryana Veterinary and AHTS Association's case (supra) it has been held that the benefit of adhoc service cannot be granted for the purposes of 8/18 years to release additional increments. It has been clarified that only that part of service could be counted for the purposes of reckoning 8/18 years which would count for seniority. The aforementioned decision has been followed and applied in the case of State of Punjab v. Gurdip Kumar Uppal, (2003) II SCC 732: (2001(3)SLR 256(SC)) and in the case of State of Punjab v. Ishar Singh, (2002) 10 SCC 6784 : (2002(2) SLR 289 (SC)).

If the facts of the present case are examined in the light of the principles laid down by the Hon'ble Supreme Court in the aforementioned judgements, it becomes evident that petitioner No. 24 and all other petitioners are not entitled to count the period of their adhoc service for the purposes of earning increment at the stage of 8/18 years or 10/20 years. Smt. Santosh Sharma was appointed on adhoc basis on September 7, 1972 and her service were regularized w.e.f. January 1, 1979. It is obvious that her service could be counted only from the date of regularization for the purpose of earning additional increment at the stage of 8/18 years or

10/20 years as the case may be Similar would be the position in respect of other petitioners.

The prayer of the petitioners that no recovery should be made would also not require any detailed consideration in view of the letter dated April 23, 2003 issued by the respondent Department. The aforementioned letter, in fact incorporates the principle laid down by the Hon'ble Supreme Court in Sahib Ram V. State of Haryana and others, (1995) Suppl. 1 SCC 18:[1994(5) SLR 753(SC)], wherein it has been held that if upgraded pay scale is given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, then recovery of the payment already made would become irrecoverable.

In view of the above, the writ petition is dismissed."

Therefore, you are requested that the above mentioned observation of High Court in CWP No. 15555/2003 and 15055 of 2003 may be brought into the notice of High Court while contesting the cases of your deptt. on this issue or while filing review application before the Hon'ble High Court. These observations may also be brought into the notice of Hon'ble Apex Court in case any SLP of the deptt. concerned is pending before the Hon'ble Apex Court. Further, wherever any such or similar nature case is yet under consideration in your department, it needs to be disposed off in terms of these instructions while quoting the gist of the order passed by the Hon'ble Supreme Court urgently.

In the event, in certain cases where there is a requirement to re-open the cases settled before to bring them consistent with the said orders of Hon'ble Supreme Court, same must be re-opened

expeditiously and settled by passing speaking orders afresh after giving a show cause notice to the concerned employee.

Yours faithfully,

Deputy Secretary, Finance (PR)
for Financial Commissioner & Principal Secretary
to Government, Haryana, Finance Department.

Endt. No.6/83/2008-4PR (FD)

Dated: 10.06.2009

A copy is forwarded to the Accountant General (A&E) and Audit, Haryana, Chandigarh.

Deputy Secretary, Finance (PR)
for Financial Commissioner & Principal Secretary
to Government, Haryana, Finance Department.

A copy is forwarded to all the Financial Commissioners & Administrative Secretaries to Govt. Haryana for information and necessary action.

Deputy Secretary, Finance (PR)
for Financial Commissioner & Principal Secretary
to Government, Haryana, Finance Department.

To

1. All the Financial Commissioners & Principal Secy. to Govt. Haryana;
2. All the Commissioners & Administrative Secretaries to Govt. Haryana;

U.O. No.6/83/2008-4PR (FD) Dated Chandigarh, the 10.06.2009

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45901—C.S.—H.G.P., Chd.

Senior Accounts Officer
Finance Department, Haryana
Chandigarh