

Personnel Attention

No. Fin (Pen)A(3)-1/09-Part-V-Loose
Government of Himachal Pradesh
Finance(Pension) Department

From

The Additional Chief Secretary (Finance) to the
Government of Himachal Pradesh

To

1. All Administrative Secretaries to the Government of Himachal Pradesh.
2. All Heads of Departments Himachal Pradesh.

Dated Shimla-2, the 31st December, 2020

Subject: Clarification regarding payment of gratuity under the Payment of Gratuity of Act, 1972.

Sir,

1. I am directed to refer to the subject cited above and to say that references are being received in this department from various quarters seeking clarification with regard to payment of gratuity to the Govt. employees for combined service of both daily waged and regular service on the basis of pay last drawn by an employee at the time of retirement under the Payment of Gratuity Act, 1972; keeping in view orders passed by the Controlling Authorities-Cum-Labour Officers, Department of Labour and Employment, Himachal Pradesh. The matter in question was examined in Finance Department in consultation with the Law Department.

2. Basically, fundamental nature of the payment of Gratuity Act 1972 is a social welfare legislation, aimed to provide payment of gratuity to 'employees' engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.

3. The Section 2(e) of the Payment of Gratuity Act 1972, defines that "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person

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who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

4. Further, Section 2A of the Act defines the continuous service and Section 4 of Act, stipulates conditions and manner, in which, payment of gratuity will be paid to an employee under the said Act. The Section 4(1) of Payment of Gratuity Act 1972, clearly stipulates that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of 'fifteen days' wages based on the rate of wages last drawn on termination of employment of an employee after he has rendered continuous service for not less than five years.

5. It is crystal clear from the provisions in Section 2(e) and Section 4(2) of the Payment of Gratuity Act, 1972, that the terminology last pay drawn, as find mention in the orders of the Controlling Authority-Cum-Labour Officer, Department of Labour and Employment, will apply to the wages last drawn by a person/employee in the capacity of a daily wager before date of regularization of his daily waged service.

6. Therefore, keeping in view the position of Section 2(e) and Section 4 of the Payment of Gratuity Act, 1972, wherever, the Controlling Authority-cum- Labour Officer, has passed order(s) to consider the last pay drawn by the applicant, in the capacity of a regular employee for the purpose of calculation of gratuity under this Act, is contrary to the statutory provision of the aforesaid Payment of Gratuity Act, 1972. Apart this, any decision, rendered by the Controlling Authority-cum-Labour Officer(s) to take last pay drawn by an employee at the time of retirement for calculation of gratuity for both daily waged and regular service is also contrary to the Hon'ble High Court, Himachal Pradesh, decision dated 9th May, 2007 in Lashkari Ram's case {(2008) ILJ 137 HP, 2008 (1) ShimLC 245}

7. As you are aware that Govt. employees appointed on regular basis on or before 14.05.2003 are governed by the CCS(Pension)Rules, 1972 and they are entitled to gratuity under these Rules. Similarly, Govt. employees appointed on regular basis on or after 15.5.2003 are covered under the Contributory

Pension Scheme now called New Pension System (NPS) and they are entitled to retirement gratuity /death gratuity in accordance with Govt. instructions contained in O.M. No. Fin (Pen) A (3)-1/96 dated 18th September, 2017.

8. Therefore, keeping in view the position of Act/Rules/Instructions, as referred to above, it is emphasized upon all concerned that in the cases, where, the Controlling Authority-cum-Labour Officer(s) or Joint Commissioner-cum-Appellate Authority, has passed order(s) to determine the gratuity of Govt. servant by taking into account both daily waged period and regular service of such Govt. servant, based on emoluments last drawn by him at the time of retirement, under the Payment of Gratuity Act, 1972, such orders may be agitated in higher appellate Court immediately by way of filing appeals in time bound manner.

9. These instructions/ clarification may be brought to the notice of Subordinate offices for immediate compliance.

Yours faithfully,


Special Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated: Shimla-2, the 31/12/2020

Copy is forwarded to:

1. The Divisional Commissioner, Shimla, Mandi and Kangra at Dharamshala Himachal Pradesh for information and similar necessary action.
2. The Principal Accountant General (Audit) Himachal Pradesh Shimla-171003.
3. The Accountant General (A&E) Himachal Pradesh-171003.
4. The Registrar General, H. P. High Court, Shimla - 171001.
5. All Deputy Commissioners in Himachal Pradesh.
6. All the Controllers/ Joint Controllers/Deputy Controllers / Assistant Controllers/Section Officers of HPFAS cadre under the Administrative Control of T&A Organization in Himachal Pradesh.
7. All District Treasury Officers/Treasury Officers in Himachal Pradesh.
8. The Incharge, NIC, H.P. Secretariat, Shimla-2 with the request to upload this letter on the State Finance Department Website.

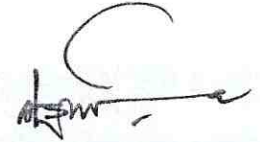

Special Secretary (Finance) to the
Government of Himachal Pradesh.

Directorate of Hr. Education
Himachal Pradesh

Endst. No. EDN-H(1)B(15)1/2009- Imp. Instt. Dated Shimla – 171001 the
Copy for information and further necessary action is forwarded to:-

30/01/2021

1. The Addl. Chief Secretary (Finance) to the Govt. of Himachal Pradesh w.r.t. No. Fin (Pen) A(3)-1/09-Part-V-Loose dated 06.01.2021 for information please.
2. The Additional Director of Higher Education Admn. / Colleges, H.P.
3. The Joint Director of Hr. Education, C-I / C-II / S / H.P.
4. The Joint Controller (F&A), Dte. of Hr. Education, H.P.
5. The OSD(C) / OSD (Skt.) Directorate of Hr. Education, H.P.
6. The DDO .Supdt. Cash Cell, Directorate of Hr. Education, H.P.
7. All the Branch Officer / Superintendent Establishment Branches & Building & Pension Branch, Directorate of Higher Education HP with the remarks that to take further necessary action in the matter accordingly.
- ✓ 8. **The Incharge Computer Cell, Dte. of Hr. Education, H.P with the remarks to upload the said orders on the deptt. Website.**
9. All the Deputy Directors of Higher Education in Pradesh for (strict compliance).
10. All the Principal, GDC / GCTE Dharamshala & Skt. Colleges in Pradesh.
11. All the Principals/ HM of Govt. Sr. Sec. Schools / High Schools in the H.P.
12. The Chief Librarian, Center State Library Solan.
13. All the District Library in the Pradesh, HP.
14. The NCC Group Commander, GP HQ, Shimla-4.
15. All the NCC units in the Pradesh, HP.
16. Guard File.



(Dr. Amarjeet K. Sharma)
Director Higher Education
Himachal Pradesh

शिक्षा निदेशालय उत्तर हिमाचल प्रदेश

30 JAN 2021



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