

No. EDN-HE(12)B(6)-1/2012-Para Teachers
Directorate of Higher Education,
Himachal Pradesh.

Dated: Shimla-171001 the April, 2019

ORDER

Whereas, notice was served on 15.03.2019 to all the Para DPEs who were regularized in the year 2014 after 01.10.2012 and were given initial start of Rs.14430/- instead of minimum of pay band + grade pay of post i.e. 10300/-+3600/- by the department. Allowing initial start was contrary to the Rule 5(ii) of Himachal Pradesh Civil Services (Category/Post wise revised pay) Rules, 2012 notified vide FD's Notification No. Fin(PR)-B(7)-64/2010-Loose dated 24.09.2012 which reads as under:-

5(ii) In case of Government servant appointed on or after the date of commencement of these rules, the pay will be fixed at minimum of the pay band plus grade pay as mentioned in the "Schedule" against the respective category/post.

And whereas, the replies of all DPEs who were regularized on or after 01.10.2012 have been taken in consideration, but while regularizing the services of Contract/ Para DPEs on or after 01.10.2012 they were allowed initial start 10830+3600=14430/- whereas as per above Rule 5 (ii) of H.P. Civil Services (Category Postwise Revised Pay) Rules, 2012 which was notified on 24.09.2012, their pay was to be fixed in minimum of pay band plus grade pay i.e. Rs. 10300+3600=13900/-. In response to notice dated 15.03.2019 some of DPEs have submitted that Himachal Pradesh Civil Services (Category/Post wise revised pay) Rules, 2012 were notified in Sept. 2012 whereas they have been hired by the department in the year 2003 & 2004.

And whereas the replies of some of DPEs have been received they have requested to continue salary what they are getting after regularization but Govt. employees salary are to be released as per notification /instruction issued by finance department time to time.

And whereas, it is admitted fact that by allowing initial start of Rs 14430/- in regularization orders is contrary to Finance notification dated 24.09.2012, but after clarification dated 01.09.2015, DPEs are to be paid minimum of pay band + grade pay of the post i.e. 10300 + 3600= 13900/-.

And whereas, references /judgments of the Apex Court of India in identical cases have also been perused where the overpayment was made to employee and were allowed salary what was not actually due to them but employee has never requested for such fixation but erroneously, the employer has allowed salary in higher side contrary to provisions which was not due. The Hon'ble Supreme Court in SLP No. 11684/2012 titled as State of Punjab versus Rafiq Masih observed in Para 11 that *it is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, ...*

While concluding the judgment the Hon'ble Supreme Court has ordered that it is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of

their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

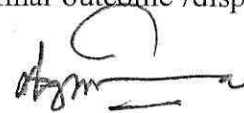
(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

And Whereas, Hon'ble HPAT has allowed initial start to PGT's regularized after 01.10.2012 in OA No.5241 of 2016 but same has been further agitated by department in Hon'ble High court of HP and final outcome is awaited.

Now therefore, keeping in view the facts and circumstances of the case, salary of Government employee is governed as per Finance department notification issued from time to time. The services of Para DPEs regularized after 01.10.2012 and their pay required to be restricted to Rs. 13900/- in the pay scale of Rs. 10300-34800 plus 3600/- Grade Pay as per Finance notification dated 24.09.2012 instead of initial start of Rs. 14430/-. Accordingly, rectification may be done in pay fixation of those DPE's who were regularized on or after 01.10.2012 and were allowed initial start Rs. 14430/- and entry to rectification effect may be made in service book of concerned on or before 20.04.2019 by all the DDO's wherever such DPE's are presently posted. The salary of April, 2019 may be released after rectification only. Instructions regarding adjustment of excess paid will be issued after final outcome /disposal of the of the matter which is subjudice.


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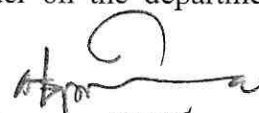
Endst. No. Even Dated Shimla-1 the April, 2019

Copy forwarded for information and necessary action to:-

1. All the Deputy Directors of Higher Education, in Himachal Pradesh.
2. All the Principals Govt. Sr. Sec. Schools/ DIETs in Himachal Pradesh with the direction to rectify the pay of Para regularized DPEs.
3. All the DPEs regularized on or after 01.10.2012 in Govt. Sr. Sec. Schools/ DIETs in Himachal Pradesh.
4. Incharge, IT cell with the directions to upload this these order on the departmental website.

शिक्षा निदेशालय उच्चतर

16 APR 2019


Director Higher Education
Himachal Pradesh Shimla-1