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10/05/18



**OFFICE OF DIRECTOR SECONDARY EDUCATION HARYANA PANCHKULA**

<sup>KW</sup>  
Order No. 10/4-2015 Admn. (4)

Dated, Panchkula the

A copy of order No. 6/17/2017-4PR(FD) Dated 12.04.2018 received from Special Secretary to Govt. of Haryana, Finance Department regarding CWP No. 2966 of 2017-Ramesh Kumar & Others Vs State of Haryana is forwarded to the following for information and necessary action:-

1. Director Elementary Education, Haryana, Panchkula.
2. Director SCERT Haryana, Gurgugram.
3. All DIET's in the State.
4. All District Education Officer's in the State.
5. All District Elementary Education Officer's in the State
6. All the Headquarter Officers.
7. Registrar Education (Secondary).
8. All the Superintendent (HQ).
9. Superintendent Admn. (Primary).
10. Superintendent Accounts Branch (HQ).
11. Superintendent Coordination Branch.
12. PS/DSE.
13. PA/Additional Director Admn.
14. PA/Additional Director Academic.
15. PA/Joint Director Admn.
16. All Assistant Admn Branch.
17. IT Cell (HQ) for website.
18. *Legal Cell.*

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SUPERINTENDENT ADMINISTRATION  
for DIRECTOR SECONDARY EDUCATION  
HARYANA PANCHKULA

**ORDER**

**No. 6/17/2017-4PR (FD)**

**Date 12th April 2018**

1- The instant Order is being issued pursuant to CWP No. 2966 of 2017- Ramesh Kumar & Others Vs. State of Haryana which was disposed of by the Hon'ble Punjab & Haryana High Court vide its judgment dated 12.1.2018. By means of which action, of making recovery of Rs. 20,000/- on account of Interim Relief (@ Rs. 2000/- p.m. from 1.1.2016 to 31.10.2016), without giving Show Cause Notice were quashed and a direction was issued to the competent authority to hear the petitioners and pass speaking orders.

2- The facts of this case are as on date 17.12.2013 the Haryana Govt. had issued Instructions No. 4/1/2013-1FR/31960 whereby Interim Relief @ Rs. 2000/- p.m. was commenced to be paid to Group C & D Govt. employees w.e.f. 1.1.2014. It was interalia mentioned in the Instructions ibid that this Interim Relief will be discontinued from the date of implementation of the recommendations of 7<sup>th</sup> Central Pay Commission and also that this Interim Relief will be sui generic viz. it will neither be termed as "Pay" nor "Allowance" nor "Wage". Accordingly, this amount will not be counted for any service benefit i.e. computation of HRA, Hill Compensatory Allowance, Overtime Allowance, Cash Compensation, Encashment of leave, Pay Fixation, Dearness Allowance, Pension or Gratuity etc. This Interim Relief was also to be discontinued on appointment/promotion to any post of Group A or B categories. As all of six Nos. of petitioners are Class III (Group C) employees they were, thus, rightfully extended this benefit.

3- Pursuant to acceptance of the recommendations of the State Committee set up in terms of 7<sup>th</sup> CPC the revised pay structure in the form of The Haryana Civil Services (Revised Pay) Rules, 2016; dated 28.10.2016 and The Haryana Civil Services (Assured Career Progression) Rules, 2016; dated 28.10.2016 was implemented w.e.f. 1.1.2016. The Rule 14 of the HCS (RP) Rules, 2016 and the Rule 22 of the HCS (ACP) Rules, 2016 provided for a clause of making recovery of amount of Rs. 20,000/- already paid on account of Interim Relief from 1.1.2016 to 31.10.2016 out of arrears payable to Class III and IV employees on account of general pay revision. In terms of provision of the Rules, this was in consonance with the earlier decision of the Govt. by discontinuation of Interim Relief w.e.f. the date of implementation of recommendations of 7<sup>th</sup> CPC as plainly and conspicuously mentioned in aforementioned Instructions dated 17.12.2013, the amount of Interim Relief was adjusted against their payable arrears. The petitioners submitted a Representation dated 17.12.2016 for not making recovery from them but the

Representation *ibid* appears not to have been replied. Feeling aggrieved, the petitioners approached the Hon'ble Punjab & Haryana High Court by means of present CWP wherein they have arrayed one Sh. Gautam, Clerk in GHS, Siwaha, Distt. Jind as Private Respondent also from whom, they contended, the Interim Relief was not recovered/adjusted. The detailed Written Statement was filed by the State to this CWP and the amount of Interim Relief was also recovered/adjusted from aforesaid Sh. Gautam in the meantime.

4- The petitioners in the present CWP contended that the amount paid once by the Govt. consciously especially when there is no fraud or misrepresentation on the part of petitioners cannot be recovered from them and that too without any notice. They have relied upon two decided cases of Hon'ble Supreme Court of India- **State of Punjab Vs. Rafiq Mashi-2015 (4) SCC 334** and **High Court of Punjab & Haryana Vs. Jagdev Singh** and also on a case decided by Hon'ble Punjab & Haryana High Court - **Budh Ram Vs. State of Haryana, 2009 (3) SCT 333**. They had also relied upon Haryana Govt. Finance Department Instructions No. 1/23/2010-2PR(FD), dated 20.01.2017 and contended that the act of recovery of Interim Relief from them is ultra vires to the said Instructions.

5- The detailed Reply was filed on behalf of the State Govt. which countered all of the allegations of the petitioners but the Hon'ble High Court disposed of the said CWP vide its judgment dated 12.1.2018 with a direction to hear the petitioners on the question of recovery and then pass speaking orders. In compliance with the Orders *ibid* of Hon'ble High Court the petitioners were issued a due notice for hearing and all of Six Nos. of them presented themselves for hearing before me on 16.3.2018. The departmental representatives were also present. The Petitioners repeated their contentions, which formed their pleadings in CWP, that making recovery from them was illegal per se in terms of law settled by Hon'ble Supreme Court in Rafiq Masih case and Jagdev Singh, supra and also that as no notice was served upon them to this effect it was also bad qua Principle of Natural Justice. They also presented a Representation dated 16.3.2018 which contained their contentions what they had raised before Hon'ble High Court and during the course of hearing before me. In addition thereto in this Representation they have also referred to **afresh** cases of UOI Vs. Rekha Majhi, Shyam Babu Verma Vs. UOI, Karam Singh Vs. State of Haryana and Bam Dev Chhetri and Ors. Vs. JNU. It has been noticed that all of these four Nos. of cases were not part of their pleadings before Hon'ble High Court and as such at this stage of compliance are not admissible to be taken on record and accordingly are not to be treated as a part of record and not considered.

6- I have heard the petitioners at length and also counter version of Sh. Vijay Grover, Accounts Officer Pay Revision Branch (Finance Department) and the Departmental Representatives (O/o the Director Elementary Education, Haryana, Panchkula) Sh. Narender, Asstt. and Sh. Paramjit Singh, Legal Asstt. and also examined the case record carefully. It is pointed out by Sh. Vijay Grover, Accounts Officer Pay Revision Branch that as four Nos. of cases, that the petitioners have referred to in their Representation dated 16.3.2018 were not part of their pleadings before Hon'ble High Court same, therefore, cannot be relied upon by them at this subsequent stage and the same cannot be taken as record of this case. The operative part of the judgment dated 12.1.2018 in compliance with which the instant hearing has been fixed reads as :-

**“Normally, no recovery should have been made without informing the reason to the employees for such recovery, The petitioners have a right to know why they have been dealt with in the manner the Department has without applying the principles of natural justice. Therefore, the action of the respondents is quashed and a direction is issued to the competent authority to hear the petitioners and passa speaking order and communicate the same to them. Whatever money is found due under that order may be disbursed to the petitioners. Since the issue is minor in nature, the entire exercise be carried out within two months from the date of receipt of certified copy of the order.**

**With these directions and observations, the writ petition is disposed of.”**

7- The record shows that the contention of petitioners, making recovery of an amount of Rs. 20,000/- terming that excess payment which was consciously paid to them during the intervening period from 1.1.2016 to 31.12.2016, is wrong and an attempt to portray the otherwise a plain act in oblique manner. The version of Finance Department was found plausible that it was not an excess payment paid either inadvertently or out of negligence but a due amount payable under the old pay structure of 2008 (the de jure currency of which was from 1.1.2006 to 31.12.2015) but which remained in currency de facto till 31.10.2016 on account of issuance of Notification of revised HCS (RP) Rules, 2016 and HCS (ACP) Rules, 2016 only on 28.10.2016. As the revised pay structure was given retrospective effect w.e.f. 1.1.2016 it was but natural to pay the arrears w.e.f. 1.1.2016 itself and adjust the payment already received as per old pay structure. This is only in terms of this fact a clear provision was made in Rule 14 and Rule 22 of the HCS (RP) Rules, 2016 and

HCS (ACP) Rules, 2016 respectively to recover the amount of Interim Relief paid during the period from 1.1.2016 to 31.12.2016 being an ingredient of 6<sup>th</sup> CPC/old pay structure. It is only pursuant to new Rules the amount of Interim Relief for the intervening period was adjusted against arrears payable to the petitioners. It is also the contention of the Department that from a specified/cut-off date from which a new structure of pay has been accepted by the petitioners they cannot claim selectively only one ingredient of old pay structure and as such that ingredient which in the present case is Interim Relief is liable to be returned by them. It is also contention of the Departmental Representatives and Finance Department that an express and conspicuous clause (clause ii) was itself inserted in the Instructions dated 17.12.2013 that the Interim Relief shall be discontinued from the date of implementation of 7<sup>th</sup> CPC recommendations. It was also made crystal clear that this amount was not to be counted for any of the purposes including pay-fixation (clause iii). It is also a matter of fact that the petitioners have not challenged the validity of Rule 14 of HCS (RP) Rules, 2016 and Rule 22 of the HCS(ACP) Rules, 2016 and vide its Orders dated 12.1.2018 the Hon'ble High Court has passed limited directions to hear the petitioners and then pass speaking orders meaning thereby the Rule 14 and Rule 22 ibid are fully valid and in existence and does not bar the Govt. to make necessary adjustment out of payable arrears of employees which has been termed as recovery otherwise in the Rules ibid.

8- Now to be limiting myself to the mandate of Orders of Hon'ble High Court dated 12.1.2018 I find the approach of the petitioners not fair and equitable. I have no constrains to state that they are misinterpreting the whole issue for their undue benefit. The Govt. Instructions dated 17.12.2013 by virtue of which Interim Relief was commenced very clearly and in unambiguous terms lay down that in the event of implementation of 7<sup>th</sup> CPC recommendations the Interim Relief shall be discontinued and as such this is an advance notice to this effect itself. It is strange that the petitioners want to enjoy the monetary benefit only but at the same time pretend to have no notice of its discontinuation in the event of implementation of 7<sup>th</sup> CPC recommendations/revised pay structure. Moreover, the Rule 14 of HCS (RP) Rules, 2016 and Rule 22 of HCS (ACP) Rules, 2016 are also a Notice to this effect that since these Rules have come into being w.e.f. 1.1.2016 the ingredient of old pay structure namely Interim Relief shall cease to exist and accordingly shall be recovered from arrears only. It is especially to be noticed that no amount is being recovered out of regularly being paid salary but out of arrears of new pay structure. The term "recovery" referred to in Rule 14 and 22 ibid has not been used in generic sense but with specific and limited reference to making adjustment of amount due on account of new pay structure and amount already paid on account of old pay structure. Thus, I am in agreement

with the office view that in spirit this is not a recovery but an adjustment of amount due and drawn. The allegation of the petitioners, well-educated teachers that they have not been served upon Notice to the effect of making recovery and as such Principle of Natural Justice has not been complied with, is specious. They have enjoyed the amount of Interim Relief for long two years and also appear to have opted for the revised pay structure w.e.f. 1.1.2016 and in terms of clear provisions of Instructions dated 17.12.2013 and Rule 14 of HCS (RP) Rules, 2016 and 22 of HCS(ACP) Rules, 2016, they were sufficiently on clear and conspicuous notice that from the date of adoption of revised pay structure they stand to lose the benefit of Interim Relief and as such there is no illegality and irregularity on the part of authorities concerned in making adjustment of Interim Relief amount from them. The law laid down in the Rafiq Masih and Jagdev Singh case is obviously not applicable in their case as the payment of Interim Relief was "conditional" ab initio and was neither paid inadvertently nor out of negligence nor on account of any fraud and misrepresentation on the part of petitioners. The petitioners at the same time cannot be allowed to read and use under reference Instructions and Rules selectively for their undue benefit i.e. only the part(s) making payment to them to be applied and the part(s) making adjustment from them not to be applied.

9- In view of the hereinabove discussion the act of deduction of Rs. 20,000/- out of payable arrears of petitioners is, in true spirit of Rules, not an act of recovery but merely an adjustment of amount due and drawn. Since HCS (RP) Rules, 2016 and HCS (ACP) Rules, 2016 have never been challenged in the present CWP and nor these came under scrutiny on merit. The same are therefore fully correct and making adjustment of Interim Relief amount as such is fully legal act on the part of authorities concerned. Moreover, Clause ii of the Instructions dated 17.12.2013 and Rule 14 and Rule 22 of HCS (RP) Rules, 2016 and HCS (ACP) Rules, 2016 respectively, are in themselves open Notice to the employees concerned. Accordingly, I find no merit in the plea of the petitioners and reject the same. The amount of Rs. 20,000/- adjusted against their arrears of revised pay structure is fully legal act and the same amount is not to be refunded to them.

10- The petitioners, however, are given a liberty to re-exercise their option to opt for the revised pay structure i.e HCS (RP) Rules, 2016 or HCS (ACP) Rules, 2016, as the case may be, from the date of their Notification i.e. 28.10.2016 in case this option is found more beneficial by them and if they opt for these Rules from the date of Notification they may be refunded the amount of Rs. 20,000/- received back from them since the Interim Relief is to be paid till an employee draws his pay in old pay structure of 2008 Rules. In case the petitioners re-exercise their option and choose new pay structure from

the date of Notification i.e. 28.10.2016 (in this case it is to be read as 1.11.2016) they shall, however, be liable to refund the arrears received by them on account of revised pay structure from 1.1.2016 to 31.10.2016. The petitioners, if they are willing to re-exercise their option as such, may give a clear undertaking to the competent authority concerned within one month from the receipt of these Orders.

With the above findings this case is disposed of. The Education Department is especially directed to ensure timely delivery of these orders to the petitioners and DDOs concerned. It is also directed that in case petitioners re-exercise their option due action, as per Rules, may be taken promptly.

Orders be communicated to all concerned.



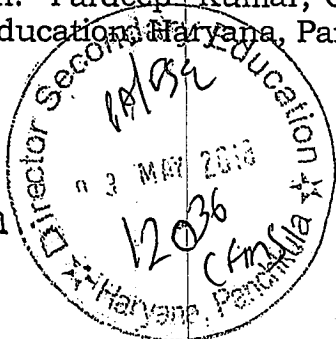
Wazeer Singh Goyal, IAS,  
Special Secretary to Govt. Haryana  
Finance Department

Endst No. No. 6/17/2017-4PR (FD)

Date 16.04.2018

A copy of the above is, hereby, forwarded to the following:-

1. The Addl. Chief Secretary to Govt. Haryana, Elementary Education Department.
2. The Director, Elementary Education Department, Haryana, Panchkula.
3. Distt. Elementary Education Officer, Jind. (He is directed to ensure compliance with these Orders at the end of concerned BEO/ Head Master of the School).
4. The Treasury Officer, Jind.
5. The Block Education Officer, Jind.
6. Head Master, Govt. Middle School, Dharoli, Distt. Jind.
7. Sh. Ramesh Kumar, Science Master, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.
8. Sh. Sant Ram, SS Master, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.
9. Sh. Hargian, Sanskrit Teacher, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.
10. Sh. Kuldeep Kumar, PTI, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.
11. Sh. Satish Kumar, Drawing Teacher, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.
12. Sh. Pardeep Kumar, Clerk, GMS Dharoli, C/o Director Elementary Education, Haryana, Panchkula.



Chandigarh  
Date

Wondra  
Chief Accounts Officer, Pay Revision  
for Special Secretary to Govt. Haryana  
Finance Department