संख्याः2–3/2022 ई.एक्स.एन.एच.स्थापना– 16138-156
राज्य कर एवं आबकारी विभाग
हिमाचल प्रदेश।

प्रेषक

आयुक्त राज्य कर एवं आबकारी,
हिमाचल प्रदेश।

प्रेषितः

1. अतिरिक्त/संयुक्त आयुक्त राज्य कर एवं आबकारी, (द0क्षे0/उ0क्षे0/म0क्षे0) शिमला/पालमपुर व मण्डी।
2. संयुक्त आयुक्त राज्य कर एवं आबकारी, (उ0द0)(द0क्षे0/उ0क्षे0/म0क्षे0) परवाणू/पालमपुर व उना।
3. उप आयुक्त राज्य कर एवं आबकारी, जिला शिमला/ सोलन/बी.बी.एन. बददी/सिरमौर/बिलासपुर/हमीरपुर/नुरपुर/कांगड़ा/चम्बा/कुल्लू/मण्डी व उना।
4. सहायक आयुक्त राज्य कर एवं आबकारी, जिला किनौर ।

दिनांकः शिमला–9 08-06-2023

विषयः CWP No.3598 of 2019 –titled as Balo Devi V/S State of H.P.

महोदय,

उपरोक्त विषय पर इस कार्यालय के पत्र संख्याः 2–3/2022 ई0एक्स0एन0एच0स्थापना–20375–93 दिनांक 04.07.2022 के सन्दर्भ में आपका ध्यान आकर्षित करते हुए वित्त विभाग हिमाचल प्रदेश के पत्र संख्या : Fin(Pen) A(3)-10/2016 दिनांक 18.01.2022 की प्रति पुनः इस आशय के साथ आपके कार्यालय को प्रेषित की जाती है कि आपके कार्यालय में किसी भी कर्मचारी की पैन्शन हेतु गणना में 10 वर्ष पूर्ण न हो रहे हो तो उनके दैनिक वेतन भोगी के पांच वर्ष का एक वर्ष जोड़ कर 10 वर्ष पूर्ण कर लिए जाए ताकि उक्त पत्र के अनुसार कोई पात्र कर्मचारी वित्तीय लाभ से वंचित न रह जाए जिसकी प्रति पुनः इस पत्र के साथ आगामी आवश्यक कार्यवाही हेतु प्रेषित की जाती है।

संलग्नः यथोपरि

भवदीय,

अधीक्षक ग्रेड–1
कार्यालय आयुक्त राज्य कर एवं आबकारी,
हिमाचल प्रदेश।

Uploaded on web site

पृष्ठांकनः संख्या 2–3/2022 ई.एक्स.एन.एच.स्थापना– 16157 08-06-2023
प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है।

1. आई0टी सैल को इस आशय के साथ प्रेषित है कि उक्त पत्रों को तुरन्त बैवसाईड पर अपलोड़ करना सुनिशिचत करें ।

9/7/23
CUTI

अधीक्षक ग्रेड–1
कार्यालय आयुक्त राज्य कर एवं आबकारी,
हिमाचल प्रदेश।

Apex Court Matter
Important

No.Fin(Pen)A(3)-10/2016
Government of Himachal Pradesh
Finance (Pension) Department
****

From

The Addl. Chief Secretary (Finance) to the
Government of Himachal Pradesh, Shimla-2.

To

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

Dated:Shimla171002, *the* 18th **Jan, 2022.**

Subject :- **CWP No.3598 of 2019-titled as Balo Devi V/s State of H.P.**

Sir/Madam,

On the subject cited above, I am directed to refer to this department's letter No.Fin(Pen)A(3)-10/2016 dated 14-02-2019 and to say that the Hon'ble High Court of H.P. vide judgement dated 28.09.2021 in CWP No. 3598 of 2019 titled as " Balo Devi V/s State of H.P." has held in para 34 as under:-

" Para 34:- Before parting, it would be appropriate to deal with the apprehension raised on behalf of the petitioner that the interpretation, as expressed in Reference Order, would be contrary to Rule 49 of the CCS (Pension) Rules, 1972, wherein 9 years 9 months are reckoned as 10 years. The apprehension is misconceived as for determining the qualifying service for the purpose of pension any benefit as provided in Rule 49 has not ben taken away and an employee has not been precluded from getting such benefit. The benefit extended in Sunder Singh's case (Civil Appeal No. 6309 of 2017) is in addition to that and 10 years' service, referred in that case, is to be calculated in the manner as provided under the CCS (Pension) Rules, 1972, but definitely an employee shall be entitled for benefit of daily wages service as directed in Sunder Singh's case (Civil Appeal No. 6309 of 2017) that 5 years daily –waged service shall be treated equal to 1 year regular service for the purpose of granting pension and in case the

Contd./2

person has served for 15 years or 20 years as a daily –wager then he shall be entitled for benefit of 3 or 4 years, as the case may be, of regular service for the purpose of calculating qualifying service for pension and, in such eventuality, if an employee, post- regularization, is having 7 or 6 years of regular service, then after adding benefit of daily-waged service, such employee shall be entitled for pensionary benefits. The term" more than 8 years but less than 10 years" in Sunder Singh's case (Civil Appeal No. 6309 of 2017) is an illustration with reference to the petitioners therein, wherein the petitioners were having post-regularization service of more than 8 years with daily –waged service of 10 years and the case of post regularization service 6 years or 7 years or less than that with daily –waged service of 15 years or 20 years or more than that was not before the Supreme Court. But in any case if service of an employee does not become 10 years, as required under rule 49 of CCS (Pension) Rules, 1972, even after adding benfit of daily- waged service as mandated in Sunder Singh's case (Civil Appeal No. 6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years, in terms of Rule 49 (supra). Thus, we hold that in such case 8 years cannot be taken as 10 years.

3. In this regard, the Secretary (Law) to the Govt of H.P. vide letter No.LLR-E(5)-1/2014-Leg.-Loose dated 22.11.2021 addressed to all the Administrative Secretaries Himachal Pradesh (copy enclosed), has clarified that an employee shall become eligible for pension only if he completes requisite 10 years qualifying service as mandated under Rule 49 of CCS(Pension) Rules, 1972.
4. It is therefore, requested that while deciding similiarly situated cases in department in line with the case of Sunder Singh in Civil Appeal No. 6309 of 2017 in terms of this department instructions contained in letter No. Fin(Pen)A(3)-10/2016 dated 14-02-2019, the decision dated 28-09-2021 of the Hon'ble High Court in CWP No. 3598/2019 titled "Balo Devi V/s State of H.P., and the clarifications issued by the Secretary (Law) to the Govt. of H.P. vide letter No. LLR-E(5)-1/2014-Leg.- Loose dated 22.11.2021 may be strictly followed. These instructions may be brought to the notice of all concerned.

Yours faithfully,

Special Secretary (Finance) to the Government of Himachal Pradesh

Contd./3

Endst. No. Fin(Pen)A(3)-10/2016 dated Shimla-2, *the* Jan, 2022.

Copy forwarded to:-

1. The Registrar General, High Court of Himachal Pradesh Shimla-171001.
2. The Divisional Commissioner, Shimla, Mandi and Kangra at Dharamshala Himachal Pradesh for information and similar necessary action.
3. The Principal Accountant General (A&E) Himachal Pradesh Shimla-171003
4. All the Deputy Comissioners in Himachal Pradesh.
5. All the Distt. and Session Judges, in Himachal Pradesh.
6. The Incharge, NIC, H.P. Sectt. Shimla-2 with the request to upload this letter on the State Finance Department Website.

Special Secretary (Finance) to the Government of Himachal Pradesh

No. LLR-E(5)-1/2014-Leg.-Loose
Government of Himachal Pradesh
Department of Law

From

The LR-cum-Pr. Secretary (Law) to the
Government of Himachal Pradesh.

To

All Administrative Secretaries to the
Government of Himachal Pradesh.

Dated:- Shimla-171002, the 22nd ~~23rd~~ November, 2021

Subject:-CWP No.3598 of 2019-titled as Balo Devi vs State of H.P.

Sir,

I am to enclose herewith a copy of order dated 28th September,2021, and to say that the larger bench of the Hon'ble High Court of Himachal in CWP No.3598 of 2019-Balo Devi vs State of H.P., after considering the decision of the Hon'ble Apex Court rendered in Civil Appeal No.6309 of 2017-titled as Sunder Singh vs State of Himachal Pradesh has passed the following orders:-

"Para 34:-Before parting, it would be appropriate to deal with the apprehension raised on behalf of the petitioner that the interpretation, as expressed in Reference Order, would be contrary to Rule 49 of the CCS (Pension) Rules, 1972, wherein 9 years 9 months are reckoned as 10 years. The apprehension is misconceived as for determining the qualifying service for the purpose of pension any benefit as provided in Rule 49 has not been taken away and an employee has not been precluded from getting such benefit. The benefit extended in Sunder Singh's case (Civil Appeal No.6309 of 2017) is in addition to that and 10 years service, referred in that case, is to be calculated in the manner as provided under the CCS (Pension) Rules, 1972, but definitely an employee shall be entitled for benefit of daily waged service as directed in Sunder Singh's case (Civil Appeal No.6309 of 2017) that 5 years daily-waged service shall be treated equal to 1 year regular service for the purpose of granting pension and in case the person has served for 15 years or 20 years as a daily-wager then he shall be entitled for benefit of 3 or 4 years, as the case may be, of regular service for the purpose of calculating qualifying service for pension and, in such eventuality, if an employee, post-regularization, is having 7 or 6 years of regular service, then after adding benefit of daily-waged service, such employee shall be entitled for pensionary benefits. The term "more than 8 years but less than 10 years" in Sunder Singh's case (Civil Appeal No.6309 of 2017) is an illustration with reference to the petitioners therein,

wherein the petitioners were having post-regularization service of more than 8 years with daily-waged service of 10 years and the cases of post regularization service 6 years or 7 years or less than that with daily-waged service of 15 years or 20 years or more than that was not before the Supreme Court. But in any case if service of an employee does not become 10 years, as required under rule 49 of CCS (Pension) Rules, 1972, even after adding benefit of daily-waged service as mandated in Sunder Singh's case (Civil Appeal No.6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years, in terms of Rule 49 (supra). Thus, we hold that in such case 8 years cannot be taken as 10 years.

Para 35. In view of above discussion, we are of the considered opinion that view expressed in Reference Order dated 14.9.2021 by the Division Bench, in CWP No.3598 of 2019, is appropriate application of the judgment of Supreme Court passed in Sunder Singh's case (Civil Appeal No.6309 of 2017)."

As per aforesaid orders, an employee shall become eligible for grant of pension only if he completes requisite 10 years qualifying service as mandated under rule 49 of CCS(Pension). If service of an employee does not become 10 years as required under rule 49 of CCS (Pension) Rules, 1972, even after adding daily-waged service in terms of decision rendered in Sunder Singh's case (Civil Appeal No.6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years.

In view of above the orders of the Hon'ble High Court of Himachal Pradesh, all the decisions taken earlier contrary to aforesaid orders are required to be got reviewed.

It is, therefore, requested that necessary steps for getting the earlier decisions reviewed may be taken as expeditiously as possible, so that undue benefits, if any, extended to the employees by erroneous implementation of decisions of the Hon'ble Court, could be corrected.

Yours faithfully,

LR-cum-Pr. Secy (Law) to the
Government of Himachal Pradesh