

Himachal Pradesh
Public Works Department

No.PWE-133-11/ES-III- 1609-1800 Dated:- 25.04.2018

From:-

Engineer-in-Chief.

To

The Engineer-In-Chief (QC&D), HP-PWD, Shimla-I
All the Chief Engineers in HP.PWD.
All the Superintending Engineers in HPPWD.
All the Executive Engineers in HP.PWD.
All the Land Aquisition Officers in HP-PWD.

Subject:- *Regarding regularization of services of daily wagers.*

I am directed to enlose herewith a copy of letter *No. Fin (C)-A(9)-3/2016 dated 11th April, 2018* as received from Addl. Chief Secretary (Finance) to the Government of Himachal Pradesh on the subject cited above for information and necessary action.

Encl: As above.


Registrar,
Himachal Pradesh, PWD,
Shimla- 171002.

Copy forwarded for information and necessary action to:-

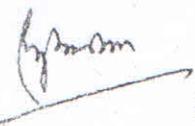
1. The Chief Engineer(S), (PMGSY),(NH),(SRP),HP-PWD, Shimla.
2. The Chief Architect HP-PWD, Shimla.
3. All Head of branches.
4. Assistant 4,5,6&7 in ES-III in this office.
5. Nodal Officer(IT), in this office alongwith copy of above letter and its enclosures. He is requested to display above letter on the official website of department at the earliest.
6. Guard file.

Encl: As above.


Registrar,
Himachal Pradesh-171002.
Shimla- 171002.

Factually, as per regularization Policy of Daily Wagers completion of requisite years of daily wage service for consideration to be regularized is mandatory and regularization in all such cases will be against regular vacant post from prospective effect i.e. from the date of issue of order of regularization after completion of codal formalities. Thus it is evident from the judgment of Rakesh Kumar case and provisions of the Regularization Policy of State Government that the benefit of regularization after completion of required years of service rendered on daily wage basis in the Government departments shall be admissible prospectively subject to available regular vacant post of the concerned category in the Department.

In the above background, it appears that various cases have been filed and decided (stating to be covered cases of otherwise, on the analogy of the judgment in case of Mathu Ram supra), whereby the departments/boards/Corporations/PSU/ Autonomous Bodies including Urban Local Bodies have issued the orders of retrospective regularization or they intend to issue the orders of retrospective regularization at any time here-in after, and the issuance of these order will contrary to the constitutional mandate and dehors the policy and the same will result in huge financial burden worth Crores of rupees on the State exchequer also.



Therefore, in view of the position explained above, all the Administrative Departments and Head of Departments are requested that the order based on Judgment rendered in Mathu Ram and in Rakesh Kumar case and any other similar situated cases may not be implemented for retrospective regularization. If in any case, the benefit of Mathu Ram's case or any other similar situated judgments of Hon'ble High Court/HPAT has already been implemented by the Departments such cases may not be taken as precedent to extend the benefit in other similar situated cases. Besides in case Hon'ble High Court/HPAT had/has issued directions to extend the benefit of regularization of service on the analogy of Mathu Ram case or others similar situated decisions of the Hon'ble High Court/HPAT, such decisions may be contested in higher appellate Court on the strength of State Government Regularization Policy and Judgments of the Hon'ble Supreme Court of India passed in Uma Devi Case.

The copies of judgment dated 31.7.2014 rendered in CWP No.2415/2012 titled Mathu Ram Vs Municipal Corporation, Shimla, Judgment dated 28.7.2010 delivered CWP No.2735 of 2010 titled Rakesh Kumar & others Vs State of HP and advice of Ld. Advocate General of H.P. is enclosed for ready reference.

Yours faithfully,



(RAJENDER SHARMA)
Under Secretary (Finance) to the
Government of Himachal Pradesh.

PERSONAL ATTENTION

No. Fin-(C)-A(9)-3/2016
Government of Himachal Pradesh
Finance (Regulation) Department

From

The Additional Chief Secretary (Finance) to the
Government of Himachal Pradesh, Shimlas-2

To

1. All Administrative Departments,
Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.

Dated: Shimla-171002, the 11th April, 2018.

Subject:- Regarding regularization of services of daily wagers.

Sir,

I am directed to refer to subject cited above and to say that the daily wagers working in various Department/Boards/Corporations/PSUs/Autonomous Bodies, are claiming the benefit of regularization from retrospective date(s) by filing the court cases on the strength of Hon'ble High Court Judgment dated 31.7.2014 rendered in CWP No.2415/2012 titled Mathu Ram Vs Municipal Corporation & others, whereas as per State Government Policy issued from time to time the regularization of daily wagers is required to be made after completion of prescribed length of daily wage service against the available regular vacant posts of the concerned category, without making any creation in the department. On this issue, the Advocate

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General of Himachal Pradesh has opined that the Judgment in Mathu Ram case is per incuriam because regularization retrospectively from the date of completion of 8 years of daily wage service, without there being a vacant or available post, is impermissible in view of the law laid down by the Constitutional Bench of Hon'ble Supreme Court in case of Uma Devi. More so, once the regularization policy of the Government, as inforce after 1.4.2006 onwards provided for regularization against available vacant post or creation of posts which was done on completion of required years of service as per regularization Policy. The grant of retrospective regularization without their being vacant/available post which dehors the regularization policy, is impermissible. In fact, Judgment in Mathu Ram case is a judgment in Personam.

The judgment of Mathu Ram case is based on the Rakesh Kumar case. In that case Hon'ble High Court of H.P vide para 7 of Judgment dated 28.7.2010 delivered CWP No.2735 of 2010 titled Rakesh Kumar & others Vs State of HP has issued directions to the respondents to consider the cases of the petitioners herein for conferment of work charged status subject to their eligibility in terms of policy dated 3.4.2000 and dated 6.5.2000 as explained in Para 2 & Para 3 of the aforesaid judgment. Hon'ble High Court in Rakesh Kumar case has not made any modification in the State Government orders of regularization issued in the year 2000 or after that.

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PERSONAL ATTENTION

No. Fin-(C)-A(9)-3/2016
Government of Himachal Pradesh
Finance (Regulation) Department

From

The Additional Chief Secretary (Finance) to the
Government of Himachal Pradesh, Shimlas-2

To

1. All Administrative Departments,
Government of Himachal Pradesh.
2. All Heads of Departments in Himachal Pradesh.

Dated: Shimla-171002, the 11th April, 2018.

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