

HIMACHAL PRADESH

PUBLIC WORKS DEPARTMENT

NO/PWE/88-14/PEN/REP/ES-I-19961-20061 DATED-

29/01/2021

From-

Engineer-in-Chief,
HPPWD Shimla-2.

To

The Chief Engineer (Kangra Zone) HPPWD Dharamshala.
The Chief Engineer (Mandi Zone) HPPWD Mandi.
The Chief Engineer (Hamirpur Zone) HPPWD Hamirpur.
The Chief Architect HPPWD Shimla.
All the Superintending Engineers in field offices in HPPWD.
All the Executive Engineers in Division offices in HPPWD.

Subject:-

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

I am directed to enclose herewith a copy of letter NO.Fin.(Pen)A(3)-1/09-Part-V-Loose Dated 31st December, 2020 received from Additional Chief Secretary (Finance) to the Government of H.P. on the aforesaid subject for information and taking further necessary action in accordance with above referred clarification of the Government please.

Encl-As above.

(Lobzang Namgyal)
Registrar,
HPPWD Shimla-2.

Copy to Nodal Officer I.T in this office. It is requested to get uploaded the same on the website of this department please.

Copy to Ld. Distt. Attorney in this office for information.

Copy to Superintendent Gr. I, ES-III/Supdt.Gr.I, Cash Section in this office for information.

Encl:- As above

(Lobzang Namgyal)
Registrar,
HPPWD Shimla-2.

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 of Controlling Authorities-Cum-Labour Officers, Department of L Employment, Himachal Pradesh. The matter in question was examined by the 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.

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.

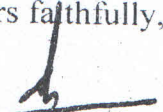
4. Further, Section 2A of the Act defines the continuous service and Section 4 of Act, stipulates conditions and manner, in which, payment of gratuity will be paid to an employee under the said Act. The Section 4(1) of Payment of Gratuity Act 1972, clearly stipulates that for every completed year of 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) ILLJ 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,

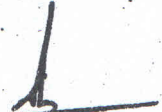

Special Secretary (Finance) to the
Government of Himachal Pradesh.

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.