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From

The Additional Chief Secretary to Government,
Haryana, Admn. of Justice Department

REGISTRY - III
3.607
21.11.2014

To

All Head of Department in the State of Haryana.

Memo. No. 29/4/2010-4J(I)
Dated, Chandigarh the 18.11.2014

Sub:-

Filing of Written Statements by the Government/Department in pending cases in terms of the Haryana Litigation Policy.

Kindly refer to the subject noted above.

2. The matter has been got legally examined on the following questions with regard to the competency of filing written statements by various State authorities in the cases pending in the Hon'ble High Court:-

(i) Whether in all cases separate replies, one on behalf of Govt. and other by remaining respondents are to be filed?

(ii) Whether a joint reply on behalf of Govt. and other by remaining respondents including State of Haryana could be filed by other respondents where competent authority is not Govt.?

(iii) Whether reply is to be filed by Govt. itself or reply is to be filed by other respondents after getting the same approved from the Govt., in cases where Government is the competent authority?

3. For the purpose of examining the above said questions, the perusal of the provisions as contained in Haryana State Litigation Policy, 2010 (hereinafter referred as the "Litigation Policy") as well as the Haryana Law Department Manual (hereinafter referred as the "Manual") are required to be perused. The Litigation Policy was framed by the State of Haryana for bringing about a visible and enduring qualitative and quantitative improvement in the manner in which litigation is perceived, managed and conducted in the State. The object of the said policy, was to reduce the pendency of cases and to curb the delay in decision of the cases proactively by the Government. The objective as stated in the Litigation Policy was to transform Government into an Efficient and Responsible Litigant so that it manages and conducts litigation in a cohesive, coordinated and time bound manner and further to reduce overall Government Litigation load in Courts in order to provide assistance to the judiciary in reducing the pendency of cases and curbing delay occurring in decision of the cases.

4. As per the provisions as contained in para-3 of the Litigation Policy, the Litigation Policy has been made mandatory for all Government/State Public Sector Undertakings/Statutory Bodies personnel who directly or indirectly are associated with the litigation. It has further been provided in the said para that the Law Department Manual which is an evolving collection of guidelines, instructions, clarifications and information, would continue to serve as a reference document in matters connected with the litigation. However, where the provisions contained in the Law Department Manual (LDM) are in conflict with any provision of the

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Litigation Policy, then that provision of LDM would be deemed to have been superseded by the Litigation Policy.

5. The question posed in the present reference is only to the effect that how the replies are to be filed by the State authorities in the cases pending before the Hon'ble High Court.

The guidelines to this effect are contained in para NO.9 of the Litigation Policy. It has been provided that where the State has been impleaded as a party in a case through Administrative Secretary and in which issues of a policy or inter departmental or inter State or connected with special directions issued by the court, are involved, then the Administrative Secretary shall himself approve the reply/affidavit for the purpose of filing in the court and putting forward the defence on behalf of the State. It has further been provided in para NO.9 itself that the contradiction in the replies or any submission to be filed by the official respondents should be avoided while filing separate replies. It has also been made clear that where the reply is to be filed on behalf of the State then the same shall be signed by an officer not below the rank of Deputy Secretary/Joint Secretary and in cases where replies is to be filed on behalf of some department of the Government or the District Administration, then the same shall not be filed by an officer not below the rank of Joint Director/HCS Officer.

Para-3 of the Manual deals with the conduct of civil business on behalf of the State in the courts. As per Note - 4 as contained in Para-3 of the Manual, the plaints or written statements on behalf of the Government are required to be signed and verified by the Deputy Commissioner of the District in which the cause of action in whole or in part has arisen or by any other Gazetted officer of the department who is well acquainted with the facts of the case. On perusal of the said provision, it is reflected that the same is general in nature, whereas specific provisions with regard to the filing of replies have been made in para-9 of the Litigation Policy notified by the State of Haryana in the year 2010. Thus in the above noted facts and also in view of the fact that the Litigation Policy is to prevail in case of conflict with the provisions contained in the Manual, the reference to the provisions of Litigation Policy, 2010 shall suffice for answering the questions posed for opinion in the present case. The provisions contained in Para-9 of the Litigation Policy are being reproduced here as under for facility of reference:-

"9.2.1. In cases where State is a party through Administrative Secretary and in which issuers) of (a) Policy (b) Inter departmental or Inter State(c) connected with special directions of the Court are involved the Administrative Secretary, himself approve the reply/affidavit.

9.2.2. It shall be ensured by the Nodal Officer/Legal Officers of the Department that there is no contradiction in the replies or any submission filed by Government respondents who may be filing replies separately.

9.2.3. The replies shall be signed and filed by officers at appropriate levels. It shall not be below Deputy Secretary/Joint Secretary, Joint Director/HCS officer as the case may be in respect of Government or Department or District Administration respectively."

After considering the provisions as contained in para-9 of the Litigation Policy, the issues referred for opinion in the present case are being answered as under:-

- (i) Whether in all cases separate replies, one on behalf of Govt. and other by remaining respondents are to be filed?

The cases in which the issues are with regard to any policy or action having inter departmental or inter State ramifications or special directions of the Court: are involved, then the Administrative Secretary of the department concerned shall have to approve the reply/affidavit and file the same under his own signatures in the court for defending the cause of the State. Only the consolidated reply in such cases should be filed on behalf of the State. No separate reply is required to be filed i.e. one on behalf of the Govt. and other on behalf of remaining respondents in all the cases. The decision to file one consolidated reply for all the respondents and separate reply on behalf of the Government and remaining respondents is required to be taken separately in the facts of each case.

- (ii) Whether a joint reply on behalf of Govt. and remaining respondents including State of Haryana could be filed by other respondents where, competent authority is not Govt.?

The cases in which the final action is taken at the Government level on the basis of the factual feedback from the Head of the Department or the Directorate, then it will be proper to file a consolidated reply on behalf of the Government after getting the feedback from the Head of the Department concerned or the Directorate. Further, the cases in which the final decision is taken at the Directorate level or at the level of the Head of the Department, then the reply may be filed for defending the cause of the State by the officers posted in the Directorate not below the rank of Joint Director. In cases where the final action has been taken at the level of the Head of the Department, then the reply may be filed by the Head of the Department himself or some Gazetted Officer of the Department who is well conversant with the facts of the case. Thus where competent authority is not the Government; then a joint reply may be filed by the remaining official respondents whose decision or action is under challenge.

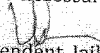
- (iii) Whether reply is to be filed by Govt. itself or reply is to be filed by other respondents after getting the same approved from the Govt., in cases where Government is competent authority?

In cases where the action or the final order has been passed at the level of the Government but the factual position is with the Directorate or the department concerned, then the factual statement regarding the facts may be called from the Directorate or department concerned and the consolidated reply on behalf of all the respondents may be filed in order to avoid the conflict between the stand taken by different authorities. In cases where separate replies are necessary on the part of the Government as well as the Directorate or the Head of the Department, then the replies from the Directorate or the Head of the Department may be called by the State and cumulative view of the matter in question may be taken in order to ward

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off any conflict and then the separate reply on behalf of the Government and the Directorate or department may be filed. It is clarified that the reply on behalf of the Government should not be filed by an officer below the rank of Deputy Secretary/Joint Secretary and in cases where the replies is to be filed by the Directorate or the District Administration then the same should not be filed by an officer below the rank of Joint Director/HCS Officer.


You are, therefore, requested to take necessary action in terms of the position as explained above.


Superintendent, Jails & Judicial,
for Additional Chief Secretary to Government,
Haryana, Admn. of Justice Department

Endst. No. 29/4/2010-4JJ(1)

Dated, Chandigarh the 18.11.2014

A copy is forwarded to the Engineer-in-Chief, Haryana, PWD (B&R) Branch, Chandigarh w.r.t. their letter No. 316 dated 13.01.2012 for information and necessary action.


Superintendent, Jails & Judicial,
for Additional Chief Secretary to Government,
Haryana, Admn. of Justice Department