

IMMEDIATE/ DATE BOUND/ COURT CASE

From

Financial Commissioner and Principal Secretary to Government
Haryana, Town and Country Planning Department

To

1. The Director General,
Town and Country Planning Department,
Haryana Chandigarh
2. The Director
Urban Estates Department, Haryana
Panchkula
3. The Chief Administrator,
Haryana Urban Development Authority
Sector-6 Panchkula

Memo No. 11/05/2010-3TCP
Dated, Chandigarh, the 07-01-2011

**SUBJECT: REGARDING INSTRUCTIONS UNDER PARA 20.4 (C) OF LAW DEPARTMENT
MANUAL.**

Reference on the subject cited above.

Please find enclosed a copy of letter No. 71243-71377/CO29(604)04 dated 01-12-2010 which is addressed to all the Heads of the Departments in Haryana, received from Law Secretary-Cum-Remembrance to Government, Haryana, Law and Legislative Department. Therefore, you are requested to ensure that without the prior necessary sanction of the competent authority, no appeal/ revision/ review as the case may be filed and further this department shall not henceforth issue instructions unless the request of the controlling authority alongwith official sanction as per provisions of para 20.4 (C) of Law Department Manual is received in this Department. It is emphasized that any request by the controlling authority should be made before the expiry of limitation and this department shall not be responsible for any delay caused due to non compliance of these instructions. It is also ensured that while making request under this para, grounds of appeal and other information as requested earlier by this department vide memo. No. 3102-3251 dated 09-09-2010 be also supplied to avoid any delay/ legal complication/ loss to State Exchequer in the matter.

Superintendent
For Financial Commissioner & Principal Secretary to
Government Haryana, Town and Country Planning Deptt

From

The Law Secretary-Cum-Legal Remembrance to Government Haryana
Law and Legislative Department, SCO No. 57-59, sector-17-C
Chandigarh

To

1. The Chief Secretary to Government Haryana Chandigarh
2. All the Financial Commissioners and Principal Secretaries to Government Haryana Chandigarh
3. The Advocate General, Haryana Chandigarh
4. The Advocate-on-Record, Haryana Legal Cell, Haryana Bhawan, New Delhi
5. All the Head of Departments in the State of Haryana
6. All the Deputy Commissioners in the State of Haryana
7. All the District Attorneys in the State of Haryana

Memo No. 71243-71377/ Co. 29(604)04
Dated Chandigarh, the 01-12-2010

SUBJECT: REGARDING INSTRUCTIONS UNDER PARA 20.4(C) OF LAW DEPARTMENT MANUAL.

It is brought to your kind notice that this department is receiving frequent requests from the officers below the level of controlling authority incharge of the case under para 20.4 of the Law Department Manual without the sanction of the controlling authority. The Hon'ble Punjab and Haryana High Court has dismissed the RSA No. 1792 of 2010 titled as State of Haryana vs. Sukhpal Singh observing that **Ld. Counsel appearing on behalf of the State has also submitted that as per provisions of Law Department Manual the Administrative Department can file an appeal even if the LR/ AG has opined such a case not fit for appeal, but admittedly, there is nothing on record to suggest that the Administrative Head of the Department i.e. Financial Commissioner and Principal Secretary to Government, Haryana, Department of Forest, Chandigarh, has given permission to file this appeal.**

It may also be noticed here that a similar case i.e. RSA No. 568 of 2010 was dismissed on 29-03-2010 being barred by limitation and not maintainable for want of necessary permission by the administrative Head of the Forest Department. In that case, it was noticed that Special Leave Petition in a similar case filed by the State of Haryana before the Hon'ble Apex Court has been dismissed. In the present application no such fact of dismissal of SLP has been disclosed.

In view of the fact that there is no permission by the Financial Commissioner and Secretary to Government, Haryana Department of Forest Chandigarh to file the present appeal, I find no reason to condone the delay of 335 days in filing this appeal, which itself is not maintainable for want of permission by the Controlling Authority of file the same.

For facility of reference, para 20.4(c) of Law Department Manual is reproduced as below: -

"20.4(c) - The Legal Remembrancer shall on receipt of these documents from the Government Pleader consider the desirability of filing an appeal or application for revision or review of judgment or otherwise and convey his views to the controlling authority. If it is decided to file an appeal or application for revision or review of judgment, the Legal Remembrancer may on his own authority issue instructions to the officer charge (Law Officer) for doing the needful and inform the controlling authority about the action taken. The controlling authority, if agrees with the views of the Legal Remembrancer shall

accord sanction of the action taken. If the controlling authority decides otherwise, the Legal Remembrancer shall withdraw the instructions already issued in this behalf. **In cases, where the Legal Remembrancer does not favour for filing of an appeal or application for revision or review of the judgment and controlling authority still insists for obtaining the verdict of appellant/ revisional court as the case may be, the former will invariable act accordingly.** Ordinarily, the officer incharge of the case shall not prefer an appeal or application for revision or review of judgment except under express instructions from the Legal Remembrancer or the controlling authority. In a case of urgency, the officer incharge of the case may file an appeal or application for revision or review of the judgment as the case may be and thereafter reference shall be made to the Legal Remembrancer for getting the action approved.

Controlling authority has been defined in para 15.1 (a) of Law Department Manual which says that "Controlling Authority" means an officer empowered to authorize, (i) the institution of a suit on behalf of the State (ii) the defence of any threatened suit to which the State has been made a party, (iii) intervention by the State in any suit in which the State is interested, or (iv) the institution or defence of a suit by or against a public officer in his public capacity. In those classes of cases for which no officer is specifically empowered to act as controlling authority these functions will be discharged by Government which will itself be regarded as the controlling authority.

Thus, a bare perusal of the aforesaid paras stipulates that official sanction of the appropriate authority is required before filing of Appeal/ Revision/ Review, as the case may be. Further para 20.4 of the Law Department Manual provides that in cases in which this Department does not favour of filing appeal, the **Controlling Authority** shall insist for seeking instructions of this department under this para instead of the officers lower level, may be offices incharge of the cases, as it is frequently happening presently that the Head of the institution/ department or the Administrative Department always remains ignorant about such litigation which have been filed or defended or appealed by the officers at lower level who have not been empowered to authorize under para 15.1 (a) supra.

Keeping in view the aforesaid position, you are hereby requested to ensure that without the prior necessary sanction of the competent authority, no appeal/ revision/ review as the case may be, be filed and further this department shall not henceforth issue instructions unless the request of the controlling authority alongwith official sanction as per provisions of para 20.4 (c) of Law Department Manual is received in this department. It is emphasized that any request by the controlling authority should be made before the expiry of limitation and this department shall not be responsible for any delay caused due to non-compliance of these instructions. It be also ensured that while making request under this para, grounds of appeal and other information as requested earlier by this department vide memo no. 3102-3251 dated 09-09-2010, be also supplied to avoid any delay/ legal complications/ loss of State Exchequer in the matter.

A.L.R. (Litigation)
For Law Secretary-Cum-Legal Remembrancer
To Government Haryana
Law and Legislative Department