

GOVERNMENT OF ODISHA
FINANCE DEPARTMENT

No. 28040 /F., Dt. 22.09.2017
FIN-LEGAL-CASE-01-2017

To

All Departments of Government.
All Heads of Departments.

Sub:- Timely submission of Counters / Para Wise Comments / Appeal Petitions / SLP etc. before the Court of Law and timely compliance of the orders of the Courts by the State Government, its Instruments and Officers.

The Undersigned is directed to say that the Finance Department being a referral Department are impleaded as opposite party/ respondent in most of the cases along with other Departments involving matters with or without financial implications. The Para wise comments / Counters are required to be filed by the concerned Departments of Government within the stipulated time. However, it has been observed that in many cases, those are not being filed in time before the Courts of Law leading to passing of ex-parte orders involving huge financial liabilities. Similarly, there is in-ordinate delay in filling of appeal petitions as well as Special Leave Petitions before the Hon'ble High Court and Hon'ble Supreme Court respectively without any justifiable explanations for the delay leading to dismissal of the petitions on the ground of undue delay.

2. When the appeal petitions are dismissed on the ground of delay, the merit of the case are not examined leading to payment of huge arrears even with interest thereon, as there is no option left then to comply to the orders of the Hon'ble Courts. The situation could have been different if Para wise comments / counters / appeal petitions / SLPs are filed in time, so that the merits of the case could have been examined. The Departments of Government are not taking timely follow up action on receipt of the orders of the Courts leading to contempt cases against all the opposite parties / respondents and proposals are received by Finance Department for hasty implementation of the Court's order in view of contempt notices. The Comptroller and Auditor General of India has also pointed out in the Audit Report that out of 243 cases test checked by audit during the CCO based audit of one Department, no counter affidavit was filed by the concerned Department in 239 cases for which ex-parte order was passed against the Government.

3. For timely submission of counters / para wise comments / appeal petitions etc. guidelines have been issued by the Finance Department in the past vide letter No.10126 dt.08.03.2000 and letter No.38436 dt.18.08.2009 indicating the procedure and the time line to be followed by the Departments to monitor the court cases. However, such guidelines are not being followed by the Departments in many cases.

4. In a recent judgement dt. 21.07.2017, Hon'ble Supreme Court of India in Diary No. 17864/2017 (Arising out of impugned final judgement and order dtd 03.08.2016 in FAO No. 376/2016 passed by the High Court of Orissa in the matter of State of Odisha and another

(Petitioners) vrs. Akshaya Kumar Mallick and another (Respondents)) has passed orders as mentioned below:

“Despite our orders and despite the affidavit filed before this Court, we find that there is no improvement in the system of functioning. Therefore, in public interest, we are constrained to pass the following order:

Hereafter, in case any matter is filed at the instance of the State of Odisha, either before the High Court or before this Court with delay, the officials in the Departments concerned starting with the rank of dealing hand to the highest officials in the rank of Principal Secretary shall not be entitled to any pensionary benefits including gratuity for the said period of delay unless specifically granted by the High Court or this Court. Needless to say, that in the application for condonation of delay, the names of all the officers shall be furnished. We also make it clear that in case the State has suffered any loss on this account, it will be opened to the State to proceed against the officials and recover the loss.”

5. It is pertinent to mention here that through Litigation Management System (LMS), all pending, dispose and new cases will be transacted electronically through various departments & government offices. LMS also helps to track all important events in respect of a case such as communication of notice of the case, submission of draft reply, revision of the reply by Government Advocate, filing of reply in the Court, interim orders, judgment compliance, appeal etc. and LMS is available on internet through URL:- <http://orissalms.in/lms>.

Further, the LMS system enables to provide the Writ copy/plaint copy of Court cases filed before Hon'ble High Court and OAT on real time basis and users can submit PWC online to AG office or Government Advocate. Government advocate can download the PWC and prepare the draft counter and send it to the concern officers. After finalization of the draft counter, the concerned officer of the government will file counter affidavit in the court. The interim order as well as the final judgment is being uploaded in LMS on real time basis. So that the concern officials can take immediate action on post judgment in order to avoid contempt.

6 In view of the order as mentioned above, all the Departments of Government are now advised to put in place appropriate mechanism for monitoring of the court cases and also to ensure submission of para wise comments / counter affidavits / appeal petitions / review petitions / Special Leave Petitions etc. well within the time to avoid ex-parte decisions / dismissal of the petitions leading to huge financial burden on the State Government. As personal liability can be fixed for delay / negligence in handling the court cases, all the Departments of Government are now requested to issue necessary instructions to the authorities under their Administrative Control to be more careful and cautious in dealing with court matters.

7. Delayed submission of counter affidavits / para wise comments / appeal petitions/ special leave Petitions etc. for vetting may not be considered by Finance Department without proper justification of the same.

Sd/-

Principal Secretary to Government