

No 4/12/2010-4 Jud-II 2965
Government of Punjab
Department of Home Affairs and Justice
(Judicial-II Branch)

307-368 (321)
5/11

Dated 30/8/10

To,

The Registrar,
Punjab & Haryana High Court,
Chandigarh.

Subject:- Issuance of Punjab State Litigation Policy.

Sir,

I am directed to refer you to the subject cited above and to send herewith a copy of revised draft Punjab State Litigation Policy. You are requested to send your comments within ten days to this Department positively so that the same be finalized.

Yours faithfully

Under Secretary Home (B)

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E.A. (cell)
E.L. (cell)

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DRAFT PUNJAB STATE LITIGATION POLICY, 2010

Whereas at the national consultation for strengthening the judiciary towards reducing pendency and delays held on 24th & 25th October, 2009, the Union Minister for Law and Justice presented resolutions which were adopted by the entire conference unanimously. The resolutions acknowledged the initiative to frame a National Litigation Policy for the Government of India and State Litigation Policy by every State with a view to ensure conduct of responsible litigation by reducing pendency and delays in the matter pending before the courts. Keeping in view the above object, the State of Punjab frames following policy:-

1. The policy may be called Punjab State Litigation Policy, 2010.
2. It shall come into force on such date as the Government may by notification in official gazette, appoint.

3. THE VISION/MISSION

(i). The aim of Litigation Policy is to transform Government into an efficient and responsible litigant and also to reduce Government litigation in the courts.

(ii). Government shall cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision shall be discarded. The easy approach, "Let the court decide," must be eschewed and condemned.

4. AVOIDING LITIGATION:

(1) Major cause of litigation is lack of proper response to representations made and legal notices issued by the aggrieved parties. Every Administrative Department and Head of Department shall ensure that representations are decided by passing a speaking order in a time bound manner in accordance with rules and instructions covering the matter. Section 80 of CPC prescribes that no suit shall be instituted against the State without service of notice except with the leave of the court. Whenever a notice is received, the competent authority should examine the matter

and accept or reject the claim by passing a speaking order as the case may be and reply should be sent to the concerned party.

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(2) Suits by the Government shall only be brought in the last resort. In this respect reference shall be made to Para 17.1 of Punjab Law Department Manual which is as under:-

(a) No suit is to be brought on behalf of the Government except in the last resort, when all other means of obtaining satisfaction have failed.

(b) The institution of a suit on behalf of the Government is not to be recommended or authorized until the proposed defendant has had ample opportunity given him of stating his view of the case and of coming to some agreement for the settlement of the Government claim out of court. While it is the duty of officers of the Government to enforce the just rights of the Government and to protect its interest, the law should not be appealed to until all efforts have been made to effect an amicable adjustment, and the case for the Government has been inquired into departmentally and evidence secured on all points which are likely to be contested.

(3) No person having a just claim against the Government should be compelled to sue before defence of suit. Para 18.1 of Punjab Law Department Manual should be observed which reads as under:-

(a) No person having a just claim against the Government should be compelled to resort to litigation to enforce it.

(b) When any person threatens to bring a suit against the Government it is incumbent on the proper departmental officers and controlling authorities to satisfy themselves without delay of the justice or otherwise of the whole and every part of the claim made, all reasonable efforts being made to bring about an amicable adjustment, without an appeal to the law, so far as this can be done without sacrificing the just rights of the Government.

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(c) The object of the notice prescribed by section 80 of the Code of Civil Procedure is to allow ample time to the Government to enquire into the justice or otherwise of all claims and to affect settlement of all just claims, before a suit is brought, and the best use should be made of the opportunity thus given by the law towards equitably and amicably adjusting claims."

(4) Inter se disputes between two departments, Corporations, Public Sector Undertakings etc. shall be resolved amicably without referring the matter to the court. The Government of Punjab, Department of Personnel (PP-3 Branch) vide letter No.12/13/05-5PP-II/1993 dated 8-2-06 has reiterated its earlier decision that inter se disputes between the departments/Corporations/Public Sector Undertakings or other Institutions could be better resolved in the State Level Committee and no department/Public Sector Undertakings/Corporations/Institutions would be permitted to incur expenditure on filing legal suits/appeals/revisions etc. That any such matter, in the first instance should be resolved by two Administrative Secretaries concerned, otherwise the matter should be brought to the notice of Chief Secretary, Punjab. In rare cases where intervention of the Chief Secretary, Punjab does not resolve the situation, the matter shall be taken to an Empowered Committee consisting of:-

1. Chief Secretary, Punjab.
2. Principal Secretary, Finance.
3. Two concerned Administrative Secretaries.
4. L.R/D.P.L.
5. Advocate General, Punjab.
6. Secretary, Coordination as Convenor

In case any department still have same reservation, the matter can be taken to the Group of Ministers consisting of Chief Minister, Finance Minister and Minister

Incharge of the Department, Corporations, Public Sector Undertakings involved in the dispute for final decisions.

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(5) In accordance with the instructions issued by the Government of Punjab, Department of Personnel (PP-2 Branch) vide I.D. No. 12/39/2002-5PP-II/9406, dated 17-7-02 every department shall examine cases where the judgment has attained finality and bring similarly placed cases before the Committee consisting of Chief Secretary, Punjab, Legal Remembrancer and Administrative Secretary of the concerned Department for final decision with regard to the extension of same relief/benefit to the other members of the cadre whose claims are based on identical facts and points of law.

5. MANAGING LITIGATION

(1) After issuance of sanction to file or defence of a case, proper assistance shall be rendered by the Administrative Department to the concerned Law Officer in preparing the case of the State and in pursuing the same in the court concerned. The Administrative Department should supply the entire available material to the Law Officer and brief him from time to time well in advance from the date of hearing after fixing time with him. Departments of the Government should consider themselves as clients of the State Counsel.

(2) Every Administrative Department at the Secretariat level and Heads of Departments working under the Administrative Department shall nominate one sufficiently senior officer preferably with legal background and expertise as Nodal Officer to keep liaison between the department on one side and the law officer on the other side for the purpose of looking after the litigation work of the Department. The Nodal Officer shall ensure proper co-ordination with the office of Advocate General, Punjab or Director, Prosecution and Litigation, Punjab, as the case may be, for obtaining advice whenever necessary and for getting the instructions issued for prosecuting/defending the State case. The Nodal Officer should ensure that the plaint/written statement/reply on behalf of the Government is got drafted strictly on

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the basis of record and, further, that the same is filed before the due date. The Nodal Officer shall be responsible to monitor the prosecution/defence of the State in each case effectively from time to time. The Administrative Departments and Heads of Departments shall notify to the office of Advocate General, Punjab and Director, prosecution and Litigation the name/ designation and contact numbers of their Nodal Officer for maintaining proper liaison in respect of various cases. Nodal Officers must also be subjected to training at Mahatama Gandhi State Institute of Public Administration, Punjab so that they are in a position to understand what is expected of them under the State Litigation Policy.

6. ACCOUNTABILITY

Accountability is the touch-stone of this Policy. Accountability will be at various levels; at the level of officers in charge of litigation, those responsible for defending cases, all the Government Pleaders/ lawyers and Nodal Officers. As part of accountability, there must be critical appreciation on the conduct of cases. Good cases which have been lost must be reviewed and subjected to detailed scrutiny by the Administrative Departments and the Heads of Department to ascertain responsibility. Upon ascertainment of responsibility, suitable action will have to be taken. Complacency must be eliminated and replaced by commitment.

7. ESTABLISHMENT OF EMPOWERED COMMITTEE

There will be Empowered Committee to monitor the implementation of this Policy and accountability. The Nodal Officers through their Heads will ensure that all relevant data is sent to the Empowered Committee. The Empowered Committee at the State level shall be consisting of:-

1. Chief Secretary, Punjab.
2. Principal Secretary, Home Affairs and Justice
3. Advocate General, Punjab.
4. Director Prosecution & Litigation

Director Prosecution & Litigation shall also be Convenor of the Committee

8. SERVICE OF SUMMONS

Section 62 of the Code of Criminal Procedure provides that a summon shall be served by the Police Officer or subject to such rules being framed by the State Government by any officer of the court or other public servant. In every district responsible police officers shall be appointed in the summoning staff and their work shall be monitored by a Deputy Superintendent of police. A Nodal Agency shall be constituted at every police district and the State level to monitor availability of official witnesses. Police district level nodal agency shall consist of Superintendent of Police, District Attorney (Legal)/Deputy District Attorney (Legal) and the Deputy Superintendent of Police, Incharge of summoning staff. At the State level, Nodal Agency shall be headed by DIG/Crime Wing with Joint Director Prosecution/Crime and AIG/SP, Crime being its members. District Nodal Agency may collect list of official witnesses to be examined in the next month in different courts and ensure that either the official witnesses appear in court in person or in case of any difficulty in personal appearance the said witnesses remain available for recording evidence by way of video conferencing at any other district court in the State with prior intimation to the District Judge of the place where he is to be available. State Nodal Agency will review the working of District Nodal Agency so that there is no default in availability of official witnesses for evidence on the dates planned in advance. If for any inevitable reason the availability of witnesses cannot be secured, intimation must be given in advance to the District Judge concerned who may re-schedule the recording of evidence accordingly and confirm revised schedule to the Nodal Agency.

It is also seen that sometimes, summons on Medical Officers to appear as prosecution witnesses in criminal cases to prove MLRs or post mortem reports could not be served upon them on account of their leaving the institution or for some other reason. Process servers find it difficult to know the new-address. From initials made on the medical reports, it becomes very difficult to decipher full name of the concerned Doctor. Therefore, for the purpose of facilitating service of summons, a Supervisory Officer/Nodal Officer shall be nominated at every

Government hospital who should keep record of doctors leaving the Institution alongwith their permanent and new address and Telephone/mobile Number and Medical Officers shall make it sure to put their signatures in full with their stamps.

9. SCRUTINY OF POLICE REPORTS UNDER SECTION 173 Cr.PC

After completion of investigation of criminal cases, charge sheet shall be got scrutinized and approved from the District Prosecution agency. Charge sheet shall be filed only in those cases where there is sufficient reliable evidence and the cases in which evidence is deficient to prove the charge, cancellation report shall be filed. In case of difference of opinion between District Investigation Agency and District Prosecution Agency, the matter shall be referred to the Director, Prosecution and Litigation, Punjab for further guidance and advice.

10. AMICABLE SETTLEMENT THROUGH LOK ADALATS

Periodic review of pending MACT, land acquisition and service cases shall be regularly conducted by THE District Screening Committee headed by a Deputy Commissioner, District Attorney and the concerned district head. The District Screening Committee shall consider the cases pending in the courts in their respective district and submit a proposal/recommendation to the Nodal Committee of the concerned department i.e. Department of Transport for MACT cases, Department of Revenue and Rehabilitation for land acquisition cases and Department of Personnel and General Administration for service matters. The Member Secretary, Legal Services Authority, Punjab shall act as Chief Coordinator for these committees. The cases which are approved by the concerned Departmental Nodal Committee shall be referred to the concerned Lok Adalat.

11. GOVERNMENT REPRESENTATION IN THE COURTS

(1) Number of posts of District Attorneys, Deputy District Attorneys and Assistant District Attorneys who act as Public Prosecutors/Additional Public Prosecutors/

Assistant Public Prosecutors and Government Pleaders in courts shall proportionally increased to the number of trial courts.

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(2) Government counsel must be well equipped and provided with adequate infrastructure. Efforts will be made to provide compact of disc containing judgment of the Supreme Court and High Courts, computers, internet links, FAX machines and Common research facilities must be made available for Government lawyers as well as equipment for producing compilations of cases.

(3) For the purpose of getting the cases involving the similar issues clubbed into groups, Advocate General office will store data stating statute under which each case falls or as to the issue involved.

(4) Training programs, seminars, workshops and refresher courses for Government advocates must be encouraged. There must be continuing legal education for Government lawyers with particular emphasis on identifying and improving areas of specialization.

(5) Advocates on Record must play a meaningful role in Government litigations. They cannot continue to be merely responsible for filing appearances in Court. Incomplete briefs are frequently given to the Government Counsel. This must be discontinued. It shall be ensured that proper records are kept of cases filed their copies retained by the Department.

(6) There should be equitable distribution of briefs so that there is broad based representation of Government. Complaints that certain Panel advocates are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee.

(7) Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to Government. If concessions are made on issues of fact or law, and it is found that such concessions were not justified, the matter will be reported to the Empowered Committee and remedial action would follow.

12. ADJOURNMENTS

(1) Accepting that frequent adjournments are resorted to by Government lawyers, unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.

(2) In fresh litigations where the Government is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and if necessary to the Head of the Department.

(3) In Appellate Courts, if the paper books are complete, then adjournments must not be sought in routine course. The matter must be dealt with at the first hearing itself. In such cases, adjournments should be applied for only if a specific query from the court is required to be answered and for this, instructions have to be obtained.

(4) One of the functions of the Nodal Officers will be to coordinate the conduct of litigation. It will also be their responsibility to monitor the progress of litigation, particularly to identify cases in which repeated adjournments are taken. It will be the responsibility of the Nodal Officer to report cases of repeated and unjustified adjournments to the Head of Department and it shall be open to him to call for reasons for the adjournment. The Head of the department shall ensure that the records of the case reflect reasons for repeated adjournment. Serious note will be

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taken of cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault, suitable action should also be taken against them.

(5) Cases in which costs are awarded against the Government as a condition of grant of adjournment will be viewed very seriously. In all such cases the Head of Department must give a report to the Empowered Committee of the reasons why such costs were awarded. The names of the persons responsible for the default entailing the imposition of costs will be identified. Suitable action must be taken against them.

13. FILING OF CRIMINAL APPEALS

(1) District Attorney/Public Prosecutor shall file appeal against order of acquittal passed by Magistrate in respect of cognizable and non-bailable offence, if the case is found fit for appeal, in the court of Session after obtaining instructions to that effect from the District Magistrate.

(2) Proposal shall be sent by the District Attorney/Public Prosecutor to the Director, Prosecution and Litigation, Punjab:-

(a) for filing appeal against the order of Magistrate or the Court of Session for enhancement of sentence; or

(b) against an order of acquittal passed by a Magistrate in respect of

(i) a cognizable and bailable offence; or

(ii) in respect of a case found not fit for appeal but punishable with

imprisonment for life or in which an accused is a public servant; or

(c) from an original or appellate order of acquittal passed by a Court of Session; or

(d) an order of acquittal passed by court of Session in revision; or

(e) an order passed by the Magistrate or Court of Session in which revision

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(3) Director Prosecution and Litigation, Punjab will send all criminal cases found fit for filing appeal/revision/petition in the High Court to the Advocate General, Punjab, who will in turn send his recommendation to the Vigilance Department in cases registered by the Vigilance Bureau, Punjab under the Prevention of Corruption Act and in all other cases to the Department of Home Affairs and Justice for taking final decision as to whether the appeal is to be filed or not.

14. FILING OF CIVIL APPEALS

(1) Director Prosecution and Litigation, Punjab will send all civil cases found fit for filing appeal/revision/review/CWP in the High Court to the Advocate General, Punjab, who will in turn send his recommendation to the concerned Administrative Department for taking final decision as to whether appeal/revision/review/CWP is to be filed or not.

(2) No sanction to file SLP/CWP/LPA/RSA/Appeal/Revision shall be accorded by the Administrative Department against the opinion of Advocate General, Punjab or Director, Prosecution and Litigation, Punjab, as the case may be, without the approval of the Department of Home Affairs and Justice.

(3) Appeals will not be filed against ex parte ad interim orders. Attempt must first be to have the order vacated. An appeal must be filed against an order only if the order is not vacated and the continuation of such order causes prejudice.

(4) Appeals must be filed intra court in the first instance. Direct appeals to the Supreme Court must not be resorted to except in extraordinary cases.

(5) Given that Tribunalisation is meant to remove the loads from Courts, challenge orders of Tribunals should be an exception and not a matter of routine.

(6) Proceedings will be filed challenging orders of Administrative Tribunals only if

- (a) There is a clear error of record and the finding has been recorded against the Government.
- (b) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.
- (c) The judgment would impact the working of the administration in terms of morale of the service, or
- (d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims.

(7) Appeals in Revenue matters will not be filed:

- a) if the stakes are not high and are less than the amount to be fixed by the Revenue Authorities;
- b) If the matter is covered by a series of judgments of the Tribunal or of the High Courts which have attained finality;
- (c) where the assessee has acted in accordance with long standing industry practice;

(8) Appeals will not be filed in the Supreme Court unless:

- (a) the case involves a substantial question of law of general importance;
- (b) If it is a question of fact, the conclusion of the fact is so perverse that an honest judicial opinion could not have arrived at that conclusion;
- (c) Where public finances are adversely affected;
- (d) Where there is substantial interference with public justice.

15. LIMITATION : DELAYED APPEALS

(1) Every attempt must be made to reduce delays in filing appeals/applications. It shall be responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation. Each Head of Department will be required to call for details of cases filed on behalf of the

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Department and to maintain a record of cases which have been dismissed on the ground of delay. The Nodal Officers must submit a report in every individual case to the Head of Department explaining all the reasons for such delay and identifying the persons/causes responsible. Every such case will be investigated and if it is found that the delay was not bonafide, appropriate action must be taken.

(2) It shall be the responsibility of the drafting Law Officers/Government Pleaders to carefully draft an application for condonation of delay, identifying the areas of delay and identifying the causes with particularity. Drafting Law Officers/Government Pleaders who fail to adhere to this shall liable for suitable action.

16. COORDINATION BETWEEN DIFFERENT ORGANS

It is imperative to look into the functions of each sub system (police, prosecution and courts) and the part they could play to supplement to each other most effectively. If the whole system functions smoothly and properly, it may have a considerable impact in reducing crime & backlog. To achieve this goal, the integrity of each sub system is considered utmost important. Another factor is that the policy of each sub-system must be planned in coordination and keeping into account the requirements of the other sub-systems. District and Sessions Judge, District Magistrate, Superintendent of Police and District Attorney could sit together join their heads and have heart to heart talk on various sensitive matter relating to criminal administration in their district. In this regard instructions issued in concurrence with High Court of Judicature of Lahore which were reiterated on August 17, 1994 by the Punjab Govt. to hold quarterly meetings to discuss issues of service of summons, warrants, prosecution, witnesses present but returned un-examined and production of case property should be adhered to. The object of such meetings is to consider difficulties arisen during previous quarter in investigation, prosecution and trial of criminal cases and to consider how these could be removed or reduced.