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No. SC-6-33/98

BHUBANESWAR

Dated the 6.12.2000

To: **All Secretaries to Government/
All Heads of Departments/
All Collectors.**

Sub: **Contempt proceedings against Officers and employees of the State Government –
their defence at the expense of Government – if permissible.**

Sir,

Detailed instructions on the defence of Government servants in legal proceedings have been issued by the General Administration Department vide letter No. 14537/Gen., dated 26.5.92 on the procedure to be followed for defending Government servants in legal proceedings. Para-11 of the letter referred above, deals with the defence of Government servants on whom the contempt of court charges have been served. It has been provided in this paragraph that the Government servant concerned may be defended at Government cost, if the Administrative Department after careful consideration, have satisfied themselves that the Government servant was not personally responsible for non-implementation of the Court orders. It has been further provided therein that where the Administrative Department are not satisfied as above, on the basis of the facts available with them, the defence of the Government servant should be left to himself.

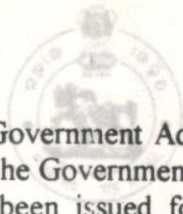
2. The Hon'ble Supreme Court of India in Civil Appeal No. 8588-89 of 1997 in the case of Commissioner, Agra and others Vs. Rohtas Singh and others reported in AIR 1998 SC:685 have laid down the following principles of law:-

- (i) It is open to the State to nominate its Advocates to appear for its officials in contempt proceedings.
- (ii) The State is entitled to authorise a Law Officer to appear in cases where the contempt consists of disobedience of an order of the Court by an Officer or employee of the State.
- (iii) Where the conduct of the concerned official is contumacious, the Court can direct him to pay costs personally.

3. In view of the above principles laid down by the Hon'ble Supreme court at Serial (i) and (ii) of para -2 above, the State Government after careful consideration have now decided that the Administrative Department/Heads of

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Departments may request the Government Advocates and Standing Counsels for the State to appear and defend the Government officials against whom the notices for contempt of Courts have been issued for any alleged act of omission or commission while performing their duties in their official capacities. It has also been further decided that in such cases the legal expenses will be borne by the concerned Administrative Department/Head of Department/Head of Office.

4. But, in view of the principles of law enunciated by the Supreme court at Serial (iii) of para-2 above, Government have also decided that if on conclusion of the contempt proceedings, the Administrative Department/Head of the Department finds that the Officer concerned had intentionally and knowingly committed the contempt of Court or has been held guilty of contempt charges by the Court/Tribunal, as the case may be, the fees paid to the Government Advocate or Standing Counsel who appear for the concerned Government employee in the contempt proceedings and other legal expenses incurred for the case shall be recovered from his salary provided further that such recovery will be initiated only if the contempt is considered to be intentional or based on any unauthorised action. Further more, such recovery may be made only after the order under the Contempt of Courts Act attains its finality.

5. This Circular letter supersedes paragraph 11 of the G.A. Department Resolution No. 14537/Gen. Dated 26.5.92 referred to above.

The above instructions may kindly be communicated to all the Subordinate Offices for their information and guidance. This issues with the concurrence of the Law Department communicated in their U.O.R. No. 1965 dated 24.9.98.

Yours faithfully,

CHIEF SECRETARY

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