

File No. MPP-B(003)-28-2021  
Government of Himachal Pradesh,  
Department of MPP & Power

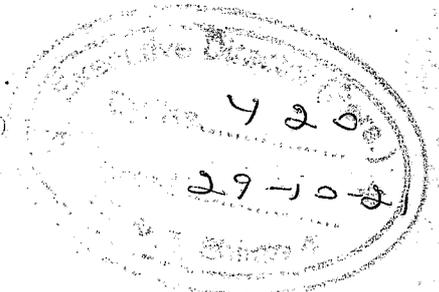
From

The Additional Chief Secretary (Power) to the  
Government of Himachal Pradesh

To

1. The Director of Energy,  
Shanti Bhawan, Phase-III, Sector-6,  
New Shimla, Shimla-171009
2. The Managing Director,  
H.P. State Electricity Board Limited,  
Vidyut Bhawan, Shimla-171004.
3. The Managing Director,  
H.P. Power Transmission Corporation Limited,  
Near old MLA Quarters,  
Tutikandi, Shimla-171005.
4. The Managing Director,  
H.P. Power Corporation Limited,  
Himfed Building; BCS,  
New-Shimla, Shimla-171009
5. The Secretary,  
H.P. Electricity Regulatory Commission,  
SDA Complex, Kasumpti, Shimla-171009
6. Chief Electrical Inspector,  
Block No. 29, SDA Complex,  
Kasumpti, Shimla-9

*Assign to...*  
M.P.  
EDLP  
29/10/21



Dated: Shimla-2, the

19-10-2021

Subject:- CWP No. 4851/2021-titled as Sushil Kumar Vs. State of H.P. and others.

Sir,

I am directed to enclose herewith copy of letter No. CWP 4851/2021 dated 5.10.2021 alongwith its enclosures received from the Sr. Addl. Advocate General, Himachal Pradesh on the subject cited above and to say that the aforesaid case was listed before the Hon'ble Court on 9.9.2021 and which was disposed of by the Hon'ble court with a direction to the Chief Secretary to the Govt. of H.P. to issue the necessary instructions to all the Boards, Corporations, NGOs and Employee Unions to not issue any D.O. Notes regarding transfer and posting of the employees. The order dated 9.9.2021 has not been complied till date. Today, in the similar case of



1E/720  
29/10/2021  
to all filed  
D/Skan  
offn

For circulation & uploading on the website of Board also judgement of matter vs State of HP/HPSEB Ltd. vs Anir Kumar + ors. U.S.(GE) 29/10/2021.

Paragjeet 29/10  
S. Asst.

the Electricity Board the Hon'ble Court has directed the Chief Secretary to the Govt. of H.P. to issue the necessary instructions in the matter, otherwise to remain present in the Court on 6.10.2021.

You are, therefore, requested to comply with the orders of the Hon'ble High Court accordingly. The department of the undersigned will send the another communication in the matter when the necessary instruction received from the chief Secretary Govt of HP.

Yours faithfully,

Special Secretary (Power) to the  
Government of Himachal Pradesh

Endst. No. As above Dated Shimla-02, the \_\_\_\_\_ 2021

Copy to the Secretary Education to the Government of Himachal Pradesh with letter as referred above for information and necessary action please.

Special Secretary (Power) to the  
Government of Himachal Pradesh

**HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED**  
(A State Govt. undertaking)



Registered office : Vidyut Bhawan, HPSEBL, Shimla-171004(H.P)

GST No. : HPSEBL 02 AACCH4894EHZB

Telephone Number : 0177-2803600,2801675(Office), 2813563(Fax)

Corporate Identity Number :

U40109HP2009SGC031255

Website address : [www.hpseb.in](http://www.hpseb.in)

Email : [md@hpseb.in](mailto:md@hpseb.in) & [dirf@hpseb.in](mailto:dirf@hpseb.in)

No. HPSEBL (Sectt)/GE/CWP No.6196/2021-49382-6<sup>0</sup> Dated:- 29/10/2021

Copy of above is forwarded to all the concerned for information and necessary to:-

- 1) All the Chief Engineers / MD BVPCL, Jogindernagar /SE's/Sr.XEN's under the HPSEB Ltd.
- 2) The Superintending Engineer, (IT) Shimla to upload on HPSEBL Website please.
- 3) All the D/Assistants in HPSEB Ltd.

DA-As above.

Under Secretary (GE)  
HPSEBL, Shimla-04.

29/10/2021

11-10-21

**TIME BOUND**

3

HIGH COURT MATTER

No. CWP 4851/2021-  
O/o the Advocate General,  
State of Himachal Pradesh.

Dated:-5.10.2021.

55 453322  
7/10/21

To

The Chief Secretary to the  
Govt. of H.P., Shimla.

Subject: CWP No. 4851/2021-titled as Sushil Kumar Vs. State of H.P. and others.

3  
5/10/21  
Acs (MPP)  
Acs (Pers)

Sir,

It is intimated that the aforesaid case was listed before the Hon'ble Court on 9.9.2021 and which was disposed of by the Hon'ble Court with a direction to the Chief Secretary to the Govt. of H.P. to issue the necessary instructions to all the Boards, Corporations, NGOs and Employee Unions to not tissue any D.O. Notes regarding transfer and posting of the employees. The order dated 9.9.2021 has not been complied till date. Today, in the similar case of the Electricity Board the Hon'ble Court has directed the Chief Secretary to the Govt. of H.P. to issue the necessary instructions in the matter, otherwise to remain present in the Court on 6.10.2021.

You are, therefore, requested to comply with the order of the Hon'ble Court and impart necessary instructions in the matter today positively

This is for your information and necessary action.

Yours sincerely,

(Rajinder Dogra)

Sr. Addl. Advocate General,  
State of Himachal Pradesh.

7/10/21  
SS (Power)

Sy (P)  
11/10/2021  
Sh. N. K. D



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 8<sup>th</sup> DAY OF OCTOBER, 2021

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE SATYEN VAIDYA

CIVIL WRIT PETITION NO. 6196/2021

BETWEEN:

1. AMIT KUMAR,  
S/O LATE SH. DAULAT RAM,  
AGED ABOUT 42 YEARS,  
RESIDENT OF VILLAGE KHANER,  
POST OFFICE HALNIDHAR,  
TEHSIL KUMARSAIN, DISTRICT SHIMLA,  
HIMACHAL PRADESH.
2. HIRA LAL VERMA,  
S/O LATE SH. BHAG CHAND,  
RESIDENT OF VILLAGE BATHONE,  
POST OFFICE SERI BANGLOW,  
TEHSIL KARSOG, DISTRICT MANDI,  
HIMACHAL PRADESH.
3. ASHOK KUMAR BHARDWAJ,  
S/O SH. SITA RAM BHARDWAJ,  
RESIDENT OF VILLAGE JANOG,  
POST OFFICE & TEHSIL  
THEOG, DISTRICT SHIMLA,  
HIMACHAL PRADESH.

...PETITIONERS

(BY SH. SURENDER SHARMA, ADVOCATE)

AND

1. HIMACHAL PRADESH STATE ELECTRICITY  
BOARD LIMITED THROUGH ITS  
EXECUTIVE DIRECTOR (PERSONNEL),  
VIDYUT BHAWAN,  
SHIMLA-171004.
2. SH. HIRANAND VERMA,  
ASSISTANT ACCOUNTS OFFICER,  
FINANCE & ACCOUNTS WING,  
HPSEB LIMITED, SHIMLA-4,  
(PRESIDENT, HIMACHAL PRADESH STATE  
ELECTRICITY BOARD LIMITED  
MINISTERIAL SERVICES ASSOCIATION).

3. **SH. KESHA NAND SHARMA,  
O/O CHIEF ENGINEER SYSTEM  
PLANNING HPSEBL, SHIMLA-4,  
(GENERAL SECRETARY, HIMACHAL PRADESH  
STATE ELECTRICITY BOARD LIMITED  
MINISTERIAL SERVICES ASSOCIATION).**

....RESPONDENTS

**(SH. TARA SINGH CHAUHAN, ADVOCATE, FOR R-1)  
(SH. R.S. GAUTAM, ADVOCATE, FOR R-2)  
(SH. J.L. BHARDWAJ, ADVOCATE, FOR R-3)**

**RESERVED ON: 6.10.2021**

*This petition coming on for admission before notice this day, Hon'ble Mr. Justice Tarlok Singh Chauhan, passed the following:*

**ORDER**

The instant petition has been filed for the grant of following substantive reliefs:

- (i) that the impugned Annexures P-1 to P-3, P-5 and P-6 may kindly be quashed and set aside.
- (ii) that respondent No.1 may kindly be directed not to transfer and post the petitioners on the basis of impugned Annexures P-1 to P-3, P-5 and P-6.
- (iii) that the respondent No.1 may kindly be directed to initiate appropriate proceedings against respondents No. 2 and 3 for interfering with the working of the respondent-Board by making requests/proposals to transfer the petitioners and other employees.
- (iv) that the respondent No.1 may kindly be directed to produce the record and place on record the particulars with regard to the postings and transfers of respondents No. 2 and 3 from the date(s) of their initial appointments till date and thereafter keeping

in view their longer stay at Shimla, the respondent No.1 may kindly be directed to post respondents No. 2 and 3 out of Shimla.

2 Learned counsel for the respondent-Board as well as private respondents would argue that the instant petition is premature and, therefore, not maintainable inasmuch as the petitioners have not actually been transferred and only having been recommended to be transferred, they cannot prevent or pre-empt particular course by filing this petition.

3 During the course of the hearing, both the parties produced voluminous documents, which only go to indicate that currently it is respondents No. 2 and 3, who happen to be office bearers of Himachal Pradesh State Electricity Board Limited Ministerial Services Association and earlier, it was the petitioners. The impugned Annexures P-1 to P-3, P-5 and P-6, are communications issued by respondents No. 2 and 3 for recommending the transfer of the petitioners.

4 We have heard learned counsel for the parties and have also gone through the records of the case carefully.

5 We are appalled by the gross indiscipline existing in the respondent-Board where the members of the different Employees' Associations or Unions have been addressing communications directly to the Hon'ble Chief Minister being oblivious or intentionally ignoring the Conduct Rules. This practice requires to be discontinued forthwith.

6 What is more distressing is that these Employees' Associations or Unions are acting as extra constitutional authorities and are making recommendations for non-consensual transfers, especially of their opponents.

7 This Court, while dealing with an identical case being **CWP No. 4851/2021, titled as Sushil Kumar vs. State of H.P. & ors. decided on 9.9. 2021**, observed as under:

5. *It is rather very unfortunate that cases are coming up repeatedly before this Court, in which the impugned transfer orders or transfer cancellation orders unabashedly and brazenly state that the transfer order or transfer cancellation is being done by or at the instance of persons, who have no role, position or authority in the administration of the department.*

6. *For better administration, the employees/officers must be shielded from fear of being harassed by the repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration.*

7. *This court has repeatedly held that the transfer of officials/officers is required to be effected on the basis of set norms and guidelines; and this power cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians, who has no concern with the working of the department.*

8. *The result of such political interference in the matter of transfers and postings of government servants is that the government servants get demoralized and they become affiliated to some political party or politician, which is wholly destructive to all norms of administration.*

9. *The citizens have a fundamental right to good governance, which is possible only if government servants*

including the employees of the Board/ Corporation, who are governed and controlled by the State Government, are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

10. To say the least the Association has made a mockery and has used its strength as a tool to transfer the employees.

11. The Government as an ideal employer has a bounden duty to strictly safeguard the interest of its employees against the machinations of such organization so that the public servants can discharge their functions without fear or favour and they need not to toe the line drawn by the association. If such transfer is allowed to take effect, it would embolden other association(s) to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted somewhere else.

12. This would demoralize the government servants and may even inspire them to amend their ways in such a manner so as to please each and every one whoever come under the banner of the Association. If the government machinery has to serve the people well, their functioning and official routines are to be insulated against the extraneous influences.

13. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, that permeates the whole of the constitutional fabric and is an integral part of the constitutional structure. Rule of law contemplates governance by laws and not by humour.

14. That apart, the transfer cannot be used as a medium to scuttle or choke the voice of dissent, especially, the voice of dissent cannot be silenced through administrative arbitrariness.

High Court

15. The employees' association primarily constituted to highlight the grievances of the employees can no doubt request the competent authority for transfer of employees of the Association highlighting the grievances of the employees, but in no case can recommend for the transfer of the employees that too to a particular station, which is solely the job of the administrative department.

16. In addition thereto, under no conditions or circumstances can these associations, unions etc., as the case may be, recommend for a non-consensual transfer merely because the association may comprise of sizable number of employees. These Associations cannot indulge in hand twisting tactics and try to exert pressure on the administrative authority to effect a non-consensual transfer.

17. Likewise, these associations cannot impress upon the administrative authorities to promote a particular employee, as that again is only within the exclusive domain and domain of the administrative department. In case an individual employee is aggrieved by his non promotion, then it is always open to him to approach the administrative department and in case, the administrative department does not accede to his request, the door of justice are always open to such employee. The association cannot usurp the power of administrative department.

18. Therefore, we direct that henceforth no recommendations for non consensual transfer shall be made by the Himachal Pradesh Sikshak Mahasangh (Association), much less, accepted by the competent authority. It is made clear that when such recommendations come to the notice of this Court, then the Himachal Pradesh Sikshak Mahasangh shall be disqualified for all intent and purposes.

19. Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, which has no role in the functioning and business of the

administration, therefore, the impugned transfer of the petitioner on the basis of such recommendations cannot be sustained.

8 In compliance to the directions contained in aforesaid case, the Chief Secretary to the Government of Himachal Pradesh, has issued instructions, which read as under: -

*"Your attention is invited to the Hon'ble High Court orders dated 20.7.2021 titled as Vipender Kalta vs. State of H.P. & others and further orders dated 9.9.2021 of Hon'ble High Court passed in CWP No.4851/2021, titled as Sushil Kumar vs. State of H.P. & others. In both the cases the Hon'ble High Court has expressed serious concern over recommendation related to service matters of employees including transfer, promotion etc., by extra constitutional authorities which have no role in the functioning and business of the administration. All the Secretaries/HODs must ensure that such recommendation, if received, should not be taken on their face value and must be put up to competent authorities purely on merit and dealt strictly on administrative grounds."*

9 Even instructions, in compliance to the aforesaid judgment, also stand issued by the Director (Higher Education).

10. However, it appears that the judgment rendered in Sushil Kumar's case *supra* has not had its effect on the Employee's Associations or Unions, as they in the blatant and brazen manner continue to make recommendations for non-consensual transfers, as is evident from the facts of the instant case.

11 If any individual employee or officer or office bearer of any Union or Association, recognized or unrecognized, indulge in any coercive or intimidating or indisciplined acts or behavior, the employer is always at liberty to take such action, as permissible in law.

12 Therefore, we make it absolutely clear that henceforth the Boards, Corporation or any other institutions, falling under the definition of the 'State' under article 12 and 226 of the Constitution of India, shall not entertain much less consider and decide recommendations made by any of the Employees' Associations or Unions for non-consensual transfers of its employees in the State of Himachal Pradesh and any Employees' Associations or Unions in the State of Himachal Pradesh resorting to such practice shall, in addition to any other action, be liable to be de-recognized and disqualified for all intents and purposes.

13. A copy of this order be sent by the Registry of this Court to the Chief Secretary to the Government of Himachal Pradesh for onward circulation to all the Departments of the Government, all Boards, Corporations etc.

14 As regards the instant petition, the same being premature at this stage is accordingly dismissed so also the pending application(s), if any. For compliance, list on 22.10.2021.

**(Tarlok Singh Chauhan)**  
Judge

**(Satyen Vaidya)**  
Judge

**8.10.2021**  
(pankaj)



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 9<sup>th</sup> DAY OF SEPTEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE SATYEN VAIDYA

CIVIL WRIT PETITION NO. 4851 OF 2021

Between:-

SUSHIL KUMAR SON OF SHRI  
ROSHAN LAL CHAND, AGED 53  
YEARS, RESIDENT OF VILLAGE  
KRAHLAR, POST OFFICE  
KUTHERA, TEHSIL AND  
DISTRICT HAMIRPUR,  
HIMACHAL PRADESH,  
PRESENTLY POSTED AS  
LECT./LECT(SN), GSSS  
BALDUHAK, DISTRICT  
HAMIRPUR, H.P.

...PETITIONER

(BY SH. SURINDER SAKLANI, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH  
THROUGH SECRETARY  
(EDUCATION) TO THE  
GOVERNMENT OF HIMACHAL  
PRADESH, SHIMLA-2.
2. DIRECTOR OF HIGHER  
EDUCATION, HIMACHAL  
PRADESH, SHIMLA-1.
3. SMT. MEENA KUMARI WIFE OF  
(NOT KNOWN TO THE  
PETITIONER), PRESENTLY  
POSTED AS LECT./LECT/(SN),  
GSSS THONA, DISTRICT MANDI,  
HIMACHAL PRADESH.

5/10/2021  
Secy. (Edu.)

...RESPONDENTS

(SH. ASHOK SHARMA,  
ADVOCATE GENERAL WITH SH.  
RAJINDER DOGRA, SENIOR  
ADDITIONAL ADVOCATE  
GENERAL, SH. VINOD THAKUR,  
SH. SHIV PAL MANHANS, SH.  
HEMANSHU MISRA,  
ADDITIONAL ADVOCATE  
GENERALS AND SH. BHUPINDER  
THAKUR, DEPUTY ADVOCATE  
GENERAL, FOR RESPONDENTS  
No. 1 AND 2

SH. JAGDISH THAKUR,  
ADVOCATE, FOR RESPONDENT  
NO. 3).

*This Petition coming on for Admission After Notice this day,  
Hon'ble Mr. Justice Tarlok Singh Chauhan, passed the  
following:-*

**ORDER**

Admittedly, the transfer of the petitioner has been effected on the recommendations made by an authority, which has nothing to do with the administration or the administrative department to which the petitioner belongs. As such, the transfer is clearly not sustainable in view of the judgment rendered by this Court in **CWP No. 2862 of 2021, titled as Vipender Kalta, vs. State of H.P., decided on 20.07.2021.**

2. The perusal of record reveals that the transfer of the petitioner has been effected on the recommendations made by the **Himachal Pradesh Sikshak Mahasangh** (For short

'Association') and the same unfortunately has been accepted by the competent authority.

3. It is rather unfortunate that the Himachal Pradesh Sikshak Mahasangh, which is an association incorporated to look into the grievances of the teaching community is behaving in such a fashion, which is clearly suggestive of the fact that the recommendations have been made only to settle scores.

4. It is surprising to note that the association in its recommendations addressed to the Hon'ble Chief Minister has not only requested for transfers but has even requested for promotion of some of the employees, as is evident from the letter, which is reproduced in its entirety and reads as under:-

The Hon'ble Chief Minister may be requested to kindly approve the following transfer order and issue order in supersession of all previous order with condonation of short stay of less than two years of both and relaxation on ban on transfer policy/Contract Policy/Hard area policy in supersession of all previous order as a special case.

1. Shalini TGT (NM) may be transfer to GHS Megal U/C GSSS Tandoo to GSSS Kunsal Distt. Kgr vice Smt. Archana Sood and vice versa to GSSS Makol versa
2. Rakesh kumar HM at GHS Ulehrian (Kgr) S. No. 2550 may be adjusted on promotion to the post of Principal at GSSS Paral Distt. Kgr or GSSS Lathial (Kgr) against vacancy.
3. Smt. Meena Kumari Lect. Math may be transfer from GSSS Thonal (MND) to GSSS Balduhak Distt. HMR vice Sh. Sushil Kumar and vice versa
4. Sunil Dutt Principal may be transfer from GSSS Jeori to GSSS Nora (Kgr) against vacancy or GSSS Dhoopkyara (Kgr) against vacancy on retirement on dated 31/08/2021.



5. It is rather very unfortunate that cases are coming up repeatedly before this Court, in which the impugned transfer orders or transfer cancellation orders unabashedly and brazenly state that the transfer order or transfer cancellation is being done by or at the instance of persons, who have no role, position or authority in the administration of the department.

6. For better administration, the employees/officers must be shielded from fear of being harassed by the repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration.

7. This court has repeatedly held that the transfer of officials/officers is required to be effected on the basis of set norms and guidelines; and this power cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians, who has no concern with the working of the department.

8. The result of such political interference in the matter of transfers and postings of government servants is that the government servants get demoralized and they become affiliated to some political party or politician, which is wholly destructive to all norms of administration.

9. The citizens have a fundamental right to good governance, which is possible only if government servants

including the employees of the Board/Corporation, who are governed and controlled by the State Government, are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

10. To say the least the Association has made a mockery and has used its strength as a tool to transfer the employees.

11. The Government as an ideal employer has a bounden duty to strictly safeguard the interest of its employees against the machinations of such organisation so that the public servants can discharge their functions without fear or favour and they need not to toe the line drawn by the association. If such transfer is allowed to take effect, it would embolden other association(s) to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted somewhere else.

12. This would demoralize the government servants and may even inspire them to amend their ways in such a manner so as to please each and every one whoever come under the banner of the Association. If the government machinery has to serve the people well, their functioning and official routines are to be insulated against the extraneous influences.

13. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic

feature of the Constitution, that permeates the whole of the constitutional fabric and is an integral part of the constitutional structure. Rule of law contemplates governance by laws and not by humour.

14. That apart, the transfer cannot be used as a medium to scuttle or choke the voice of dissent, especially, the voice of dissent cannot be silenced through administrative arbitrariness.

15. The employees' association primarily constituted to highlight the grievances of the employees can no doubt request the competent authority for transfer of employees of the Association highlighting the grievances of the employees, but in no case can recommend for the transfer of the employees that too to a particular station, which is solely the job of the administrative department.

16. In addition thereto, under no conditions or circumstances can these associations, unions etc., as the case may be, recommend for a non-consensual transfer merely because the association may comprise of sizable number of employees. These Associations cannot indulge in hand twisting tactics and try to exert pressure on the administrative authority to effect a non-consensual transfer.

17. Likewise, these associations cannot impress upon the administrative authorities to promote a particular employee, as

that again is only within the exclusive domain and domain of the administrative department. In case an individual employee is aggrieved by his non promotion, then it is always open to him to approach the administrative department and in case, the administrative department does not accede to his request, the door of justice are always open to such employee. The association cannot usurp the power of administrative department.

18. Therefore, we direct that henceforth no recommendations for non consensual transfer shall be made by the Himachal Pradesh Sikshak Mahasangh (Association), much less, accepted by the competent authority. It is made clear that when such recommendations come to the notice of this Court, then the Himachal Pradesh Sikshak Mahasangh shall be disqualified for all intent and purposes.

19. Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, which has no role in the functioning and business of the administration, therefore, the impugned transfer of the petitioner on the basis of such recommendations cannot be sustained.

20. Accordingly, the present petition is allowed and the impugned transfer order dated 23.08.2021 (Annexure P-1) is quashed and set aside. Since, the petitioner has completed his

normal tenure at the given station on 23.08.2021, therefore, this order shall not come in the way of the respondents-State, in case, they still choose to transfer the petitioner. The said transfer shall be made strictly in accordance with Comprehensive Guiding Principles, 2013 and notification dated 19.11.2020.

21. The petition is disposed of in the aforesaid terms, so also pending application(s), if any.

Copy of this order be sent to the Chief Secretary to the Government of Himachal Pradesh for compliance.

**(Tarlok Singh Chauhan)**  
Judge

**(Satyen Vaidya)**  
Judge

**9<sup>th</sup> September, 2021**  
(Sanjeev)

