



Government of Jammu and Kashmir
Public Works (R&B) Department
Civil Secretariat, Jammu/Kashmir

Subject: SWP No.149/2014 titled Shamas-ud-din Koka and Anr. V/s State of J&K and others

Government order No: 19 - PW(R&B) of 2022
Dated: 19 -01-2022

Whereas, vide Govt. Order No. 195-PW(R&B) of 2006 dated 11-05-2006, among others, Shri Shamas-ud-din Koka was suspended w.e.f 18-04-2006 i.e from the date he was arrested by State Vigilance Organization in case FIR No. 17/2006 & 18/2006 P/s Vigilance Organization Kashmir. The officer retired on superannuation on 30-04-2006; and

Whereas, Vide Govt. order No 284-PW(R&B) of 2006 dated 29-07-2006, a committee was constituted to inquire into the matter and the committee opined as under:

"Selective action against the suspended officers only is not equitable as the impugned rate structure allowed by them for purchase of the aforesaid materials have also been allowed by various R&B Divisions/Units in the State without analogous panel consequences. These Engineer were suspended because they were under directions. They have been enlarged on ban by the Court. Let the Law takes its own course. It is advisable in the interest of department to restore that operational mobility by reinstating them."

Whereas, among others, Shri Shamas-ud-din Koka was reinstated vide Govt. Order No. 54-PW(R&B) of 2007 dated 19-02-2007, but the period of suspension was not decided; and

Whereas, Shri Shamas-ud-din Koka filed a writ petition in SWP No. 149/2014 MP No. 182/2014 titled Shamas-ud-din Koka & another V/s State of J&K and others, wherein they sought the relief of releasing full pension, gratuity, leave salary and other post retiral benefits in their favour and also to refix their pay under SRO 93 of 2009; and

Whereas, the petitioners are under trial in case of FIR No. 17/2006, 18/2006 and 21/2006 and the said cases are pending before the Court of Learned Special Judge Anti- corruption, Srinagar; and

Whereas, the Hon'ble High Court in SWP No. 149/2014 MP No. 182/2014 titled Shamas-ud-din Koka & another/s State of J&K and others passed a judgment dated 25.10.2017, operative part of which is reproduced as under:

"....Learned Counsel for the petitioner relies upon the order of this Court passed in SWP No. 1317/2006 c/w SWP No.1409/2009, titled Kishande Singh and others Vs State and others-Mirza Ahmadullah and others Vs state and others. Learned Counsel pleads that on the basis of the said judgment, Government has passed the order No.1530-GAD of 2013 dated 25.10.2013, in favour of the similarly situated persons. In this view of the matter and having heard the learned counsel for the parties, writ petition is disposed of with a direction to the respondent/

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competent authority to accord consideration to the claim of the petitioners on its own merits. If the case of other similarly placed employees have been considered favourably in SWP No. 1317/2006 c/w SWP No. 1409/2009, titled Kishander Singh and others V/s State and others-Mirza Ahmadullah and others V/s State and others, the said proceedings may be taken into consideration. The respondents are directed to pass consideration order within a reasonable time frame preferably within a period of 8 to 12 weeks from the date of receipt of certified copy of this order. The writ petition is disposed of on the above terms".

Whereas, in compliance to judgment dated 26-07-2013 passed by HHC in SWP No. 1317/2006 c/w SWP No. 1409/2009, titled Kishander Singh and others V/s State and others-Mirza Ahmadullah and others V/s State and others, the case of the petitioners was considered by GAD by issuing Govt. Order No. 1530-GAD of 2013 dated 25-10-2013 with following orders:

- i. The period of dismissal/ suspension of the petitioners shall be treated as on duty till they attained age of superannuation.
- ii. The Rural Development Department and Finance Department shall workout and release all the benefits due to the petitioners for the period they remained dismissed/ suspended minus suspension allowance drawn by them during the said period, till they attained the age of superannuation and process and release all the retiral benefits in favour of the petitioner due to them under rules.
- iii. The departments shall act on (i) and (ii) above only after petitioners in both the writ petitions furnish an undertaking with two guarantees that in the event, any Government money is found to be recoverable from them, they shall deposit it in the State Treasury".

Whereas, in view, the above Court direction, the matter was referred to the Department of Law, Justice & PA for their advice, vide U.O.No.PW(R&B) Legal/263/18 Dated 04.07.2018; and

Whereas, the Department of Law, Justice & PA vide U.O No.LD(Lit)/2014/26-PWD dated 24.07.2018 returned the case with the following advise:

"Department is advised to pass a speaking consideration order in light of the directions of the Hon'ble High Court".

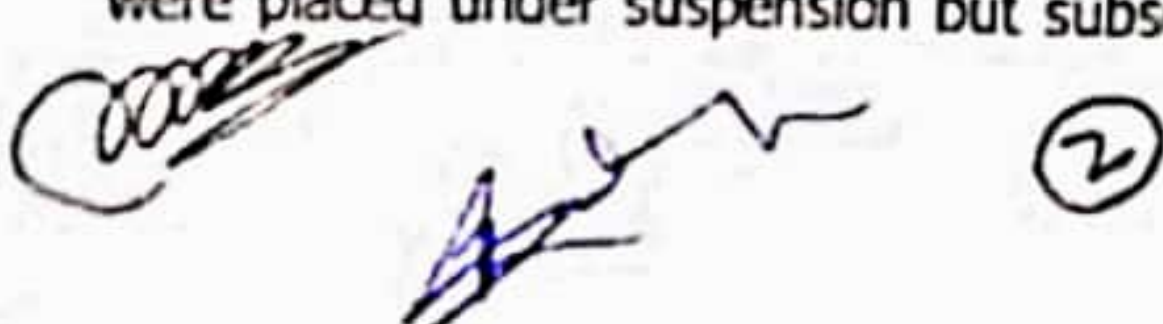
Whereas, the case vide U.O No.PW(R&B)/Legal/263/2018 dated 03.10.2018 was referred to the General Administration Department for opinion; and

Whereas, the General Administration Department again taken up the matter with Department of Law, Justice and PA. The said department again referred the case to Advocate General; and

Whereas, the Advocate General vide his endorsement No.AG/PS/19/Opn/560 dated 28.12.2019 returned the case to the Department of Law, Justice and PA with the following matrix:-

"Note para 14 and 15 of this file (LD(Lit)2014/26-PWD) reveals as under:-

14. The petitioners in the instant writ petition have claimed that they were working in the PW(R&B) Department as Chief engineers and an inquiry was initiated and they were placed under suspension but subsequently appear to have been reinstated by



the order of the Government. However, the petitioners were also facing trial in case FIR No.17/2006, 18/2006 and 21/2006 and the said cases are pending before the court of Ld. Special Judge Anti corruption, Srinagar. The petitioners pleaded that the period of suspension of the petitioners remained undecided as a result of which their post retiral benefits payable in the shape of pension, gratuity, leave salary etc has been denied.

15. In the instant case, the Hon'ble Court disposed of the case vide its judgment dated 25.10.2017, operative part of which reads as under:-

"In this view of the matter and having heard the learned counsel for the parties, writ petition is disposed of with a direction to the respondents/ Competent authority to accord consideration to the claim of the petitioners on its own merits.

In the case of other similarly placed employees have been considered favourably in SWP NO.1317/2006 C/ W SWP NO.1409/2009, titled Kishander Singh and others Vs State and others- Mirza Ahmadullah and others Vs State and others, the said proceedings may be taken into consideration. The respondents are directed to pass consideration order within a reasonable time frame preferably within a period of 8 to 12 weeks from the date of receipt of certified copy this order. The writ petition is disposed of on the above terms."

The above judgment dated 25.10.2017 is in two parts i.e, in the first part, the court has directed consideration of the matter by the competent authority in the light of the claims of the petitioners but on its own merits. In the second part of the judgment, the court has directed to take into consideration the earlier granted consideration in favour of the petitioners in SWP No.1317/2006 titled Kishander Singh and others Vs State and others C/ W SWP NO.1409/2009 titled Mirza Ahmadullah and others Vs State and others. Before examining the merits of the case of the petitioners, the concerned authorities have been left free to decide the case of the petitioners independently on its own merit and it is only in the event of similarly in regard to the consideration accorded in connected cases i.e. SWP 1317/06 and another writ petition SWP 1409/09 that the case of the petitioners needs to be considered accordingly. Before taking any view, the pendency of the criminal cases against the petitioner is required to be kept in mind. Since the matter under reference pertains to the consideration of the cases of the petitioners, as such, the department should take a final view without any further delay by passing appropriate orders in this regard.

Whereas, the Department of Law Justice and Parliamentary Affairs vide U.O No.LD(Lit) 2020/04-GAD dated 27.02.2020 returned the file to the General Administration Department with the following advise:-

"Department is advised to decide the case of the petitioners on its merits and it is only in the event of similarly with the petitioners in SWP NO.1317/2006 and the SWP No.1409/ 2009 that the case of the petitioners needs similar consideration".

Whereas, the General Administration Department vide U.O No.GAD-VIGOSP/39/2021-02-GAD(e-office) dated 27.08.2021, returned the file to this department with the following opinion:-



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"The matter has been examined by General Administration Department consultation with the department of Law, Justice and Parliamentary Affairs. The Department of Law, Justice and Parliamentary affairs, vide UO No.Law-Opn1/44/2021-10 dated 29.07.2021, has opined as under:-

"There are no change in facts and circumstances of the case, since the opinion given by Ld. Advocate General as well as Law department. The opinions are explicit and do not call for any change. The Department needs to pass a consideration order by clearly demonstrating that the case of the petitioner is not similarly situated and also the fact that there is a clear legal bar in terms of Article 108 (ii) of JK CSRs wherein, it is stipulated that post retiral benefits can only be settled after closure of criminal cases. Since criminal cases are pending, therefore, the department is obligated to pass a consideration order keeping in view the opinion of Ld. Advocate General and Law Department, which are explicit and unambiguous."

Whereas, after due consideration and examination of the case in pursuance to the judgment of Hon'ble High Court dated 25th Oct. 2017, and in consultation with department of Law, Justice and Parliamentary affairs and General Administration department, the matter was taken up with Anti Corruption Bureau, Jammu vide this department's letter No.PW(R&B)/88/01/2021 dated 05.10.2021, to know the latest position of the cases' and

Whereas, in response, the Anti Corruption Bureau, J&K vide communication No. ACB-FIR-17/2006-K-23352 dated 11.11.2021, intimated that proceedings of case FIR No.17/2006 and FIR No.18/2006 were stayed by the Hon'ble High Court of J&K. However, the case FIR No.21/2006 is pending trial before the Hon'ble Court of Special Judge Anti Corruption Srinagar; and

Whereas after threadbare examination of the case, it has been found that the case of Kishande Singh (SWP No 1317/2006 c/w 1409/2009) is not similar to the case of Sh. Shamas-ud-din Koka. Sh Kishande Singh was charged with only one FIR; and

Whereas, there are multiple FIRs against Sh Koka as mentioned below, and, are pending before the Special Judge Anti Corruption Bureau, Srinagar:

1. FIR bearing no. 12/3003 (illegal appointments of daily wagers and fake drawal of salary bills).
2. FIR bearing no. 17/2006 (purchases made on exorbitant rates from the favourite traders) and.
3. FIR bearing no. 18/2006 (fake tendering and receipt of kickbacks in the name of wife)

Whereas, in compliance with the directions passed by the Hon'ble High Court dated 25.10.2017 and by upholding the opinion of General Administration Department/ department of Law, Justice and Parliamentary Affairs conveyed vide U.O No.GAD-VIGOSP/ 39/2021-02- GAD(e-office) dated 27.08.2021, the case of the petitioner was examined and considered in terms of Article 108(B) of JKCSR which is elaborated as under:-

- (i) When a government servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuation or suspended is reinstated the authority competent to order the reinstatement shall consider and make a specific order:-
 - a) Regarding the pay and allowance to be paid to such Government Servant for the period of his absence from duty; and
 - b) Whether or not the said period shall be treated as a period spent on duty



(4)

- (ii) Where the authority mentioned in sub rule(i) is of opinion that the Government servant has been fully exonerated or in the case of suspension , that is was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired before attaining the age of superannuation or suspended, as the case may be. the period of absence from duty shall be treated as period spent on duty.

In the backdrop of above, it is amply clear that the case of Sh Shamas-ud-din Koka, is not similar to that of petitioner in SWP No. 1317/2006 c/w SWP No. 1409/2009, titled Kishande Singh and Others V/s State and Others and retrial benefits cannot be paid until the conclusion of the trial in Special Court Anti Corruption Srinagar in FIR No.12/2003, 17/2006 and 18/2006. Hence the instant claim of the petitioner, Shamas-ud-din Koka is found untenable and devoid of merit in the light of Article 108(ii) of J&K CSR till his case is sub-judice before Special Anti Corruption Court

By order of the Government of Jammu and Kashmir.

Sd/-
(Shailendra Kumar) IAS
Principal Secretary to the Government


Dated: 19.01.2022

No: PWD-LIT/188/2021-05-Department of PWD R&B(C.No.51662)

Copy to the:

1. Principal/Secretary to the Government, General Administration Department. This is with the reference to his U.O.NO.GAD-VIGZOSP/39/2021-02-GAD(e-office) dated 27.08.2021.
2. Director, Anti Corruption Bureau, J&K.
3. Director Archives Archaeology & Museums, J&K.
4. Chief Engineer, PW(R&B) Department, Jammu/Kashmir for information and with the request to deliver the copy ibid Government Order to the petitioner.
5. Sh.Shamas-ud-Din Koka, retired Chief Engineer, R/o Seer Hamdan, Anantnag.
6. Private Secretary to Principal Secretary to Government, Public Works (R&B)Department.
7. I/c Website.
8. Government Order file/Stock file.

Copy also to the Joint Secretary (J&K), Ministry of Home Affairs Government of India.


(Dr.Zeba Suleman)
Under Secretary to the Government

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