



GOVERNMENT OF JAMMU AND KASHMIR
PUBLIC WORKS (R&B) DEPARTMENT
Civil Secretariat, J&K

Subject:- OA No. 150/ 2022 titled Ganesh Dutt and Ors Vs UT of J&K and others.

Government Order No. 255-PW(R&B) of 2024

Dated: 29 .08.2024

Whereas, the applicant namely Ganesh Dutt and others filed Original Application before the Hon'ble Central Administrative Tribunal at Jammu praying for following reliefs:-

- a. *Mandamus, commanding and directing the respondents to regularize the services of the petitioners in terms of J&K Special Provision Act, 2010 w.e.f. the date, the petitioners have completed their respective seven years of service as contractual appointees or in the alternative w.e.f. that date, the Empowered Committee constituted under section 10 of the said Act, 2010 has made recommendations under section 10(4) of the said Act, to concerned respective Administrative Departments i.e. w.e.f. 25.04.2018, with all consequential benefits including seniority and financial benefits;*
- b. *Mandamus commanding and directing the respondents to issue orders for regularization of the petitioners in terms of sub-section (5) of section 10 of the said Special Provisions Act, 2010 and give effect to such regularization w.e.f. the date, the petitioners have completed their respective seven years of service as contractual employees, or in the alternative, w.e.f. that date, the Empowered Committee has made recommendations to concerned respective Administrative departments i.e. w.e.f. 25.04.2018, with all consequential benefits including seniority and financial benefits;*

Whereas, the above OA was disposed of by the Hon'ble Tribunal vide order dated 23.02.2022 with the following direction:-

"Looking to the limited prayer made by the learned counsel for the applicants, the OA is disposed off with direction to competent authority amongst the respondents to treat this OA as representation of the applicants and dispose of

the same by passing a reasoned and speaking order within a period of 4 weeks from the date of receipt of a certified copy of this order. While considering the case of the applicants, the respondents would give special emphasis to page number 32 (Annexure No. 4 to the OA)".

Whereas, in light of above directions of the Hon'ble Tribunal, the case of the applicant has been examined in the Department and it has been found that the applicant has submitting wrong and fabricated facts before this Hon'ble Tribunal in as much the applicant has never been engaged by the PW (R&B) Department; and,

Whereas, during examination of the case, it has also came forth that the applicant has been engaged only for a period of one year by the Ladakh Hill Development Council, Leh vide order No. PWD-13(P)E-2009 (501) dated 22.09.2009 on contractual basis without conferring any right of regularization. His engagement was made subject to following terms and conditions:-

- (I) The contractual appointment shall not be entitled for any professional claim for regular appointment under normal process of selection.*
- (II) The District Superintending Engineer PWD Leh/ Assistant Commissioner, (Dev) Leh will execute the agreement on the prescribed form with the contractual appointees in terms of SRO 255 of 2003 and also execute the surety bond amounting to three times of consolidated salary/ pay of contractual appointee.*

Whereas, since the engagement of the applicant was made in terms of SRO 255 of 2003, i.e., J&K Contractual Appointment Rules, 2003, as such the applicant is barred to claim his consideration for regularization under J&K Civil Service (Special Provisions) Act, 2010; and,

Whereas, Rule 4 of J&K Contractual Appointment Rules, 2003 specifically provides that "the appointment under these rules shall not entitle the appointee to any preferential claim for regular appointment under normal process of selection". As such the applicant is barred to claim regularization particularly under J&K Civil Service (Special Provisions) Act, 2010; and,

Whereas, it has also been found that the engagement of the applicant has not been made against any clear vacancy, which is a pre-requisite for consideration of cases under J&K Civil Service (Special Provisions) Act, 2010 and therefore the claim of the applicant is not tenable; and,

Whereas, the recommendation of the Empowered Committee is only recommendatory in character and merely figuring in the said recommendation does not give any indispensable right to the applicant to claim regularization. While examining the case of the applicant in terms of recommendations of empowered committee, it has been found that the applicant was not appointed against clear vacancy and thus not eligible under rules for regularization. Further, as stated herein above, the engagement of applicant was made under SRO 255 of 2003 whereunder the applicant has furnished an undertaking that he shall not claim regularization against any post; **and,**

Whereas, the case of the applicant has also been examined viz-a-viz., order of the Tribunal passed in OA 321/ 2023 and it has been found that the case of the applicant is not identical to the facts and circumstances of the case of the applicants in OA No. 321/ 2023 and therefore no analogy can be extended to the applicant; **and,**

Whereas, though the applicant was never eligible to be considered for regularization under the provisions of J&K Civil Service (Special Provisions) Act, 2010 or any other policy, even though and otherwise the said Act now stand repealed by way of J&K Reorganization Act, 2019 and therefore the applicant cannot seek recourse to non-existing repealed act/ policy in order to seek regularization of his services; **and,**

Whereas, while examining the case of the applicant it has been found that the applicant was not engaged by adopting due process of law as such his claim for regularization cannot be sustained when the basis of engagement in itself is de hors law; **and,**

Whereas, it has been found that the applicant has not been engaged by the competent authority or in accordance with the mandate of law. The engagement of the applicant has been made by the incompetent authority. As such when the engagement in itself is bad in the eyes of law, the applicant is not entitled for regularization; **and,**

Whereas, the *Hon'ble Supreme Court of India has laid the law in the case of Umarani Vs Registrar, Coop. Societies (2004) 7 SCC 112* that:

*"...when appointments were made in contravention of mandatory provisions of the Act and statutory Rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointment. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or anybody or authority governed by a statutory Act or the rules framed thereunder. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."; **and***

Whereas, the Hon'ble Supreme Court of India has laid a law in the case of State of Karnataka Vs Uma Devi (3), (2006) 4 SCC 1 that:

"...when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent on the post. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."; and

Whereas, Hon'ble Supreme Court in the same case also held that:

"...a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post. The term "temporary employee" is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation; and

Whereas, in Tariq Ahmad Mir and Ors Vs State of J&K and Ors 2007 JKJ (HC) (2) 584 it was held that:-

"... Regularization cannot be made to the post de-hors the Rules and an employee cannot invoke the jurisdiction of the court in order to seek appointment and that too de-hors the Rules."; and

Whereas, The Hon'ble Supreme Court in case titled "*Secretary, State of Karnataka Vs. Uma Devi*" (2006) 4 SCC has directed that any public appointment has to be in terms of the Constitutional Scheme. The important and notable points of the judgment are as under:-

- I. Equality of opportunity is the hallmark for public employment and it is in terms of the Constitutional scheme only (Para 1).
- II. The filling of vacancies cannot be done in a haphazard manner or based on patronage or other considerations (Para 2).
- III. The State is meant to be a model employer and can make appointments only in accordance with the rules framed under Article 309 of the Constitution (Para 5).
- IV. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, or any body or authority governed by a statutory Act or the Rules framed there under. Regularization, furthermore, cannot give permanence to an employee whose services are ad hoc in nature. The fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. (Para 27).
- V. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (Para 30).
- VI. If it is a contractual appointment, the appointment comes to an end at the end of the contract (Para 34).
- VII. Regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further by-passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme (Para 44).
- VIII. In cases relating to service in the commercial/ taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were

entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their Cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them (Para 46).

Now therefore, in view of the above facts and circumstances and in compliance with the order dated 23.02.2022 passed by Hon'ble Central Administrative Tribunal at Jammu in OA No. 150/ 2022, as well as order dated 02.08.2024 passed in OA No. 321/ 2023, it has been found that the case of the applicant is neither covered under the policy for regularization under the J&K (Civil Service) Special Provisions Act 2010 nor any other policy/ rules and therefore the claim of the applicant being devoid of merit is rejected.

By order of the Government of Jammu & Kashmir.

Sd/-


Bhupinder Kumar (IAS),
Secretary to the Government,
Public Works (R&B) Department.

No:- PWD/Lit443/2021 (106345)

Dated:-29 .08.2024

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Commissioner/ Secretary to the Government, General Administration Department.
3. Director, Archives, Archeology and Museums, Department, J&K, Srinagar.
4. OSD with Advisor (B).
5. Private Secretary to Secretary to Government, Public Works (R&B) Department.
6. Sh. Hunar Gupta, Deputy Advocate General.
7. Shri. _____ (Petitioner/ Applicant) for information.
8. IC Website for uploading the same on official website.
9. Government Order File/ Concerned File (w.2,s.c).


Under Secretary to the Government,
Public Works (R&B) Department.