

Government of Jammu and Kashmir

Public Works (R&B) Department
(HRM – Section)
Civil Secretariat, Jammu

Subject: CPSW No. 51/2020 in SWP No. 1352/2009 titled Rajesh Kumar & others V/s Mehmood Iqbal & another.

Government Order No. 383 –PW(R&B) of 2021

D a t e d : 27 .12. 2021

Whereas, above titled contempt petition has been filed by the petitioners for alleged violation of writ court order dated 17.08.2009 in writ petition bearing SWP No. 1352/2009 which reads as under:-

"The respondents shall take the decision regarding bringing the petitioner on the list of degree holders within a period of two weeks from the date this order is served upon the respondents.

While making promotion to the post of Assistant Engineers, respondents shall strictly adhere to the quota reserved for various categories as prescribed under the rules. Diversion of the post shall not be made if sufficient numbers of candidates are available in a particular class/category.

Whereas, the petitioners have acquired Diploma in Civil Engineering and after undergoing the selection process, they have been appointed as Junior Engineers (Civil) under diploma holder's quota and allotted either Hydraulic or R&B Wings of Public Works Department and their seniority has also been determined as Diploma holders Junior Engineers.



Whereas, the plea/ claim of the petitioners submitted before the Hon'ble Court is reproduced as under:-

"for the reasons stated here-in-above and others to be submitted at the time of hearing the contempt proceedings may kindly be initiated against the respondents for not having complied with the judgment and order dated 17.8.2009 passed in SWP 1352/2009 and also for violating the said order by making the promotion of Junior Engineers Diploma Holders to the post of Assistant Engineers without considering and promoting the Junior Engineers degree holders under 60% quota as prescribed under rules and dealt with in accordance with law.

The respondents may further be directed to comply with the said judgment and order in letter and spirit and consider and promote the petitioners with all consequential benefits.

Such other additional or alternate relief which this Hon'ble court may in the facts and circumstances of the case deem fit and proper be also awarded to the petitioners."

Whereas, the petitioners have obtained their Degrees from the Vinayaka Mission Research Foundation University, Salim Tamil Nadu through distance mode of Education and have claimed for acceptance of their Degrees as also for inclusion/ incorporating of their names in the seniority list of Degree holders Junior Engineers (Civil) and their further promotion as Assistant Engineers (Civil) on the basis of having obtained Degrees from VMRF University, Salim, Tamil Nadu through distance mode of Education.

Whereas, this department has received a copy of judgment dated 03.11.2017 passed by the Hon'ble Apex Court in bunch of appeals c/w appeal titled Orissa Lift Irrigation corporation Limited V/s Rabi Sankar Patro & Others, where-under the Hon'ble Supreme Court while accepting the views of Punjab & Haryana High Court in Kartar Singh's case has set aside the ex-post facto approvals granted by UGC in the cases of the candidates enrolled during the academic session 2001-2005 and directed that the Degrees in Engineering awarded by the concerned deemed Universities stands suspended with further direction that the AICTE shall devise the modalities to conduct an appropriate test(s) both in written as well in practicals through the National Institutes of Technology's in respective States where ever the students are located.

Whereas, the controversy relates to different Deemed Universities including (1) Vinayaka Mission's Research Foundation, Salem, Tamil Nadu, (2) Institute of Advanced Studies in Education (IASE) University, Gandhi Vidya Mandir, Sardarshah Rajasthan, (3) Janardan Rai Nagar (JRN) Vidyapeeth Udaipur, Rajasthan and (4) Allahabad, Agriculture Research Institute, Allahabad, U.P.

Whereas, consequent upon the aforesaid judgment of the Hon'ble Apex Court, several reviews were filed before the Hon'ble Supreme Court against the said judgment and while accepting the plea in review M.A. No.38 of 2018 in C.A No. 17907/2017, the Hon'ble Court vide its order dated 22.01.2018 has been pleased to direct as under:-

"We therefore, as one time relaxation in favour of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment are eligible to appear at the test to be conducted by AICTE direct:

- a. *All such candidates, who wish to appear at the forthcoming test to be conducted by AICTE in May-June 2018 and who exercise option in appear at the test in terms of the judgment, can retain the degree in question and all the advantages flowing there from till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.*
- b. *This facility is given as one time exception so that those who have the ability and can pass the test in the first attempt itself should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdraw. At the cost of repetition, it is made clear that no more such chance or exceptions will be given or made. They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.*
- c. *We direct AICTE to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this order. AICTE shall however extend the time to exercise the option to appear at the test suitably".*

Except for the directions given in the above paragraph (i.e.paragraph 7) and the clarification as regards courses leading to award of diplomas as mentioned hereinabove, we reject



all the other submissions. 9] All applications, petitions and writ petitions stand disposed of in aforesaid terms."

Whereas, in light of above judgment/ orders of the Hon'ble Supreme Court, the AICTE has consequently issued notification for conduct of test/ exam, in pursuance to which various officials have appeared in the said test/ exam conducted by AICTE and they approached the department with the proof/ result of qualifying the test including copies of certificate of validation of VMRF granted Degrees validated by the AICTE through special test/ examination conducted during the period w.e.f June 3rd to 6th, 2018.

Whereas, those incumbents who have qualified the said test/ examination conducted by the AICTE on 3rd & 6th June, 2018 have been included/ incorporated in the final seniority list of Degree holders Junior Engineers (Civil) framed vide Government Order No.460-PW(R&B) of 2019 dated 22.10.2019 and those who could not qualify the said test/ exam or opted not to appear in the said test/ examination were neither included/ incorporated in the said updated seniority list nor have given any consequential benefit for obvious reasons of not complying to the order/ directions of Hon'ble Supreme Court's dated 03.11.2017 and 22.01.2018 in above titled cases.

Whereas, the department while making/ issuing promotions/ placements to the higher post/s at any level, the quota reserved for various classes/ categories defined in the rules is strictly adhered as per norms prescribed under relevant rules in vogue without any diversion of specified/ fixed quota in each class/ category of post.

Whereas, during examination of the case, it has been found that the plea of petitioners cannot be considered for acceptance of their Degrees obtained from Vinayaka Mission Research Foundation University, Salim, Tamil Nadu through correspondence/ distance mode of education (not validated by the AICTE) and not qualifying the exam as ordered by the Hon'ble Supreme Court and conducted by AICTE, rather opted to disobey the Highest Court Order and preferred not to appear in the examination is also being found devoid of any merit. Besides, plea of petitioners for inclusion of their names in the final seniority list of Degree holders Junior Engineers and their plea for further promotion as I/C Assistant Engineers on the basis of degrees obtained from Vinayaka Mission Research Foundation University through correspondence/

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distance mode has also been found devoid of any merit.

Now, therefore, in view of above facts, after examining the instant matter afresh by the department, the claim of all the petitioners is found devoid of any merit and therefore, their names cannot be included/ incorporated in the final seniority list of Degree holders Junior Engineers and their plea for further promotion as I/C Assistant Engineers on the basis of degrees having obtained from Vinayaka Mission Research Foundation University, Salim, Tamil Nadu through correspondence/ distance mode (not validated by the AICTE) and not qualifying the exam as ordered by the Hon'ble Supreme Court and conducted by AICTE, rather opted to disobey Order of the Highest Court and preferred not to appear in the examination as directed and conducted by AICTE.

By order of the Government of Jammu & Kashmir.

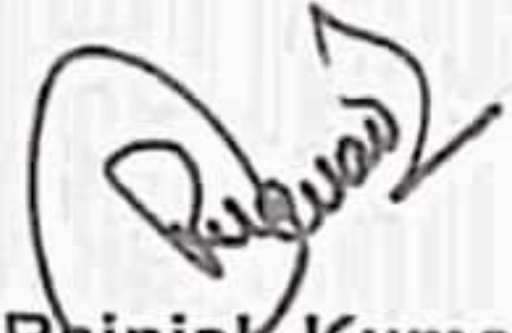
Sd/-
(Shailendra Kumar) IAS
Principal Secretary to the Government

No.PWD/HRM1/ 403/ 2021-05-Deptt. Of PWD R&B

Dated: 27 . 12. 2021

Copy to the:-

1. Principal Secretary to Hon'ble Lieutenant Governor.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Concerned Administrative Secretaries to Government
4. Additional Advocate General, High Court of Jammu, Kashmir & Ladakh.
5. Director, Archives, Archaeology & Museum, J&K, Jammu.
6. Development Commissioner Works, PW(R&B) Department.
7. OSD to Hon'ble Advisor (B) for information of Hon'ble Advisor.
8. Senior Law Officer, PW(R&B) Department.
9. Private Secretary to the Principal Secretary to Government, PW(R&B) Department
10. Government Order file/ Monda Return.
11. I/C Website, Public Works(R&B) Department.


(Rainish Kumar) KAS
Additional Secretary to Government
Public Works (R&B) Department