

**DIRECTORATE OF HEALTH SERVICES,
JAMMU DIVISION**

(Near MLA Hostel, Jammu (J&K) PIN 180001
E-mail: dhsjammu@rediffmail.com
Ph. 0191-2546338, 2549632 Fax: 0191-2549632

Subject:-SWP No:-3317/2015 titled Mohammad Abass Vs State & Ors.

ORDER

Whereas, the petitioner, engaged as Part Time Sweeper to carry out the sanitation work of Medical Aid Centre, Chakka, Block Assar has filed the writ petition SWP No:-3317/2015 titled Mohammad Abass Vs State and others in the Hon'ble High Court of J&K at Jammu for issuance of an appropriate writ in the nature of:-

Mandamus:

- I. *Commanding upon the respondents to accord consideration to the case of the petitioner in pursuance of the judgment dated 06-12-1999 passed in SWP No. 598/1994 titled Mst Sakina Begum and anr Vs State and ors.*
- II. *Commanding upon the respondents to regularize the services of the petitioner for the post of Safaiwala on analogy of private respondents who has been regularized in pursuance of Govt. Order No;-340-HME of 2001, dated 21-05-2001 being similarly situated persons.*
- III. *Commanding upon the respondents to release the wages of the petitioner under Minimum Wages Act as the petitioner is only being paid Rs.100/- per month only for working as a Safaikaramchari(PTS) at Medical Aid Centre, Chakka in Health and Family Welfare centre, Assar.*

Any other writ, order or direction, appropriate in the circumstances, may also be issued in favour of the petitioner as against the respondents.

Whereas, the Hon'ble Court disposed of the writ petition with the judgment/order whose operative portion reads as under:-

This petition is disposed of with direction to the respondents to accord consideration to the claim of the petitioner having regard to the averments made in the petition, annexure appended thereto and judgment SWP No. 598/1994 titled Sakina Begum Vs State and ors decided on 06-12-1999. Let the matter be considered and decision taken within six weeks from the date a copy of the order is served upon the respondents. The petitioners, if so advised, may hand over copy of the petition alongwith all its annexure to the respondents so as to facilitate an early disposal in the matter.

Disposed of alongwith MP(s)"

Whereas, the case of the petitioner has been examined and found that the petitioner has been engaged as Part Time Safaiwala in the department and there are other hundreds of similar situated Part Time Safaiwalas in the

department working on same arrangement anticipating their regularization, and;

Whereas, presently there is no policy formulated by the Government for the regularization of services of safaiwalas working on Part Time Basis. As such regularization of an individual shall be injustice with hundreds of other similar situated safaiwalas and shall constitute a bad precedence, and;

Whereas, as much as, the ratio of judgment rendered in SWP No:- 598/1994 and its application in the instant case is concerned, it is observed that even if not denied that the petitioners in the writ petition SWP No:- 598/1994 were also engaged as Part Time Safaiwalas. However, it is well settled that the concept of equality is a positive concept which cannot be enforced in a negative manner, when any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on the ground of denial thereof to them. Equality clause cannot apply in a case when it arises out of illegality, and;

Whereas, the petitioner has not been engaged against any sanctioned post. He has been engaged as Part Time Safaiwala and is being paid out of contingent funds. He works for an hour in the day and do not discharge his duties on full time basis as such cannot be treated as daily rated workers who are entitled to minimum wages. As such the petitioner is entitled for minimum wages under Minimum Wages Act.

Therefore, the case of the petitioner has been accorded consideration in compliance to judgment of the Hon'ble Court and found devoid of merit, hence rejected.


Sd/-
(Dr. Renu Sharma)
Director Health Services,
Jammu

No:-DHSJ/Legal//1485-88

Dated: -04 / // /2019

Copy to the:-

1. Financial Commissioner to Govt., Health and Medical Education Department, Civil Secretariat, Jammu for information. This has reference to Administrative Department letter No:-HD/Legal/NG/MR-336/2015, dated 02-08-2019
2. Chief Medical Officer, Doda for information.
3. Block Medical Officer, Assar (Doda) for information.
4. Mohammad Abbas S/O Mohammad Abdullah R/OMalwana, Tehsil and District Doda.


(Dr. Syed Tasneema Bano)
Dy. Director Health Services,
Jammu

4/2/19