

**UNION TERRITORY OF JAMMU & KASHMIR  
DIRECTORATE OF HEALTH SERVICES, JAMMU**

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**Subject:** -CCP(S) No. 775/2019 in WP (C) No. 3720/2019 titled  
Parveen Kumar & Ors Vs Amit Duloo & anr.

**ORDER**

**Whereas,** the writ petition filed by the petitioners bearing WP(C) No:-3720/2019 titled Parveen Kumar & Ors Vs State of J&K and Others was disposed of by the Hon'ble High Court of J&K and Ladakh at Jammu, on 10-10-2019, with the judgment/order whose operative portion reads as under:-

*"Accordingly, the writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners for their regularization as projected in the writ petition and in terms of judgments titled "Ashok Kumar V. State of J&K and others" reported in 2003 (Supp.) JKJ 93 and "State of J&K and others Vs. Mushtaq Ahmed Sohail and others reported in 2012(4) JKJ 1051 and having regard to Govt. Order No.1285-GAD of 2001 dated 06.11.2001, provided the petitioners are similarly situated and fulfill the eligibility criteria as also the aforesaid judgments and Govt. Order are applicable to their cases, of course, under rules, within a period of two months from the date of receipt of copy of this order."*

**And whereas,** the respondents had considered the claim of the petitioners by passing a consideration Order bearing No:- DHSJ/Legal/15968-69, dated 29-01-2020 and thereafter filed the compliance report.

**And whereas,** the Hon'ble High Court of J&K and Ladakh in the subject captioned contempt petition filed by the petitioners, on 28-08-2023, was pleased to pass the following order: -

*"Learned counsel for the petitioners submits that the compliance report filed by the respondents is not in conformity with the judgment dated 10.10.2019 passed by this Court, as such,*

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*learned counsel for the respondents is directed to file fresh compliance report indicating the compliance of the said judgment in letter and spirit.*

*List on 06.10.2023.”*

**And whereas,** in compliance to Hon'ble Court orders, the claim of the petitioners has been accorded fresh consideration in light of record and sought out that the petitioners were initially appointed in the department on Adhoc/stop gap/contractual/make shift arrangements on different dates ranging from the year 1992 to 2003, on different categories of posts and their services have been regularized in terms of J&K Civil Services (Special Provision) Act, 2010 vide different Government Orders issued vide dated. 06-07-2012, 25-04-2013 & 19-03-2013.

**And whereas,** the petitioners by filing the writ petition bearing WP (C) No:-3720/2019 titled Parveen Kumar & Ors Vs State of J&K and others had sought directions upon the respondents to regularize the service of the petitioners in view of Govt. Order No:- 1285-GAD of 2001, dated 06-11-2001 retrospectively from the date each petitioner had completed 7 years' service keeping in view the mandate of the judgements passed by the Hon'ble Court in the cases titled Ashok Kumar Vs State of J&K and Ors and State of J&K and Ors Vs Mushtaq Ahmed Sohail and ors.

**And whereas,** the claim of the petitioners has been examined and considered in the light of Govt. Order No:-1285-GAD of 2001, dated 06-11-2001, which dealt with regularization of Adhoc appointments against non-gazetted posts made by various departments and found that said government order was modified by virtue of Govt. Order No:-168-GAD of 2004, dated 09-02-2004 which provides as under:-

*“Now, therefore, in supersession of Govt. Order 1285-GAD of 2001, dated 06-11-2001, it is hereby ordered as under:-*

- i. All Adhoc appointments made after 28-07-1989 onwards and which continued in service till the date of issue of this order shall be converted into contractual appointments w.e.f. 1<sup>st</sup> Feb, 2004, and these contractual appointments shall subsists till 31<sup>st</sup> Dec 2004 or till selections against*

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*these posts are made by the concerned selection agencies whichever be earlier.*

- ii. The contractual appointees, referred to in supra para (i) above shall be required to execute in agreement in accordance with the format appended to the Jammu and Kashmir Contractual Appointment Rules (notified vide SRO-255, dated 5<sup>th</sup> of August, 2003) with the concerned drawing and disbursing officer upto 25<sup>th</sup> of Feb, 2004. Copies of the agreement shall be sent by the concerned drawing and disbursing officer to the General Administration Department by or before 5<sup>th</sup> March 2004.*

Thus, the petitioners cannot not seek the benefit of said order which stood modified by virtue of Govt. Order No:-168-GAD of 2004, dated 09-02-2004.

**And whereas,** even the Jammu and Kashmir Contractual Appointment Rules, 2003 have been repealed by J&K Civil Services (Special Provision) Act, 2010.

**And whereas,** the case of the petitioners have also been examined and considered particularly with reference to the judgments titled Ashok Kumar Vs State of J&K & Ors reported in 2003 (Supp) JKJ 1993 and State of J&K and Others Vs Mushtaq Ahmed Sohail & Ors reported in 2012(4) JKJ 1051 and after careful perusal of the judgments it is found that these judgments are applicable to the daily rated workers/daily wagers/casual labourers who are covered under SRO-64 of 1994 and thus these judgments are not applicable to the case of the petitioners who were neither engaged on daily wage basis or casual basis.

**And whereas,** it has further been observed that after coming into existence the Government policy for the regularization of services of Adhoc/contractual/ consolidated employees working in different departments, called J&K Civil Services (Special Provision) Act, 2010 (now repealed), the case of the petitioners, alongwith other eligible employees was processed by the department, in light of provisions of the Act and their services have been regularized in terms of J&K Civil Services (Special Provision) Act, 2010 (which now stands repealed) on the recommendations of Empowered Committee constituted under the Act, vide different Government Orders issued in the year 2012 & 2013.

**And whereas,** proviso first to section 5 of J&K Civil Services (Special Provision) Act 2010 provides that the regularization of the eligible adhoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization. In view of this rule position the petitioners are also not entitled for regularization of their services retrospectively as there is no such provision in the Act.

**And whereas,** the services of the petitioners have been regularized vide Govt. Orders dated 06-07-2012, 25-04-2013 & 19-03-2013 as recommended/cleared by the Empowered Committee constituted in terms of J&K Civil Services (Special Provision) Act 2010 which is accepted by the petitioners in the year 2012 onwards and they drew their salaries and increments since the year 2012 onwards in terms of the said scheme and after accepting the scheme now the petitioners cannot turnaround and claim the benefit from the date of completion of their seven years' service either in terms of J&K Civil Services (Special Provision) Act, 2010, when there is no such provision in the Act, or under an executive Govt. Order No. 1285-GAD of 2001 which in fact stood modified by virtue of Govt. Order No:-168-GAD of 2004, dated 09-02-2004 and subsequently replaced by a more comprehensive Act, 2010 of the State Legislature.

**And whereas,** it is settled law that no person can claim regularization in service until and unless the regularization is provided under any statute, rule or Government Order. The service of the applicant has been regularized in terms of J&K Civil Services (Special Provision) Act, 2010, as earlier to this Act there was no Government policy for the regularization of services of Adhoc, contractual and consolidated employees working in different departments and proviso first to Section 5 of this Act clearly lays down a stipulation that the regularization of eligible adhoc, contractual or consolidated appointees under the Act shall have effect only from the date of regularization, irrespective of the fact that appointees have completed more than seven years of services on the appointed date or thereafter but before such regularization. In this view of the rule position the petitioners are entitled for regularization only from the year, 2012-2013 and not from the date of competition of their seven years of services on Adhoc/Contractual/stop-gap basis as there is no such provision

in the Act under which their services have been regularized. Otherwise also the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, under which the services of the petitioners have been regularized, has now been repealed as a whole in terms of the Jammu and Kashmir Reorganization (Adaption of State Laws) Order, 2020 issued by the Ministry of Home Affairs vide S.O. 1229(E) dated 31<sup>st</sup> March 2020.

**Now**, therefore, in view of the facts elaborated herein above and after having examined and considered the case of the petitioners, it is found that the petitioners cannot be granted the benefit of retrospective regularization as neither the judgments referred in their case is applicable nor the Govt. Order No:-1285-GAD of 2001, is in force, having been superseded by virtue of Govt. Order No:-168-GAD of 2004, dated 09-02-2004 and subsequently replaced by the Act of 2010. Hence the case being considered afresh and found devoid of merit and is rejected.

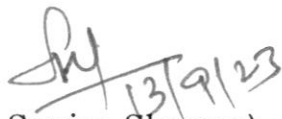
Sd/-  
(Dr. Rajeev K. Sharma)  
Director Health Services,  
Jammu

No;-DHSJ/Legal/9338-41

Dated: - 13 /09/2023

Copy to the:-

1. Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu/Srinagar for information.
2. Sh. Amit Gupta, Addl. Advocate General, Jammu to apprise the Hon'ble Court by filing fresh compliance report.
3. HEB Section, Directorate of Health Services, Jammu to upload the order on official website.
4. Sh. Parveen Kumar S/O Sh. Dwarka Nath R/O H.No. 54, W.No. 12 Akhnoor, District Jammu (lead petitioner) for information.

  
(Dr. Sanjay Sharma)  
Dy. Director (Dentistry)  
Health Services, Jammu

