



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

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Subject:-O.A./61/00318/2021 titled Shakti Kumar Vs U.T. of J&K and Ors.

ORDER

WHEREAS, the Hon'ble Central Administrative Tribunal, Jammu Bench has disposed of the subject captioned case, on 24-02-2021 with the judgment/order whose operative portion reads as under:-

"We, therefore, dispose of the OA directing the respondents to consider the case of the applicants for regularization, in terms of the existing policy regarding regularization and pass a reasoned speaking order under intimation to the applicant. While considering the case of the applicant, the respondents should also take into consideration the contents of this O.A. This exercise shall be completed by the respondents within a period of one month from the date of receipt of a certified copy of this order."

AND WHEREAS, The applicant in the application has averred that he is an Adhoc employee working in the department from the last 31 years i.e. 03-01-1989 but despite of serving for such a long time, he is not been regularized as a Class-IV Employee as per Government Order No:-1220-GAD of 11-09-1989. The applicant has averred that he is matriculate and was engaged as Class-IV in the department on Adhoc basis vide Order No:-CMO-J/E-2/3163-66, dated 03-01-1989 issued by the Chief Medical Officer, Jammu and is serving in the department till date without any regularization. The applicant has further contended that his case has been submitted by the Directorate of Health Services, Jammu to the Administrative Department, vide letter No:-DHSJ/J/Es-5/23/17719, dated 07-03-2019, but his services are not regularized till date.

AND WHEREAS, the case of the applicant has been examined and sought out that the then Chief Medical Officer, Jammu appointed the applicant de hors the rules, without making any advertisement for open competition;

AND WHEREAS, no subsequent order was issued by the competent authority for continuation/regularization of services of the applicant;

AND WHEREAS, the Government from time to time has formulated different policies to regularize the adhoc/contractual/consolidated employees of different departments and subsequently different empowered committees were also constituted for the purpose. Firstly, it was the policy notified vide G.O. No. 1220-GAD of 1989 dated 11.09.1989 read with G.O. No. 1285-GAD of 2001 dated 06.11.2001 superseded by G.O. No. 168-GAD of 2004 dated 09.02.2004 read with G.O. No. 237-GAD of 2004 dated 20.02.2004, G.O. No. 794-GAD of 2004 dated 22.06.2004. The policy was once again superseded by the Jammu and Kashmir Civil Services (Special Provision) Act 2010; however the same was also repealed by the Government following the Jammu & Kashmir Re-Organization Act, 2019;

AND WHEREAS, as of now, there is no policy governing the regularization of adhoc employees in the UT of J&K;

AND WHEREAS, the applicant having been appointed without following the proper procedure as such cannot claim for regularization or continuation of the said illegality;

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, the 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, adhoc 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"

Now therefore, in compliance to the judgment/orders of the Hon'ble Tribunal, passed in O.A./61/00318/2021 titled Shakti Kumar Vs U.T. of J&K and Ors, the case of the applicant has been accorded consideration and since the applicant was appointed for 89 days on adhoc basis dehors the rules, without any subsequent orders of his continuation, and that currently there is no such policy for the regularization of services of Adhoc Employees in force, as such, in view of above stated facts & the legal position the case has been found devoid of merit, hence rejected.


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

No;-DHSJ/Legal/9493-98

Dated: - 20/09/2023

Copy to the: -

1. Chief Medical Officer, Jammu for information.
2. Block Medical Officer, Ramgarh for information.
3. Private Secretary to Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu for information of worthy Secretary.
4. Health Education Bureau, Directorate of Health Services, Jammu to upload the order on official website.
5. Establishment Section Es-5.
6. Shakti Kumar S/O Sh. Daya Ram R/O Village Alora, Tehsil Phalian Mandal, District Jammu for information.


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