



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

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Subject:-T.A No. 61/2678/2020 titled Swaran Singh & Ors Vs UT of J&K and Ors.

ORDER

Whereas, the petitioners in the above titled case have sought directions to regularize the service of the petitioners in view of the 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 judgments 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 also fix the seniority of the petitioners from the date the petitioners were initially engaged against clear vacancies, and;

Whereas, the case which came to be transferred to the Hon'ble Central Administrative Tribunal, Jammu Bench has been disposed of vide judgment dated 28-04-2021, the operative portion whereof reads as under:-

"Looking to the limited prayer made by the learned counsel for the applicants and the facts and circumstances of the case, we dispose of the T.A. with direction to the respondents to consider the claim of the applicants for regularization in terms of Judgment 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 Govt. Order No. 1285-GAD of 2001, dated 06-11-2001, provided the applicants are similarly situated and fulfill the eligibility criteria and the aforesaid judgments and Govt. orders are applicable in their case, under rules, within a period of two months from the date of receipt of certified copy of this order."

Whereas, counsel for the petitioners vide notice dated 12-01-2022, has served upon this office copy of the judgment for its implementation, and;

Whereas, case of the petitioners have been examined in light of record and sought out that the petitioners were appointed on Adhoc basis in the department on different dates ranging from the year 1992 to 1998, and;

Whereas, it is pertinent to mention here that the government took a policy decision and framed a policy for regularization of Adhoc, contractual and consolidated employees in terms of J&K Civil Services (Special Provision) Act, 2010 for regularization of the employees appointed on adhoc, contractual and consolidated basis and accordingly the case of the petitioners was processed in light of provisions of the Act and their services

have been regularized in terms of J&K Civil Services(Special Provision) Act, 2010 vide different Govt. Orders issued by the Administrative Department on the recommendations of Empowered Committee constituted under the Act, and;

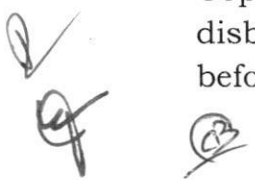
Whereas, proviso first to section 5 of J&K Civil Services (Special Provision) Act 2010 provides that the regularization of the eligible adhoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees 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 not entitled for regularization of their services retrospectively as there is no such provision in the Act, and;

Whereas, the case of the petitioners have also been examined 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, the claim of the petitioners has also been considered in the light of Govt. Order No:-1285-GAD of 2001, dated 06-11-2001 which deals 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:-

- v. 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. 1st Feb, 2004, and these contractual appointments shall subsists till 31st Dec 2004 or till selections against these posts are made by the concerned selection agencies whichever be earlier.
- vi. 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 5th of August, 2003) with the concerned drawing and disbursing officer upto 25th 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 5th March 2004.



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

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. Hence the case being considered and found devoid of merit and is rejected.

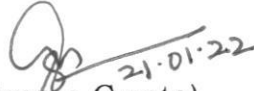
Sd/-
(Dr. Saleem-ur-Rehman)
Director Health Services,
Jammu

No;-DHSJ/Legal/16057-59

Dated: - 21 / 01 / 2022

Copy to the:-

1. Private Secretary to Additional Chief Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu for information of worthy Additional Chief Secretary.
2. HEB Section to upload the order on official website.
3. Sh. Swaran Singh S/O Late Sh. Gulzar Singh R/O Village Dab, Tehsil Marh, District Jammu (Lead petitioner) for information.


(Dr. Seema Gupta)
Dy. Director Health Services (Sch)
Jammu
