



सत्यमेव जयते

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

Near MLA Hostel, Indira Chowk Jammu, J&K Pin: 180001

E-mail: dhsjammu@rediffmail.com, dhsjammu@gmail.com

Tel. No. : 0191 - 2546338, 0191-2549632 Fax No. 0191-2549632

Subject:-SWP No:-98/2013 titled Kher Singh Vs State & Ors.

ORDER

Whereas, the petitioners in the subject captioned writ petition has sought directions from the Hon'ble High Court, amongst others, to command the respondents to allow final consideration to the case of the petitioners for their regularization as Safaiwalas in Health Department against available posts held by them from different dates ranging from 1988 to 1997 and to give effect their regularization from the dates the petitioners are holding these posts, and;

Whereas, the Hon'ble High Court of J&K and Ladakh at Jammu has disposed of the writ petition SWP No:-98/2013 titled Kher Singh & Ors Vs State of J&K and Others and Para-5 of the judgment/order reads as under:-

5. *".....The relief as restricted to the aforesaid situation is totally innocuous, therefore, the instant petition is disposed of with a direction to the respondents that they shall accord consideration to the cases of petitioners in accordance with the applicable provisions as referred to hereinabove or in accordance with any other enabling provisions and to take a final decision within a period of two months from the date, a copy of this order is served on the respondents. The decision as shall be taken thereon be conveyed to the petitioners."*

Whereas, the petitioners have been engaged as Safaiwalas in the department, at different time, ranging from the year 1988 to 1997, on contingent basis on consolidated pay and being paid their wages out of object head "Upkeep of Outsource", and;

Whereas, in the year 2010, the Govt. came up with a policy vide J&K Civil Services (Special Provisions) Act, 2010 for the regularization of services of the employees who were engaged on Adhoc/ contractual/ consolidated basis in different departments and accordingly the cases of the petitioners were forwarded to the Administrative Department for placing before the Empowered Committee constituted under the Act for their consideration, and;

Whereas, the cases of the petitioners were placed before the Empowered Committee in its 50th ECM held on 19-08-2015 and the following decision was taken by the Committee:-

“The documents furnished by the department reflects that the incumbents from S. No. 112 to 129 have been engaged on consolidated basis; however, their salary is paid by debit to Contingencies. As such, these incumbents are not entitled for regularization as per Section 3(d) of the J&K CS (Special Provisions) Act, 2010.”

Whereas, the department resubmitted the matter for placement before the Empowered Committee for a review in light of the Hon'ble Court judgment dated 20-11-2014 and the comments furnished by the Director Health Services, Jammu. The case was again placed before the Empowered Committee in its 57th meeting dated 07-12-2016 and the committee decided as under:-

“In pursuance of judgment dated 20-11-2014 in the contempt petition No. 122/2015 titled Khadim Hussain Vs State & others filled in SWP No. 98/2013 titled Kher Singh V/S State & Others, the Empowered Committee deliberated upon the issue in great detail, and went through its mandate & decided that these petitioners are being paid out of Contingencies which implies that they are not working against any post as such the petitioners are not entitled for regularization as per Section 3(d) of the J&K CS Special Provisions Act, 2010. Accordingly, the Empowered Committee reconsidered & rejects the claim of petitioners, meanwhile, advised the department to reject the claim of petitioners by way of speaking order.”

Whereas, subsequently, the Administrative Department in Health and Medical Education forwarded a separate proposal to Finance Department, and vide U.O. No. A/Spl.Cell-O(2014)-68, Dated 18-09-2017, after examination of the proposal, the department was advised as under:-

“The case has been examined in the Finance Department. The department is advised to enquire into the matter at its level, as to how petitioners are being shown to be working against the sanctioned posts on one hand but drawing their salary from detailed head “Outsourcing of Upkeep” on the other hand and then resubmit the case to the Finance Department, if warranted. The Department file is returned with a copy of the relevant minutes of meeting held on 30-05-2017 for now”.

Whereas, department accordingly convened a meeting in this behalf on 26-02-2018 to sort out the issue. During deliberations it was decided that the concerned quarters will correct the wrong by debiting the salary to the proper Head and the matter may again be placed before the Empowered Committee, and;

Whereas, consequent upon the above, the cases of the petitioners were again placed before the Empowered Committee in its 62nd meeting held on 22-10-2018. The following decision was taken by the Committee:-

“The committee after threadbare discussion resolved that the department should categorically state that these incumbents have been engaged against the clear vacancies & that too from the date of initial engagement and incase, the petitioners are not found fulfilling the eligibility criteria the writ petition shall need to be defended in consultation with the Department of Law, Justice and Parliamentary Affairs. However, if the court orders have assumed finality the department should take appropriate action at its level and if need arise, approach the competent authority for implementation of orders of Hon'ble High Court”.

Whereas, the department in response to the above informed that as per records produced by the concerned BMO's of District

Rajouri, before the enquiry committee constituted by the Department, it has been revealed that these safaiwala's have been engaged/appointed as contingent safaiwalas against clear vacancy on consolidated pay by debit to wages. The pay of the consolidated safaiwalas has been drawn from detailed head "Outsource of upkeep" from the date of appointment till date. However, perusal of statement of accounts showing of pay in favour of these safaiwalas provided by the concerned DDOs has revealed that their pay bills have been drawn in the treasury under the Account Head 2210 of which the detailed head "Outsource of Upkeep" is a sub head. Therefore, as per observations of the enquiry committee, the incumbents are working against clear vacancies, and;

Whereas, a meeting was convened by the Finance Department to discuss the issue regarding regularization of Safaiwalas in Health & Medical Education Department. The meeting was held on 20-06-2022 under the Chairmanship of Financial Commissioner (Additional Chief Secretary), Finance Department and was attended by the following officers:-

1. Secretary to the Government, Law, Justice & Parliamentary Affairs Department.
2. Director Finance, Health & Medical Education Department.
3. Additional Secretary, Health and Medical Education Department.
4. Additional Secretary (Legal), Health and Medical Education Department.

Whereas, the committee discussed the matter in threadbare and the following decisions were taken:-

1. The incumbent(s) Safaiwalas have been engaged/appointed as Safaiwalas on contingent basis on consolidated pay by debit to wages, which implies that the petitioners have not been appointed against any sanctioned post following due procedure. Posts carry pay scales and emoluments are not paid on consolidated basis. Vacancies available in the Government are to be filled up with due process and constitutional provisions. The existence of vacancies does



not authorize any officer to ignore the provisions of law and engage people against those vacancies.

2. The Safaiwalas, as such, are not entitled to regularization as per Section 3(d) of the J&K Civil Services (Special Provisions) Act, 2010 which stands repealed by Ministry of Home Affairs vide SO 1229(E) dated 31-03-2020.
3. The engagement of the Safailwalas has not been made as per due procedure and is violation of Article 16 of the Constitution of India.
4. The department shall issue a consideration order rejecting the claim of the petitioners.

Whereas, the Administrative Department vide letter No:-HD-Lgal/276/2022-02(c.No.224632), dated 12-07-2022 conveyed the decision of the Finance Department taken in the meeting with the advice to reject the claim of the petitioners for regularization of their services.

Now, therefore, the claim of the petitioners for regularization of their services is accorded consideration and according to the decision taken in the meeting of the Finance Department, it is hereby rejected.

Sd/-

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

No:-DHSJ/Legal/ 5310-12

Dated: - 20/07/2022

Copy to the:-

1. Principal Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu/Srinagar for information.
2. Chief Medical Officer, Rajouri for information.
3. Kher Singh S/O Sh. Amit Chand R/O Village Kadarian, P.O. Jigni Tehsil Kalakote and District Rajouri for information.

(Dr. Deepak Kapoor)

Dy. Director Health Services (HQ)

Jammu