

Government of Jammu and Kashmir
Forest, Ecology & Environment Department
Civil Secretariat, Srinagar/Jammu
(Legal Section)

Subject: - Reconsideration of the claim of Shri Mushtaq Ahmad Khan S/O Abdul Aziz Khan R/O Thathar, Tehsil Banihal, District Ramban in compliance with the order dated 26.02.2014 passed by the Hon'ble Court in SWP No. 2202/2012 titled Mushtaq Ahmad Khan Vs. State of J&K and others read with order dated 30.11.2022 passed by the Hon'ble Court in CPSW No. 159/2017 titled Abdul Rehman and others Vs. Mohd. Afzal and others.

Government Order No: - 02 JK (FST) of 2023

Dated: - 03.01.2023

Whereas, Shri Abdul Rehman S/O Ghulam Mohd. Sohil R/O Tehsil Ramban, Shri Abdul Rashid S/O Abdul Sohil R/O Tehsil Ramban and Shri Noor Mohd. S/O Ghulam Hussain R/O Tehsil Ramban had approached the department and had sought regularization of their services as Daily Rated Workers in deference to the order dated 31.12.2001 passed by the Hon'ble Court in SWP No. 3219/2001 titled Abdul Rehman and others Vs. State of J&K and others, which was considered and rejected by the Divisional Forest Officer concerned vide Order dated 26.04.2002, on the ground, *inter alia*, that the petitioners were engaged after cut-off date viz., 31.01.1994;

Whereas, the aforesaid Order dated 26.04.2002 was challenged by the above-named persons (hereinafter referred to as "petitioners") in SWP No. 1812/2006 titled Abdul Rehman and others Vs. State of J&K and others, which came to be disposed of by the Hon'ble Court vide its order dated 05.10.2016 with a direction to the respondents to decide the claim of petitioners for regularization in light of the law laid down by the Division Bench of Hon'ble High Court of J&K in State of J&K and others Vs. Mushtaq Ahmad Sohail and others;

Whereas, against the aforesaid order dated 05.10.2016, the department had preferred an appeal that was numbered as LPA No. 107/2021 titled UT of J&K and

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others Vs. Abdul Rehman and others, which came to be dismissed by the Hon'ble Division Bench vide its order dated 29.07.2022, on the ground of delay, given that sanction for filing of LPA was accorded on 28.05.2022 but was actually filed on 01.10.2022, more so when there was already delay in obtaining sanction for filing of LPA;

Whereas, post dismissal of aforesaid LPA, claim of the petitioners was considered in compliance with the order dated 26.02.2014 passed by the Hon'ble Court in SWP No. 2202/2012 titled Mushtaq Ahmad Khan Vs. State of J&K and others, and was rejected vide G.O. No. 146-JK (FST) of 2022 dated 03.10.2022, on the ground that the petitioners stood discontinued prior to the issuance of Government Order No. 1285-GAD of 2001 dated 06.11.2001 and are, therefore, not entitled to the benefit of Government Order No. 1285-GAD of 2001 dated 06.11.2001 given that the benefit available there under was subject to the condition, *inter alia*, that the person concerned should have been in service on the date of issuance of Government Order (supra) viz., 06.11.2001, while as the petitioners were no longer on the rolls of the department on the relevant date;

Whereas, the department had accordingly filed compliance report before the Hon'ble Court on the strength of aforesaid G.O. No. 146-JK (FST) of 2022 dated 03.10.2022. Subsequently, the contempt petition came to be listed for hearing on 30.11.2022 and the Hon'ble Court was pleased to pass the following order/direction on the aforesaid date: -

"While disposing of the writ petition filed by the petitioners, the Coordinate Bench of this Court had taken note of the judgment passed by the Division Bench in "State of J&K and others Vs. Mushtaq Ahmed Sohail and others" reported in 2012 (4) JKJ-1051 and directed the respondents to pass a speaking order in terms of Para 13 and 14 of the said judgment.

Mr. R. K. S. Thakur, learned counsel for the petitioners has drawn the attention of this Court to the order of rejection that was impugned by way of the writ petition, disposed of vide order dated 05.10.2016. A perusal of the same reveals that the petitioners were not considered

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eligible for regularization on the ground that they stood already disengaged with effect from June 2001.

The compliance report stands filed by the respondents, wherein on the identical grounds claims of the petitioners stands rejected.

This Court is of the considered view that the order dated 03.10.2022 is not in consonance with the judgment passed by this Court vide order dated 05.10.2016.

In view of this, though the respondents do not deserve any further opportunity to comply with the judgment passed by this Court, but taking into consideration the repeated submissions made by Mr. Dewakar Sharma, learned Dy. AG, in the interest of justice, one more opportunity of four weeks is granted to the respondents to comply with the judgment passed by this Court, failing which, the respondent No. 1 shall remain present before this Court on the next date of hearing.

List on 31.01.2023.”;

*Whereas, post receipt of aforesaid order dated 30.11.2022, the matter was re-examined in the department and it came to fore that although, the Divisional Forest Officer concerned while passing the rejection order dated 26.04.2002 had taken a ground, *inter alia*, that the petitioners stand disengaged w.e.f. June, 2001, however, it is equally true the writ court while passing the order dated 05.10.2016 has only returned its finding on the issue of engagement of petitioners post imposition of ban and has held that the said issue stands settled in light of judgment passed by the Division Bench of Hon'ble High Court of J&K passed in State of J&K and others Vs. Mushtaq Ahmed Sohail and others, wherein the Hon'ble Division Bench has interpreted aforesaid G.O. No. 1285-GAD of 2001 dated 06.11.2001 as modification of scheme notified vide SRO 64 of 1994 as also extension of cut-off date provided for engagement of Daily Rated Workers;*

Whereas, notwithstanding that the writ court vide its order dated 05.10.2016 has quashed the rejection order that was issued by the Divisional Forest Officer concerned, however, it is apposite to state that the writ court in its order dated 05.10.2016 has clearly restricted its finding to the extent of issue of engagement of the petitioners after the cut-off date and no finding was returned on other grounds

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that were taken in the rejection order, which included discontinuation of petitioners w.e.f. June, 2001;

Whereas, in addition to what has been stated above, it is noteworthy that as far as regularization of services under the Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994, notified vide SRO 64 of 1994, is concerned, the eligibility for regularization prescribed under rule 4 of SRO 64 of 1994 is subject to the condition, *inter alia*, that the person concerned should have completed seven years continuous period of working as Daily Rated Worker. Furthermore, the benefit of aforesaid G.O. No. 1285-GAD of 2001 dated 06.11.2001, which was interpreted by the Hon'ble Division Bench in State of J&K and others Vs. Mushtaq Ahmed Sohail and others as modification of scheme notified vide SRO 64 of 1994 as also extension of cut-off date provided for engagement of DRWs, was also subject to the conditions prescribed therein, which included, *inter alia*, seven years continuous period of working;

Whereas, insofar as the petitioners herein are concerned, none of the petitioners fulfills the aforesaid condition, which is evident from the year wise details of breaks in service of the petitioners quoted herein below: -

S. NO.	NAME OF THE PETITIONER	YEAR-WISE BREAKS IN SERVICE								
		1993-1994	1994-1995	1995-1996	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	TOTAL BREAKS
1.	ABDUL REHMAN	30 DAYS	358 DAYS	180 DAYS	190 DAYS	11 DAYS	43 DAYS	50 DAYS	34 DAYS	896 DAYS

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2.	ABDUL RASHID	92 DAYS	173 DAYS	219 DAYS	99 DAYS	301 DAYS	360 DAYS	335 DAYS	34 DAYS	1613 DAYS
3.	NOOR MOHD.	33 DAYS	268 DAYS	198 DAYS	85 DAYS	14 DAYS	34 DAYS	25 DAYS	66 DAYS	723 DAYS

; and

Whereas, from the above-stated factual position, it is quite established that the petitioners herein had breaks in the continuity of service during the period the petitioners had worked in the department from the year 1993 up to the year 2001 and are, therefore, not fulfilling the above-stated condition of seven years of continuous service, which is one of the pre-requisites to be entitled to claim the benefit of SRO 64 of 1994 and Government Order No. 1285-GAD of 2001 dated 06.11.2001. Accordingly, it can safely be inferred that the claim of the petitioners is not squarely covered by the aforesaid judgment of Hon'ble Division Bench and resultantly, the petitioners are not entitled to be regularized given that the petitioner No. 1 had more than 2 years of break in service during the period he had worked in the department; petitioner No. 2 had more than 4 years of break in service during the period he had worked in the department; and petitioner No. 3 had nearly 2 years of break in service during the period he had worked in the department, more so the fact that the petitioners are not on the rolls of department from the year 2001 onwards.

Now, therefore, keeping in view the afore-stated position, claim of the petitioners having been reconsidered in compliance with the order dated 26.02.2014 passed by the Hon'ble Court in SWP No. 2202/2012 titled Mushtaq Ahmad Khan Vs. State of J&K and others read with order dated 30.11.2022 passed by the Hon'ble Court in CPSW No. 159/2017 titled Abdul Rehman and others Vs.

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Mohd. Afzal and others is found meritless. Accordingly, the claim of petitioners is rejected.

By order of the Government of Jammu and Kashmir.

Sd/
(Sanjeev Verma) IAS
Commissioner Secretary to the Government

No- FST/Lit/22/2022-02-ForestDeptt.

Dated: - 03.01.2023

Copy for information to the: -

1. Pr. Chief Conservator of Forests (HoFF), J&K.
2. Divisional Forest Officer, Ramban Forest Division, Ramban.
3. Government Order file/Stock file.


(Suhail-ul-Islam) JKAS
Deputy Secretary to the Government