

**GOVERNMENT OF JAMMU & KASHMIR
FOREST, ECOLOGY & ENVIRONMENT DEPARTMENT
CIVIL SECRETARIAT, J&K**

Subject: Consideration of claim of petitioner in compliance with the order dated 08.08.2016 passed by the Hon'ble Court in SWP No. 1079/2016 titled Imtiyaz Hussain Malik Vs. State of J&K and others.

Government Order No. : 13 - JK (FST) OF 2024

Dated : 12.01.2024

1. *Whereas*, petitioner in the afore-cited writ petition had approached the Hon'ble Court and had sought, inter-alia, direction upon the respondents for regularization of his services under the provisions of SRO 64 of 1994;
2. *Whereas*, the writ petition (supra) came to be disposed of by the Hon'ble Court vide its order dated 08.08.2016, operative part whereof reads as under: -

“...The respondent No. 1 and 2 Chief Conservator of Forests, J&K Jammu are directed to consider the claim of the petitioner for regularization of his services expeditiously, preferably within eight weeks from the date of receipt of a copy of this order along with the detailed representation”.

3. *Whereas*, the matter was examined in compliance with the aforesaid direction of the Hon'ble Court and it came to fore that the petitioner's date of birth is 11.06.1973 and was engaged as Casual Labour vide Order dated 01.04.1990. Besides, there are breaks in service viz., 77 months w.e.f. 04/1990 up to 03/1997 with further breaks of two or three days after every 89 days from the year 1998-1999 onwards;

4. *Whereas*, sub-rule (3) of rule 1 of the Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994, notified vide SRO 64 of 1994 provided as under:

“3. They shall apply to the daily rated workers/work charged employees engaged in any government department.”

5. *Whereas*, rule 4 of SRO 64 of 1994 provided the eligibility conditions, for regularization. Clause (b) and clause (f) of rule (4) provided as under:

“b. that on the date of his initial appointment his age was within the minimum and maximum age limit as prescribed for appointment in government service.

f. that he has completed seven years continuous period of working as daily rated Worker or work charged employee or partly as daily rated worker and partly as work charged employee."

6. *Whereas*, it is evident from the above-stated rule position that in order to claim the benefit of SRO 64 of 1994, the person concerned should, inter alia, have been engaged as Daily Rated Worker; have completed seven years continuous period of working in such capacity; and be within the minimum and maximum age limit on the date of his initial appointment as prescribed for appointment in government service, and non-fulfillment of any of the stipulated pre-conditions would render a person ineligible for regularization under SRO 64 of 1994;
7. *Whereas*, as is evident from the above-stated factual position, the petitioner has been engaged as Casual Labour and was underaged at the time of his initial appointment, besides, the petitioner has breaks in service, which, therefore, makes him ineligible to claim the benefit of SRO 64 of 1994;
8. *Whereas*, notwithstanding the above-stated position the policies/legislative enactments relating to regularization of services, including SRO 64 of 1994 have now been repealed vide S.O. 514 dated 06.10.2023, which is a policy decision taken by the Government. S.O. 514 dated 06.10.2023 provides as under:

"S.O. 514 .- In exercise of the powers conferred by proviso to Article 309 of the Constitution of India and all other enabling provisions in this behalf, the Lieutenant Governor is pleased to direct that the "Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994" notified vide SRO 64 of 1994 dated 24.03.1994; "Jammu and Kashmir Casual and Other Workers-Regular Engagement Rules, 2017" notified vide SRO 520 of 2017 dated 21.12.2017 and all other rules, regulations, notifications, bye-laws, orders etc. pertaining to regularization of engagement of Daily Rated/Work Charged/Casual/Seasonal/ Adhoc/Consolidated or other worker(s) are hereby repealed.

All the pending cases shall stand abated and no fresh cases shall be entertained."

9. *Whereas*, the aforesaid policy decision has not been taken by the Government with regard to a particular case but is of a general nature, which is applicable to all those cases where regularization of services was pending consideration till the taking of the aforesaid policy decision. Therefore, the petitioner, who otherwise also was not eligible for regularization under SRO 64 of 1994, is not entitled to the benefit of the policy that stands repealed by the Government in the Finance Department with a further decision in this regard that all pending cases shall stand abated and no fresh cases shall be entertained. Reliance in this regard is placed on judgment dated 21.07.2023 passed by the Division Bench of Hon'ble High Court of J&K and Ladakh at Srinagar in CCP(D) No. 08/2022 titled Ishfaq Tantray Vs. Khalid Jahangir, operative part whereof reads as under:

"...since a policy decision was taken by the Administration at the higher level before such a right has accrued to the petitioners for getting appointed, we are of the view that failure to appoint the petitioners on the basis of the selection process which has been directed to be completed by the Division Bench, cannot be said to amounting to commission of contempt of the Court under the Contempt of Courts Act, 1971, as the act of the respondents cannot be said to be wilful disobedience of the order of the Division Bench dated 10.05.2013 passed in LPA No. 184/2012..."

10. Now, therefore, keeping in view the afore-stated position, claim of the petitioner having been considered in compliance with the order dated 08.08.2016 passed by the Hon'ble Court in SWP No. 1079/2016 titled Imtiyaz Hussain Malik Vs State of J&K and others, for regularization of his services under SRO 64 of 1994 (repealed law) is found meritless. Accordingly, claim of the petitioner is rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dheeraj Gupta) IAS

Financial Commissioner (Additional Chief Secretary)

No: FST-Lit/28/2022

Dated: 12.01.2024

Copy to the:

1. Principal Secretary to the Finance Department, J&K.
2. Commissioner/Secretary to the Government, General Administration Department, J&K.
3. Principal Chief Conservator of Forests & HoFF, J&K. He is requested to have the compliance report filed on the strength of this Government Order.
4. Private Secretary to the Financial Commissioner (Additional Chief Secretary), Forest, Ecology and Environment Department.
5. Petitioner.
6. I/C Website.
7. Government order/Stock file (w.3.s.c).

(Mohammad Arshad Jan)

Under Secretary to the Government