

Government of Jammu & Kashmir
Forest, Ecology & Environment Department
Civil Secretariat, Srinagar/Jammu

Subject: - Consideration of claim of Shri Ghulam Hassan Mir S/O Abdul Ahad Mir R/O Khurhama, Kupwara in compliance with the order dated 04.05.2017 passed by the Hon'ble Court in SWP No. 2056/2015 titled Ghulam Hassan Mir Vs. State of J&K and others.

Government Order No. **249** -JK (FST) of 2023
Dated:- **10** -12-2023

Whereas, Shri Ghulam Hassan Mir S/O Abdul Ahad Mir R/O Khurhama, Kupwara (hereinafter referred to as 'petitioner') had approached the Hon'ble Court through the medium of writ petition numbered as SWP No. 2056/2015 titled Ghulam Hassan Mir Vs. State of J&K and others, and had sought, interalia, direction upon the respondents for regularization of his services under SRO 64 of 1994;

Whereas, the writ petition (supra) came to be disposed of by the Hon'ble Court vide its order dated on 04.05.2017, operative part whereof reads as under: -

"...Applying the law as laid down in the reported judgment to the facts of the present case, the petitioner having been appointed in the month of May, 1995 is entitled to be regularized, therefore, petition is allowed. Respondents are commanded to consider regularization case of the petitioner and pass appropriate orders regarding his regularization within a period of four weeks from today. Furthermore, consequential benefits as may have accrued and due shall also be paid to the petitioner.";

Whereas, against the aforesaid order dated 04.05.2017, the department had preferred an LPA that was numbered as LPASW No. 95/2018 titled State of J&K and others Vs. Ghulam Hassan Mir, which came to be dismissed by the Division Bench of Hon'ble High Court of J&K vide its order dated 17.07.2018, operative part whereof reads as under: -

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"...From the perusal of the impugned order, it is evident that the learned Single Judge has followed the ratio laid down in Mushtaq Sohail's case (supra) and has disposed of the writ petition. In the aforesaid backdrop and in the facts of the case, we do not see any reason to take different views in the matter. Accordingly, the same is dismissed.";

Whereas, subsequently, the case of the petitioner was referred to the Finance Department vide U.O. dated 08.11.2019, for placing the same before the Empowered Committee, for consideration. In response, Finance Department vide its U.O. dated 02.12.2019 advised as under: -

"Returned. The department is advised to follow the decision of the Empowered Committee, which reads as under: Department should desist from referring such cases to Finance Department, as are required to be considered in light of court orders but do not fall within the mandate of the Empowered Committee which examines the cases of those Daily Wager in records and have been engaged prior to 31.01.1994 only. In such cases, here court orders have assumed finality, the department should take appropriate action at their level for implementation of the orders of the Hon'ble Court in consultation with the department of Law, Justice and Parliamentary Affairs.";

Whereas, keeping in view the aforesaid advice received from the Finance Department, the matter was taken up with the Department of Law, J & PA vide .O. dated 10.12.2019, for advice. Department of Law, J & PA vide its U.O. dated 31.12.2019 advised as under: -

"There are no grounds for filing of SLP in the matter, more so, the case is also hit by limitation. As such, the department is advised to implement the judgment passed by the Hon'ble Court in letter and spirit.";



Whereas, the matter was thereafter taken up with the General Administration Department in the shape of a Coordination Note, for consideration of the petitioner's claim, in relaxation of rules;

Whereas, subsequently, a meeting on the subject was held on 18.11.2022 under the chairmanship of Chief Secretary, J&K, wherein it was decided to obtain the petitioner's pre- appointment verification report from the character antecedent verifying agency in the first place;

Whereas, accordingly, Principal Chief Conservator of Forests (HoFF), J&K vide this department's communication No. FST-Lit/46/2021-02 dated 18.11.2022 was requested to approach the character antecedent verifying agency (CID, J&K), to verify the petitioner's pre-appointment character antecedents as per the requirements of law in terms of Government Order No. 528-JK(GAD) of 2021 dated 21.06.2021 read with circular instructions in this behalf and forward the report of the concerned agency to this department, for further course of action;

Whereas, Principal Chief Conservator of Forests, J&K vide his communication No. PCCF/LO/SWP/2017/54-57 dated 03.07.2023 had forwarded the character antecedent verification report dated 10.04.2023 received from the Criminal Investigation Department, J&K, wherein CID, J&K had reported that there is nothing adverse against the petitioner;

Whereas, after receiving the character antecedent verification report from the concerned agency, the matter was again taken up with the General Administration Department vide U.O. dated 11.08.2023, for consideration of the petitioner's claim;

Whereas, the matter was pending consideration in the General Administration Department and, in the meantime, the department received a revised report from the Criminal Investigation Department, J&K in respect of the petitioner herein, informing therein that the petitioner is involved in FIR No. 67/2012 u/s 341, 323 RPC of P/S Lalpora and FIR No. 48/2014 u/s 341, 354, 336 RPC of P/S Lalpora. CID, J&K further reported that both these FIRs have been challaned before the Hon'ble Court and are still sub-judice;

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Whereas, the aforesaid revised report was also forwarded to the General Administration Department, for consideration of the case of the petitioner and the General Administration Department vide its U.O. dated 04.10.2023 advised as under:

"Returned: The Department is intimated that the matter was referred to the Department of Law, Justice & Parliamentary Affairs for their opinion. The later vide UO No. Law/Opn1/110/2023-10 Dated 21.09.2023 returned as under:

'Forest Department may be apprised that the Administrative Council has repealed SRO-64 of 1994 and SRO 520 of 2017. Further, the Ld. Advocate General vide this department's communication dated 16.09.2023 has been requested to take remedial measures, in which the present contempt matter figures at S. No. 7 of Annexure B of the communication dated 16.09.2023. Copy of the same is enclosed herewith for information and further necessary action in the matter.

Accordingly, the Department is advised to re-examine the matter accordingly.";

Whereas, keeping in view the totality of facts and circumstances of the present case as detailed herein before, the petitioner's claim for regularization warranted re-examination under the provisions of SRO 64 of 1994 in view of the new material facts that have come to the knowledge of the department only after receipt of character antecedent report from the CID, J&K and were unknown to the department, earlier;

Whereas, on a plain reading of rule 4 of SRO 64 of 1994, it is axiomatic that all the conditions stipulated therein are mandatorily required to be fulfilled, so as to make a person eligible for claiming regularization under the provisions of SRO 64 of 1994 and non-fulfillment of any of the stipulated pre-conditions would render a person ineligible for regularization;

Whereas, Rule 4 of the J&K Daily Rated Workers/Work Charged Employees Regularization) Rules, 1994, notified vide SRO 64 of 1994, stipulates



the following pre-conditions, inter alia, to be fulfilled in order to make a person eligible for regularization:-

“(e) That his work and conduct has remained satisfactory during the period he worked as Daily Rated Worker or Work Charged Employee.

(f) That he has completed seven years continuous period of working as Daily Rated Worker or Work Charged Employee or partly as Daily Rated and partly as Work Charged Employee”;

Whereas, on a plain reading of rule 4 of SRO 64 of 1994, it is axiomatic that all the conditions stipulated therein are mandatorily required to be fulfilled, so as to make a person eligible for claiming regularization under the provisions of SRO-64 of 1994 and non-fulfillment of any of the stipulated pre-conditions would render a person ineligible for regularization;

Whereas, verification of character and antecedents of a person is one of the important features in service jurisprudence so as to find out conduct of the said person and his suitability in government service. Further, criminal antecedents are accepted in law as reliable guides for an employer to assess character traits and evaluate the conduct and suitability of a person for appointment/continuation in service. In Delhi Administration Vs. Sushil Kumar (1996) 11 SCC 605, the Hon'ble Supreme Court laid stress on the fact that the verification of character and antecedents is one of the important criteria to test the suitability of a person to a post;

Whereas, the petitioner, although, was having knowledge of the fact of pendency of two criminal cases against him, has intentionally concealed information pertaining to criminal prosecution and is, therefore, guilty of suppressio veri or suggestio falsi. Further, multiplicity of criminal cases pending against the petitioner manifests repetitive criminal conduct of the petitioner, more so when the petitioner in one of the criminal cases registered against him is involved in an offence that falls within the purview of 'moral turpitude' and, as such, the conduct of the petitioner cannot be said to have remained satisfactory. Therefore, the aforesaid antecedents reveal traits, which make the petitioner ineligible to claim the benefit of SRO 64 of 1994;



Whereas, the petitioner has not only concealed the above- stated facts before the department but had also not disclosed these material facts before the Hon'ble Court while filing writ petition in the year 2015 and had obtained direction/relief from the Hon'ble Court, for consideration of his case for regularization, when at the time of filing of writ petition, the petitioner was well aware of the FIRs registered against him as also knew and understood the implications of the omission in his writ petition to disclose the aforesaid vital information, which also depicts the conduct of the petitioner as unsatisfactory. Reliance in this regard is placed on judgment dated 26.09.2022 passed by the Hon'ble Supreme Court in SLP (Civil) No. 5170/2021 titled Satish Chandra Yadav Vs. Union of India and others, operative part whereof reads as under: -

“...79. Ms. Madhavi Divan, the learned ASG has rightly relied on Kendriya Vidyalaya Sangathan (supra) in which this Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification Form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to the queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to the matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

80. We find that the observations in the aforesaid case are fully applicable to the appeal filed by Satish Chandra Yadav. We are of the opinion that it was a deliberate attempt on the part of the appellant Satish Chandra Yadav to withhold the relevant information and it is



this omission which has led to the termination of his service during the probation period.

81. In view of the aforesaid, the Appeal arising out of the Special Leave Petition (C) No. 20860 of 2019 filed by Satish Chandra Yadav fails and is hereby dismissed..."; and

Whereas, the petitioner does not also fulfill the prescribed condition of seven years continuous service given that the petitioner has breaks in service viz., 10/1995, 11/1995, 10/1996 to 12/1996, 01/1998 to 02/1998, 07/2004, 10/2004, 01/2005, 11/2005 and 06/2018;

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."; and

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 has not been done till the taking of the policy decision. Therefore, the petitioner who otherwise also was not covered under SRO 64 of 1994, is not entitled to the benefit of a policy that

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stands repealed as on date. 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. 8/2022 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 willful disobedience of the order of the Division Bench dated 10.05.2013 passed in LPA No. 184/2012...”

Now, therefore, keeping in view the afore-stated position, claim of the petitioner having been considered in compliance with the order dated 04.05.2017 passed by the Hon'ble Court in SWP No. 2056/2015 titled Ghulam Hassan Mir 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

Principal Secretary to the Government

No: - FST-Lit/46/2021-02

Dated: -10 .12.2023

Copy to the:-

1. Commissioner Secretary to the Government, General Administration Department.
2. Pr. Chief Conservator of Forests (HoFF), J&K. He is requested to get the compliance report filed in the matter at the earliest.
3. Secretary to Government, Department of Law, Justice & PA, J&K.
4. PS to Principal Secretary to Government, Forest, Ecology and Env't. Department.
5. Mr. Ghulam Hassan Mir S/O Abdul Ahad Mir R/O Khurhama, Kupwara (Petitioner).
6. Govt. Order File (w.2.s.c).

(Mohammad Arshad Jan)

Under Secretary to the Government