

**Government of Jammu and Kashmir
Forest, Ecology & Environment Department
Civil Secretariat, J&K**

Subject: - Consideration of the claim of Shri Tariq Hafiz S/O Bashir Ahmad R/O Neeru, Ramban in compliance with the order dated 10.11.2016 passed by the Hon'ble Court in SWP No. 703/2004 titled Tariq Hafiz Vs. State of J&K and others.

Reference: - (i) U.O. No. LAW-SER/15/2023-10 dated 01.11.2023 received from the Department of Law, J & PA.
(ii) U.O.No. GAD-CORD/94/2023-09-GAD dated 14.12.2023 receive from the General Administration Department.

Government Order No: - 256JK (FST) of 2023

Dated: - 20 .12.2023

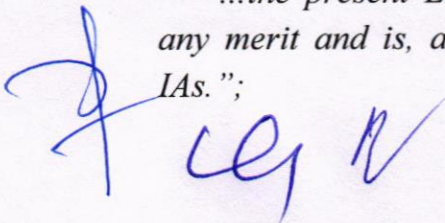
Whereas, Shri Tariq Hafiz S/O Bashir Ahmad R/O Neeru, Ramban (hereinafter referred to as 'the petitioner') had approached the Hon'ble Court and had sought, *inter alia*, direction upon the respondents, for regularization of his services under SRO 64 of 1994;

Whereas, the writ petition (supra) came to be disposed of by the Hon'ble Court vide its judgment dated 10.11.2006, operative part whereof reads as under: -

"...Respondents are directed to regularize the services of the petitioner from the date he completed seven years of service and to accord him all consequential benefits...";

Whereas, against the aforesaid judgment dated 10.11.2016, the department had preferred an appeal numbered as LPASW No. 196/2017 titled State of J&K and others Vs. Tariq Hafiz, which came to be dismissed by the Division Bench of Hon'ble High Court of J&K at Jammu vide its order dated 03.08.2018 dismissed the LPA with the following directions: -

"...the present Letters Patent Appeal is found to be without any merit and is, accordingly, dismissed along with connected IAs...";



Whereas, subsequently, the department had preferred an SLP in the matter numbered as SLP(Civil) Diary No. 7174/2020 titled Union Territory of J&K and others Vs. Tariq Haffiz, which came to be dismissed by the Hon'ble Supreme Court of India vide its order dated 25.10.2021, operative part whereof reads as under: -

"...The impugned judgment of the High Court does not suffer from any error. The Special Leave Petition is, therefore, dismissed on the ground of delay as well as on merits...";

Whereas, against the aforesaid order dated 25.10.2021 passed by the Apex Court, the department had filed a review petition numbered as RP(C) No. 001334/2022 titled Union Territory of J&K and others Vs. Tariq Haffiz, which also came to be dismissed by the Hon'ble Supreme Court of India vide its order dated 11.10.2022;

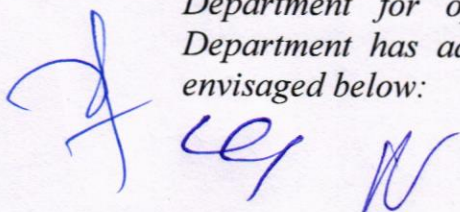
Whereas, the matter was taken up with Department of Law, J& PA, for advice. Department of Law, J & PA vide its U.O. dated 20.12.2022 advised as under: -

"Returned: Since all the available remedies have been exhausted, as such, the Department is left with no option but to implement the writ court judgment dated 10.11.2016 and in compliance thereto take necessary steps required in the matter.";

Whereas, the matter was taken up with the General Administration Department vide U.O. dated 13.06.2023 in the form of a Coordination Note, for approval of the Competent Authority to the regularization of services of the petitioner under SRO 64 of 1994. However, General Administration Department vide U.O No. GAD-CORD/94/2023-09 Dated: 27-06-2023 has returned the file with the following advice:

"Returned: The opinion of Finance Department was sought with regard to regularization schemes. The later opined as under:

'Returned: The matter was taken up with the Law Department for opinion in the matter. The Law Department has advised to follow the procedure as envisaged below:



a) *All the engagements made illegally are void ab-initio and the same would not give any justiciable right to the illegal appointee to claim regularization. The said principle has been upheld in State of Karnataka vs Uma Devi case and the ratio of the said case can be taken as a defense before the concerned forum to deny regularization of an illegal engagement.*

b) *Where the Hon'ble Courts have passed directions, in a particular case for regularization of an engagement and contempt proceedings have been initiated, the Department may project and express the inability to implement the said directions, in view of the fact that such action would contravene and infract the express directions laid down in Uma Devi case and other similar binding precedents.'*

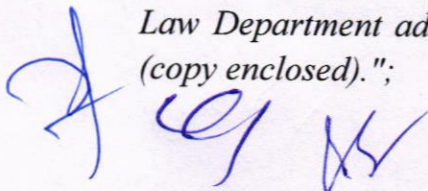
The Department is advised to proceed further in the matter, accordingly.";

Whereas, the Hon'ble Court was apprised on the lines of aforesaid advice received from the General Administration Department. However, the Hon'ble Court was pleased to pass an order dated 16.08.2023, operative part whereof reads as under: -

"...Despite opportunity granted to the respondent to comply with the order dated 19.05.2023, he has failed to comply with the same. Since needful has not been done, therefore, the said respondent-Principal Secretary Forest Department, Civil Secretariat has rendered himself liable for the contempt proceedings for framing of rule against him/her. Notice be sent to him to remain present on the next date of hearing to show cause as to why he be not proceeded in accordance with law for having committed contempt of Court proceedings...";

Whereas, subsequently, the matter was re-referred to the GAD on 30.09.2023 in the shape of a Coordination Note, for approval of the Competent Authority and the Hon'ble Court was apprised accordingly. However, General Administration Department vide its U.O. dated 27.09.2023 returned the file with the following advice: -

"The Department is advised to re-examine the matter in terms of communication No. LAW-SER/15/2023-10 Dated 16-09-2023 of Law Department addressed to Learned Advocate General, J&K (copy enclosed).";



Whereas, the matter was again taken up with the Department of Law, J & PA, for advice in the matter. Department of Law, J & PA vide its U.O. dated 01.11.2023 advised as under: -

“Returned: The matter was taken up with Learned Advocate General, J&K who has opined as under:

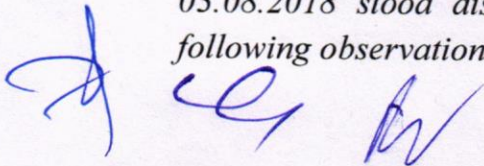
A conjoint reading of various note paras of this e-file indicates that the directions of the Hon'ble High Court to regularize the petitioner has attained finality with the dismissal of the SLP by the Apex Court. The aggrieved party has invoked the contempt jurisdiction of the Hon'ble High Court. Pursuant to the court directions for compliance of judgment and despite grant of opportunities as per Order dated 09.05.2023, the same does not appear to have been complied with so-far. It may be relevant to refer to note Para 27 which reads as under:

‘Where the Hon'ble Court have passed directions, in a particular case for regularization and contempt petitions have been initiated, the Department may project and express inability to implement the said direction would contravene and infract the expressed directions laid down in Uma Devi's case and other similarly binding purposes.’

It is reiterated that the undersigned has already expressed opinion in this regard that such decision cannot be applied uniformly in all and every case and each case has to be viewed on its own merit. In the instant case, the Division Bench in its Order dated 03.08.2018 has observed as under:

‘The present LPA is found to be without any merit and is accordingly dismissed along with connected IA's.’

Similarly, SLP filed against the judgment dated 03.08.2018 stood dismissed on 25.10.2021 with the following observations:

Three handwritten signatures in blue ink are located at the bottom left of the page. The first signature is a stylized 'A', the second is a cursive 'C', and the third is a cursive 'W'.

'In the instance, we see no cause for interference under Article 136 of the Constitution of India. The impugned judgment of the High Court does not suffer from any error. The SLP is, therefore, dismissed on the ground of delay as well as on merits.'

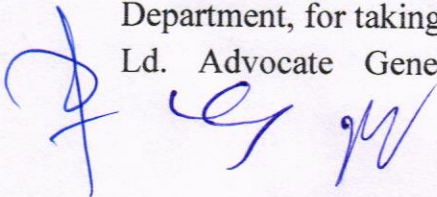
Consequent upon dismissal of the SLP, the Review Petition was filed which too appears to have been dismissed on 11.10.2022 and in terms of Order dated 16.11.2022, it was ordered that the subject matter of the judgment has attained finality to be implemented. It needs to be noticed that the decision to express inability to implement the judgment in view of Uma Devi's case, as quoted herein above, cannot override the decision of the Court. It is presumed that the Hon'ble High Court as well as Hon'ble Supreme Court was aware of the law laid down in Uma Devi's case, therefore, for this reason, it may not be advisable to express inability in each and every case to implement the judgment which has attained finality. However, in other cases which are subject matter of litigation through writ petition, such plea of course can be taken.

Needless to state that the grounds now sought to be urged were to be urged at the relevant point of time and even otherwise, the issue has not been dealt with appropriately at the administrative level. In my opinion and at this juncture, there is no other alternative than to implement the judgment in letter and spirit. In any case, majesty of law has to be maintained with utmost seriousness.

I opine accordingly.'

Department is therefore advised to proceed in terms of aforesaid opinion of Ld. Advocate General, J&K."; and

Whereas, the matter was taken up with the General Administration Department, for taking a decision in the matter in light of the advice tendered by Ld. Advocate General in the present matter. General Administration



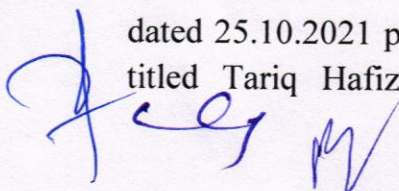
Department vide its U.O. No. GAD-CORD/94/2023-09-GAD dated 14.12.2023 advised as under: -

"Returned. The General Administration Department conveys concurrence of the Competent Authority (Hon'ble Lieutenant Governor) in respect of the proposal regarding "Regularization of services of the petitioner namely Shri Tariq Hafiz S/o Bashir Ahmad R/o Neeru, Ramban" submitted in the file- FST-Lit/150/2021-02-Forest Department (E-84350) as under:

'In compliance with the order dated 10.11.2016 passed by the Hon'ble High Court of J&K in case SWP No. 703/2004 titled Tariq Hafiz Vs. State of J&K and others read with the order passed by Hon'ble High Court of J&K in LPA No. 196/2017 titled State of J&K and Others Vs Tariq Hafiz and the order dated 25.10.2021 passed by the Hon'ble Supreme Court in SLP (C) 7174/2020 titled Tariq Hafiz Vs Respondent(s), sanction is hereby accorded to the regularization of services of the petitioner namely Shri Tariq Hafiz S/o Bashir Ahmad R/o Neeru, Ramban, from the date of completion of seven years, as Helper in the pay scale of 4440-7440+1300 (pre-revised) in the Department of Social Forestry, in terms of SRO 64 of 1994. This shall, however, not form precedence for other similarly situated cases.'

The copy of the concurrence of the Finance Department with regard to creation of the supernumerary post conveyed in terms of U.O. No. FD-Code/114/2021-03-Part (2)-1846 dated 09.12.2023 is also enclosed herewith. The Department is advised to take further necessary action in the matter."

Now, therefore, in compliance with the order dated 10.11.2016 passed by the Hon'ble Court in SWP No. 703/2004 titled Tariq Hafiz Vs. State of J&K and others read with the order passed by Hon'ble High Court of J&K in LPA No. 196/2017 titled State of J&K and Others Vs Tariq Hafiz and the order dated 25.10.2021 passed by the Hon'ble Supreme Court in SLP (C) 7174/2020 titled Tariq Hafiz Vs Respondent(s), sanction is hereby accorded to the



regularization of services of the petitioner namely, Shri Tariq Hafiz S/O Bashir Ahmad R/O Neeru, Ramban, from the date of completion of seven years, as Helper in the pay scale of 4440-7440+1300 (pre-revised) in the Department of Social Forestry, in terms of SRO 64 of 1994. This shall, however, not form precedence for other similarly situated cases.

This also issues with the concurrence of the Finance Department with regard to creation of *the supernumerary post conveyed in terms of their U.O. No. FD-Code/114/2021-03-Part (2)-1846 dated 09.12.2023.*

By Order of the Government of Jammu and Kashmir.

Sd/-

(Dheeraj Gupta), IAS

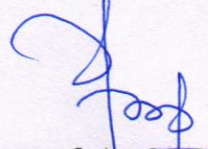
Principal Secretary to the Government

No: - FST-Lit/150/2021-02-

Dated: - 20.12.2023

Copy to the: -

1. Principal Secretary to the Hon'ble Lieutenant Governor.
2. Commissioner/Secretary to the Government, General Administration Department.
3. Principal Chief Conservator of Forests/Director, Social Forestry, J&K.
4. Joint Secretary, (J&K), Ministry of Home Affairs, Government of India.
5. Director, Archives, Archaeology and Museums, J&K.
6. Private Secretary to the Chief Secretary, J&K.
7. PS to Principal Secretary to the Government, Forests, Ecology & Environment Department.
8. I/c Website/Government Order file(w.3.s.c)/Stock file.


(Mohammad Arshad Jan)

Under Secretary to the Government

