

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

Subject:- Consideration of the claim of the petitioners in compliance with the order dated 10.07.2023 read with order dated 14.02.2023 passed by Hon'ble Tribunal in M. A. No. 331/2023 in T. A. 1602/2021 in SWP No. 219/2012 Titled Altaf Hussain Dhobi vs Department Of Forests, UT of J&K.

Government Order No: - 286 - JK(FST) of 2024

Dated: - 06 - 12-2024

Whereas, the petitioners approached the Hon'ble court through the medium of writ petition which came to be numbered as SWP No. 219/2012 Titled Altaf Hussain Dhobi Vs Department of Forests, UT of J&K, seeking therein, inter alia, direction upon the respondents for regularization of their services under SRO 64 of 1994;

Whereas, the writ petition (supra) was transferred to Central Administrative Tribunal, Srinagar Bench and came to be disposed of by the Hon'ble Tribunal vide its order dated 10.07.2023, operative part whereof reads as under:-

"...the T.A. is disposed of and the impugned order dated 27.09.2008 is quashed and set aside. The matter is remanded back to the respondents to decide the cause of the applicant in terms of the directions contained in order "dated 03.06.2008 of Hon'ble High court in SWP No. 1569/2003".

Necessary order in this regard shall be passed by the respondents within a period of three months from the date of receipt of this order..."

Whereas, in compliance with the aforesaid direction of the Hon'ble Court, claim of the petitioners was examined and it came to fore that the petitioner namely Mr. Altaf Hussain Dhobi were engaged as Casual Labour in erstwhile Chitternar Range in 03/1996 as per records i.e. MR Sheets and has been paid wages whatever due to him against the manual work in Nursery from 03/1996 to 03/1997. And other petitioner namely Mr. Gh. Mohammad Sheikh was also engaged as Casual Labour against manual work in Nursery in the month of 05/1994, with intermittent breaks and had been wages earned by him. Further, the service of both the petitioners has never been utilized after 03/1997.



Whereas, vide this Department's letter no. FST- Lit/208/2023, dated 06.09.2023 and dated 08.12.2023, Director, Forest Research Institute, J&K was requested to furnish the complete details of the case in respect of the petitioners. And in response, the Director, J&K Forest, Research vide his letter no. JKFR/Adm/2023-24/1607-10, dated 20.10.2023 has stated that the both petitioners had worked as Daily Wagers in Chitternar Nursery of erstwhile Research Division, Srinagar with effect from January 1994 and February 1994 respectively and during the General Assembly Election 1996 in J&K State, both the petitioners have performed the Election Duty with effect from 28.08.1996 to 06.09.1996, as is evident from the certificates issued by the Tehsildar, Bandipora and Presiding Officer, 32 Pampore, endorsed by Tehsildar Pulwama. However, the case of the petitioners was not forwarded by the JK Forest Research Institute to Administrative Department for regularization process at that point of time, when these petitioners have performed the election duty during the General Assembly 1996.

Whereas, the petitioners have filed the writ petition No. 433/98, which was disposed of vide order dated 21.09.1998 with the directions to the respondents to consider their case within a period of three months. Accordingly, the case of the petitioner was considered by the then DFO, Research Division, Srinagar and was rejected vide No. 1659-67/E dated 07.08.2002, citing the reason that both the petitioners have been engaged simply as labourer on casual basis. However, the consideration does not mention the election duty performed by the petitioners.

Whereas, the aggrieved petitioners have again approached to the Hon'ble High Court and filed Service Writ Petition no. 1569/2003, seeking the regularization in terms of Government Order No. 639-GAD of 1996, dated 09.08.1996. The said SWP was disposed of by the Hon'ble High Court vide order dated 03.06.2008, the operative part reads as under:-

"... In the given circumstances, the impugned order dated 07.08.2002 is quashed and it is provided that the respondents to consider the case of petitioners for regularization in term of SRO-64 read with Circular dated 17-11-2006 and take a decision in the matter within a period of three months. the period of three months shall commence from the date copy of this order is served by the petitioners on the respondents against proper receipt. The respondent shall also report compliance within the time allowed"

Whereas, the then DFO Research Forest Division Srinagar, considered the representation and communicated to the petitioners vide letter No. 619-26/Estt. Dated 27.09.2008 which reads as under:-

"The representation as such has been considered in light of directives of Hon'ble High Court and circumstances enumerated above. Since engagement of petitioners as labourer on casual basis w.e.f. 01.04.1994 and since they have not been in continuous service for seven or more years, their claim for regularization, is in violation of SRO- 64 dated 24.03.1994 have no locus - standii on their claim and is out rightly rejected".

Whereas, the petitioners have again approached to the Hon'ble High Court and filed another SWP No. 1219/2012, seeking their regularization in terms of Government Order No. 639-GAD of 1996, dated 09.08.1996. However, in view of re-organization of the State of Jammu & Kashmir, the SWP No. 1219/2012 CMP No. 2013/2012 has been transferred to the Central Administrative Tribunal (CAT) Srinagar Bench Srinagar and registered as TA No. 1602/2021.

Whereas, the writ petition (supra) came to be disposed of by the Hon'ble Court vide its order dated 10.07.2023, operative part whereof reads as under:-

"...the T.A. is disposed of and the impugned order dated 27.09.2008 is quashed and set aside. The matter is remanded back to the respondents to decide the cause of the applicant in terms of the directions contained in order "dated 03.06.2008 of Hon'ble High court in SWP No. 1569/2003".

Necessary order in this regard shall be passed by the respondents within a period of three months from the date of receipt of this order..."

Whereas, the policies/Legislative Enactments relating to regularization of services, including SRO-520 of 2017 have now been repealed vide S.O. 514, dated 06.10.2023, which is a policy decision taken by the Government and the said 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 applicant herein are not entitled to the benefit of a 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.

Whereas, the claim of the petitioner for his regularization in absence of any regularization policy is not tenable under law. Further the Hon'ble Supreme Court vide its judgment dated 07.10.2021 passed in Civil Appeal No's. 5689-5690 of 2021 titled Union of India and others Vs. Ilmo Devi and others has held



that "...As per the settled proposition of law, the regularization can be only as per the regularization policy declared by the State/ Government and nobody can claim the regularization as a matter of right de hors the regularization policy..."

Now therefore, in compliance with the order dated 10.07.2023 read with order dated 14.02.2023, passed by the Hon'ble Tribunal in. M.A 331/2023 in T.A. 1602/2021 in SWP 1219/2012 Titled Altaf Hussain Dhobi Vs Department of Forests, UT of J&K, claim of the petitioners has been considered and is found devoid of merit and claim of the petitioners is accordingly rejected.

By order of the Government of Jammu and Kashmir.


Sd/-
(Shailendra Kumar) IAS
Principal Secretary to the Government
Forest, Ecology and Environment Department

No. FST-Lit/208/2023-02

Dated: 06 .12.2024

Copy to the:-

1. Pr. Chief Conservator of Forests (HoFF), J&K.
2. PCCF/Director, J&K Forest Research Institute. He is requested to file compliance report in the matter on the strength of this Government Order.
3. Private Secretary to Principal Secretary to the Government, Forest, Ecology and Environment Department, for kind information of Principal Secretary.
4. Petitioners.
5. Government Order file.


(Shabir Ahmad Baba)
Under Secretary to the Government
