

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

Subject: Consideration of claim of applicants in compliance with the order dated 14.03.2023, passed by the Hon'ble Central Administrative Tribunal, Srinagar in O.A No. 1170/2022 titled Abdul Rashid Dar and others Vs UT of J&K and others.

**Government Order No: 301-JK(FST) of 2024
Dated: 19.12.2024**



Whereas, the applicants namely Abdul Rashid Dar S/o Wali Mohammad Dar R/o Shumeriyal, Kupwara, Nisar Ahmad Sofi S/o Wali Mohammad Sofi R/o Nowpora Sopore, Baramulla, Abdul Hamid Mir S/o Ali Mohammad Mir R/o Segipora, Sopore, Baramulla, Nazir Ahmad Lone S/o Abil Lone R/o Lshtiyal Kalaroos Kupwara, Abdul Hamid Dar S/o Abdul Gaffar Dar R/o Tutigund Handwara, Kupwara, Fayaz Ahmad Magray S/o Lala Magray R/o Kundil Kupwara, Ghulam Nabi Dar S/o Ghulam Mohammad Dar R/o Cahirkoot Kupwara, Abdul Rashid Mir S/o Ghulam Mohammad Mir R/o Shumeriyal Kupwara, Ghulam Hassan Lone S/o Ghulam Rasool Lone R/o Anderhama Dragmulla, Kupwara, Mohammad Shafi Pir S/o Mohammad Yousuf Pir R/o Khumeriyal Kupwara, Javid Ahmad Mir S/o Abdul Khaliq Mir R/o Sigipora Sopore, Baramulla, Nazir Ahmad Bhat S/o Mohammad Ramzan Bhat R/o Sigipora Sopore, Baramulla, Abdul Rashid Mir S/o Ghulam Mohammad Mir R/o Sigipora Sopore, Baramulla, Ghulam Mohud Din Nagoo S/o Ghulam Rasool Nagoo R/o Hayhama Kupwara, Ghulam Nabi Mir S/o Abdul Rahim Mir R/o Sopore Baramulla, Mohammad Shafi Mir S/o Abdul Ahad Mir R/o Sigipora Sopore, Baramulla, Jawhara Begum D/o Ali Mohammad Bhat R/o Drugmullah Kupwara had approached the Hon'ble Tribunal through the medium of Original Application that was numbered as O.A No. 1170/2022 titled Abdul Rashid Dar Vs Forest Department.

Whereas, the said O.A came to be disposed of by the Hon'ble Tribunal vide its order dated 14.03.2023, operative part whereof reads as under:-

"....In view of the limited prayer made by the Ld. Counsel for the applicant, respondents are directed to take a decision with regard to the recommendation made by the Empowered Committee on 04.04.2018 and after taking such decision respondents are directed to consider the claim of the applicant as per the recommendation made on such decision as per rules by passing a reasoned and speaking order.....";

Whereas, the Empowered Committee in its 13th meeting held on 04.04.2018 had cleared and approved creation of 56 post of Helpers of Kamraj Forest Division, however, the same was subject to condition mentioned against each viz condonation of breaks and relaxation in lower age bar in some cases;

Whereas, the department sans any power for considering regularization under SRO 64 of 1994 at its level unless such cases are cleared by the Empowered Committee in the Finance Department in the first place;



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Whereas, the General Administration Department had also issued circular instructions vide its O.M dated 23.02.2021, informing therein as under:

"The regularization scheme namely, Jammu & Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994 notified vide SRO 64 of 1994 and repealed J&K Civil Services (Special Provisions) Act, 2010 are under administrative scrutiny and a considerate and informed decision on the issue is to be taken in the matter. The issue is required to be placed before the Establishment-cum-Selection Committee.";

Whereas, Principal Chief Conservator of Forests, Jammu & Kashmir vide his communication No. PCCF/NG/Estt/1646 dated 31.05.2024, furnished the requisite information along with relevant documents to the department for further necessary action;

Whereas, the cases of the petitioners were examined and the following factual position has come to fore:

Sh. Abdul Rashid Dar has been engaged as Daily Wager 01.01.1993. There is a break of 6 years and 7 months in his services.

Sh. Nisar Ahmad Sofi has been engaged as Daily Wager on 19.12.1991. There is a break of 245 days in his services.

Sh. Abdul Hamid Mir has been engaged as Daily Wager on 01.11.1993. There is a break of 123 days in his services.

Sh. Nazir Ahmad Lone has been engaged as Daily Wager on 15.12.1993. There is a break of 5 years and 1 month in his services.

Sh. Ab Hamid Dar has been engaged as Daily Wager on 01.11.1993. There is a break of 91 days in his services.

Sh. Fayaz Ahmad Magray has been engaged as Daily Wager on 24.11.1993. There is a break of 183 days in his services.

Sh. Gh Nabi Dar has been engaged as Daily Wager on 12.08.1991. There is a break of 124 days in his services.


Sh. Ab Rashid Mir has been engaged as Daily Wager on 12.06.1993. There is a break of 93 days in his services.

Sh. Gh Hassan Lone has been engaged as Daily Wager on 10.09.1993. There is a break of 242 days in his services.

Sh. Mohd Shafi Pir has been engaged as Daily Wager on 09.07.1993. There is a break of 153 days in his services.

Sh. Javeed Ahmad Mir has been engaged as Daily Wager on 12.08.1993. There is a break of 62 days in his services.

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Sh. Nazir Ahmad Bhat has been engaged as Daily Wager on 23.11.1993. There is a break of 182 days in his services.

Sh. Ab Rashid Mir has been engaged as Daily Wager on 10.09.1993. There is a break of 210 days in his services.

Sh. Ghulam Mohud Din Nagoo has been engaged as Daily Wager on 04.01.1993. There is a break of 213 days in his services.

Sh. Ghulam Nabi Mir has been engaged as Daily Wager on 24.02.1993. There is a break of 335 days in his services.

Sh. Mohammad Shafi Mir has been engaged as Daily Wager on 10.10.1993. There is a break of 151 days in his services.

Smt. Jawhara Bano has been engaged as Daily Wager on 01.09.1993. There is a break of 91 days in his services.

Whereas, rule 4 of the Jammu and Kashmir Daily Rated Workers/ Work charged Employees (Regularization Rules),1994, notified vide SRO 64 of 1994, provided the eligibility conditions for regularization under SRO 64 of 1994 and clause (b) 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..."

Whereas, on a plain reading of rule 4 of SRO 64 of 1994, it is obvious 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, the applicants do not fulfill the requisite conditions as stipulated therein in SRO 64 of 1994, which makes the claim of the applicants unsustainable for claiming the benefit of SRO 64 of 1994;

Whereas, notwithstanding the above stated position, the policies/legislative enactments relating to regularization of services, including SRO 64 of 1994 have been repealed by the Government 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

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

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..."

Whereas, the policies/legislative enactments regarding regularization under SRO 64 of 1994 has been repealed by the Government vide S.O 514 dated 06.10.2023 and thus as on this date there are no rules/law existing under which regularization can be done and it is no longer res integra that regularization cannot be done in the absence of any specific legislation or rules. Further it has been laid down by the Hon'ble Apex Court in its judgment dated 07.10.2021 passed in Civil Appeal No's. 5689-5690 of 2021 titled Union of India and /Others Vs. Imo Devi and others that "...As per the settled position 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 dehors the regularization policy..."

Now, therefore, keeping in view the afore-stated position, claim of the applicants having been considered in compliance with the order dated order 14.03.2023, passed by the Hon'ble Central Administrative Tribunal, Srinagar-Bench in O.A No. 1170/2022 titled Abdul Rashid Dar and others Vs UT of J&K and others, for regularization of their services under SRO 64 of 1994 (repealed law) is found meritless. Accordingly, claim of the petitioner is rejected.

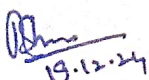
By order of Government of Jammu and Kashmir.

Sd/-

(Shalinder Kumar)IAS
Principal Secretary to the Government.

No. FST-Lit/61/2023-02-Forest Department

Dated: 19.12.2024.


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Copy to the:-

1. Additional Chief Secretary to Hon'ble Chief Minister.
2. Principal Secretary to the Hon'ble Lieutenant Governor, J&K
3. Commissioner/Secretary to the Government, General Administration Department, J&K.
4. Principal Chief Conservator of Forests, J&K.
5. Secretary to the Government, Law, J&PA Department, J&K.
6. OSD to Hon'ble Minister for Forest, Ecology & Environment Department.
7. PS to Principal Secretary to Government, Forest, Ecology & Environment Department, J&K
8. Government Order file.

Raj Kumar
19.12.24
(Raj Kumar)

Raj Kumar
Under Secretary to Government