

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

Subject:- Consideration of the claim of the petitioner in compliance to the Judgment dated 30.03.2012 passed in SWP No. 706/2012 titled Mod Saleem Vs State of J&K and others read with order dated 16.10.2024 passed in CPSW No.183/2012 in SWP No.706/2012 titled Mohd. Saleem V/s Vinod Niranjana & Anr.

Government Order No: 308- JK(FST) of 2024
Dated: 20-12-2024

Whereas, the petitioner had approached the Hon'ble Court through the medium of writ petition which came to be numbered as SWP No. 706/2012 Titled Mohd. Saleem Vs State of J&K & Ors, seeking therein, *inter alia*, direction upon the respondents for regularization of his services under SRO 64 of 1994;

Whereas, the writ petition came to be disposed of by the Hon'ble High Court vide its order dated 30.03.2012, the operative part whereof reads as under:-

"The writ petition of the petitioner, at request of learned counsel of petitioner, is disposed of with a direction to the respondents to accord consideration to the petitioner's case for regularization in accordance with Law. The respondents shall taken a decision in the matter within four weeks from the date of copy of the order is served upon respondents."

Whereas, the aggrieved petitioner namely Mohd. Saleem filed a Contempt Petition numbered as CPSW No 183/2012 seeking implementation of judgment of Hon'ble High Court's order dated 30.03.2012.

Whereas, in compliance to the Hon'ble High Court's Order dated 03.12.2024, the regularization case of the petitioner was placed before the Empowered Committee for its consideration, however, the case of the petitioner was rejected by the Empowered Committee for the reason that petitioner has been engaged as a Casual Labour, thus is not eligible for regularization under the provisions of SRO-64 of 1994.

Whereas, the case of the petitioner was again forwarded by PCCF/HoFF, vide its Letter No. PCCF/LO/NG/Estt./DRW/SIX-point Agrostology-511047, dated 07.10.2021, for regularization of his services under SRO- 64 of 1994, as it came to fore that the petitioner has been engaged as Daily Wager by the Project Officer, J&K, instead of Casual Labour.

Whereas, the matter was thereafter taken up with the Department of Law, Justice and Parliamentary Affairs, for seeking opinion in the matter and in response, Law Department vide its U. O. No. Law-Lit-/29/2022-10, dated: 03.02.2022, conveyed as under:-





Returned:- Department is advised to seek the views/comments of the Finance Department in the matter in the first instance.

Whereas, on the advice of the Law, Justice and PA Department, the matter was taken up for obtaining comments and in turn, Finance Department vide its U. O. No. FD-Code/170/2021-03-332, dated 04.03.2022, advised as under:-

Returned:- The department is advised to pass the consideration order, as directed by the Hon'ble High Court, on the basis of the decision of empowered committee conveyed to the department vide O.M No. A/54(2015)-31 dated 04.03.2016.

Whereas, vide this department's letter No. FST-Lit/152/2021-02, dated: 09.03.2022, the PCCF/HoFF was requested to kindly pass consideration order in the matter in light advice tendered by the Finance Department.

Whereas, a consideration order was issued by the office of Conservator of Forests, Agrostology Circle, vide Order No. nil, dated 02.08.2022, in compliance to the Hon'ble Court's order dated 30.03.2012, by rejecting the claim of the petitioner for regularization under SRO-64 of 1994, on the reasons that the petitioner was initially engaged as Casual Labour.

Whereas, the said consideration order was rejected by the Hon'ble High Court vide its order dated 04.02.2023, the operative part is produced as under:-

However from nowhere the Conservator of Forests Agrostology Wing Jammu, J&K Forest Department, has come to pass so called consideration Order no. CFA/FST/Estt./306-07 dated 02.08.2022, whereby saying that the petitioner was a casual labour, as such, his case was rejected by the Empowered Committee. There is no reference of earlier stand of the Department with respect to daily rated worker status of the petitioner and there is U-turn in this consideration order. Thus, even on record the officials are resorting to falsehood leaving this Court perplexed as to which is true and correct stand of the Department. Thus, this Court rejects the order dated 02.08.2022 of the Conservator of Forests, Agrostology Wing Jammu who is present in person and is directed to apprise his Commissioner/Secretary, Forest Department to mend their stand otherwise all the concerned officials would suffer risk of personal appearance before the Court to account for apparent contradictions and continuing non-compliance of Court directives.

List on 20.02.2023.

Whereas, the matter was thereafter taken with the Finance Department and Law Department from time to time and accordingly, a detailed consideration/speaking order was issued under endorsement No. CFA/FST/Court Case/154-55, dated 06.06.2023, by the O/o Conservator of Forests, Agrostology Circle, J&K Jammu, thereby rejecting the claim of the petitioner for regularization of his services under the ambit of SRO-64 of 1994.

Handwritten signature and initials in blue ink.

Whereas, the Contempt petition (supra) was listed before the Hon'ble Court on 16.10.2024 and the Hon'ble Court was pleased to pass order dated **16.10.2024**, which is reproduced as under:-

'Ms. Chetna Manhas, learned counsel for the respondents submits that as per the record, the petitioner was a Daily Rated Worker and not a Casual Worker.

In view of this, compliance report be filed strictly in terms of order dated 30.09.2024 by the next date of hearing'.

Whereas, Chief Conservator of Forest vide letter No/ NG/Estt/512-dated 23-02-2024 furnished the requisite information along with relevant documents to the department for further necessary action:

Whereas, the case of the petitioner was examined and the following position has come to fore:-

Sh. Mohd Saleem S/o Ibrahim R/o Simble Lehar, Jagti, Jammu was engaged as Daily Wage Basis on 15-04-1993 by PCCF Office. There is a break of 28 days in the Month of 12/96, 12 days in the Month of 1/97 and 9 days in the Month of 02/97 and his qualification at the time his initial engagement is/was under Matric.

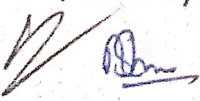
Whereas, rule 4 of the Jammu and Kashmir Daily Rated Workers/Work charged Employees (Regularization Rules), 1994, notified vide SRO 64 of 1994, provided the eligibility conditions for regularization under SRO 64 of 1994 and clause (f) of rule 4 provided as under:

"..(f). that he has completed seven years continuous period of working as Daily Rated Worked or Work charged Employee or partly as Daily Rated Worked or partly as work charged Employee..."

Whereas, it is evident from the above stated rule that in order to be eligible for regularization under the provisions of SRO-64 of 1994, it is obvious that all the conditions stipulated therein are mandatorily required to be fulfilled, and non-fulfillment of any of the stipulated pre-conditions would render a person ineligible for regularization;

Whereas, the petitioner has gap in his continuous services and as such do not fulfill all the requisite conditions as stipulated therein in SRO 64 of 1994, which makes the claim of the petitioner unsustainable for claiming the benefit of SRO 64 of 1994;

Whereas, the policies/Legislative Enactments relating to regularization of services under SRO-64 of 1994, 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 petitioner herein is not entitled to the benefit of a policy that stands repealed by the Government in the Finance Department with a further decision in this

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regard that all pending cases shall stand abated and no fresh cases shall be entertained; and

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 dehors the regularization policy..."

Now, therefore, in compliance with the order dated 30.03.2012, read with order dated 16.10.2023, passed by the Hon'ble Court in CPSW No. 183/2012 in SWP No. 706/2012, titled Mohd. Saleem Vs. Vinod Niranjana and another, claim of the petitioner has been considered and is found devoid of merit. Accordingly the claim of the petitioner is rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shailendra Kumar) IAS

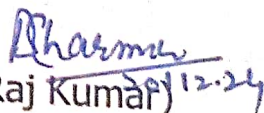
Principal Secretary to the Government

Dated: 20.12.2024

No. FST-Lit/152/2021-02

Copy to the:-

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
2. Principal Secretary to the Government, Finance Department.
3. Commissioner/Secretary to the Government, General Administration Department, J&K.
4. Secretary to the Government, Law, Justice and PA Department.
5. Pr. Chief Conservator of Forests (HoFF), J&K.
6. Conservator of Forests, Agrostology Circle, J&K Jammu.
7. OSD to the Hon'ble Minister for Forest, Ecology & Environment Department.
8. Private Secretary to Principal Secretary to the Government, Forest, Ecology and Environment Department.
9. Government Order file.


(Raj Kumar) 20/12/24
Under Secretary to the Government