

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

Subject: Consideration of claim of Shri Arjun Singh S/O Shri Krishan Singh R/O Village, Smailpur, Tehsil & District Samba in compliance with the order dated 19.05.2022 passed by the Hon'ble Central Administrative Tribunal-Jammu Bench in O.A. No. 486/2022 titled Arjun Singh Vs. Union Territory of J&K and others.

Government Order No: - 45 -JK(FST) of 2024
Dated: - 21 .02.2024

Whereas, Shri Arjun Singh (applicant) had approached the Hon'ble Tribunal through the medium of an application bearing O.A No. 486/2022 titled Arjun Singh Vs UT of J&K and others, and had sought, *inter alia*, direction upon the respondents to regularize his services under SRO 64 of 1994;

Whereas, the Hon'ble Tribunal disposed of the aforesaid application vide its order dated 19.05.2022, operative part whereof reads as under: -

"...On consideration of the above submissions of the counsels for both the parties, this O.A is disposed of at the admission stage, without expressing any opinion on merits of the case, directing Respondent No's. 1 and 2 to consider a copy of this O.A. as representation of the applicant as per provisions of rules for regularization of daily wagers and in view of the proposal of the respondents dated 17.11.2021 and decide it with a reasoned order by 22.07.2022 and thereafter communicate it to the applicant within a week."

Whereas, in compliance with the aforesaid order dated 19.05.2022, the matter was examined and following position came to fore: -

- i That the applicant was reportedly engaged as Daily Rated Worker in IWDP-Hill-II Sub-Watershed Akhnoor/Jammu on 01.07.1991.
- i That the department in the year 2003 submitted a list of 270 Daily Rated Workers to the Finance Department, for placing the same before the Empowered Committee for consideration in terms of SRO 64 of 1994.
- i That the Empowered Committee in its 169th meeting held on 19.06.2003 under the Chairmanship of Financial Commissioner (Finance) approved creation of 250 temporary posts of Helpers in the pay scale of Rs. 2550-

- 3200, for regularization of equal number of Daily Rated Workers of IWDP-Hills in terms of SRO 64 of 1994.
- iv. That in pursuance of recommendations of the Empowered Committee, the department accorded sanction to the creation of 250 temporary posts of Helpers against equal number of Daily Rated Workers vide Government Order No. 329-FST of 2007 dated 14.06.2007, for regularization of their services and, among others, the applicant was figuring at S. No. 20 in Annexure-A to the Government Order (supra).
 - v. That the Project Chief IWDP-Hills vide his letter No. 76-77/PC/IWDP-59 dated 18.04.2015 intimated that the applicant is persistently requesting for issuance of his regularization order in pursuance of Government Order No. 329-FST of 2007 dated 14.06.2007 after a gap of 10 years of unauthorized absence and allowing him to join in the Project.
 - vi. That the matter was examined and it came to fore that the applicant, who was earlier engaged as Daily Rated Worker in the IWDP-Hills Project in the year 1991, had actually left the job w.e.f. October, 2005.
 - vii. That the Project Chief, IWDP-Hills vide his letter No. 648/PC/WDP-59 dated 30.11.2015 had informed that the case of regularization of the applicant was not processed for the reason that the applicant was found on unauthorized absence from October, 2005 onwards and was not on the rolls of IWDP-Hills Project in the year 2007 when the above-referred to Government Order dated 14.06.2007 was issued.
 - viii. That the claim of the applicant was examined and vide Government Order No. 25-FST of 2016 dated 27.01.2016, it was ordered that the entry at S. No. 20 appearing in Annexure-A to Government Order No. 329-FST of 2007 dated 14.06.2007 shall be deemed to have been delated *ab initio* and the claim of the applicant was accordingly rejected.
 - ix. That there is no change in the facts and circumstances of the case and, as such, the decision taken in respect of the applicant vide aforesaid Government Order dated 27.01.2016 still holds good.
 - x. That as regards the communication dated 17.11.2021 is concerned, reference of which has been made by the Hon'ble Tribunal in its order dated 19.05.2022 passed in the present matter, it is noteworthy that by virtue of the communication (supra), the advice of the Finance Department and General Administration Department was conveyed to the Pr. Chief Conservator of Forests (HoFF), J&K, for furnishing comments/recommendations in the matter, which, however, evoked no response from the office of Pr. Chief Conservator of Forests (HoFF), J&K.
 - xi. That the Finance Department vide its U.O. dated 24.11.2017 had advised in the present matter as under: -

"The department is advised to decide the period of absence in the first instance. However, if date of regularization of the incumbent

happens to fall before the period of absence, the regularization need not be linked with issue of un-authorized absence."

- xii. That the General Administration Department vide its U.O. dated 29.07.2021 had advised in the present matter as under: -

"The Department is advised to examine the issue in terms of Article 128 of J&K Civil Services Regularizations read with the opinion furnished by the Finance Department under UO No. A/143(94)-Temp-91 dated 24.11.2017 and firming up a proposal for consideration of the Competent Authority."

- xiii. That the opinion is always recommendatory in nature and, therefore, the advice of Finance Department and General Administration Department does not bind the department to take an appropriate decision warranted under law. Further, the J&K Civil Service Regulations, 1956 cannot be said to be applicable to a Daily Rated Worker who does not hold any post in the department. Besides, there is no provision of law that provides to inquire into unauthorized absence on part of Daily Rated Workers and, therefore, unauthorized absence on part of any Daily Rated Worker, who is not holding any post, *ipso facto* tantamount to his disengagement.
- xiv. That 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 DailyRated/WorkCharged/Casual/Seasonal/Adhoc/Consolidate d or other worker(s) are hereby repealed.

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

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- xv. That 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 is no longer working in the department w.e.f. October, 2005 onwards, is not eligible 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.

Now, therefore, keeping in view the afore-stated position, claim of Shri Arjun Singh S/o Shri Krishan Singh R/o Village Smailpur, Tehsil & District Samba, having been considered compliance with the order dated 19.05.2022 passed by the Hon'ble Central Administrative Tribunal, Jammu Bench in O.A. No. 486/2022 titled Arjun Singh Vs. Union Territory of J&K and others, for regularization of his services under SRO 64 of 1994 (repealed law) is found meritless. Accordingly, claim of the applicant is rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dheeraj Gupta) IAS

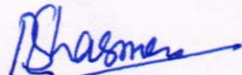
Financial Commissioner(Additional Chief Secretary)

No: - FST-Lit/69/2022-02-Forest Department

Dated: - 21 .02.2024.

Copy to the: -

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K
2. Commissioner/Secretary to the Government, General Administration Department, J&K.
3. Secretary to the Government, Law, J & PA Department, J&K.
4. Principal Chief Conservator of Forests (HoFF), J&K.
5. Project Chief, IWDP Hills, J&K, Jammu.
6. Pvt. Secretary to Chief Secretary, J&K
7. PS to Financial Commissioner (Additional Chief Secretary), Forest, Ecology & Environment Department, J&K, for kind information of FC(ACS).
8. Government Order file.


(Raj Kumar Sharma)

Under Secretary to the Government

