



Government of Jammu & Kashmir (U.T)
Public Works (R&B) Department
Civil Secretariat, Jammu.

Subject:- SWP No. 2054/2002 titled Mohammad Parvez V/s State and others.

Government Order No. 188 -PW(R&B) of 2020

Dated: 26 .06.2020

Whereas, 68 (Sixty eight) posts of Assistant Engineer (Civil) were requisitioned by PWD J&K on 18.08.1987 to J&K Public Service Commission. In response, the Public Service Commission on 03.02.1993 notified a panel of selected candidates for appointment; and

Whereas, Mohd. Parvez, the petitioner herein, did not figure in the selection list and accordingly was not appointed. With coming into force of SRO 126 of 1994 dated 28.06.1994, providing 3% reservation to ALC category candidates (at roster points 10, 45 and 90) in direct recruitments, Sh. Mohd Parvez, the petitioner herein (ALC category candidate) became aggrieved and he approached Hon'ble High Court in SWP No. 153/1999 titled Mohammad Parvez V/s State in which the Hon'ble Court directed for consideration of his case. The claim of Mr. Mohammad Parvez, however was rejected vide Govt. No. 26-PW(R&B) of 1999 dated 21.02.2000; and

Whereas, feeling aggrieved, with the rejection order dated 21.02.2000, he filed SWP NO. 2054/2002 titled Mohammad Parvez V/s State challenging rejection order; and

Whereas, the Hon'ble High Court vide judgment dated 18/12/2017 in SWP NO. 2054/2002 titled Mohammad Parvez v/s State gave the verdict, the operative part of which reads as under:-

"Accordingly, this petition is disposed of with a direction to the respondents to consider the claim of the petitioners in terms of averments made in the writ petition and having regard to judgment passed by Division Bench of this Court in LPA(S) No. 204/95 c/w LPA (S) No. 123/99 titled Public Service Commission v/s Shabir Ahmed and others alongwith connected matters decided on 09.09.1999, provided the same is applicable to the case of the petitioners. Let decision be taken within a period of six weeks from the date a certified copy of this order alongwith aforesaid judgment is made available to the respondents by the petitioner. "

Whereas, the mentioned incumbents in the judgment dated 18.12.2017 in SWP No. 2054/2002 titled Mohammad Parveez v/s State i.e. Shri Shabir Ahmed and Sher Mohd Khan had also not figured in the selection list, however, they expected their inclusion in the panel on the basis of being Schedule Tribe (ST) category candidates, as reservation to ST category candidates in direct recruitment had come into force vide SRO 205 of 1991. They filed writ petition before the Hon'ble High Court of J&K, and writ petition was decided as under: -

"If the petitioners as a result of such consideration and on the basis of reservation as indicated above, make a mark and succeed in getting to the relevant zone of consideration, the natural consequences of issuing appointment order in their favour shall follow. The needful in all respects shall be done within a period of six months from today."

Whereas, the Division Bench of this Hon'ble Court in LPASW no. 22/2018 c/w LPASW Nos. 23/2018, 25/2018, 26/2018, 27/2018 and 07/2018 titled Sheena Shah V/s State and others has held as under:-

"The Argument is not acceptable because once a process of admission has been initiated in accordance with applicable rules, same has to be concluded in accordance with rules as were in place. Amended Rule 17 has an effect vis-à-vis position of the reservations. Though unamended Rule 17



operates harshly but in absence of challenge thereto, same has to be applied as being in place when admission process was initiated because Rule 17 amended on 30th January, 2018, will apply to the next process of admission not to the Admission 2018 already initiated".

Whereas, besides, the selection process is to be conducted by the Selection agencies i.e. Public Service Commission and upon the recommendation by the Public Service Commission, this department issues the appointment order. In this case, no such recommendation have been made by the Public Service Commission in respect of the petitioner and hence no appointment order can be issued by this department; and

Whereas, The Jammu and Kashmir Reservation Rules, 1994 commenced under SRO 126 dated 28.06.1994 by General Administration Department providing for reservations in various classes/categories of the services in Govt. Jobs/direct recruitment to "The Residents of areas adjoining Line of Actual Control". Rule 10 of the part-II, Rule 10 of SRO 126 dated 28.06.1994 reads as under:-

"PART II"

RESERVATION FOR APPOINTMENT BY DIRECT RECRUITMENT.

10. Except as otherwise provided in these rules, available vacancies shall be reserved for the direct recruitment in each service, class, category and grade in favour of permanent residents of the state belonging to any of the below mentioned categories which shall, as nearly as possible, constitute the percentage of available vacancies shown against each:-

- | | | |
|---|-----|-----|
| a. Scheduled Castes | ... | 8% |
| b. Schedules Tribes | ... | 10% |
| c. Socially and educationally backward classes (other than scheduled cases and scheduled tribes). | | |
| (i) Weak and under privileged Classes. (Social Castes) | ... | 2% |

- (ii) Residents of areas adjoining
Line of Actual Control ... 3%
- (iii) Residents of Backward areas ... 20%

Whereas, at the time of reference of vacancies (i.e. 18.08.1987) and issuance of selection list by the PSC dated 03.02.1993, SRO-126 dated 28.06.1994 was not in force. Hence, the plea of the petitioner on this score is not maintainable and not covered under consideration zone as SRO 126 cannot be implemented retrospectively; and

The plea of the petitioner has been examined and considered in light of the Hon'ble Court orders, rule position and relevant record has been found without any merit.

By order of Government of Jammu and Kashmir.

Sd/-

(Shailendra Kumar) IAS,
Principal Secretary to Government


No. PW(R&B)Legal/269/2018

Dated: 26 .06.2020

Copy to the:

1. Financial Commissioner, Finance Department.
2. Joint Secretary, MHA(JK) Government of India.
3. Commissioner Secretary to Government, PHE/ I&FC Department.
4. Director Archeology Archives and Museums, Jammu & Kashmir.
5. Chief Engineer, PW(R&B) Department Jammu/Kashmir.
6. Chief Engineer, Mechanical Engineering Department, Jammu/Kashmir.
7. Chief Engineer, PHE/ I&FC Jammu/Kashmir and RTIC Jammu.
8. Chief Engineer UEED Jammu/Kashmir.
9. Private Secretary to Commissioner/ Secretary to Government, PW(R&B) Department.
10. Government Order File/ Stock file.


(Rajnish Kumar), KAS

 Additional Secretary to Government,
Public Works(R&B) Department