



Government of Jammu and Kashmir
Public Works (R&B) Department
Civil Secretariat, J&K

**Subject: Implementation of Judgment of Hon'ble Supreme Court
in a case titled Orissa Lift Irrigation Corporation Limited
V/s Rabi Sankar Patro and others dated 22-01-2018.**

Government Order No. 37-PW(R&B) of 2023
Dated:- 20.01.2023.

Whereas, the J&K Engineering (Subordinate) Service vide SRO No. 297 PW(R&B) of 2006 Recruitment Rules, among other things provides as under:-

"A Junior Engineer Grade-II Diploma Holder after acquiring AMIE Section (A&B) shall be treated as degree holder for the purpose of seniority from the date of completion/passing of AMIE Section (A&B) Course."

Whereas, a score of Engineers were appointed as Junior Engineer (Civil) under diploma holder category time to time started approaching the department for accepting their degree and for including their name in the seniority list of degree holders Junior Engineers (Civil). These Engineers have obtained their Bachelors of Engineering through correspondence mode from Vinayaka Mission Research Foundation (VMRF), Salem, Tamil Nadu and from other deemed universities through distance mode in the year (2006-07); and

Whereas, as per J&K Engineering Service (Gazetted) Recruitment Rules 2006 issued vide SRO No. 297 PW(R&B) of 2006, AMIE degree obtained through Institute of Engineering is accepted by the department; and on declaring such Junior Engineer -Diploma holders as Degree Holders, (Degree holders) are incorporated in the seniority list of JE and their career progression goes as per recruitment rules;

Whereas on the above analogy, vide Government Order No. 245-PW(Hyd) of 2008 dated 05-06-2008 among others, the followings JEs(Civil) Diploma Holders borne on the establishment of the Public Works (R&B) Department were treated as Degree Holders having acquired degree in Civil Engineering through distance mode of education.

And vide Government Order No 216-PW(R&B) of 2014 dated 05-06-2014 the below mentioned Engineers were placed as I/c Assistant Engineer with the following conditions:-

| S.No | Name of the Engineer | Session /Year of passing |
|------|-----------------------|--------------------------|
| 1. | Delair Singh | 2006 |
| 2. | Purshotam Kumar Joshi | 2006 |
| 3. | Vijay Kumar | 2006 |
| 4. | Suhail Ahmad | 2006 |
| 5. | Vikas Kotwal | 2006 |
| 6. | Amitpal Singh | 2006 |
| 7. | Ishpal Singh | 2006 |
| 8. | Tulsi Das Sharma | 2006 |
| 9. | Anushman Sharma | 2006 |
| 10. | Pawan Kumar Bogla | 2006 |
| 11. | Ghulam Qadir | 2006 |
| 12. | Sudhir Sharma | 2006 |
| 13. | Irhsad Ahmad | 2006 |
| 14. | Arvind Sharma | 2006 |
| 15. | Pankaj Sharma | 2006 |
| 16. | Satish Kumar Jamwal | 2006 |
| 17. | Anil Gandota | 2006 |
| 18. | Manohar Lal | 2006 |
| 19. | Kewal Singh | 2006 |
| 20. | Suresh Chander | 2006 |
| 21. | Ashok Kumar Sharma | 2006 |
| 22. | Rakesh Sethi | 2006 |
| 23. | Jugal Kishore Koul | 2007 |


20.1.23

- i. The placement of the following JE(Civil) as I/C AEs(Civil) in their own pay and grade till the posts are filled up in accordance with rules through DPC.
- ii. The above placements are subject to the conditions that they shall not have any preferential claim to hold the post on substantive basis as and when the same are filled up on the recommendations of the DPC/PSC. These placement are also subject to the outcome of writ petition (s) ,if any pending before any competent court (s) of law;
- iii. Consequent upon higher placement as I/C AE, these engineers shall continue at their present place of posting till further orders.

Whereas these Engineers started approaching the department for accepting their degrees and for inclusion of their names in the seniority list of Junior Engineers (Civil).

Whereas, vide different SWPs filed in Hon'ble High court titled Arun Gupta vs State (SWP 963/2010 and 2166 of 2012); titled Sampuran Singh V/s State and others (SWP 798/2011); and (SWP 919/2013) titled Gh. Qadir and ors vs State and the issue of acceptance of degrees from Vinayaka Mission Research Foundation were raised by these Engineers .The earlier petitions of 2012 were disposed by the Hon'ble High court for consideration and were rejected by the department vide Govt. No. 285-PW(R&B) of 2011 dated 18.08.2011 for being devoid of merit. Simultaneously the department filed LPA before Hon'ble Division Bench which was dismissed vide order dated 06.03.2012 with the direction to comply directions of Learned single Judge. Aggrieved of this order passed by Hon'ble Division Bench, the department preferred SLP No. 22947-22948/2012 titled J&K V/s Arun Gupta and others. And Hon'ble Supreme Court dismissed the said SLP on technical grounds vide Order dated 14.01.2013, declining to exercise its powers under Article 136 of the constitution and declined to interfere with the orders to Hon'ble High court; and

Whereas, after a chain of communications with General Administration Department, Law Department and Vigilance Organization a high Level committee was constituted under the Chairmanship of Hon'ble Minister of R&B with Hon'ble Minister of PHE & IFC, Administrative Secretary of General Administration Department, Secretary R&B, Secretary Law as its members to take a holistic view on the matter due to multiplicity of litigations and stay granted by the Hon'ble high court in SWP titled Gh. Qadir and ors vs State, (SWP 919/2013). The high level committee after deliberations decided as under:-

"It was recommended that the Engineering Degrees acquired through distance mode of education shall be recognized

in accordance with the provisions of SRO 339 of 2005 issued by the Higher education Department read with Government Order No. 252-HE of 2012 dated 30.05.2012 as already decided by the Cabinet for the purpose of employment/promotions in the State of J&K excluding those acquired from off-campus."

Whereas, in view of the above referred decision taken in the High level meeting, the department vide letter No. PW(R&B)NG/90/2010 dated 21.02.2014, requested the authorities of concerned institutions to indicate whether these Engineers have acquired Degree in Civil engineering from In-campus/off-campus; and

Whereas, in response to the said communication, the Director of concerned Institution vide letter No. VMU/DDE/413 dated 25.02.2014 conveyed that Distance Education Program are being run directly from the University headquarter only. Consequently, thereupon the matter was taken up with the Department of Law, Justice and PA, who vide their U.O No. LO (Ser) 2012/56- PW(R&B) dated 22.04.2014 advised as under:-

"Returned. Department is advised to dispose off the issue in light of the decision taken in the meeting held on 10.12.2013 in which it was decided that the Engineering Degrees acquired through Distance Mode of Education shall be recognized in accordance with the provisions of SRO-339 of 2005 issued by Higher Education Department read with Govt. order No, 252-HE of 2012 dated 30.05.2012 as already decided by the cabinet for the purposes of employment/promotions in the State of J&K excluding those who acquired such degrees from the off-campus".

Whereas, based on the direction of the Hon'ble Court supra and the decision taken in the high level meeting dated 10.12.2013, coupled with the advice of Department of law, Justice and PA, it was decided to accept the degrees of petitioner(s) and his counterparts in the department from the date these petitioners had obtained the degrees and accordingly vide govt. Order No. 216-PW(R&B) of 2014 dated 05.06.2014, these JEs were placed as I/c Assistant Engineer (Civil) in own pay and grade; and

Whereas, the inclusion of their degree from distant mode/ through correspondence, entails amendments in the recruitment rules mention about AMIE only, so the issue remained under consideration in the department; and

Whereas, in the meanwhile the department received a copy of judgment dated 03.11.2017 passed by the Hon'ble Apex Court in bunch of appeal

20.1.23

c/w appeal titled Orissa Lift Irrigation Corporation Limited V/s Rabi Sankar Patro and Others, where under the Hon'ble Supreme court while accepting the view of Punjab and Haryana High Court in Kartar Singh's case has set aside the ex-post facto approvals granted by UGC in the cases of the candidates enrolled during the academic session 2001-2005 and directed that the Degree in Engineering awarded by the concerned deemed universities stands suspended with further direction that the AICTE shall devise the modalities to conduct an appropriate test/ tests both in written as well in practical through the National Institutes of Technology in respective States where ever the students are located. The operative part of which reveals as under:

Para 46:

"Having found the entire exercise of grant of ex-post-facto approval to be incorrect and illegal, the logical course in normal circumstances would have been not only to set aside such ex-post-facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of courses leading to award of degrees in Engineering. However, since 2004 UGC Guidelines themselves had given liberty to the concerned Deemed to be Universities to apply for ex-facto approval, the matters is required to be considered with some sympathy so that interest of those students who were enrolled/ during the academic session 2001-2005 is protected Though we cannot wish away the fact that the concerned Deemed to be Universities flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the over bearing interest of the concerned students persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of said ex-post-facto approval However, the fact remains that the facilities available at the concerned Study centre's were never checked nor any inspections were conducted. It is not possible at his length of time to order any inspection. But there must be confidence and assurance about the worthiness of the concerned students. We, therefore deem it appropriate to grant some chance to the concerned students to have their ability tested by the authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE-UGC in the manner indicated hereinafter. Further every single advantage on the basis of that degree hall also stand suspended"

Para 47:

The AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test/tests both in written examination as well as in practical for the concerned students admitted during the academic sessions 2001-2005 covering all the concerned subjects. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May- June, 2018 or on such dates as AICTE may determine. Not more than two chances be given to the concerned students and if they do not pass the test/tests their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test/tests, the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the concerned Deemed to be University within a month of the exercise of such option. The students are given time till 15th of January, 2018 to exercise such option. The entire expenditure for conducting the test/tests in respect of students who wish to undergo test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018. If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the concerned candidates. We make it clear at the cost of repetition that if the concerned candidates do not clear the test/tests within the time stipulated or choose not to appear at the test/tests, their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however any monetary benefits or advantages in that behalf shall not be recovered from them."

Whereas consequent upon the said judgment several reviews petitions were filed before the Hon'ble Supreme Court against the said judgment and while accepting the plea in review M.A no 38 of 2018 in C.A no 17907/2017 the Hon'ble High Court vide order dated 22-01-2018 has been pleased to direct as under:

"We therefore, as one time relaxation in favor of those candidates who were enrolled during the academic years 2001-2005 and who, in terms of the judgment are eligible to appear at the test to be conducted by AICTE direct:

a. All such candidates, who wish to appear at the forthcoming test to be conducted by AICTE In May-June 2018 and who exercise option in appear at the test in terms of the judgment, can retain the degree in question and all the advantages flowing

there from till one month after the declaration of the result of such test or till 31.07.2018 whichever is earlier.

b. This facility is given as one time exception so that those who have the ability and can pass the test in the first attempt itself should not be put to inconvenience. If the candidates pass in such first attempt, they would be entitled to retain all the advantages. But if they fail or choose not to appear, the directions in the judgment shall apply, in that the degrees and all advantages shall stand suspended and withdrawn. At the cost of repetition, it is made clear that no more such chance or exceptions will be given or made, They will undoubtedly be entitled to appear on the second occasion in terms of the judgment but this exception shall not apply for such second attempt.

c. We direct AICTE to conduct the test in May-June 2018 and declare the result well in time, in terms of our directions in the judgment and this order. AICTE shall however extend the time to exercise the option to appear at the test suitably'.

Whereas AICTE issued a public notice on its website exhorting upon all students /candidates enrolled during the academic session in the aforementioned University to register on AICTE Website www.aicte.india.org for appearing in the examination in the months of June & December, 2018 across India in NIT, PEC Chandigarh and Anna University, to validate the degrees awarded by them; and

Whereas vide letter no F-no 13-60/P&AP/SC-Legal/Dist.Edu/2019/96B dated 26-04-2019 AICTE has clarified that the examination of both the phases i.e June & Dec 2018 were successfully completed in a scheduled time. The result was declared in July 2018 for the first phase and in Feb 2019 for the 2nd phase of examination after conducting of examination /test the result was published and uploaded on the website and all the organization/government department were requested to verify the results by visiting the list of successful candidate on AICTE website and also the online certificate issued to them; and

Whereas ,vide Government Order no 38-PW(R&B) of 2019 dated 14-01-2019 and Government Order no 459-PW(R&B) of 2019 dated 22-10-2019 the degrees of AEs/JE who have acquired Degrees through Vinayaka Mission Research Foundation, Tamil Nadu (VMRF) were accepted by the department from the date they have qualified their degree.

Whereas vide Notice no PW(R&B)/Legal/135/2019 dated 04-12-2020 all engineering graduates of Public Works (R&B) Department who have obtained degrees through Distance /correspondence/non-regular mode from the universities/academic bodies other than AMIE, were informed through notice to submit their degrees to the department through their

respective Chief Engineers/HOD within a period of (07)days for genuineness and validity of the degree from the concerned institutions in light of the Judgment of Hon'ble Supreme Court in a case titled Orissa Lift Irrigation corporation Vs/Rabi Sankar Patro and others dated 22-01-2018. It was further informed to all such candidates that any further Placement/Promotion /Confirmation to higher post shall remain on hold till verification/genuineness/validity of their degrees is not received from concerned Institutions/academic bodies in light of the above mentioned Judgment of Hon'ble Supreme Court; and

Whereas in light of directions passed by Hon'ble Court it is more than clear that two chances were given to the students to pass the test, which is to be held under the joint supervision of AICTE-UGC in the manner indicated therein. The advantages that have accrued on the basis of the degree from the deemed university of Rajasthan, would stand suspended during that period and if the candidates clear the test within the stipulated time, which is two attempts, all of the advantages or benefits shall be restored to the candidates .

Whereas the department vide Govt. order no. 38-PW(R&B) of 2019, dated: 14-10-2019, accepted the degrees of engineers who successfully passed the said test/examination of the AICTE.

Whereas one more chance was given to these engineers to produce their valid B-Tech Degree before the department vide this department notice issued vide no PW(R&B)/Legal/135/2019 dated 04.12.2020 of Public Works Department till date.

Whereas following engineers who either failed to pass the said test or to appear in the said test, thereby losing a chance to be degree holder:-

| S.No | Name of the Engineer |
|------|----------------------|
| 1. | Delair Singh |
| 2. | Vijay Kumar |
| 3. | Suhail Ahmad |
| 4. | Vikas Kotwal |
| 5. | Amitpal Singh |
| 6. | Ishpal Singh |
| 7. | Tulsi Das Sharma |
| 8. | Anushman Sharma |
| 9. | Sudhir Sharma |
| 10. | Irhsad Ahmad |
| 11. | Arvind Sharma |

[Handwritten signature]
20.1.23

| | |
|-----|---------------------|
| 12. | Pankaj Sharma |
| 13. | Satish Kumar Jamwal |
| 14. | Anil Gandota |
| 15. | Manohar Lal |
| 16. | Suresh Chander |
| 17. | Ashok Kumar Sharma |
| 18. | Rakesh Sethi |
| 19. | Jugal Kishore Koul |

Now, therefore in compliance to the directions passed by Hon'ble Supreme Court ibid the placement order of I/C Assistant Engineers (Civil) issued vide Government Order No. 216-PW(R&B) of 2014 dated 05.06.2014 in respect of Engineers, who have failed to appear in the test/exam or have not cleared the said exam /test conducted by the AICTE during June and December 2018, is hereby withdrawn/cancelled ab-initio.

By order of the Government of Jammu and Kashmir

Sd/-
Shailendra Kumar) IAS
Principal Secretary to the Government

No. PWD-LIT/404/2022-05-PWD (7029482)

Dated: 20.01.2023

Copy to the:-

1. Administrative Secretary to the Government, Department.
2. Director Anti Corruption Bureau, J&K.
3. Director, Archeology, Achieves and Museum, J&K.
4. Shri Ravinder Gupta, Additional Advocate General, J&K High Court.
5. Chief Engineer, PW(R&B) Department, Jammu/Kashmir.
6. Chief Engineer PMGSY, JKRRDA, Jammu/Kashmir.
7. OSD to Advisor (B) to Hon'ble Lieutenant Governor, J&K
8. Private Secretary to Principal Secretary to the Government, PW (R&B) Department.
9. Senior Law Officer, PW(R&B) Department for information and necessary action.
- 10 Incharge web site, PW(R&B).
- 11 Government Order file/Stock file/Monday Return.

Copy also to the Joint Secretary (J&K), Ministry of Home Affairs Government of India.


(Dr Zeba Suleman) IAS
Under Secretary to the Government