



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

Subject: C.P. No. 166/2022 in O.A. No. 310/2022 titled Ravinder Kumar Raina Vs UT Shailendra Kumar and Ors.

Government Order No: 353 -PW(R&B) of 2024
Dated: 11 -12.2024

WHEREAS, the applicant namely Mr. Ravinder Kumar Raina (Razdan) filed an O.A. No. 61/1661/2021 before the Hon'ble Central Administrative Tribunal, Jammu seeking directions for his regularization, release of all pensionary benefits and arrears of salary. The Hon'ble Tribunal vide Order dated 03.11.2021 disposed of the O.A. with the following directions:-

"Looking to the limited prayer made by the learned counsel for the applicant, the O.A. is disposed of with directions to the respondents to treat the O.A. as the representation of the applicant and consider the case of the applicant for regularization w.e.f. 01.04.1999 in the same manner and on the same terms and conditions as has been done in the case of the private respondent and also to consider the release of the pensionary benefits including pension, gratuity, commutation and encashment of leave salary with interest at the rate of 12% per annum from the date of his retirement on 31.05.2018 in accordance with rules. The respondents will pass a reasoned and speaking order in this order and communicate the same to the applicant within a period of two months from the date of receipt of a certified copy of this order".

AND WHEREAS, in compliance to the above Order passed by the Hon'ble Tribunal, the claim of the applicant was considered vide Government Order No. 51-PW(R&B) of 2022 dated 08.02.2022;

AND WHEREAS, the petitioner filed another O.A. No. 310/2022 before the Hon'ble Central Administrative Tribunal, Jammu Bench challenging the order dated 08.02.2022 and the Hon'ble Tribunal disposed of the O.A. vide Order dated 06.04.2022 with the following direction:-

"... On considering the above submissions of counsels for the parties, this O.A. is disposed of at the admission stage, without expressing any opinion on the merits of the case, directing the respondents, particularly General Administration Department, to expeditiously decide the case of the applicant for regularization of his service and grant of pensionary benefits after obtaining necessary clarification and documents from the Chief Engineer. This decision should be taken within four weeks from the date of receipt of a certified copy of this order and within one week thereafter to communicate it to the applicant. No costs".

AND WHEREAS, in compliance to the above Orders of the Hon'ble Tribunal and to ascertain the factual position vis-a-vis., claim of the applicant, the Government appointed an Inquiry Officer in the matter vide Government Order No. 289-PW(R&B) of 2022 dated 24.08.2022;

AND WHEREAS, the Inquiry Officer, submitted its report vide No. PS/US/Z/03/2022 dated 12.12.2022, and the findings of the same are summarized as under:-

1. The applicant has been engaged in SKIMS, Soura by the Chief Engineer Project Organization, J&K, Soura vide Order No. CEP/86 of 1881 dated 07.08.1981. The SKIMS, Soura being an autonomous Organization had to consider the case and not the Public Works(R&B) Department.
2. The applicant in the garb of migration has managed his further continuation in the Public Works (R&B) Department also construction of his service book, illegally.
3. The applicant has submitted contrasting claims with regard to initial engagement. In one reply submitted to the Inquiry Officer, he has claimed to have been engaged on the establishment of SKIMS, Soura , while in the other reply, he claimed to have been engaged on the establishment of the Public Works (R&B) Department.
4. As per the Muster Sheets, he has drawn wages as Work Charge Works Supervisor w.e.f., August 1981 to 1987 from PW(R&B) Division-1st. He is seeking regularization without producing the initial engagement order and continuity order.
5. He is claiming regularization on the basis 'service book', which has been constructed in violation of rules and the genuineness of entries in the said service is also under suspicion, as the then Assistant Engineer, PW(R&B) Division-1st has denied signing the document. His name has also not been found figuring in the proposed conversion of service from daily wager/ work charged to the regular establishment, submitted by the then Chief Engineer, PW(R&B) to the Administrative Department.
6. There are certain entries in the service book, which are contrary to the reply filed by the applicant.
7. Despite of having managed the construction of a service book in violation of rules, his continuous service of 7 years could not be established for want of Muster Rolls, initial engagement order, and also the continuity order.

AND WHEREAS, the findings of the Inquiry Officer reveals that the applicant was never engaged in any capacity in the PW (R&B) Department. The applicant has managed his continuation in the Public Works (R&B) Department by dubious methods playing misrepresentation upon the Department;

AND WHEREAS, it has also surfaced during examination of case of applicant that he has also managed construction of his service book illegally, genuineness of which has not been authenticated by the officer who has purportedly signed the service book. That even otherwise construction of service records does not give any indispensable right to the applicant to claim inherited right for regularization nor construction of such record ipso-facto bring the applicant on the regular establishment of the Department unless a proper regularization order has been approved and issued by the competent authority under a valid and existing regularization policy;



AND WHEREAS, it has also been found that the engagement of the applicant has not been made against any clear vacancy, which is a pre-requisite for consideration of a cases under J&K Civil Service (Special Provisions) Act, 2010 and therefore the claim of the applicant is not tenable;

AND WHEREAS, though the applicant was never eligible to be considered for regularization under the provisions of J&K Civil Service (Special Provisions) Act, 2010 or any other policy, even though and otherwise the said Act now stand repealed by way of J&K Reorganization Act, 2019 and therefore the applicant cannot seek recourse to non-existing repealed act/ policy in order to seek regularization of his services;

AND WHEREAS, while examining the case of the applicant it has been found that the applicant was not engaged by adopting due process of law as such his claim for regularization cannot be sustained when the basis of engagement in itself is de hors law;

AND WHEREAS, it has been found that the applicant has not been engaged by the competent authority or in accordance with the mandate of law. The engagement of the applicant has been made by the incompetent authority. As such when the engagement in itself is bad in the eyes of law, the applicant is not entitled for regularization;

AND WHEREAS, the case of the applicant has also been examined viz-a-viz., order of the Tribunal passed in OA 321/ 2023 and it has been found that the case of the applicant is not identical to the facts and circumstances of the case of the applicants in OA No. 321/ 2023 and therefore no analogy can be extended to the applicant;

AND WHEREAS, the Hon'ble Supreme Court of India has laid the law in the case of Umarani Vs Registrar, Coop. Societies (2004) 7 SCC 112 that:-

"...when appointments were made in contravention of mandatory provisions of the Act and statutory Rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointment. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or anybody or authority governed by a statutory Act or the rules framed thereunder. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed...";

AND WHEREAS, the Hon'ble Supreme Court of India has laid a law in the case of State of Karnataka Vs Uma Devi (3), (2006) 4 SCC 1 that:

"...when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the make such a promise. It is also obvious that the theory cannot be appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by

following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally invoke to seek a positive relief of being made permanent on the post. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed...";

AND WHEREAS, Hon'ble Supreme Court in the same case also held that:

"...a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post. The term "temporary employee" is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation;

AND WHEREAS, in Tariq Ahmad Mir and Ors Vs State of J&K and Ors 2007 JKJ (HC) (2) 584 it was held that:-

" ... Regularization cannot be made to the post de-hors the Rules and an employee cannot invoke the jurisdiction of the court in order to seek appointment and that too de-hors the Rules.";

AND WHEREAS, the Hon'ble Supreme Court in case titled "Secretary, State of Karnataka Vs. Uma Devi" (2006) 4 SCC has directed that any public appointment has to be in terms of the Constitutional Scheme. The important and notable points of the judgment are as under:-

- I. Equality of opportunity is the hallmark for public employment and it is in terms of the Constitutional scheme only (Para 1).
- II. The filling of vacancies cannot be done in a haphazard manner or based on patronage or other considerations (Para 2).
- III. The State is meant to be a model employer and can make appointments only in accordance with the rules framed under Article 309 of the Constitution (Para 5).
- IV. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, or anybody or authority governed by a statutory Act or the Rules framed there under.



Regularization, furthermore, cannot give permanence to an employee whose services are ad hoc in nature. The fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. (Para 27).

- V. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (Para 30).
- VI. If it is a contractual appointment, the appointment comes to an end at the end of the contract (Para 34).
- VII. Regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further by-passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme (Para 44).
- VIII. In cases relating to service in the commercial/ taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their Cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them (Para 46).

AND WHEREAS, it has been also found that the grant of pension and other retrial benefits can only be extended upon the incumbent who holds the Civil Posts and whose service is regulated by J&K CSR and other recruitment/ service rules. Since, it is the settled legal position that the person who is holding a temporary post in any capacity in the Department does not hold the civil post and the provisions of J&KCSR or other service rules are not applicable on him, as such,

and since the applicant was not holding a civil post/ substantive post of the Department as such his claim for grant of pensionary benefits is also not covered under rules.

NOW THEREFORE, in view of the above factual position coupled with the settled legal position on the issue and in compliance to order dated 06.04.2022, passed by the Hon'ble Central Administrative Tribunal, Jammu Bench in O.A. No. 310/2022, and in light of the findings of the Inquiry committee constituted vide Government Order No. 289-PW(R&B) of 2022 dated 24.08.2022, the claim of the petitioner for regularization and his further claim for release/ grant of pensionary/retiral benefits after having being through considered in the Department has been found devoid of any merits and hence rejected.

By Order of the Government of Jammu and Kashmir

Sd/-

(Bhupinder Kumar)IAS

Secretary to the Government
Public Works(R&B) Department

Dated: 11.12.2024

No: PWD-NGAZ0CIV/12/2021-05 [E-16594]

Copy to the:-

1. Additional Chief Secretary to the Hon'ble Chief Minister, J&K.
2. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
3. Joint Secretary (JKL), Government of India, New Delhi.
4. Director Archives, Archaeology & Museums, J&K.
5. Chief Engineer, PW(R&B) Department, Zone Jammu.
6. Additional Advocate General, J&K, Jammu.
7. Senior Law Officer, Public Works (R&B) Department.
8. Private Secretary to the Secretary to the Government, Public Works (R&B) Department.
9. Concerned/Applicant in the O.A. No. 310/2022.
10. I/C Website, Public Works (R&B) Department.
11. Government order/stock file/Monday return.

(Hamid Hameed)

Under Secretary to the Government
Public Works (R&B) Department

HA