



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

Subject: CP No./2022 in OA No. 61/150/2022 titled Ganesh Dutt & Ors V/s Mr. Shailendra Kumar & Ors.

Government Order No. 364-PW(R&B) of 2023
Dated: 01.09.2023

Whereas, the Public Works (R&B) Department received a copy of the contempt petition filed by petitioner Ganesh Dutt and others against non-implementation of order dated 23.02.2022 passed by the Hon'ble CAT in OA No. 61/150/2022 titled Ganesh Dutt & Ors V/s Mr. Shailendra Kumar & Ors, operative portion of which speaks as under:-

"Looking to the limited prayer made by the learned counsel for the applicants, the OA is disposed off with direction to competent authority amongst the respondents to treat this OA as representation of the applicants and dispose of the same by passing a reasoned and speaking order within a period of 4 weeks from the date of receipt of a certified copy of this order. While considering the case of the applicants, the respondents would give special emphasis to page number 32 (annexure No. 4 to the OA)"

Whereas, on receipt of the above order, the case was examined in terms of official record and the Honorable CAT directions mentioned above and it came to fore that the case relates to regularization of Mr. Ganesh Dutt and others, Contractual Junior Engineer in terms of Provisions of J&K Civil Services (Special Provision) Act 2010, and

Whereas, the Chief Engineer PW(R&B) Department Jammu vide communication No. CEJ/Estab/1945-46 dated 06.12.2016 intimated that Mr. Ganesh Dutt was appointed as contractual Junior Engineer vide Deputy Commissioner/CEO, LHDC Leh order No. 13(P)E/2009(501) dated 22.09.2009; and

Whereas, vide U.O. No. PW(R&B)NG/92/2016 dated 16.01.2018, the case was referred to Finance Department (Empowered Committee) for regularization of the incumbent in terms of provisions of J&K Civil Services (Special Provision) Act 2010; and

Whereas, in turn the Finance department vide U.O.No. A/Spl. Cell-15(2018)-405 dated 27.11.2018 conveyed as under:-

The case of the incumbent was placed before the Empowered Committee its 61st ECM held on 25.04.2018 and the decision stands already conveyed to the department vide No. A/105(10)-389/14 dated 14.06.2018 the copy of the same is placed alongside of the file."

Whereas, as per the minutes of 61th meeting of the Empowered committee held on 25.04.2018 under the chairmanship of Principal Secretary, Finance Department, Mr Ganesh Dutt S/o Bansil Lal R/o Raipura Hiranagar Kathua, contractual Junior Engineer was cleared by the committee subject to the verification of genuineness of certificates/appointment orders and other documents provided by the department and verification of following conditions:-

- i. The appointments have originally been made against clear vacancy.
- ii. Appointments have been made by the competent authority or initial appointment made by authority not competent to engage is got regularize.
- iii. The status of appointment is only contractual consolidated or adhoc.
- iv. The employee contours as such on the appointed date.
- v. The appointees possessed the requisite qualification and eligibility for the post on the date of initial appointment as prescribed under recruitment rules.
- vi. No disciplinary or criminal proceedings are pending against them.
- vii. The appointees have completed seven years of service on the appointed date.
- viii. The appointees are not part time or seasonal including those whose wages are paid out of Local funds or contingent grants.

Whereas, vide this department letter dated 26-12-2018, the Chief Engineer PW(R&B) Department Jammu was requested to clear the conditions laid down by the Empowered committee, and

Whereas, in turn, the Chief Engineer PW(R&B) Department Jammu vide communication No. CEJ/Estab/S/2369-70 dated 02.01.2019, furnished the following information:

- The appointment has originally been made against clear vacancy.
- Appointments have been made by the competent authority (Ladakh Autonomous Hill Development Council).
- The status of the appointment is only contractual.
- The employee continues as such on the appointed date to till date at PW(R&B) Division Samba.
- Qualification Diploma enclosed.
- No disciplinary or criminal proceedings are pending against them.
- The appointees have completed seven years as per Bio data given.
- The appointee's salary paid by 2059 MH of Salary.

Whereas, the case was examined in the department and it was found that the age of Mr. Ganesh Dutt as per his date of birth certificate issued by the J&K Board of School Education recorded therein as 30.04.1973 is 45 years 08 months and 02 days as on 01.01.2019, and

Whereas, the age limit for entry into Government Service is prescribed as 40 yrs under OM Category in terms of Government Order 586-GAD of 2014 dated 03-06-2014 and the regularization case of Mr. Ganesh Dutt was found involving relaxation of age limit by 05 years, 08 months and 02 days as on 01.01.2019, and

Whereas, the case was accordingly referred to the General Administration Department vide U.O dated 15.03.2019 alongwith note for submission to the then Hon'ble Governor through Chief Secretary in coordination with the following:

"As recommended by the Finance Department (Empowered Committee) vide No. 105(10)-389/14 dated 14.06.2018, sanction is hereby accorded to the regularization of contractual appointment of Mr. Ganesh Dutt S/O Bansilal R/O Raipura, Hiranagar, Kathua as Junior Engineer (civil) in the pay scale of Rs. 9300-34800 with grade pay of Rs. 4200/- pre revised in relaxation of upper age by 05 years 08 months and 02 days as on 01.01.2019 in terms of J&K Civil Services (Special Provisions) Act 2010, prospectively."

Whereas, in turn the General Administration Department vide U.O No. GDC- 40/CM/2018 dated 20.06.2019 returned the case with the following observations-

- i. Provide a copy of letter whereunder the name of the incumbent was recommended by the Empowered committee in the Finance Department for issuance of regularization order in terms of J&K Civil Services (Special Provisions) Act 2010.
- ii. Certify the conditions laid down in the minutes of 61st Meeting of the Empowered Committee held on 25.04.2018 issued under endorsement No. A/105(10)-389/14 dated 14.06.2018
- iii. Seek the fresh vigilance clearance of the incumbent.

Whereas, the Chief Engineer PW(R&B) Department Jammu vide this department letter dated 16.07.2019 was requested to furnish the requisite reply to the observations raised by the GAD as well as posting details from initial appointment to till date for obtaining fresh vigilance status of the petitioner and

Whereas, the Chief Engineer PW(R&B) Jammu vide letter No CEJ/Estab/S/553-54 dated 20.07.2019 furnished the requisite reply/documents as well as posting details; and

Whereas, the posting details of the official were forwarded to GAD (Vigilance) vide OM dated 23.08.2019 for obtaining vigilance clearance in respect of the petitioner; and

Whereas, the GAD (Vig) vide OM No. GAD(Vig)02/NOC/2019-PW(R&B)-V dated 17.10.2019 furnished the vigilance clearance among others and reported that there is no preliminary Enquiry/ FIR pending against Mr Ganesh Dutt, Junior Engineer, PW(R&B) Division Samba; and

Whereas, after fulfilling all the requisite formalities, the case was again referred to GAD vide UO No. PW(R&B)/NG/92/2016 dated 06.01.2020, for placing the same before the Hon'ble Lieutenant Governor through Chief Secretary in Coordination for seeking approval to the relaxation of upper age limit by 05 years 08 month and 02 days as on 01.01.2019 in favour of the petitioner; and

Whereas, the General Administration Department vide O.M No. GDC-265/CM/2017 dated 23.02.2021 intimated that the regularization schemes namely Jammu and Kashmir Daily Rated Workers/ Work Charged Employees (Regularization) Rules 1994, were notified vide SRO-64 of 1994 and repealed J&K Civil Services (Special Provisions) Act 2010 are under Administrative Scrutiny and under consideration and informed decision on the issue is to be taken in the matter; and

Whereas, subsequently, in view of the observations of the General Administration Department and Finance Department, official record viz a viz Hon'ble CAT directions, the department vide Government order No 177-PW(R&B) of 2022 dated 23-05-2022 issued a consideration order whereunder stipulated that the case of the petitioner shall be settled once decision on the continuation or otherwise of regularization schemes is taken by the General Administration Department; and

Whereas, the Deputy Advocate General, Jammu vide his office communication No HG/DAG/2023/6647 dated 18-07-2023 informed the department that the titled matter was listed for hearing on 10-07-2023 and the Hon'ble Central Administrative Tribunal has ordered that the Respondents directed to file fresh compliance after passing fresh orders as per Annexure-4 page 32 of the OA; and

Whereas, in the context of CAT directions passed on 10-07-2023, the titled matter was referred to the Law Department vide U.O. dated 18.07.2023 for necessary advisory who in turn vide U.O No.LAW-LIT7/593/2022-10 dated 27.07.2023 has returned the case file with the following advice:-



"Since the J&K Civil Services (Special Services) Provisions Act, 2010 has been repealed by passing of the Reorganization Act, 2019. The department is accordingly advised to bring on record the said fact before the Hon'ble CAT, Bench while filling a fresh compliance in terms of the judgement passed by the Hon'ble CAT order dated 23.02.2022 in OA No. 61/150/2022 titled Ganesh Dutt & Ors V/s UT of J&K and Ors."

Now, therefore in view of the observations of the General Administration Department, Finance Department & Department of Law, Justice & Parliamentary Affairs, official record viz a viz Honorable CAT directions, the case of the petitioner for his regularization has been examined and considered and it has been found that the same is devoid of merit as J&K Civil Services (Special Services) Provision Act, 2010 has been repealed and there is no legal instrument available through which regularisation can be affected.

By order of the Government of Jammu and Kashmir.

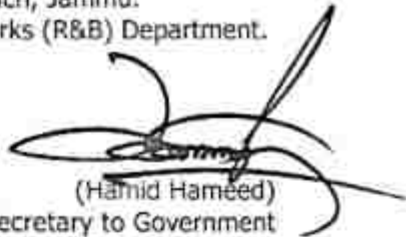
Sd/-
(Shailendra Kumar)IAS
Principal Secretary to Government
Public Works(R&B) Department

No:-PWD-LIT/443/2021-05

Dated: -01-09-2023

Copy to the:-

- 1) Principal Secretary to the Hon'ble Lieutenant Governor.
- 2) Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
- 3) Director, Archives, Archaeology and Museum Department, J&K.
- 4) Chief Engineer, PW(R&B) Department, Jammu
- 5) OSD with Advisor (B) to the Hon'ble Lieutenant Governor, J&K.
- 6) Senior Law Officer, Public Works (R&B) Department.
- 7) Advocate Abhimanyu Sharma, Central Administrative Tribunal Jammu Bench, Jammu.
- 8) Private Secretary to the Principal Secretary to the Government, Public Works (R&B) Department.
- 9) Concerned
- 10) I/C Website, Public Works (R&B) Department.
- 11) Government order/stock file (w.3.s.c.s)/Monday Return.


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





