



Union Territory of Jammu and Kashmir
Social Welfare Department
Civil Secretariat, J&K, Jammu.

Subject: SWP No. 1858/2018 titled Tanveer Zahid Vs State & Ors.

Government Order No: 07 -JK(SWD) of 2022
Dated 14 - 01 -2022

Whereas, the petitioner namely Tanvir Zahid, was initially appointed as Supervisor on adhoc basis on 1993 and was regularized vide Govt. Order No. 211-SW of 2014 dated 22.08.2014 on the recommendations of the Empowered committee constituted vide Govt. Order No. 1423-GAD of 2009 dated 14.10.2009 with immediate effect;

Whereas, the petitioner filed a writ petition bearing No. SWP No. 1858/2018 before the Hon'ble High Court of J&K at Srinagar, wherein she prayed that her services be regularized retrospectively. The Hon'ble High Court vide order dated 10.08.2018 disposed off the writ petition, which is reproduced as under:-

"a. The grievance of the petitioner in the instant writ petition is that she was appointed way back in the year 1993 as Supervisor in the respondent department against a clear vacancy. The employees who were either similarly situated with the petitioner or were junior to the petitioner were regularized from the date of their initial appointment or were regularized after completion of seven years of service under Govt. Order bearing No.1285-GAD of 2001 dated 06.11.2001 and have since been given promotions too, but the petitioner having a superior claim was not given similar treatment and was regularized only after 21 years of service in the year 2014, while as her juniors were regularized just after 2 years of their appointments.

b. Having regard to the grievance projected by the petitioner and relief sought for, this writ petition is admitted to hearing and taken up for final disposal and is disposed of with a direction to the respondents to accord consideration to the claim of the petitioner

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on the same analogy as has been evolved in the case of similarly situated persons within a period of four weeks from the date the certified copy of this order alongwith the copy of writ petition is made available to the respondents . Disposed of."

Whereas, the case of the petitioner has been examined in the department and it has been found that the services of the petitioner were regularized earlier vide Government Order No. 211-SW of 2014 dated 22.08.2014 on the recommendations of the Empowered Committee constituted vide Govt. Order No, 1423-GAD of 2009 dated 14.10.2009 and in terms of the J&K Civil Services (Special Provisions) Act, 2010.

Whereas, Section 5 of the J&K Civil Services (Special Provisions) Act, 2010 clearly provides **that the regularization of the eligible adhoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization."**

Whereas, the treatment earlier given to similar situated cases with regard to according retrospective effect for their regularization is not in consonance with the rules governing the subject and the Empowered Committee in the year 2014 has also recommended their regularization along with the petitioner prospectively i.e from the date issuance of Government Order.

Whereas, the recommendations of the Empowered Committee regarding regularization of services of Ms. Tanvir Zahid are very much within the framework of law and rules governing the field as there is no provision for retrospective promotion whatsoever in the relevant Act thereof;

Whereas, the Department has also initiated an enquiry to ascertain the reasons as to how selective retrospective effective has been accorded to the regularization in respect of other employees as mentioned in the aforementioned writ petition as they are also prima facie in violation of rules and laws governing the matter and therefore illegal and void;

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Whereas, a wrong done in the past cannot be allowed to perpetuate only on the Principle of parity and any such issue needs to be examined only in light of laws and rules relevant to the issue and it is the responsibility of the Government to take corrective action at the first opportunity available;

In view of aforementioned facts and circumstances and in compliance to the judgment passed by Hon'ble High Court vide its order dated 10.08.2018 in writ petition No. 1858/2018 titled Tanvir Zahid Vs State & Ors. the claim of the petitioner regarding grant of retrospective effect to her regularization hereby stands considered in light of extant rules and norms and is found devoid of any merit and against the provisions of relevant law and therefore, rejected.

By order of the Government of Jammu and Kashmir.

Sd/-


(Sheetal Nanda)IAS
Secretary to the Government
Social Welfare Department

Dated: 14 - 01-2022

No: SW/Lit/05/2021

Copy to the:-

1. Joint Secretary (JKL), Ministry of Home Affairs, Government of India.
2. Principal Secretary to the Government, General Administration Department.
3. Additional Advocate General, Hon'ble High Court, J&K, Srinagar.
4. Mission Director (ICDS) J&K, Srinagar.
5. OSD to Hon'ble Advisor (F), in-charge Social Welfare Department.
6. Senior Law Officer, Social Welfare Department for information.
7. Standing Council, Social Welfare Department, Hon'ble High Court Srinagar.
8. Pvt. Secretary to Secretary to the Government, Social Welfare Department.
9. Concerned
10. Official Website In-charge.
11. Government Order file/ Stock file (w.2.s.c)


14.1.2022
(Rehmatullah)

Under Secretary to Government
Social Welfare Department

14/1/2022