



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

Subject:- O.A.No.61/692/2022, titled Mohammad Aslam V/S U.T of J&K and Others and consideration thereof, in pursuance to the Order dated 21.02.2024, passed by the Hon'ble Central Administrative Tribunal Bench, Jammu.

Government Order No. **162** -JK (SWD) of 2024
Dated:- **03** -09-2024

Whereas, an Original Application bearing O.A No. 61/692/2022 came to be filed before Hon'ble Central Administrative Tribunal Bench, Jammu, by one Mr. Mohammad Aslam, Supervisor in ICDS and sought following reliefs:

- i. *To quash Order No.25-DGWCD of 2020 dated 30-07-2020 issued by respondent no. 02 Director General, Women and Child Development, by which the petitioner has been placed under suspension and attached in the office of District Programme Officer, ICDS, Reasi, by issuance of Writ of Certiorari;*
- ii. *to issue directions to the respondents to consider the case of petitioner for reinstatement as Incharge Child Development Project Officer, Mahore/Pouni the post on which the petitioner was working prior to the issuance of Order No.25- DGWCD of 2020 dated 30-07-2020 and to release the salary in favour of petitioner w.e.f the date of suspension by revoking the suspension order, by issuance of writ of Mandamus;*
- iii. *to declare the Order No. 25-DGWCD of 2020 dated 30-07-2020 issued by respondent no.02 Director General, Women and Child Development, by which the petitioner has been placed under suspension and attached in the office of District Programme Officer, ICDS, Reasi as ultra- virus, unconstitutional, arbitrary, unjust and contrary to the provisions of law, provisions of Principle of Natural Justice and Also contrary to the provisions of Article 14 and 16 of the Constitution by issuance of writ of Mandamus; and*

Whereas, the Department filed the reply/ objections in O.A No.61/692/2022, titled Mohammad Aslam V/s Social Welfare Department and Ors., before the Hon'ble Central Administrative Tribunal J&K, taking a stand that the applicant namely Mohammad Aslam, who is a Supervisor in ICDS, looking after the charge of CDPO, ICDS Project Mahore/Pouni, was suspended by Director General, Women and Child Development, vide Order No.25-DGWCD of 2020 dated 30.07.2020, pursuant to filing of FIR no. 59/2020, in the concerned Police Station, under sections 354, 354-A, 354-D of IPC, against the applicant on the allegations of sexual Harassment of Anganwadi Worker, posted at W.No.7 Sarkalla Dharni, Tehsil Chassana District Reasi; and

Whereas, keeping in view the mandate of the relevant Rules governing the field and Circular issued by GAD vide its No.48-GAD of 2000 dated 13.12.2000, a Committee was constituted, under the Chairpersonship of Commissioner Secretary to the Government, Social Welfare Department, vide Government Order No.40-JK(SWD) of 2022 dated 10.03.2022, to review the suspension case of the named official. In this regard, the Committee held its first meeting on 08.06.2022, having detailed deliberations on the issue. In the meeting it was observed that the trial against the said official, pertaining to allegations of sexual harassment of subordinate official, is still in the initial stage. As such, keeping in view the seriousness of the nature of case, any decision on the review of the suspension of the official was deferred till the next meeting, with the direction to Mission Director, Mission Poshan to provide the latest status of the Court case/proceedings and copy of charge sheet/ challan, produced by the Prosecution in the Learned Court, till then the suspension of the applicant was continued; and

Whereas, on receipt of the relevant information/record from the concerned quarter, in the matter, second meeting of the Committee, constituted for the purpose, was convened on 09.12.2022, to review the suspension of Mr. Mohammad Aslam, Supervisor, ICDS project Mahore/Pouni, District Reasi. In the said meeting, a threadbare discussion was held and the Competent Authority perused all the relevant record and considered the appropriate provisions of Law governing the field and keeping in view of the fact that although charge sheet/challan has been produced in the Trial Court, the outcome of the Trial Court may take considerable time and that official is under suspension since 30.07.2020, the Committee decided to reinstate the named official with the condition that the official should not be posted in the field, so that he does not have direct dealing with women workers. It was further decided that the period of suspension shall be decided after the outcome of the case pending adjudication before the Trial Court. In view thereof, the official/applicant was accordingly, reinstated vide Government Order No. 239-JK(SWD)of 2022dated23.12.2022, with a direction that he shall remain deployed in the office of DPO Doda, for further duties; and

Whereas, the Hon'ble Tribunal was apprised with the above stated position by the Department, in the reply/objections filed against the O.A No.61/692/2022, with a plea to dismiss the petition/application, filed by the official, as the same has become infructuous, pursuant to revocation of Suspension of the applicant vide Government Order No. 239-JK (SWD) of 2022 dated 23.12.2022. However, the Hon'ble Tribunal after considering all the facts was pleased to dispose of the petition/ O.A No.61/692/2022 with the observations, the operative part of which is reproduced as under:-

"...Having heard the learned counsel for the parties and perused the file, I deem it appropriate to dispose of this Original Application with a direction to the respondents to consider the case of the applicant for placing him as Incharge CDPO as he was working prior to his suspension keeping in view the statement made in the reinstatement order dated 23.12.2022 that allegations leveled against the applicant have been found to be fake and false by the inquiry officer. The respondents are also directed to consider releasing the consequential benefits in favour of petitioner w.e.f. the date of his suspension, as per relevant rules and instructions on the subjects." and

Whereas, the case of the applicant was considered in the light of relevant record and the rules governing the field and found that the applicant, prior to his suspension was posted as Supervisor and looking after the charge of ICDS project, Pouni, District Reasi, in terms of Government order No,76-SWD of 20-18 dated;-02-03-2018; and

Whereas, the Committee constituted in the Social Welfare Department for review of suspension cases has already taken a lenient view and has re-instated the applicant pending the outcome of the criminal case against him; and

Whereas, the record suggests that there has been a temporary arrangement wherein the applicant among others was deputed and given the responsibility to look after the charge of ICDS projects and the said arrangement was necessitated owing to make the ICDS Centers fully functional in order to effectively implement the centrally sponsored scheme for the well being of the beneficiaries, as there had been lack of sufficient staff to fill up the posts of CDPOs, in various ICDS centers and the Government never intended to grant Incharge, CDPO status to the named official, who was substantially a Supervisor in ICDS services, prior to his suspension. Besides, the look after arrangement as stated earlier, neither conferred any right to the incumbents to hold the post, nor the same could be conferred as promotion or Incharge arrangement having any claim of charge allowance; and

Whereas, the temporary arrangement talked about, did not confer any consequential monetary benefits, as there was no change in grade/ pay scale etc, which would entitle him to claim any benefit; and

Whereas, the reinstatement of applicant after his suspension was to the same position as 'Supervisor' in ICDS and placing his services in the office of DPO Doda did not mean any change in his position; and

Whereas, the charges of sexual harassment still stand against the applicant and charge sheet/challan has also been filed in the Trial Court and he has not yet been absolved of the charges; and

Whereas, the Committee constituted in the Social Welfare Department for review of suspension cases has already taken a lenient view and has also re-instated the applicant pending the outcome of criminal case against him; and

Whereas, the applicant is still under trial under section 354,354-A and 354-D of IPC and the allegations against the applicant are of sexual harassment and are very serious in nature and allowing the applicant to again work in field and coming in direct contact with women beneficiaries and women employees would translate into government being non-serious towards such sensitive and important issues and such matters cannot be taken lightly and casually in the department especially when the applicant is dealing day-in and day out with women beneficiaries and women employees.

Now, therefore, in light of the fact that criminal proceedings are still pending against him, that no emoluments/benefits are due to the applicant and that his placement cum seniority, eligibility and vacancy position, against any post in the field can only be considered on the basis of merit and that too after the disposal of the criminal case against him, and that as per the decision of the Review Committee, the suspension period of the official shall also be decided on the basis/outcome of the criminal case, the case of the petitioner is found to be lacking merit and hence rejected.

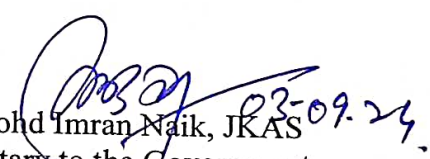
By order of the Government of Jammu and Kashmir.

Sd/-
Sheetal Nanda, IAS
Commissioner/Secretary to the Govt.
Social Welfare Department

No. SWD-LIT/123/2023
Copy of the:-

Dated: 03 -09-2024

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Mission Director, Mission Poshan J&K.
3. Private Secretary to the Commissioner/Secretary to the Government, Social Welfare Department.
4. Concerned official.
5. Government order file/ Stock.
6. Incharge Website.


Mohd Imran Naik, JKAS
Under Secretary to the Government
Social Welfare Department