



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

Subject: Case No. C.P 68/2024 in O.A 1675/2023 titled Surjeet Singh V/s Social Welfare.

Ref: Letter No. MDP/Estt/Misc-46-2021/18548 dated 11.07.2024 from Mission Director, Mission Poshan J&K.

Government Order No. 244 –JK(SWD) of 2024
Dated: 13 .12.2024

Whereas, Mission Director, Mission Poshan (then Mission Director, ICDS) referred the case of Mr. Surjeet Singh for regularization under the provisions of J&K Civil Services (Special Provision) Act, 2010 to the Administrative Department;

Whereas, Mr. Surjeet Singh, S/o Mr. Tara Chand, R/o Village Bejha, District Doda, was appointed as Junior Assistant vide Order No. ICDS/POD/Estt/2013-06 dated 29.01.1996 by the Programme Officer, ICDS, Doda, on an adhoc basis, on compassionate grounds as requested by the Advisor to the Hon'ble Governor and the District Development Commissioner, Doda, for a period of 89 days or until a selection was made, whichever was earlier, subject to the condition that the arrangement shall not confer any rights upon the applicant for selection to the post when the selection process is completed;

Whereas, the case of Mr. Surjeet Singh was placed before the Empowered Committee, constituted vide Government Order No. 139-F of 2015 dated 19.08.2015 and the Empowered Committee, through its Notification No. 53 dated 15.03.2016, among others, recommended the regularization of the petitioner under the provisions of the J&K Civil Services (Special Provision) Act, 2010, subject to the fulfillment of the following conditions:

1. That these appointees have not been selected by any Recruiting agency/ or appointed in any other Government Department;
2. That allowances other than what were admissible/due have not been drawn;


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3. That these incumbents are working against clear vacancy and have not been conveyed / recommended earlier by the Empowered Committee;
4. That the appointments have been made by the Competent Authority or initial appointment made by an authority not competent to engage is got regularized;
5. That the status of appointment is only contractual, consolidated or adhoc;
6. That no disciplinary or criminal proceedings are pending against the employee/s;
7. That the appointees are not part time or seasonal including those whose wages are paid out of local funds or contingent grants; and
8. That the concerned department shall fully verify their original qualification, Date of Birth, Permanent Residential Certificates, prior to the issuance of the regularization orders after obtaining necessary approval of the Competent Authority.

Whereas, as mandated by the Social Welfare (Subordinate) Service Recruitment Rules, 2009, Junior Assistants must be recruited either directly through SSB or through promotion by way of a DPC from amongst the eligible in-service employees of the Department, who must undergo and qualify the mandatory Secretariat Assistant Examinations/Training during the period of their probation;

Whereas, the post of Junior Assistant is a permanent position as per the established Recruitment Rules, and not an adhoc post and appointment of Jr. Assistants under direct quota, which constitutes 75% of the overall sanctioned strength, must be made by the JK Service Selection Board and this implies that the Programme Officer, Integrated Child Development Services (ICDS) who issued appointment order in the instant case, was not the competent authority to make appointments to the post of Junior Assistant, or to any other post, whether on a permanent or adhoc basis. Whereas, as per the applicable rules and regulations, only the duly authorized appointing authority i.e JKSSB in the instant case, holds the power to issue appointment orders for such posts and consequently, the appointment order issued by the Programme Officer is in contravention with the established legal and procedural framework and is, therefore, deemed to be illegal and void ab initio as any such appointment, made without the requisite legal authority, cannot be recognized as valid under the law;


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Whereas, in a similarly situated case involving Mr. Fayaz Ahmad Shah and Ms. Yasmeena Sidiq, who were appointed as contractual Supervisors, the Department sought clarification from the Finance Department regarding whether cases cleared for regularization under the J&K Civil Services (Special Provision) Act, 2010, pending regularization, still retained validity after the repeal of the Act following the constitutional changes enacted in the Jammu & Kashmir in 2019;

Whereas, the Finance Department, through O.M No. FD-Code/113/2021-03-24 dated 18.01.2023, communicated that the Act had been repealed by the Ministry of Home Affairs (MHA) vide S.O 1229(E) dated 31.03.2020 and further, the Department was advised to obtain the opinion of Law Department who in turn advised to consult GAD for their opinion in the matter;

Whereas, General Administration Department, vide O.M No. GAD-CORD/57/2023-09 dated 03.05.2023, conveyed the following:

“...the opinion of Department of Law, Justice and PA was sought in the regularization schemes. The latter opined as under:

- a. *In terms of Article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India . As such, the direction passed by Hon'ble Apex Court, being a binding precedent prevails.*
- b. *All the engagements made illegally are void ab-initio and the same would not give any justiciable right to the illegal appointee to claim regularization. The said principle has been upheld in State of Karnataka Vs Uma Devi case and the the ratio of the said case can be taken as a defense before the concerned forum to deny regularization of an illegal engagement.*
- c. *Where the Hon'ble Courts have passed directions in a particular case for regularization of an engagement and contempt proceedings have been initiated, the Department may project and express the inability to implement the said directions, in view of the fact that such action would contravene and infract the express directions laid down in Uma Devi case and other similar binding precedents.*

Accordingly, the department is requested to proceed further in the matter as per the above opinion tendered by the Department of Law, Justice and PA.”


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Whereas, in view of the advice preferred by the Finance Department and the legal opinion provided by the Law Department, the regularization cases of Mr. Fayaz Ahmad Shah and Ms. Yasmeena Sidiq were rejected vide Government Order No. 189-JK(SWD) of 2024 dated 09.10.2024;

Whereas, the petitioner, Mr. Surjeet Singh, approached the Hon'ble Central Administrative Tribunal (CAT), Jammu vide O.A No. 61/1675/202 and the Hon'ble CAT disposed off the O.A vide judgment dated 22.12.2023 in titled *Surjeet Singh vs. Social Welfare Department*, directing the respondents to treat the Original Application as a representation of the petitioner and pass a reasoned and speaking order in accordance with the provisions of the J&K Civil Services (Special Provision) Act, 2010. The relevant portion of the order is reproduced below:

"... the respondents are directed to treat this O.A as a representation of the applicant and decide the same by passing a reasoned and speaking order in accordance with the J&K Civil Services (Special Provision) Act, 2010. Before passing any order, the applicant shall be afforded an opportunity of being heard. The entire exercise shall be completed within six weeks from the date of receipt of a certified copy of this order."

Whereas, in the subsequent petition No. C.P 68/2024 in O.A 1675/2023, titled *Surjeet Singh vs. Social Welfare Department*, the Hon'ble CAT issued another order on 27.09.2024, which states:

"Having heard learned counsel for the petitioner.

Issue notice to the respondents to show cause as to why contempt proceedings be not initiated against them, returnable by the next date of hearing.

Mr. Hunar Gupta, Ld. DAG appears and accepts the notice for contemnor and sought time to file compliance report. Four weeks' time as a matter of last opportunity is granted to the respondents to file compliance report.

The matter is listed on 05.11.2024."

Whereas, in compliance to the Hon'ble Central Administrative Tribunal (CAT), Jammu's Order, the Department vide letter dated 27.11.2024 preferred an opportunity to the petitioner to present himself in person in the office of


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Commissioner/ Secretary, Social Welfare Department on 03.12.2024 alongwith detailed written representation pertaining to his case, who appeared himself and submitted the facts as mentioned below:

1. That he was appointed in the year 1996 on contractual basis.
2. That in terms of Special Provision Act 2010, he was eligible for regularization as Jr. Assistant.
3. That despite the incumbent was cleared by the Empowered Committee for regularization as Jr. Assistant, his services were not regularized by the Department, thereby depriving him from all service benefits.
4. Vide letter dated 02.03.2018 issued by Addl Secretary, Legal SMD ICDS Jammu advised the CDPO, ICDS Project Thathri to release all the service benefits in favour of the applicant from the date of issuance of Court order, but nothing has been done and the DPO Doda vide letter dated 25.05.2001 requested the CDPO to take necessary action and release all the entitlements as admissible under rules on the basis of Court directions passed in SWP No. 1095/1997.

The applicant in his representation has finally requested for redressal of his grievance for regularization of his services as Jr. Assistant and providing service benefits in his favour;

Now, therefore, in light of the advice preferred by the Finance Department through O.M No. FD-Code/113/2021-03-24 dated 18.01.2023, the opinion of the Department of Law, Justice and Parliamentary Affairs conveyed by the General Administration Department in the relevant case, the fact that the J&K Civil Services (Special Provision) Act, 2010 is no longer in force and having clearly established that the initial appointment of Mr. Surjeet Singh was made by an incompetent authority in contravention to the established norms and therefore void ab initio, the regularization case of Mr. Surjeet Singh, Adhoc Junior Assistant, S/O Tara Chand, R/O Bejha, Gandoh, District Doda, is hereby rejected as devoid of merit and not covered under rules and law.

By Order of the Government of Jammu and Kashmir.

Sd/-

Sheetal Nanda, IAS
Commissioner/Secretary to the Government
Social Welfare Department


No: SWD-LIT/221/2024

Dated: 13 .12.2024

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Copy to the:

1. Mission Director, Mission Poshan J&K.
2. SLO, Social Welfare Department.
3. Pvt Secretary to the Commissioner/Secretary to the Government, Social Welfare Deptt.
4. Concerned official.
5. I/C website.

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