



**GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/KASHMIR**

(Legal Section)

Subject: Contempt No. 129/2017 in SWP No. 2769/2016 titled Shamshad Hussain Shah and others V/S State and others.

Government Order No: 137 - Edu of 2017

D a t e d: 23- 03 - 2017

Whereas, the petitioner Shamshad Hussain Shah Raj and others filed writ petition bearing SWP No :2769/2016 before the Hon'ble High Court; and

Whereas, The Hon'ble High Court vide order dated 12.12.2016 passed the following direction, the relevant portion whereof is reproduced as under:-

"Taking into account the order, which this court proposed to pass today, it is not necessary to issue notice to the respondents.

Learned counsel for the petitioners invited the attention of the Court to order dated 17.01.2012 passed in SWP No. 81/2012. Learned counsel for the petitioner submitted that this petition in all fours is identical to the aforementioned writ petition and prayed for disposed of the present writ petition in terms of order passed by the court dated 17.01.2012 in the aforesaid writ petition.

Order dated 17.01.2012 passed in SWP No. 81/2012 is taken note of:

The writ petition is disposed of with a direction to the respondents to accord consideration to the petitioners' case for appointment as Class-IV in Education Department in accordance with the rules and having regard to the case law on the subject relied upon by the petitioners and take a decision in the matter within eight weeks from the date copy of the order is served on the respondents".

This petition along with connected MP shall also stand disposed of in terms of the aforementioned order passed in SWP No.

For 81/2012

Whereas, vide Government Order No. 1786-GAD of 1997 dated 11.11.1997, it was ordered that recruitment to Class-IV posts in different departments of the Government shall be made by the concerned Head of the Department in accordance with rules and procedure; and

Whereas, on 21.04.1998, the Director School Education, Jammu vide Advertisement Notice No. 01 of 1998 invited application for the post of Lab. Bearer/Lib-Bearer/ Gasman/Orderlies and Safaiwalas from eligible candidates of Jammu Division and a committee of the following officers was constituted by the Director School Education. Jammu vide Order No: DSEJ/901-17 dated: 8-8-1998 to make selections:-

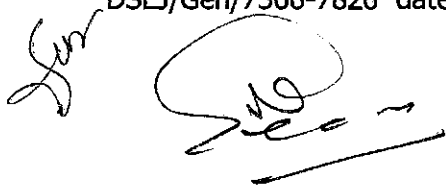
1. Chief Education Officer of concerned district.
2. Principal DIET of concerned district
3. One member from SC/ST community of the level of Principal HSS from same district to be jointly nominated by the Chief Education Officer and Principal DIET of the concerned district.
4. One officer to be nominated by Administrative Department

Whereas, the order passed by the General Administration Department vide Government Order No. 1786-GAD of 1997 dated 11.11.1997 was withdrawn vide Government Order No. 683-GAD of 1999 dated 14.06.1999 and the Head of the Department were directed to furnish the status report about the availability of Class-IV posts; and

Whereas, the Director School Education, Jammu vide letter No. DSEJ/ANG/7077/84 dated 21.06.1999 sought status from the Chief Education Officers about the entire selection process undertaken by them in view of the General Administration Department's order dated 14.06.1999. Committee was to submit the report to Director School Education, Jammu, but the Chief Education Officer, Jammu, Kathua, Poonch, Udhampur and Rajouri issued ante dated appointment orders by fraudulent and deceitful means and in contravention of the prescribed procedure/rules; and.

Whereas, on 24.06.1999, the Director School Education, Jammu asked the Chief Education Officers to report alongwith the appointment orders, in compliance to his directions only Chief Education Officer, Doda reported that he had not made any appointments to Class-IV at his own level; and

Whereas, the Director School Education, Jammu vide his Order No. DSEJ/Gen/7566-7826 dated 28-6-99 cancelled all the appointment orders issued by the

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said Chief Education Officers of Jammu Division on the ground that power to appoint Class-IV in terms of the Government Order No. 1786-GAD of 1997 dated 11.11.1997 lies with Head of Department and not with Chief Education Officers; and


Whereas, School Education Department vide Govt. Order No. 906-Edu of 1999 dated: 05-07-1999 kept in abeyance the order of the Director School Education, Jammu, dated 28-6-99; and

Whereas, after thorough enquiry, the aforementioned Government order was withdrawn vide Government Order No: 309-Edu of 2000 dated: 24-4-2000 and order passed by the Director, School Education, Jammu's order No: DSEJ/Gen/7566-7826 dated: 28-6-1999 was allowed to operate; and

Whereas, aggrieved by this order, writ petitions were filed before the Hon'ble High Court challenged the order passed by the Director School Education, Jammu dated 28.06.1999 and order passed by the Government dated 05.07.1999, all the writ petitions were clubbed with the main case SWP No. 2668/1999 titled Satya Devi and others V/S State and others, which was disposed of on 23.05.2000 with the direction to re-draw the merit and finalize the list before July 31, 2000; and

Whereas, the Director School Education, Jammu issued advertisement No. 1 of 2000 dated 26.09.2000 invited applications for Class-IV posts from District Jammu, Kathua, Udhampur, Rajouri, Poonch except Doda; and

Whereas, meanwhile, the candidates ousted from the service went on hunger strike and the matter came up for discussion in the State Legislature time and again and the public representatives urged the Government to take a compassionate view as most of the candidates ousted belong to remote areas and had crossed or were on the verge of crossing the upper age limit for entry into Govt. service. The then Hon'ble Chief Minister extended an assurance of taking the appointees back in service and subsequently the Department vide Govt. Order No: 556-Edu of 2002 dated: 11-4-2002 came to be issued in favour of 417, whereby, it was ordered that candidates shall be appointed against temporary consolidated salary of Rs. 1200/- per month till fresh merit list is drawn. For this purpose, a committee of Deputy Commissioner concerned, CEO concerned, Principal HSS was constituted and candidates were directed to report before the committee and produce evidence of having being appointed in the year 1999 and if committee satisfied the CEO concerned issue appointment orders; and

For


Whereas, subsequently, the candidates working against Class-IV posts on consolidated salary of Rs. 1200/- per month were placed in the regular pay scale of Rs. 2550-3200 vide Government Order No: 383-Edu of 2003 dated: 4-4-2003 by the Department vide Cabinet Decision dated 14.02.2003; and

Whereas, on 07.08.2003, the order of regularization dated 04.04.2003 was stayed by the Hon'ble High Court in the SWP No. 1476/2003 titled Basharat Hussain and others V/S State and others. The Department conveyed approval for appointment in favour of Basharat Hussain and others (SWP No. 1476/2003) and (SWP No. 1630/2003) totaling 19; and

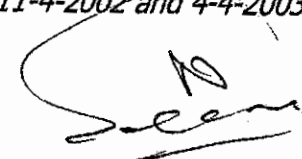
Whereas, thereafter, number of writ petitions were filed before the Hon'ble High Court and all petitions were clubbed with lead case titled Adil Akhter and others V/S State and others (SWP No. 961/2003) which was disposed of by the Hon'ble High Court on 31.12.2007 with the following directions:-

"I, however, leave the matter to the official respondents to consider the cases of the petitioners on the parity of the petitioners in Basharat Hussain's case. In case the Government decides to do so and the petitioners grievances are redressed the present writ petition shall be deemed to have been disposed of accordingly. The govt. shall take a decision in the matter within three months from the date copy of this judgment is served on the state. In case the Govt. does not take any decision in the matter within the said period or if the Govt. decides not to accord the said treatment to the petitioners, the petitions shall stand allowed and the orders impugned in the petitions No. 556-Edu of 2002 dated 11-4-02 and No. 383-Edu of 2003 dated 4-4-03 shall stand quashed".

Whereas, the Department filed an LPA bearing No: 49/2008 against the aforesaid judgment dated 31.12.2007 before the Hon'ble High Court. The Division Bench of the Hon'ble High Court disposed of the LPA on 30-7-2009 with the following directions to the State:-

"In the circumstances for all practical purposes, it must be deemed that by a way of a policy decision, the State Govt. created 417 more posts and in those posts, by the order dated: 4-4-2003 those 417 persons who were permitted to work on temporary basis by the order dated: 11-4-2002, were regularized. In consequence, thereof, it must be deemed that there are still 417 posts available.

The number of writ petitioners is less than 417. Accordingly, all of them can be accommodated. There will, therefore, be no occasion to take re-course to up settling the orders of the Government dated: 11-4-2002 and 4-4-2003.

For


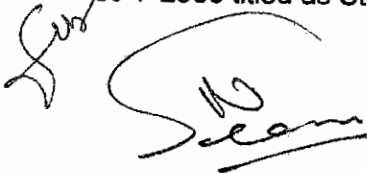
In the circumstances, the exercise to be undertaken in terms of the judgment and order under appeal be completed within a period of six months from today and to that extent the judgment and order under appeal is modified with clarifications".

Whereas, the observations of the Hon'ble Division Bench in the order dated 30.07.2009 that it must be deemed by a way of a policy decision, the State Government created 417 more posts and in those posts, by the order dated 4.4.2003, those 417 persons who were permitted to work on temporary basis by the order dated 11.4.2002, were regularized. In consequence, thereof, it must be deemed that there are still 417 posts available, but the matter of fact was that the petitioners in Adil Akhter Shah's case and clubbed matters was examined by the Department and it was decided to consider the appointment of such of the petitioners against Class-IV posts whose petitions were dubbed by the Hon'ble High Court against the available vacancies of 176 and rest of the posts (67 posts) were created in District Poonch and appointed 243 petitioners vide Government Order No. 438- Edu of 2010 dated 30-4-2010 and Order No: 440-Edu of 2010 Dated: 13-5-2010 in pursuance of Cabinet Decision No:85/05/2010 dated: 29-3-2010; and

Whereas, no vacancy pertaining to the selection process initiated pursuant to advertisement notice issued in 1998 or 2000 is available presently in District Poonch, as such the claim of the petitioners cannot be considered for appointment as Class-IV posts. Any appointment made in the available post of Class-IV now would be in violation of norms and principle of equity;

Whereas, the case of the petitioners have been examined by the Department and found that the Order dated: 17th of Jan'12, passed in SWP No: 81/12 titled Mohd. Reyaz and others V/S State and others was examined by the Department in compliance to the Hon'ble High Courts directed dated: 17-1-2012 has been considered by the Department and found not in accordance with the rules and same had been rejected vide Government Order No: 852-Edu of 2012 dated: 23-11-2012;

Whereas, Petitioners case is not similar to the cases considered in term of observations made in judgment dated: 31-12-2007 rendered in a batch of petitions, lead case being SWP No: 961/2003 titled Adil Akhter Shah and others read with judgment passed by the Learned Division Bench of this Court in LPASW No: 49/2008 decided on 30-7-2009 titled as State of Jammu and Kashmir and others v. Adil Akhter and others.



Whereas, the case of petitioners is not covered under rules as in terms of the Jammu and Kashmir School Education, Subordinate Service Recruitment Rules, 2008 notified vide SRO-308 dated: 16-10-2008, the method of recruitment for the post of Class-IV is as under:-

*"50% by direct recruitment.
50% by selection from Middle pass Contingent Local paid employees by committee duly constituted for the purpose by the concerned Director School Education".*

Whereas, the petitioners in the instant case has neither been selected nor recommended by any Recruitment Board, as such they cannot be appointed against Class-IV posts in terms of rules in vogue;

Now, therefore, accordingly in compliance to the Hon'ble High Courts direction dated: 12.12.2016 passed in SWP No. 2769/2006, the petitioners claim for appointment as Class-IV has been considered and found not in consonance with the rules, hence rejected.

By Order of the Government of Jammu and Kashmir.


Sd/-
(Shaleen Kabra)
Principal Secretary to Government
School Education Department

No: Edu/Legal/J/Misc/69/2017

Dated: 23 -03-2017

Copy to the:-

1. Director School Education, Jammu for information and necessary action.
2. Ld. Additional Advocate General, J&K High Court, Jammu for information and necessary action.
3. Chief Education Officer, Poonch.
4. Pvt. Secretary to Principal Secretary to Government, School Education Department for information..
5. Incharge Website
6. Sh. Shamshad Hussain Shah S/O Sadiq Hussain Shah R/O Salwah Tehsil Mendhar District Poonch.
7. Govt. Order file (w.3.s.c)
8. Stock file.


(Naseema Nazir)
Under Secretary to Government
School Education Department