



GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/KASHMIR
(Legal Section)

Subject: Contempt No. 487/2017 in SWP No. 1209/2016, titled Yahya Khan
V/S State and others.

Government Order No: 1049- Edu of 2017

D a t e d: 26 - 12 - 2017

Whereas, the petitioner Yayha Khan filed writ petition bearing SWP No. 1209/2016, titled Yahya Khan V/S State and others before the Hon'ble High Court at Srinagar seeking direction to the respondent No. 1 to rectify the error in the Government Order No. 235-Edu of 2013 dated 07.03.2013 with regard to regularization of Lecturers (Economics) as sought by respondent No. 2; and

Whereas, the said writ petition came to be disposed of by the Hon'ble High court vide its order dated 08.06.2016, the operative part whereof is reproduced as under:-

"Respondent No. 1 shall take a decision on the recommendation of respondent No. 2 with reference to seeking rectification of mistake having reference to the placement of petitioner below the said Phunstsog Dorji. While taking decision respondent No. 1 shall take into consideration the recommendation of respondents 2 and 3.

Consideration shall be made and orders passed within period of two months from the date copy of the order is served upon respondent No. "

Whereas, the claim of the petitioner was examined in the Department and it was found that among others, the case of petitioner was placed before the

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Committee constituted vide Government Order No. 73-Edu of 2012 dated 04.02.2012, which held its meeting on 28.01.2016, and the following course of action was proposed in the instant case:-

"As per the service particulars authenticated by the Director School Education, Kashmir it is clear that Mr. Yahya Khan (ST) is senior to Ms. Phuntsog Dorjey (ST) and has been placed as I/C lecturer before her. As such he should have to be given the proper slot of ST in the regularization of Lecturers and the slot of ST which was given to Ms. Phuntsog Dorjey (ST) will go to Mr. Yahya Khan (ST). It is as such proposed to regularize Mr. Yahya Khan (ST) as Lecturer w.e.f. 12.08.2003 and Ms. Phuntsog Dorjey (ST) as Lecturer w.e.f. 08.07.2005".

Whereas, the Committee was informed that the Hon'ble Division bench in the case SWP No. 1290/2014, titled Ashok Kumar and others versus State of J&K and others has passed the following order on 09.10.2015:-

"For the reasons discussed, the writ petitions SWP Nos 1290/2014, 1006/2005, 1694/2006, 1497/2004, 1619/2006, 213/2001, 1816/2000, 2096/2014, 1583/2014, 1854/2004 and 131-E/2004 are allowed. Section 6 Jammu and Kashmir Reservation Act, 2004 and Rules 9, 10 and 34 Jammu and Kashmir Reservation Rules 2005 are held to be ultra-vires Article 16 Constitution of India and accordingly struck down".

Whereas, the Committee was also informed that the Hon'ble Supreme Court in the Special Leave Petition (SLP) No. 32820/2015 titled Mohammad Haneef Lone & Ors vs. Ashok Kumar Sharma & Ors and Gagan Jyoti & Anr vs. State of J&K & Ors has passed the following order on 14.12.2015:-

"Status quo, as of today, be maintained in the meanwhile".

Whereas, consequent upon the above, General Administration Department, vide its O.M. No. GAD/MGT/RB-IV/04/2016 dated 21.06.2016, has conveyed, its opinion, the operative part of which is reproduced as under:-

"In view of the contradictory orders passed in the four Special Leave Petitions of similar nature, all the Administrative Secretaries

are requested to keep the slots meant for reserved category employees vacant/unfilled till the matter is finally heard and disposed of by the Supreme Court on 13.07.2016. These directions are brought to their notice for information and compliance”.

In view of the above facts, claim of the petitioner for regularization of Mr. Yahya Khan (ST) as Lecturer w.e.f. 12.08.2003 and Ms. Phuntsog Dorjey (ST) as Lecturer w.e.f. 08.07.2005, is deferred till outcome of the decision pending in the case titled Mohammad Haneef Lone & Ors vs. Ashok Kumar Sharma & Ors and Gagan Jyoti & Anr vs. State of J&K & Ors before the Hon'ble Supreme Court.

By order of the Government of Jammu and Kashmir.


Sd/-
(Farooq Ahmad Shah) IAS
Secretary to Government
School Education Department

No: Edu/Legal/K/112/2016

Dated: 26-12-2017

Copy to the:-

1. Director School Education, Kashmir for information and necessary action.
2. Sh. Sheikh Manzoor, Deputy Advocate General, J&K high Court, Srinagar for information and necessary action.
3. Pvt. Secretary to Secretary to Government, School Education Department.
4. Yahya Khan S/O Qurban Ali R/O Chuchot Leh Ladakh
5. Incharge Website
6. Govt. Order file (w.3.s.c)
7. Stock file.


(Peer Zahid Ahmad) KAS
Under Secretary to Government
School Education Department