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

Subject: SWP No: 3318/2014 CMA No: 4461/2014 titled Nazakat Ali and others V/S State and others.

Government Order No: 507- Edu of 2015

D a t e d: 07 - 10 - 2015

Whereas, the petitioners Nazakat Ali and others filed writ petition bearing SWP No: 3318/2014 titled Nazakat Ali and others V/S State and others before the Hon'ble High Court; and

The Hon'ble High Court vide order dated 29.11.2014 passed the following direction, the relevant portion whereof is reproduced as under:-

"In view of the submissions made, this petition is disposed of with a direction to the respondents to accord consideration to the case of the petitioners in light 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 provided the said judgments are applicable in the case-in-hand and pass appropriate orders thereon within a period of six weeks from the date a certified copy of this order and also that of above referred judgments are made available to them".

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Whereas, in the year 1998, applications were invited for Class-IV posts 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 said committee was directed to submit its recommendation to the Director School Education Jammu after the completion of the interview process. However, the appointment orders were issued by the Chief Education Officer, Jammu, Kathua, Poonch, Udhampur and Rajouri in contravention of the prescribed procedure, and 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 said Chief Education Officers of Jammu Division. When the matter came up before the Government, the Government kept in abeyance the order of the Director School Education, Jammu, dated 28-6-99 vide Govt. Order No. 906-Edu of 1999 dated: 05-07-1999; and

Whereas, later on the aforementioned Government order was withdrawn vide Government Order No: 309-Edu of 2000 dated: 24-4-2000 resulting in the revival of the Director, School Education, Jammu's order No: DSEJ/Gen/7566-7826 dated: 28-6-1999. Aggrieved by this order, which in effect cancelled their appointment, many of the ousted appointees approached the Hon'ble High Court through writ petitions seeking re-appointment in service and the Hon'ble High Court while upholding the cancellation of the appointments, directed that a fresh merit list be drawn by the Government keeping in view the fact that some of the candidates may be on the verge of crossing the age barrier. The said direction were passed in writ petition No: SWP-2668/1999 on 23-5-2000; and

Whereas, vide Govt. Order No: 556-Edu of 2002 dated: 11-4-2002 ordered that the ousted Class-IV employees shall be considered for appointment against the vacancies in the districts to which they belong temporarily on consolidated salary of Rs. 1200/- per month till such time the fresh merit list is drawn on completion of the selection process; and

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; and

Whereas, a writ petition titled Basharat Hussain and others was filed by 17 candidates challenging the Government orders No:383-Edu of 2003 Dated:4-4-2003 and No:556-Edu of 2002 Dated: 11-4-2002 and the Government considered the cases of petitioners. Subsequently, a large number of writ petitions were filed in the Hon'ble High Court wherein Govt. Order No: 556-Edu of 2002 dated: 11-4-2002 and Govt. Order No: 383-Edu of 2003 dated: 4-4-2003 were challenged and the Hon'ble High Court after clubbing various writ petitions passed the following directions on 31-12-2007:-

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 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 recourse to up settling the orders of the Government, dated: 11-4-2002 and 4-4-2003.

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 matter was examined by the Department and it was decided to consider the appointment of such of the petitioners against Class-IV posts whose cases have been clubbed by the Hon'ble High Court. Accordingly, a proposal for creation of 67 posts in District Poonch was submitted to the Finance Department, which however did not agree to the Department's proposal. The matter was re-examined in the Department and with the prior approval of the Hon'ble Education Minister, the proposal for creation of 67 Class IV posts in District Poonch and appointment of 243 petitioners whose cases have been clubbed with lead case titled Adil Akhter and others V/S State and others was submitted to the Cabinet. The Cabinet approved the proposal of the Department vide its Decision No:85/05/2010 dated: 29-3-2010 and accordingly, vide Government Order No. 438- Edu of 2010 dated 30-4-2010 and Order No: 440-Edu of 2010 Dated: 13-5-2010, sanction has been accorded to the creation of 67 posts of Class IV in District Poonch and utilization of said posts for appointment of the petitioners in clubbed writ petitions with lead case titled Adil Akhter Vs. State and others and the posts so created shall stand abolished as and when such incumbent shall retire, resign, dies or gets promoted; and

Whereas, the case of the petitioners has been examined by the Department and it has been found that 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 agency, as such they cannot be appointed against Class-IV posts in terms of rules in vogue; and

Whereas, the records further reveals that the Department in compliance with the Hon'ble High Courts direction dated: 30-7-2009 considered the cases of petitioners whose writ petitions were clubbed with lead case titled State of J&K V/S Adil Akhter and others (LPA (SW) No: 49/2008) and appointed them against the Class-IV posts vide Government Order No: 440-Edu of 2010 dated: 13-5-2010 based on Cabinet Decision No: 85/05/2010 dated: 29-3-2010. However the petitioners in the instant case approached the Hon'ble High Court after a period of many years and that too when the Department have already issued appointment order in favour of the candidates who were petitioners in clubbed writ petitions with lead case titled Adil Akhter and others V/S State and others.

Now, therefore, in compliance to the Hon'ble High Courts direction dated: 29.11.2014 passed in SWP No: 3318/2014, the claim of the petitioners for appointment against Class-IV posts has been considered and found not in consonance with the rules and, hence rejected accordingly.

By Order of the Government of Jammu and Kashmir.

Sd/-
(Shaleen Kabra)


Commissioner/Secretary to Government
School Education Department

Dated: 7 -10-2015

No: Edu/Legal/J/Misc/406/2015

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, Rajouri/Kathua/Jammu/Udhampur/ Ramban.
4. Pvt. Secretary to Commissioner/Secretary to Government, School Education Department for information of Commissioner/Secretary.
5. Incharge Website
6. Sh. Nazakat Ali S/O Sh. Mohd. Azam R/O Kotli Kalaban District Rajouri.
7. Incharge Website
8. Govt. Order file (w.3.s.c)
9. Stock file.


(Mohit Raina)
Under Secretary to Government
School Education Department