



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

(Legal Section)

Subject: Contempt No. 314/2013 in SWP No. 2311/2012 titled Abdul Hamid V/S State and others.
Ref: U.O. No. GDC-206/CM/2016 dated 11.04.2018, from General Administration Department.

Government Order No: ~~688~~ Edu of 2018

D a t e d: 18 - 05 - 2018

Whereas, on the basis of seniority list of Masters (working/worked as I/C Headmasters), issued vide Government Order No. 618-Edu of 2012, dated 02.08.2012, eligibility and availability of posts, the issue regarding regularization of Masters as Headmasters was placed before the Committee constituted by the Department vide Government Order No. 73-Edu of 2012, dated 04.12.2012, read with corrigendum, dated 15.02.2012; and

Whereas, on the basis of recommendations of the aforesaid Committee, the Department vide Government Order No. 684-Edu of 2012, dated 04.09.2012, regularized as many as 2529 I/C Headmasters & equivalent as Headmasters. However, Sh. Abdul Hamid (ST), I/C Headmaster, was not considered for regularization because of the fact that he was not figuring in the aforesaid seniority list; and

Whereas, Sh. Abdul Hamid (ST) I/C Headmaster filed SWP No. 2311/2012, before this Hon'ble High Court, praying therein for his regularization as Headmaster w.e.f. 01.11.2011, as has been done in case of respondent No. 6 to 10; and

Whereas, aggrieved by this action the Hon'ble High Court vide on 06.11.2012, was pleased to pass the following order:-

".....In view of case set up and stand taken the writ petition is disposed of with a direction to the respondents to accord consideration to the petitioner's claim for regularization as Head Master with effect from the date it has become due to him. The respondents shall do well to take a decision in the matter within four weeks from the date copy of the order is made available.

The petitioner may, if so advised, hand over the copy of the petition and copies of all its annexures to the respondents so as to facilitate early disposal in the matter".

Whereas, pursuant upon the directions of the Hon'ble Court, the matter was examined in the School Education Department after its examination of service particulars of the petitioner and documents produced by the Directorate of School Education, Kashmir, and on the basis of records available with the Department, it was observed that the petitioner was appointed as teacher on 29.04.1964, and promoted as Master w.e.f. 27.05.1986. The private respondents, namely Ghulam Mohammad Babar, Yaqoob Mohammad, Mohammad Ali Bhutoo, Talib Hussain and Ghulam Mohi-ud-Din were also promoted as Masters w.e.f. 27.05.1986, and were figuring below the petitioner at S.No. 2,4,6,7 & 8 respectively in the promotion order, issued by District Education Officer, Kargil (Now CEO, Kargil) vide order dated 18.07.1986; and

Whereas, vide Order No. Est-I/Edu/Transfer-A/7/85, dated 03.09.1986, issued by District Development Commissioner, Kargil, the petitioner was placed as I/C Headmaster and posted in High School, Drass against available vacancy, figuring at S.No. 10 in the said order. The private respondents, figuring at S.Nos. 12, 13, 15 & 16 in the said order, were also placed as I/C Headmasters and adjusted suitably; and

Whereas, the tentative seniority list of ST trained graduate Masters (male & female) was issued by the Education Department vide Circular No. Edu/III/Sen/ST/MF/94, dated 20.10.1994, in which the petitioner was figuring at seniority No. 75 and private respondents were figuring below the petitioner at seniority Nos. 76, 77, 79, 80 & 82 respectively; and

Whereas, the petitioner had remained all along senior to the private respondents, however, his regularization as Headmaster was not considered due to the fact that he was not figuring in the seniority list of Masters issued via Government Order No. 618-Edu of 2012 dated 02.08.2012, for which the petitioner was eligible as per rules as he had worked as I/C Headmaster w.e.f. 03.09.1986, up to his date of retirement i.e. 31.01.2006; and

Whereas, to fix the seniority of the petitioner at appropriate place in the final seniority list of Masters issued vide Government Order No. 618-Edu of 2012 dated 02.08.2012 and thereafter, accordingly consider the regularization of the petitioner from the date of his junior counterparts (i.e private respondents) have been regularized w.e.f. 01.11.2001 vide Government Order No. 684-Edu of 2012 dated 04.09.2012. Since, there was no post of Headmaster available at the relevant point of time as these posts were already utilized by the Department, as such the matter was referred to Finance Department for creation of supernumerary post of Headmaster w.e.f. 01.11.2001 to 31.01.2006 vide U.O. No. Edu/Legal/K/257/2012 dated 25.05.2016; and

Contd.....3

Whereas, the Finance Department returned the case vide U.O. No. A/116(2K)-C-455 dated 30.06.2016, with the following observations:-

"Returned: Finance Department conveys its agreement to the departmental proposal to the creation of a post of Headmaster in the pay scale of Rs(6700-10700) for the period from 01.11.2001 to 31.01.2006 on supernumerary basis to enable the department to implement the Hon'ble High Court judgment dated 06.11.2012 passed in SWP No. 2311/2012.

The above agreement is subject to the following conditions:-

- (i) The post is created in the relevant Pay Scale as per the applicable Services Recruitment Rules of the Department.*
- (ii) The post shall cease to exist immediately after drawal of arrears in favour of the retiree*
- (iii) Orders are issued after obtaining approval of the Competent Authority".*

Whereas, approval of the competent authority was pre-requisite to be obtained and accordingly, the Department vide U.O. No. Edu/Legal/K/257/2012 dated 21.11.2016, submitted a note for submission to Hon'ble Chief Minister through Chief Secretary in-Coordination to the General Administration Department for approval; and

Whereas, the General Administration Department, (competent authority) vide U.O. No. GDC-206/CM/2016 dated 26.12.2016, returned the matter with the following observation:-

"Returned. The department is advised to first assign an appropriate place in the seniority list and then resubmit the case accordingly".

Whereas, in view of the observations of the General Administration Department, the School Education Department before including the name of the petitioner in the final seniority list of Masters (working as I/C Headmasters & equivalent) issued vide Government Order No. 618-Edu of 2012, dated 02.08.2012, invited Objections, if any, from the concerned Members of the Service vide notice No. Edu/Legal/K/257/2012 dated 30.03.2017; and

Whereas, no such objection, was received in this regard by the Department, during the stipulated period of time fixed by the Department and accordingly the Department issued Government Order No. 953-Edu of 2017 dated 23.11.2017, wherein, the seniority of petitioner was fixed at seniority No. 886-A in between S/Shri Kamal Kishore (seniority No. 886) and Gh. Mohd. Bader ST (Seniority No. 887), in the inter-se-seniority list of Masters (working/worked as I/C Headmasters and equivalent) issued vide Government Order No. 618-Edu of 2012 dated 02.08.2012; and

Whereas, the Department vide U.O. No. Edu/Legal/K/257/2012 dated 07.03.2018, has again submitted a note for submission to Hon'ble Chief Minister through Chief

Secretary in-Coordination to the General Administration Department for approval to the creation of one post of Headmaster in the pay scale of Rs. 6700-10700 for the period from 01.11.2001 to 31.01.2006, on supernumerary basis for regularization of Sh. Abdul Hamid (ST) as Headmaster for implementation of the impugned judgment in letter and spirit; and

Whereas, The General Administration Department vide their O.M. No. GDC-206/CM/2016 dated 11.04.2018, has conveyed their approval of the Hon'ble Chief Minister to the departmental proposal; and

Now, therefore, in compliance to the Hon'ble High Court judgement dated 06.11.2012, passed in SWP No. 2311/2012, Sanction is hereby accorded to the creation of one post of Headmaster in the pay scale of Rs. 6700-10700 for the period from 01.11.2001 to 31.01.2006, on supernumerary basis for regularization of Sh. Abdul Hamid (ST) as Headmaster, subject to the condition that the post shall cease to exist immediately after drawal of arrears in favour of the retiree.

By order of the Government of Jammu and Kashmir.

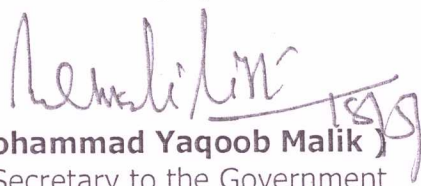
Sd/-
(Farooq Ahmad Shah) IAS
Secretary to the Government
School Education Department

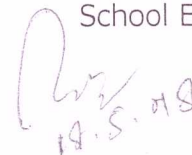
No: Edu/Legal/K/257/2016

Dated: 18-05-2018

Copy to the:-

1. Commissioner/Secretary to the Government, General Administration Department.
2. Director School Education, Kashmir for information and necessary action.
3. Accountant General, J&K, Srinagar.
4. Sh. A.M. Mir, Deputy Advocate General, J&K High Court, Srinagar for information and necessary action.
5. Pvt. Secretary to Hon'ble Minister for Education for information of Hon'ble Education Minister.
6. Pvt. Secretary to HMoS, Education for information of Hon'ble Minister.
7. Pvt. Secretary to Secretary to the Government, School Education Department.
8. Abdul Hamid S/O Ghulam Nabi R/O Chokiyal Tehsil and District Kargil (petitioner).
9. I/C Website
10. Govt. Order file (w.3.s.c)
11. Stock file


(Mohammad Yaqoob Malik)
Under Secretary to the Government
School Education Department


14.5.18