

GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT
Civil Secretariat, J&K.

Subject:- Appointment of Independent Auditor to conduct in-depth enquiry into the Financial Affairs of Delhi Public School, Athwajan, Srinagar.

GOVERNMENT ORDER NO:- 2081 JK (Edu) of 2022
DATED:- 29.09.2022

On the recommendation of FFRC (Fee Fixation Regulation Committee) sanction is hereby accorded to the appointment of JSVP & Co. Chartered Accountants, 108-A-1, 1st Floor North Block, Bahu Plaza, Jammu (CAG, Regn. No. SPJ094) to conduct the in-depth enquiry into the Financial Affairs of Delhi Public School, Athwajan, Srinagar in light of the observation made by the FFRC in its Order No. 636-FFRC (FF) of 2021 dated 01.11.2021.

The Auditor shall submit its report within a period of 10 days from the date of issuance of this order.

By order of the Government.


Sd/-
Alok Kumar (IRS),
Principal Secretary to the Government,
School Education Department.

No:- Edu/L/JK/231/2012

Dated:- 29.09.2022

Copy to the:-

1. Director School Education Jammu/Kashmir for information and n/ a.
2. Secretary J&K Board of School Education (Member FFRC) for information.
3. Private Secretary to Principal Secretary to Government, School Education Department (Member Secretary FFRC) for information of the Principal Secretary.
4. P.A. to Chairman, FFRC for information of the Hon'ble Chairperson, FFRC.
5. JSVP & Co. Chartered Accountants, 108-A-1, 1st Floor North Block, Bahu Plaza, Jammu (CAG, Regn. No. SPJ094), Email ID jsvpca@gmail.com for information and necessary action.
6. Principal, Delhi Public School, Athwajan, Srinagar for information with the request to provide necessary assistance as would be required to the CA .
7. I/C Website for uploading the same on official website.
8. Office File.


(Javed Ahmad),
Additional Secretary to Government,
School Education Department.

Government of Jammu & Kashmir
School Education Department,
Civil Secretariat, Srinagar.

E-mail:-pssed2020@gmail.com..... Contact No, 0191-2566504

Subject: Assigning of Additional Charge for the post of Principal Sainik School Manasbal.

Government Order No. 282 - Edu of 2022
Dated : 29 - 09 - 2022

In the interest of administration and for the smooth functioning of Sainik School Mansabal, it is hereby ordered that Principal, Govt. BHSS Ganderbal, shall hold the additional charge of the post of Principal Sainik School Manasbal in addition to his own duties till the time new incumbent is posted as Principal, Sainik School Manasbal.

By Order of the Government of Jammu & Kashmir.

(Alok Kumar)IRS
Principal Secretary to the Government.

Dated: 29. 09. 2022

No-

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Director, School Education, Jammu/Kashmir.
3. OSD to Advisor (B) to the Lt. Governor JKUT for information.
4. Principal, Govt. BHSS Ganderbal, for compliance.
5. Pvt. Secretary to Principal Secretary to Government, School Education Department.
6. Government Order file.

Deputy Secretary to the Government
School Education Department.



GOVERNMENT OF JAMMU & KASHMIR
SCHOOL EDUCATION DEPARTMENT
CIVIL SECRETARIAT, J&K

GOVERNMENT ORDER NO:- 2083 -JK (Edu) of 2022

DATED:- 06 .10.2022

Subject:- TA No. 62/ 2021 in SWP No. 126/ 2009 titled Hasina Parveen VS State of J&K & Ors and CCP No. 578/ 2017, in SWP No. 270/ 2016 titled Haseena Parveen Vs State of J&K & Ors.

Whereas, the applicant/ petitioner claims to have been appointed as Lab Bearer on temporary basis by District Development Commissioner vide Order No. 1051-53/Est dated 10.03.1993. The said engagement order was however purely a temporary arrangement for a period of 60 days without conferring any right upon the applicant/ petitioner; **and**

Whereas, the applicant/ petitioner apprehending discontinuation, approached Hon'ble High Court of J&K in SWP No. 741/1993 which writ petition came to be disposed off vide Order dated 07.08.2000 with the following order:-

"... In terms of above submission of counsel for the parties, the Writ petition is disposed on consensual submission of the parties with direction to respondents/competent authority to continue the applicant/ petitioner as Lab Bearer in terms and condition of her engagement till the post is filled up in accordance with the applicable rules. The applicant/ petitioner shall also be considered along with other eligible candidates when the post is to be filled up, provided the applicant/ petitioner applies for the said post, and in which case her experience, performance, and conduct shall also be kept in view."

Whereas, the applicant/ petitioner approached the Hon'ble Court in SWP No. 1126/2009 titled Haseena Parveen V/s State of J&K & Ors with the claim that she may be regularized on the analogy of similarly placed Migrant Substitute Policy. However while examining the issue in favour of the applicant/ petitioner has not been able to establish and justify that she has been specifically engaged against the migrant substitute post; **and**

Whereas, the applicant/ petitioner during the pendency of SWP No. 1126/2009, filed another writ petition bearing SWP No. 270/2016 with identical prayer claiming that her services be regularized in terms of

Jammu and Kashmir Special Provisions Act. The writ petition was disposed of by the Hon'ble Court vide order dated 19.04.2017 with the following direction:

"...There is no opposition to accord of consideration to the case of the applicant/ petitioner, therefore this petition is disposed of with a direction to the respondents that they shall finalize the process of regularization vis-a-vis case of the applicant/ petitioner and to pass appropriate orders in accordance with rules within four weeks from the date, order is served upon the respondents.

Disposed of along with connected MP."

Whereas, SWP No. 1126/2009 was transferred to the Hon'ble Central Administrative Tribunal which Transfer application was diarized as TA No. 62/00853/2021 titled Hasina Parveen Vs State of J&K & Ors and the said TA was disposed by the Hon'ble Central Administrative Tribunal vide order dated 25.02.2021 with the following direction:

"...We, therefore, dispose of the TA directing the respondents to consider the case of the applicants for regularization, in terms of the existing policy as well as law laid down by the Hon'ble Supreme Court in Uma Devi's case (Supra) regarding regularization and pass a reasoned speaking order. While considering the case of the applicants, the respondents should also take into consideration the contents of the T.A. This exercise shall be completed by the respondents within a period of two months from the date of receipt of a certified copy of this order."

Whereas, the applicant/ petitioner has suppressed the Hon'ble Court by submitting wrong facts in as much the petitioner has neither been engaged against migrant substitute post nor she has been engaged in the capacity of adhoc/ daily wager/ need base/ consolidated or contractual basis but the applicant/ petitioner has been engaged only for a period of 60 days without conferring any status or right upon her and has been allowed to continue based upon the Hon'ble Court direction passed in SWP No. 741/ 1993 till and for the period the post is substantively filled up. The judgment passed in SWP No. 741/ 1993 has attained finality since the applicant/ petitioner has not assailed the said judgment before any higher forum and therefore she cannot at this point of time or otherwise claim for regularization against the said post which she has agreed to hold till the same is filled up in accordance with applicable rules; **and**

Whereas, the engagement of the applicant was temporary in nature for a specific period of 60 (Sixty) days and based upon the orders of the

Hon'ble Court the applicant/ petitioner was continued with the same status with the condition that till the post is filled up in accordance with the applicable rules and the applicant/ petitioner shall also be considered along with other eligible candidates when the post is to be filled up, provided the applicant/ petitioner applies for the said post, and in which case her experience, performance, and conduct shall also be kept in view. In this regard, the department has advertised various vacancies of Lab Bearers from time to time however the applicant/ petitioner did not apply against these posts which were to be filled in accordance with rules, as such and in view of non participation of the applicant/ petitioner in these recruitment processes, the department was not in a position to consider her candidature against the post of lab bearer in compliance with the order/ direction dated 07.08.2000 of the Hon'ble High Court of J&K passed in SWP No. 741/ 1993 ;and

Whereas, the applicant/ petitioner on the one hand in SWP No. 126/ 2009 has sought regularization against migrant substitute and on the other hand in another writ petition bearing SWP No. 270/2016 the applicant/ petitioner is seeking regularization in terms of J&K Special Provisions Act, 2010. However the matter of fact is that the petitioner is neither covered under the J&K Special Provisions Act, 2010 neither migrant substitute policy. Besides, migrant substitute policy and J&K Special Provisions Act, 2010 have been repealed and therefore the case of the petitioner can even otherwise be not considered under these repealed policies; and

Whereas, though the applicant was never covered under the provisions of J&K Civil Service (Special Provisions) Act, 2010 or for consideration for regularization under migrant substitute policy, even though otherwise the said Act has already been repealed by way of J&K reorganization Act, 2019 and therefore the applicant cannot take recourse of the repealed act/ policy in order to seek regularization of her services; and

Whereas, while examining the case of the applicant/ petitioner it has been found that the applicant/ petitioner has not been engaged by adopting due process of law as such her claim for regularization cannot be sustained when the basis of engagement in itself is de hors law. The Hon'ble Supreme Court of India has laid the law in the case of *Umarani Vs Registrar, Coop. Societies (2004) 7 SCC 112* that:

"...when appointments were made in contravention of mandatory provisions of the Act and statutory Rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointment. Regularization is not and cannot be a mode of

recruitment by any State within the meaning of Article 12 of the Constitution or anybody or authority governed by a statutory Act or the rules framed thereunder. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."; **and**

Whereas, the Hon'ble Supreme Court of India has laid a law in the case of State of Karnataka Vs Uma Devi (3), (2006) 4 SCC 1 that:

*"...when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent on the post. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."; **and***

Whereas, Hon'ble Supreme Court in the same case also held that:

*"...a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post. The term "temporary employee" is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation; **and***