



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

Subject: CCPS No. 145/ 2021 arising out of SWP No. 2045/ 2016 titled
Fayaz Ahmad Nangroo and Ors V/s B.K. Singh & Ors.

GOVERNMENT ORDER NO:- 210 -JK (Edu) of 2022

DATED:- 27.10.2022

Whereas, the petitioners have filed a writ petition bearing SWP No. 2045 of 2016 titled Mohammad Fayaz ahmad Nangroo and Ors Vs State & Ors before this Hon'ble Court. The above titled petition was disposed of by the Hon'ble High Court vide order dated 18.07.2017 with the following directions

"...The first prayer of the petitioners has been taken care of, so no more is required to be said about the same as according to the respondents petitioners too will be regularized on their turn subject to satisfaction of the applicable norms.

So far as second prayer is concerned, the respondents shall consider cases of the petitioners for payment of minimum wages under Minimum Wages Act. The decision regarding payment of minimum of wages under Minimum Wages Act shall be taken within a period of six weeks from today."

Whereas, in compliance with the directions of the Hon'ble Court, the case of the petitioners has been examined in the Department and it has been found that petitioners have not been appointed by the competent authority or in accordance with the mandate of law. The engagements of the petitioners have been made by the incompetent authorities without having any policy or rules to that extent. As such when the engagement in itself bad in the eyes of law the petitioners are neither entitled for regularization nor they are entitled to claim for any benefit viz., minimum wages for which they are even otherwise not entitled.

Whereas, the petitioners are not working against any sanctioned post and, therefore, the benefit of minimum wages cannot be extended in favour of the petitioners particularly when the engagement is itself is part time engagement.

Whereas, and it was further observed that the petitioners have been engaged without any formal policy and against the non-existent posts by the authorities not having competence without defined working hours which are

applicable to the regular employees or other appointees engaged under different schemes or policies which have to render the defined working hours as mentioned under various labour law. As such the petitioners are not entitled to minimum wages for reason that the nature of duties including working hours discharged by the petitioners and the regular employees or scheme based/ adhoc/ daily wagger workers are not similar. The petitioners are neither daily wagers nor adhoc nor contractual appointees as such the petitioners are not entitled for the benefit of minimum wages.

Whereas, the principle for equal pay for equal work has been considered in many reported decisions and it has been held that it is well settled that equal pay must depend upon on the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a relation nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide reasonably and rationally, was not open to interference by the court.

Whereas, the petitioners have been engaged against the non-existent posts without undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates. They were neither appointed against sanctioned posts nor are paid out from the consolidated fund or any other specified fund/ budget head. Therefore the mere fact that they were doing work similar to the regular employees cannot be treated as sufficient for applying the principal for equal pay for equal work and if the claim of the petitioners is considered at this juncture, the Government has to sanction additional post so as to facilitate payment of salaries and allowances in the regular pay scale from the consolidated fund which in turn reduce the number of posts for direct recruitment.

Whereas, the wages are being paid to the petitioners and other similarly placed persons as per the resources keeping in view the school fee of the students, the Government has ordered the exemption of fee dues in favour of

girl students thus curtailing resources further with the result the wages from the local funds are not available to meet out the salary/ allowance at par with the regular employees or in terms of minimum wages of the respondent department. As such the respondent Department is not in position to meet out the liability because of non availability of funds/resources.

Whereas, the issue regarding payment of minimum wages in favour of CPW's has been settled by this Hon'ble High Court of J&K and the same has been confirmed by the Hon'ble Supreme Court of India in the cases of **Zoona Bibi Vs State reported in SLJ 2000 page 352**, whereunder following directions were passed:-

“...The appropriate Government may consider for framing of appropriate scheme or any formula so that they can survive by affording at least two coarse meals a day. Till such time the scheme or any formula is framed by the appropriate Govt, the cases of the appellants may be considered to be paid at the rates of minimum wages act as applicable in the State of Jammu and Kashmir. This direction is, however, subject to the condition that the engagement is full time and not part time.”

Whereas, in compliance to the Hon'ble Court directions the case of the petitioner was examined in the Department and it was found that the petitioners including other similarly engaged persons have not been appointed through regular mode of appointment under any specified rule or policy but the petitioner herein stood engaged on part time basis and were approximately discharging duties for maximum one hour per day. The petitioners as well as similarly situated persons, for which the petitioner are accordingly were/ are being paid out of School improvement funds (local funds). The petitioners herein who are part time workers are not entitled to seek reliefs or claim for minimum wages as they are neither covered under the definition of workmen as provided in Minimum Wages Act nor are they engaged against any sanctioned post. As such the petitioners do not meet out conditional requirement as has been kept by the Hon'ble Court in **judgment reported in SLJ 2000 page 352 passed in civil appeal No. 213 of 2013.**

Now therefore, keeping in view the above mentioned facts and circumstances of the case and in compliance to the directions passed by the Hon'ble Court the claim of the petitioners for payment of the wages in terms of judgment reported in SLJ 2000 page 352 passed in civil appeal No. 213 of 2013 was considered and it was found that the petitioners are not similarly circumstanced because of the fact that the petitioners have been engaged against non-existent posts, and are not bound by the working hours applicable to the regular employees. The petitioners are neither daily wagers nor adhoc nor contractual appointees. As such the



Claim of the petitioners is found to be devoid of merits and is therefore
rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

Alok Kumar (IRS),

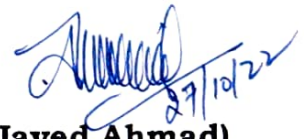
Principal Secretary to the Government,
School Education Department.

No:- Edu/Legal/14/2021 (31757)

Dated:- 27.10.2022

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Commissioner/ Secretary to the Government, General Administration Department.
3. Director School Education Jammu/ Kashmir for information and necessary action with the request to file necessary compliance report before the Hon'ble High Court.
4. Director, Archives, Archeology and Museums, J&K.
5. OSD with Advisor (B) to the Lieutenant Governor, UT of J&K for information.
6. Chief Education Officer _____ (concerned) for information and necessary action.
7. Private Secretary to Principal Secretary to Government, School Education Department for information.
8. Sh. Sheikh Mushtaq, Additional Advocate General, High Court of J&K and Ladakh for information and with the request to file necessary compliance report before the Hon'ble High Court.
9. Smt. _____ (Petitioner/ Applicant) for information.
10. I/C Website for uploading the same on official website.
11. Government Order File/ Concerned File (w.2.s.c).



(Javed Ahmad),

**Additional Secretary to the Government,
School Education Department.**