



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

Subject: - CCP (D) No. 3/2021 in LPA No. 117/2019 in LPASW No. 30/2012 titled Lalita Devi Vs Bishwajit Kumar Singh & another.

**GOVERNMENT ORDER NO: 320 - JK (Edu) of 2023
DATED: 02 – 10 - 2023**

Whereas, Director School Education, Jammu vide advertisement Notice No.DIP/J-805 dated 01.07.2004, invited applications from the eligible candidates for appointment against two posts of ReT teachers under Sarva Shiksha Abhiyan scheme in newly opened Govt. Primary School, Sabha Basti, Badyal Brahmana, Zone Miran Sahib, Tehsil R.S Pura. In pursuance to the said advertisement notice, five applications were received. A merit panel was prepared and the name of Lalita Devi figured at S.No.03, and the name of Seema Raina figured at S. No. 05. It is pertinent to mention here that against the name of Seema Raina in the panel so prepared for PS, Sabha Basti, it was clearly mentioned that no PRC or under process PRC is available. From the bare perusal of the panel, it was manifested that the merit of Seema Raina was better than the Lalita Devi but her name could not be shown above the name of the Lalita Devi because Seema Raina had not been able to produce her state subject certificate within a period of one month and accordingly, Lalita Devi was engaged as ReT teacher vide order No.ZEO/MS/04- 05/2014 dated 04.04.2005. On 16.05.2005, Seema Raina filed a representation before the Director School Education, Jammu against the appointment of Lalita Devi.

Whereas, Lalita Devi had approached the Hon'ble High Court, Jammu through a medium of writ petition bearing SWP No. 871/2005 titled Lalita Devi v/s State and ors, wherein, she prayed for issuance of directions to the respondents regarding non-termination of the services of the petitioner without following due course of law and observing the principles of natural justice.

Whereas, the Hon'ble High Court, Jammu on 30.09.2005 had disposed of the aforementioned writ petition with the following directions:-

" In the above circumstances, this petition is disposed of with the directions that if any adverse order is required to be passed against the petitioner, rules in vogue and principles of natural justice be observed."

Whereas, Director School Education, Jammu vide No. DSEJ/RET /13438-39 dated 25.10.2005 accorded approval for the engagement of private respondent namely Seema Raina as ReT teacher in PS, Sabha Basti in place of petitioner namely Lalita Devi. Thereafter, the petitioner namely Lalita Devi once again approached the Hon'ble High Court, Jammu through a medium of writ petition bearing SWP No.1573/2005 titled Lalita Devi v/s State and ors.

Whereas, the Honble High Court, Jammu on 15.05.2006 had finally disposed of the aforementioned writ petition with the following directions:

"... In the above view of the petitioner this writ petition is disposed of with a direction to respondent No.3 to take a decision in the matter of termination of the petitioner after considering her reply and the law governing the field and until such decision is taken, the petitioner shall be allowed to continue. Connected CMO shall stand disposed of and interim direction, if any shall stand vacated. If

any adverse order come to be passed against the petitioner she shall be free to challenge the same in appropriate proceedings."

Whereas, after receiving direction of the Hon'ble High Court, Jammu, the then Joint Director vide order No. DSEJ/ReT/3771 dated 29.05.2006 issued directions to the Chief Education Officer, Jammu to issue show cause notice to Lalita Devi through Zonal Education Officer, Miran Sahib as to why his services shall not be terminated being lower in merit. Lalita Devi replied to the said show cause notice, wherein, she alleged that private respondent namely Seema Raina had failed to provide PRC at the time of selection. In order to ascertain the factual position, the Personnel Officer, Directorate of School Education, Jammu vide communication No. DSEJ/W/8763-65 dated 19.08.2016 requested District Development Commissioner, Jammu to communicate the exact details of PRCs of Lalita Devi and Seema Raina along with the dates of applying in the office of Tehsildar, R.S.Pura/Additional DC, Jammu. In response to the aforementioned communication, the Addl. Deputy Commissioner, Jammu vide communication No.31-32/PRC dated 05.09.2006 clarified that the PRC file of Lalita Devi was received by his office on 07.10.2004 and PRC was issued in her favour on 25.10.2004. Similarly, the PRC file of Seema Raina was received by his office on 19.04.2005 and the PRC issued in her favour on 23.04.2005. Thereafter, in order to ascertain the exact data of filling of applications for issuance of PRC, the Personnel Officer, Directorate of School Education, Jammu vide communication No. DSEJ/W/ 16926-27 dated 26.09.2006 had taken-up the matter with Tehsildar, R.S.Pura. Vide communication No. 1315- 16/m dated 04.01.2007, Tehsildar, R.S.Pura, submitted that vide his office No.889/M dated 07.10.04, the original file regarding issuance of PRC in favour of Lalita Devi was submitted to D.C. Office, Jammu. Likewise, vide No.88/M dated 19.04.2005 the original file regarding issuance of PRC in favour of Seema Raina was submitted to D.C. Office Jammu .

Whereas, the under process certificate was issued in favour of Seema Raina on 29.01.2004 which was only valid for one month. However, no record regarding the issuance of under process certificate had been found in this regard and also there is no record of the file in the Misal Band and dispatch register.

Whereas, Director School Education, Jammu vide order no. DSEJ/RET/2384-89 dated 20-03-2007 directed the Chief Education Officer, Jammu and Zonal Education Officer, Miran Sahib to issue the appointment order in favour of Seema Raina in place of Lalita Devi. The ZEO, Miran Sahib, vide order no. ZEO/MS/07/ 1845-49 dated 30-03-2007 engaged private respondent namely Seema Raina as ReT teacher in place of Lalita Devi.

Whereas, the petitioner namely Lalita Devi had once again approached the Hon'ble High Court Jammu through the medium of writ petition bearing SWP No. 571/2007 titled Lalita Devi v/s state &ors wherein she questioned/challenged the order no. DSEJ/RET/2384-89 dated 20-03-2007.

Whereas, during the pendency of the above mentioned writ petition, the petitioner namely Lalita Devi filed another writ petition bearing SWP No. 620/2007 titled Lalita Devi v/s State and ors, wherein she questioned/ challenged order no. ZEO/MS/ 07/1 45-49 dated 30-03-2007, whereby, Seema Raina was engaged as ReT teacher.

Whereas, the petitioner's claim to engagement as ReT teacher in GPS, Sabha Basti, as projected in these two writ petitions, is based only on the ground that Seema Raina was not possessing Permanent Resident Certificate at that time when she applied for the advertisement notice.

Whereas, the Hon'ble High Court, Jammu on 12-03-2012 in SWP No. 571/2005 c/w SWP No. 620/2007 dismissed the aforementioned writ petitions with the following directions:-

"Being lower in merit to Seema Raina, the Petitioner's challenge to the engagement of respondent as Rehbar-e-Taleem in her place, therefore, fails.

Thus, found without merit, these petitions are, accordingly, dismissed lifting the interim orders issued during currency thereof"

Whereas, the petitioner filed LPA No. 117/2019, CM No. 3903/2019 in LPASW No. 30/2012 titled Lalita Devi v/s State of J&K through Chief Secretary before the Hon'ble Division Bench and the Hon'ble Court, Jammu on 04-12-2020 has passed the following order:

"....It is, however, made clear that we are not issuing any directions for engagement of the appellant as an RET rather we are issuing directions for her engagement directly as a Teacher, in the peculiar facts and circumstances of the case. Let this direction be implemented within sixty days. In case, the order appointment is not issued, the appellant would be deemed to have been appointed any would be entitled to receive her pay and allowances from the said date.

Disposed of accordingly along with connected applications (s)."

Whereas, the matter was referred to the Department of Law, Justice and Parliamentary who vide OM dated 09.03.2021 returned the file with the following advice:

Returned:- Department is advised to file SLP judgment dated 14.12.2020 against the passed by the High Court of Division Bench of Hon'ble J&K at Jammu in LPA No. 117/2019, CM in LPASW No. No.3903/2019 30/2012 titled Lalita Devi vs. State of Taruna.A.Prasad, J&K through Smt. Advocate-on-Record, Supreme Court of has been India, who engaged vide letter no. LD (SC) 2020/46-S.Edu, dated 09.03.2021.

Whereas the petitioner has also filed contempt petition bearing No. CCP(D) No. 03/2021 before the Hon'ble High Court.

Whereas, the matter was listed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court vide order dated 20.07.2022 has dismissed the SLP. The order of Hon'ble Supreme Court is reproduced as under:-

"The Special Leave Petition is dismissed.

Pending application stand disposed of."

Whereas, after consulting Department of law, Justice and Parliamentary Affairs as well as Ld. Advocate General the matter was taken up with the Finance Department and General Administration Department for implementing the judgment dated 04.12.2020 of the Division Bench of the Hon'ble High Court keeping in view the fact that the Department has lost SLP before the Hon'ble Supreme court.

Whereas, the contempt petition was listed on 12.07.2023 before the Division Bench of the Hon'ble High Court and following direction were passed:-

"Mr. Raman Sharma, learned AAG seeks one more opportunity enabling him to comply with the judgment dated 14.12.2020 in its letter and spirit.

Reluctantly, further four weeks' time is extended to comply with the judgment dated 14.12.2020, failing which the respondent No. 1-Commissioner/Secretary to Government, School Education Department, Jammu shall appear in person on the next date of hearing.

Whereas, keeping in view the coercive orders passed by the Division Bench of the Hon'ble High Court, the matter was again discussed in the Department under the chairmanship of Worthy Principal Secretary, School Education Department in presence of Director School Education Jammu, Special Secretary (N/A) and after examination of the records a supernumerary post (Teacher grade-III) was identified in District Jammu for issuance of appointment order in favour of the petitioner.

Now, therefore in pursuance to the directions passed by the Hon'ble Division Bench vide order dated 04.12.2020 passed in LPA No. 117/2019 in LPASW No. 30/2012 titled Lalita Devi Vs State of J&K & Ors read with judgment dated 20.07.2022 passed in SLP (c) No. 9036/2021 titled State of J&K & Ors vs Lalita Devi, sanction is hereby accorded to the appointment of the petitioner, Smt. Lalita Devi W/o Sh. Madan Lal R/o Village Sabha Basti, Badyal Brahamna, Teshil, R.S. Pura, District Jammu as Teacher (Grade III). She shall be given notional benefit of appointment w.e.f. 04-04-2010 and monetary benefit w.e.f. 12-02-2021.

The engagement order is subject to production of the following certificates before being allowed to join.

1. Domicile certificate.
2. Qualification Certificate.
3. Matriculation Certificate.
4. Character/antecedents certificate.
5. Other certificates, if any required.

By order of the Government of Jammu & Kashmir.

Sd/-

Alok Kumar (IRS),

Principal Secretary to the Government,
School Education Department

No: Edu-LGL0Jmu(HC)/71/2021-01

Dated: 02.10.2023

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Director School Education Jammu for information and necessary action. Her salary shall be released after receiving verification report of the character and antecedents from the Criminal Investigation Department.
3. OSD with Advisor (B) to the Lieutenant Governor, UT of J&K for information.
4. Private Secretary to Principal Secretary to Government, School Education Department for information.
5. Sh. Raman Sharma Additional Advocate General, Hon'ble High Court UT of J&K for information.
6. Smt. Lalita Devi w/o Sh. Madan Lal R/o Village Sabha Basti Badyal Brahamna Teshil R.S. Pura District Jammu) for information.
7. I/C Website for uploading the same on official website.
8. Government Order File/ Concerned File (w.2.s.c).

(Mohammad Iqbal Mir) JKAS,
Under Secretary to the Government
School Education Department.