

Government of Jammu and Kashmir
Skill Development Department
Civil Secretariate J&K Jammu.

Subject: CPSW **No.98/2017** (SWP No. **1380/2015**) (CM **No.1339/2020**) titled Fareed Ahmad Ganie Vs Mr. Sanjay Verma and another- regarding regularization of services of the petitioner.

Government Order No: 13 -JK (DSD) of 2023
Dated: 07.02.2023

Whereas, the petitioner namely Shri Fareed Ahmad Ganie was initially engaged by the Director, Skill Development Department vide communication No. DTE/101/21/ 2344-45 dated 04-07-2006 for utilizing his services as night Chowkidar in substitute arrangement on monthly wages of Rs.1500/- by debit to Institutional Development Fund (IDF) or till regular arrangement is made in accordance with the rules. No formal order was issued in favour of the petitioner and the wages were paid to him on Muster Roll; and

Whereas, the Deputy Director Technical Education Kashmir vide letter No. DDK/Estt/109/Consid/872-73 dated 15-07-2009 had enhanced the wages by allowing the minimum pay scale attached to the post of Night Chowkidar against available vacancy by debit to salary component till proper selection is made by the competent authority; and

Whereas, the monthly wages of the petitioner were again enhanced @ Rs.4440/- per month by Director Skill Development Department vide order No.697 of 2013 dated 10-10-2013 along with the release of the grade pay attached to the post vide communication No.DTE/101/PF/2002-2003 dated 28-03-2014; and

Whereas the petitioner approached the Hon'ble High Court of J&K at Srinagar through the medium of writ petition No.1380/2015, seeking therein following relief: -

- *Writ of mandamus, the respondents be directed to regularize/confirm the petitioner against the post of Chowkidar/ Class IV and services be reckoned retrospectively with all consequential benefits, seniority etc.*
- *The respondents be further directed not to disengage the services till consideration of regularization. and*

Whereas, the Hon'ble High Court vide its judgment/order dated 04-

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04-02-2016 disposed of the writ petition by directing the respondents as under:

"this writ petition along with connected MP(s) is disposed of and respondents are directed to consider the claim of the petitioner in terms of Jammu and Kashmir Civil Services (Special Provision) Act, 2010 for his permanent absorption and regularization and pass orders preferably within eight weeks from the date copy of this order is served. Disposed of as above."

Whereas, in compliance to the judgment dated 04-02-2016, passed by the Hon'ble Court, the claim of the petitioner was considered in light of the Jammu and Kashmir Civil Services (Special Provision) Act, 2010 and found devoid of merit and accordingly rejected by the Director Skill Development Department vide order No.187 of 2017 dated 14-03-2017; and

Whereas, aggrieved with the aforesaid rejection order, the petitioner initiated contempt proceeding against the Department by virtue of C P S W No.98/2016 titled Fareed Ahmad Ganie Vs Mr. Sanjay Verma and Others, for non-implementation of judgment dated 04-02-2016 and the Hon'ble Court vide its order dated 22-10-2019 directed the respondents to consider the case of petitioner afresh for regularization; and

Whereas, pursuant to the directions passed by the Hon'ble Court vide order dated 22-10-2019, the claim of the petitioner was examined and considered a fresh, in terms of section-3 and section-5 of the Jammu and Kashmir Civil Services (Special Provision) Act, 2010 and rejected vide DTE order No.704 of 2019 dated 16-12-2019 by the Director Skill Development Department; and

Whereas, the Hon'ble High Court vide order dated 10-08-2022 passed in above contempt petitions, directed the respondents as under: -

The order mentioned supra has been issued by Director Technical Education specifically provides that the claim of the petitioner for regularization of the services as Night Chowkidar, does not fulfill the prescribed eligibility criteria covered under section 3 and section 5(iii) of J&K Civil Services (Special Provision) Act 2010, as the same is devoid of any merit and was accordingly rejected.

Mr. B.A Misri, learned counsel for the petitioner, argued that the order of consideration has been passed by Director, Technical Education, who is not the competent authority in terms of the aforesaid Act and the order ought to have been passed by Empowered Committee in conformity with Section 10 of J&K Civil Services (Special Provision) Act 2010. Learned

counsel for the petitioner further pleaded that time and again, not only the salary of petitioner has been increased but grade pay also stands released in his favour vide no. ITI/Spr/Trgs/434 dated 07.02.2017 and rejection of petitioner's claim is totally against the mandate of judgment dated 04.02.2016. Thus the rejection order passed by Director Technical as such is against the mandate and spirit of directions passed by this Court dated 04.02.2016.

I have perused the order of consideration dated 16.12.2019, which has been placed on record along with the statement of facts, wherein, the reason for rejecting the case of the petitioner is with regard to his appointment and also the qualification which is middle pass. This aspect of the matter has already been gone in detail by this Court vide order dated 22.10.2019, wherein it has been observed that the department cannot join the issue of the appointment of the petitioner. It has also been observed in the aforesaid order that the ground taken in the statement of facts that the petitioner does not have the technical and academic qualification is contrary to the rules.

Be that as it may, since the direction passed by the Court was specific to the extent of according consideration to the claim of the petitioner in terms of J&K Civil Services (Special Provision) Act 2010, for his permanent absorption and regularization and with a view to do the complete justice, it would be appropriate to direct the respondents to accord fresh consideration in tune with the directions passed by this Court on 04.02.2016 within a period of six weeks from the date copy of the order along with the contempt petition is provided to the respondents against proper receipt. Learned counsel for the respondents to file fresh status report by or before next date of hearing along with order of consideration before the Court. "and

Whereas, pursuant to the directions passed by the Hon'ble Court vide order dated 10.08.2022, the Director Skill Development Department while considering the claim of the petitioner rejected the same vide order No. 14 of 2023 dated 09.01.2023, taking into the earlier consideration order No. 704 of 2019 dated 16.12.2019. On the ground that the same does not come under the purview of Jammu and Kashmir Civil Services (Special Provision) Act-2010, for permanent absorption and regularization citing following reasons: -

- i). The petitioner has not been appointed on adhoc or contractual or consolidated basis as per his aforementioned initial engagement order.*
- ii). The post of Night Chowkidar is a direct recruitment quota, so that the post cannot be filled up in violation rules.*
- iii). No formal order has been issued in favour of the petitioner.*
- iv). The utilization of services as Night Chowkidar was made on substitute*

arrangement on monthly wages of Rs. 1500/- by debit to IDF till regular arrangement was made in accordance with rules.

v). the qualification of petitioner is middle pass.

Whereas, the SRO-99 dated 07-04-2008 notified by the General Administrative Department for recruitment to the posts of Class-IV provides as under;

"in exercise of the powers conferred by the proviso to section 124 of the Constitution of Jammu and Kashmir and in supersession of all rules/orders pertaining to the recruitment of Class-IV posts, the Governor hereby directs that the minimum and maximum qualification for appointment to Class-iv posts under direct recruitment shall be Matric and 10+2 respectively." and

Whereas the Hon'ble High Court while not agreeing to the consideration order dated 09.01.2023 passed by the Director Skill Development, J&K, vide its order dated 01.02.2023, directed as under:

Heard in part.

Perusal of the record of the proceeding inasmuch as the record of the case would reveal that the respondents have been considering the case of the petitioner in defiance and breach of the direction passed by this Court on 4th February, 2016, in SWP No. 1380/2015 even the latest statement of facts filed by the respondents accompanied with a consideration order dated 9th January, 2023, reflects the same state of affairs thus, necessitating presence of respondent no.2 alongwith record.

Mr. Faheem Shah, GA appearing counsel for the respondent no. 2 undertakes to produce respondent no. 2 on Monday i.e on 6th February, 2023 along-with with a fresh consideration order in line and tune with the directions passed by this Court dated 4th February, 2016." and

Whereas, in pursuance to the order dated 01.02.2023, passed by the Hon' ble Court, the Director, Skill Development, J&K vide his communication No. DSD/Lega/197/2022-02/1376 dated 02.02.2023, has forwarded the case of the petitioner to this Department for consideration /regularization of his services, under the provisions of the J&K Civil Services (Special Provision) Act, 2010, with request to take up the matter with Empowered Committee (Finance Department) for consideration/regularization of services of the above said petitioner; and

Whereas, In pursuance to the directions passed by the Hon'ble High Court on the subject and while acceding the request of the

Director, Skill Development, J&K, the case of the petitioner was examined in the Administrative Department and referred to the Finance Department for consideration/regularization of services of the petitioner. Finance Department has returned the file vide U.O No. FD-Cod/113/2021-03 dated 06.02.2023, with following advice:

"The case has been examined in the Finance Department. The Department is advised that J&K Civil Service Special Provision Act, 2010 has been repealed by the MHA in terms of J&K Re-organization (Adaptation of State Laws) Order, 2020 issued vide SO 1229(E) dated 31.03.2020, as such the Empowered Committee does not exist";

Now, therefore, keeping in view of the above stated facts and circumstances of the instant case, the claim of the petitioner has been examined and considered in light of judgement dated 04.02.2016 passed in SWP No. 1380/2015, read with order dated 10.08.2022, passed in CPSW No. 98/2017 by the Hon'ble Court viz-a-viz the advice tendered by the Finance Department conveyed vide U.O No. FD-Cod/113/2021-03 dated 06.02.2023 and found that the claim of the petitioner is without any merit and hence rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dr. Asgar Hassan Samoon), IAS
Principal Secretary to the Government

Dated: 07.02.2023

No. DSD/IgI0ITI/88/2022-02
Copy to:

1. Secretary to the Government, Finance Department for information.
2. Secretary to the Government, Department of Law Justice and PA.
3. Director, Skill Development, J&K for information.
4. Mr. Faheem Nisar Shah, Govt. Advocate J&K High Court Srinagar for information and necessary action.
5. OSD to Advisor (B) to the Hon'ble Lieutenant Governor.
6. Private Secretary to the Principal Secretary to the Government, SDD for information of the Principal Secretary.
7. Senior Law officer of Skill Development Department.
8. PA to the Special Secretary to the Government, SDD for information,
9. Government Order file.



(Fayaz Ahmad Bhat)

Under Secretary to the Government
Skill Development Department.