

**Government of Jammu and Kashmir
Skill Development Department
Civil Secretariat, Jammu**

Subject: OA No. 61/1261/2022 titled Muzaffar Hussain Vs Union Territory of J&K and others.

**Government Order No: 30-JK (DSD) of 2023
Dated: 17.03.2023**

Whereas, on the recommendation of Principal ITI Kishtwar vide letter No. ITI-Ktr/Estt/1287-88 dated 09-01-2008, Shri Muzaffar Hussain S/O Late Ghulam Hussain Mughal R/O Kishtwar was temporarily engaged at ITI, Kishtwar for three months on honorarium of Rs. 2610/= per month for driving practice of trainees in Mechanic Motor Vehicle Trade vide DTE Order No. 200 of 2008 dated 01.03.2008; and

Whereas, vide order No. 548 of 2008 dated 17-06-2008, then Director Technical Education extended engagement of the petitioner upto 30-09-2008, thereafter no extension was granted but the petitioner did not attend to the job assigned to him at ITI Kishtwar; and

Whereas, as per available records, the petitioner was subsequently deployed by Additional Deputy Commissioner, Kishtwar with his office in 2010 vide order No. DCK/10/39-40 dated: 05-04-2010; and

Whereas, on recommendations of the then Director Technical Education, the case of the petitioner were referred to the Empowered Committee for appropriate consideration, as per Jammu and Kashmir Civil Services (Special Provisions) Act, 2010; and

Whereas, the Empowered Committee in 61st meeting held by the Committee on 25-04-2018 imposed following conditions, vide O.M No. PS/DC/Misc-392/14 dated 02.08.2018, prior to appropriate consideration under the provision of J&K Civil Services (Special Provisions) Act, 2010:-

- (i) That these incumbents have been appointed against clear vacancy or post and not been recommended earlier by the Empowered Committee;
- (ii) That they continue as such on the appointed day.
- (iii) That they possessed the requisite qualifications and are eligible for the post on the date of their initial appointment on adhoc or contractual or consolidated basis as prescribed by the Recruitment Rules governing the service for the post.
- (iv) That appointments have been made by the Competent Authority or initial appointments made by an Authority not competent to engage, be got regularized.
- (v) That these appointees have not been selected by any Recruiting agency or appointed in any other Government Department.

- (vi) That no disciplinary or criminal proceedings are pending against the employees.
- (vii) That the appointees are not part-time or seasonal, including those whose wages are paid out of local funds or contingent grants.
- (viii) That the allowances other than what was admissible/due have not been drawn. and
- (ix) That the concerned Department shall fully verify their original qualification, Date of Birth, PRCs, prior to issuance of the regularization orders after obtaining necessary approval of the Competent Authority.

Whereas, the case of the petitioner was wrongly recommended for regularization by then Director Technical Education with the remarks that the petitioner has completed the seven year continuous service, while, the petitioner has neither completed seven years continuous service nor fulfilled other conditions as stipulated under the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 which was repealed, in terms of J&K Re-organization (Adaptation of State Laws) Order, 2020 issued vide SO 1229 (E) dated:- 31-03-2020 and the petitioner is, therefore, not entitled to regularization; and

Whereas, vide U.O NO. Edu/Tech-Gen/37/2016 dated 12.02.2019, the case of the petitioner was subsequently referred to GAD for placing before Competent Authority for approval, in terms of Rule 10 (5) of Jammu and Kashmir Civil Services (Special Provision) Act, 2010; and

Whereas, General Administration Department, JKUT vide OM No. GDC-265/CM/2017 dated 23-02-2021, gave following opinion in the matter:

"Regularization scheme namely Jammu and Kashmir Daily Rated Workers/work Charged Employees (Regularization) Rules, 1994 were notified vide SRO-64 of 1994 and repealed J&K Civil Services (Special Provisions) Act, 2010 are under administrative scrutiny and a considerate and informed decision on the issue is to be taken in the matter. The issue is required to be placed before the Establishment-cum-Selection Committee". and

Whereas, mother of the petitioner submitted an application on 18.08.2022 to this Department for regularization of the petitioner in light of recommendation of 61st meeting of the Empowered Committee held on 25.04.2018 including enhancement of salary; and

Whereas, in the interim, the petitioner, through O. A /61/1261/2022 titled Muzaffar Hussain Vs Union Territory of J&K & others approached Hon'ble Central Administrative Tribunal, Jammu Bench, seeking regularization of service of the petitioner against the post of Workshop Attendant; and

Whereas, GAD vide O.M No. GAD-Cord/106/2022-09 dated 10.10.2022 conveyed decision of the Meeting of the Establishment-cum-Selection Committee held on 05.08.2022 as below:-

"The committee observed that all the provisions under SRO of 64 of 1994 and the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 have lost the relevance and validity in present times especially in view of illegality that exist in promulgation of these Acts/Rules as per the various judgements of the Hon'ble Court from time to time.

The Committee, accordingly, decided to maintain the present stance of the Government and deferred consideration to the proposal for the time being". and

Whereas, the Hon'ble Central Administrative Tribunal, Jammu Bench vide order dated 08.09.2022 while disposing of the above titled OA directed, as below: -

".....the OA is disposed of with directions to respondents to consider the representation dated 18.08.2022 submitted by the applicant and decide the same, as per rules and regulations governing the subject, by passing a reasoned and speaking order within a period of four weeks from the date of receipt of a certified copy of this order." and

Whereas, Department of Law, Justice and Parliamentary Affairs, conveyed their opinion in the matter, vide U.O. No.: LAW-LIT3/149/2023-10 dated 01.03.2023 as below:-

"The Department is advised to consider the representation of the applicant dated 18.08.2022 and pass a speaking order as per rules and regulations governing the subject, keeping in view the instructions/decision of the General Administration Department conveyed vide O.M dated 10.10.2022." and

Whereas, contents of representation made by mother of the petitioner on behalf of the petitioner on 18-08-2022 were examined at length by this Department in consultation with GAD, Law and Finance Departments of JKUT, in light of order passed by Hon'ble Central Administrative Tribunal, Jammu Bench on 08.09.2022 read with condition of Empowered Committee conveyed to this Department vide OM No. PS/DC/Misc-392/14 dated 02.08.2018 governing regularization of service of the petitioner.

Therefore, the claim of the petitioner to regularization is devoid of any merit, in view of aforementioned facts and circumstances, the petitioner does not fulfill conditions stipulated by the Empowered Committee which was abolished after repealing of J&K Civil Services (Special Provisions) Act, 2010, hence claim of the petitioner for

regularization merits rejection, in compliance to orders of Hon'ble Central Administrative Tribunal at Jammu dated 08.09.2022, on following grounds:-

1. That the petitioner was temporarily engaged unauthorisedly and illegally by then Director Technical Education initially for three months and his engagement was extended further for three months illegally and unauthorisedly till 30.09.2008 whereupon the petitioner willfully abandoned his duties at ITI Kishtwar, as the petitioner was deployed by ADC Kishtwar at his Office, illegally and unauthorisedly since 5th April 2010 as per available records, thereby creating financial burden on ITI Kishtwar, by illegally drawing his wages reportedly from ITI Kishtwar in violation of duties assigned to the petitioner.
2. That as per available records, the petitioner is not discharging duties at ITI Kishtwar since 30.09.2008.
3. That the petitioner was temporarily engaged initially for 3 months and temporary engagement of the petitioner was extended by three more months which expired on 30.09.2008 at ITI Kishtwar.
4. That temporary engagement of the petitioner was not extended by Competent Authority beyond 30.09.2008.
5. That the petitioner failed to perform duties at ITI Kishtwar beyond 30.09.2008.
6. That in view of repealing of Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, in terms of J&K Re-organization (Adaptation of State Laws) Order, 2020 issued vide SO 1229(E) dated:- 31-03-2020, the Empowered Committee under the said Act does not exist at this point of time.
7. That the Establishment-cum-Selection Committee held meeting in this context on 05.08.2022 and decided as below:-

"The committee observed that all the provisions under SRO of 64 of 1994 and the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 have lost the relevance and validity in present times especially in view of illegality that exist in promulgation of these Acts/Rules as per the various judgments of the Hon'ble Court from

time to time. The Committee, accordingly, decided to maintain the present stance of the Government and deferred consideration to the proposal for the time being".

Therefore, claim of the petitioner seeking regularization of his service at ITI Kishtwar, is devoid of any merit, as his claim could not be substantiated by the facts and circumstances mentioned hereinabove. Hence, rejected by this Department, in compliance to the orders of Hon'ble Central Administrative Tribunal Bench at Jammu.

By order of the Government of Jammu and Kashmir.

Sd/-

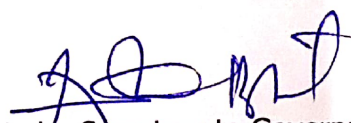
(Dr. Asgar Hassan Samoon), IAS
Principal Secretary to the Government.

Dated: 17.03.2023

No. DSD/lgl/69/2022-02

Copy to:

1. Financial Commissioner, Finance Department.
2. Commissioner/Secretary to Government, General Administration Department.
3. Secretary to the Government, Department of Law Justice and Parliamentary Affairs.
4. Director, Skill Development, J&K for information.
5. Mr. Rajesh Thappa, Additional Advocate General, Central Administrative Tribunal (CAT) Jammu Bench for information and necessary action.
6. OSD to Advisor (B) to the Hon'ble Lieutenant Governor.
7. Principal, ITI, Kishtwar for information.
8. Senior Law officer, Skill Development Department.
9. Private Secretary to the Principal Secretary to the Government for information of the Principal Secretary.
10. Government order file


Under Secretary to Government
Department of Skill Development