



Satyameva Jayate

Government of Jammu & Kashmir
Department of Rural Development & Panchayati Raj
Civil Secretariat, Jammu/Srinagar

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Tel. No. 0191-2564763 (J), 0194-2506269 (S)

Subject: Contempt Petition No. 12/2010 in SWP No. 877 / 2006
titled Abdul Rehman Khanday and Others vs Bipul Pathak and Others.

Government Order No. 287-JK (RD&PR) of 2022
D a t e d: 17.10.2022

Whereas, Gh. Mohammad Sheikh and others filed SWP No. 877/2006 seeking regularization of their services in terms of SRO-64 of 1994 and the said writ petition came up for hearing before the Hon'ble High Court on 03-05-2007. The Hon'ble High Court disposed of the writ petition with the following directions:-

"Accordingly, the petition is admitted and disposed of with a direction to respondents to initiate further lawful follow up action in petitioners case purporting to have been submitted on 08.04.2004 for consideration of their representation on their own merit and in accordance with SRO 64 of 1994, while doing so due regard be had to order No. 84 -DRD of 2006 dated 24.03.2006 where under similarly placed daily wagers have reportedly been given benefit of SRO 64 of 1994. Consideration as such, be accorded within three months from now preferably after hearing petitioners. Petition is accordingly disposed off"; and

Whereas, the petitioners filed the contempt petition bearing No : 387/2007 which was disposed of by the Hon'ble High court vide its order Dated : 04.08.2009, which provided as under:

"In the interest of justice, further opportunity is given to respondents to comply with and to implement the judgment of this court (supra) within a period of two months positively from the date copy of this order is served on them. It is provided that in case the order is not complied with, within the aforesaid period, the petitioners are at liberty to approach the court again to seek redress of their lawful grievance. Registry to provide copy of this order to Mr. Beigh for compliance thereof"; and

Whereas, the petitioners subsequently filed contempt petition bearing No. 12/2010 and the Hon'ble High Court vide its order Dated : 16.02.2022 passed the following directions:-

" 3. As has been noticed in the preceding paras, in terms of initial order/Judgment dated 3rd May 2007, the respondents were required to accord benefit of SRO 64 of 1994 within three month's time, preferably after hearing the petitioners. the time frame provide in the said order, admittedly, has been

extended upon consideration and disposal of the contempt petition (supra) in terms of order dated 4th August, 2009, extending the stipulated period of another two months.

4. The record tend to show that respondent ironically have delayed the consideration of the case of the petitioners. The record reveals that the First status report had been filed by the respondents in the year 2010 followed by two statement of facts respectively filed in the year 2015 and 2016. The latest compliance report is filed on 5th March, 2021, wherein petitioners have not been fund eligible for regularization in terms of SRO 64 of 1994.

5. The record of the statement of facts filed by the respondents nowhere reveals that the respondents have considered the cases of these petitioners on the lines on which similarly situated daily wagers were reported to have been given the benefit of SRO 64 of 1994, as provided by this court in terms of order dated 3rd May, 2007 while disposing of the petition. So much so, the statement of facts (supra) do not spell out anywhere that the respondents have provided a hearing to the petitioners as well. The statements of facts in general and the statement of facts of 2021 in particular, in this view of the matter, is incomplete and require to be augmented /supplemented by their respondents No. 1 by filing detailed affidavit.

6. Although the Court is reluctant to provide opportunity to the respondents for supplementing the statement of facts in view of the writ large delay caused by them in complying with the orders passed by this court, yet the Court, while expressing its displeasure on the working of the respondents as officers of the Government, grant two weeks' time for supplementing the statement of facts filed in the year 2021. Should the respondent No. 1 failed to file supplementary statement of facts within time stipulated above, the respondent No.1 shall remain personally present before the Court on the next date of hearing.

7. Mr Satinder Singh, AAG, appearing for the respondents is directed that the record pertaining to the case petitioners as well as those daily wagers who have been regularized earlier to the petitioners similarly situated with them, shall also be kept available on the next date.

8. List again on 10-03-2022"; and

Whereas, keeping in view the directions of the Hon'ble High Court a Committee was constituted by the Department vide Govt. Order No. 40 RD&PR of 2022 dated 04-03-2022 and Supplementary Affidavit was filed in the Hon'ble High Court. The case was listed before the the Hon'ble High Court on 10-03-2022 and passed the following Order:-

" Vide Order dated 16-02-2020, a direction was issued to the respondent to supplement the statement of fact filed in the year 2021 because the court found that the earlier Statement of Facts filled by the respondents does not reveal that the respondents have considered the case of the petitioner on the lines on which the case of the similar situated daily wagers were reported to have been given the benefit of SRO-64 of 1994 as provided by the Court in terms of order dated 03-May -2007.

In pursuance to the aforesaid direction, Supplementary Statement of facts dated 08-03-2022 which is signed by the Commissioner/ Secretary to Govt. Rural Development and Panchayati Raj has been filed. As per the Supplementary statement of facts, a Committee has been constituted in terms of Government Order No. 40 RD&PR OF 2022 dated 04-03-2022 to verify the case of the petitioners on the basis of the record. The meeting of the

Committee has been fixed in the 1st week of April, 2022. The relevant record as was directed to be kept available in terms of last order has also been produced before the Court.

Learned counsel for the respondents submits that now that the record is available, the matter would be considered by the Committee of Officers in the 1st week of April, 2022 when its meeting is fixed. On this ground, he seeks sometime to comply with the directions of this court.

In the interests of Justice, the request of the learned AAG is granted. However, it is made clear that in case the matter is not considered in the light of the order dated 16-12-2022 read with Order of the writ court by the next date of hearing Commissioner/ Secretary to Government Rural Development and Panchayati Raj shall remain present in person.

List on 20-04-2022"; and

Whereas, a meeting of the Committee constituted vide Govt. Order No. 40 RD & PR of 2022 dated 04-03-2022 was held on 04.04.2022 and pursuant to the decision taken in the meeting, the cases of the petitioners were taken up with the General Administration Department. The said Department returned the file with the following advise:-

"Returned : The matter is required to be placed before the Establishment cum Selection Committee and accordingly the department is advised to provide the information sought in matter vide O.M. No. GDC-208/CM/2020 dated : 08.01.2021, GDC-41/CM/2020 dated : 23.03.2021 followed by the reminders issued vide No : GDC-41/CM/2020 dated : 06.04.2021 and O.M. No. GAD-CORD/36/2021 dated : 08.12.2021 expeditiously ". and

Whereas, the contempt petition was listed before the Hon'ble High Court on 12-05-2022 and the Hon'ble Court directed that better statement of facts/ compliance report be filed by or before next date of hearing failing which, Ms. Mandeep Kaur, Commissioner Secretary to Government, Rural Development & Panchayati Raj, Shall remain present in person; and

Whereas, the matter was re-examined by the department and it has been found that the Department has regularized the services of two petitioners while as the petitioner No. 24,29 to 36 have withdrawn their contempt petition; and

Whereas, it has been also found that vide Order No. 84 -DRD of 2006 dated 24.03.2006, the Director Rural Development Jammu pursuant to Govt. Order No. 54-RD of 2006 dated 14-02-2006 has regularized the DRWs as Helpers who have completed seven years continuous daily rated service and the department has not granted any relaxation in qualification/age bar in their case; and

Whereas, keeping in view the Judgment dated 03-05-2007 passed by the Hon'ble High Court in SWP No. 877/2006 as well as the orders passed by the Hon'ble Court in Contempt petition, it has been decided to provide an opportunity of being heard to all the petitioners in contempt petition and also examine their all relevant documents. Accordingly Govt. Order No. 126 RD&PR of 2022 dated 24-05- 2022 has been issued by the Department where it has been ordered as under:-

1. The committee constituted vide Govt. Order No : 40 RD & PR of 2022 Dated : 04.03.2022, shall hold a meeting in the matter on 28.05.2022 at 11.00 AM in the Directorate of Rural Development Kashmir.
2. The petitioners as per Annexure -'A' appended to this order are hereby directed to appear before the above said committee on the scheduled date and time along with their aforesaid documents.
3. The concerned head of the office where the above petitioners are working presently shall appear before the committee along with the employment/leave /salary records of these petitioners positively. If no records are available in respect of any petitioners, the concerned dealing hand in that case shall need to be identified for assumed destruction of records who shall be proceeded accordingly as per service rules.
4. Director Rural Development Kashmir to issue separate order deputing a team of seven officials who will examine all the documents of the petitioners before hand and put a complete case file of each petitioner at the time of hearing and inform all the officers where the petitioners are working to attend the meeting in person. He shall also request SSP Srinagar if any security issue is apprehended .

Whereas, the Committee constituted vide Govt. Order dated 04-03-2022 held its meeting on 28-05-2022 at Directorate of Rural Development Department Kashmir and all the petitioners except the petitioner No. 12, 20 (expired), 23 and 30 attended the meeting and were given reasonable and sufficient opportunity one by one to clarify their stand with respect to their initial engagement order, appointing authority, nature of work, breaks, qualification bar, age bar, wage statement, Muster sheets, CV vouchers etc and were also asked to produce documentary evidences if any in their possession in support of their claims and after hearing the petitioners and examination of their individual files , the earlier Subordinate Recruitment Rules-1990 (SRO 133 of 1990) have been considered which reveals that the eligible qualification for the recruitment of Class IV is middle pass; and

Whereas, the Committee discussed the cases of the petitioners on case to case basis and found that out of **(36)** petitioners, **(21)** suffers qualification bar, **(14)** having Middle / Matric qualification and **(1)** petitioner figuring **at serial No. 20** has expired, as such the following three categories of the petitioners have emerged.

- a. The petitioners who possess Middle / Matric qualification.
- b. The petitioners who are illiterate.
- c. The petitioners who possess Middle / Matric qualification and require condonation of breaks from the empowered committee headed by Chief Secretary; and

Whereas, the committee after providing opportunity of being heard to the petitioners who were present and after examination of their individual files categorized petitioners in below mentioned three categories;

Category "A"

S.No.	S. No in Petition	Name of DRW / Parentage	Address	Block/Office	Qualification
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from them, if the same is not available with them record their written statement and submit to Directorate duly attested; and

Whereas, subsequently Director Rural Development Kashmir vide communication No. DRDK/E-WP/27188-91 dated 20.09.2022 wherein the information furnished by Assistant Commissioner (Development) is reproduced as below:

1. Initial engagement Order; Not available in official records.
2. Wage statement from the date of initial engagement : Not available in official records.
3. Continuity certificate; Not available in official records.
4. Certificate as per Circular No. 15 of RD&PR duly signed by BDO and countersigned by ACD: Not available in official records.
5. Original Qualification Certificates: Not available in official records. Death Certificate: Enclosed.
6. Any other relevant documents: Not Available in official records.

Whereas, Mr. Mohammad Ramzan Yatoo 's (Deceased DRW) Son has also stated in his application addressed to Block Development Officer Budgam that no documents are available in their home regarding appointment of their late father.

Whereas, in view of the above, the department is unable to consider the regularization of the said petitioner under SRO-64 of 1994 in absence of the requisite documents, the same is mandatory required for the purpose.

Now, therefore, keeping in view of the above, the claim of the petitioner (deceased) namely Mohammad Ramzan Yatoo S/o Nabir Yatoo R/o Jawalpora is considered and having been found devoid of any merit is hereby rejected.

By Order of the Government of Jammu & Kashmir.

Sd/-

(Mandeep Kaur), IAS

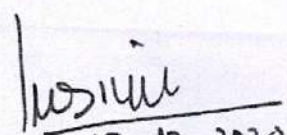
Commissioner/Secretary to the Government

No: RDD-Legl/7/2021-12 (8529)


Dated: 17.10.2022

Copy to the:

1. Secretary to the Government, General Administrative Department.
2. Joint Secretary, Ministry of Home Affairs, Government Of India.
3. Director Information J&K.
4. Director, Archives, Archeology & Museums, J&K.
5. Director Rural Development Kashmir.
6. Sh. Satinder Singh Kalla, Additional Advocate General , J&K High Court, Srinagar.
7. Assistant Commissioner (Development) Budgam
8. Concerned Petitioner.
9. Government Order File/Stock (w.2.s.c)
10. In-charge Website.


17-10-2022
(Imtiyaz Ahmad Lone)

Under Secretary to the Government


17.10.22