

Government of Jammu and Kashmir
Transport Department
Civil Secretariat, J&K

Subject:- Implementation of Court Order dated 12.09.2014 passed in SWP No. 250/2013 titled Abdul Majid and others v/s Kifayat Hussain and others.

Government Order No: 23 -JK(TR) of 2021
Dated: 09 /03/2021

Whereas, the petitioners are working in Transport Department on Consolidated basis and have filed writ petition bearing SWP No-250 of 2013-titled Abdul Majid Bhat and others V/s State of J&K and Ors; and

Whereas Hon'ble court vide order dated 12-09-2014 disposed of writ petition bearing SWP No-250 of 2013 and the operative part of judgement reads as under:

"This writ petition alongwith connected CMA(s) is accordingly disposed of in the following manner:

- a. Respondents are directed to consider the cases of petitioners for the purpose of regularization strictly in accordance with J&K Civil Services Special Provisions Act, 2010.***
- b. The grounds that the petitioners were being paid out of the contingent funds would not be a ground for refusal of consideration for regularization nor would they be considered as disqualified for such regularisation.***
- c. The case of the petitioners will be considered for grant of minimum wages under the Minimum Wages Act 1948 W.e.f the date of their initial appointment as such consolidated workers and arrears shall be paid accordingly.***
- d. The order of consideration would be passed in respect of the petitioners within a period of two months from the date of copy of this order is served upon them."***

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Whereas, in compliance to the court judgement the matter was taken up with Finance Department vide U.O No-TR-42/MVD/N/2014 dated 19-12-2014 for compliance of order dated 12-09-2014 passed in writ petition bearing SWP No-250 of 2013- titled Ab Majid and others V/S State and others ; and

Whereas, the Finance Department vide U.O No-A/Spl.Cell(2015)-O-14 dated 01-06-2015 returned the file alongwith the decision taken in the 47th Empowered Committee Meeting dated 18-05-2015, in compliance to the judgement of Hon'ble High Court dated 12-09-2014 in SWP No-250 of 2013 titled Ab Majid and others V/S State and others which reads as under:-

"The case from the S.No 1 to 7 consolidated workers of Transport Department were placed before the Empowered Committee for review of the decision taken by the Empowered Committee in 12th meeting dated 13.06.2011, in view of orders of the Hon'ble High Court, issued on 12.09.2014 as under:-

a) "respondents are directed to consider cases of petitioners for the purpose of regularization strictly in accordance with the Jammu and Kashmir Civil Service (Special Provision) Act, 2010".

b) The ground that the petitioners were being paid out of the contingent funds would not be a ground for refusal of consideration for regularization nor would they be considered as disqualified for such regularization.

The case of these persons were examined as per provisions of J&K Civil Service (Special Provision) Act, 2010 and not found eligible on the following grounds:-

a) These persons have not been engaged against any clear vacancy or a post, as such, do not full fill the criterion laid down under section 5 (i) of Jammu and Kashmir Civil Service Special Provision Act, 2010.

b) Since, they have not been engaged against any post, hence it is not possible to ascertain whether they fulfil the eligibility criteria as laid down under section 5(iii) of the Act.

In compliance with the directions of Hon'ble High Court, the fact that the petitioners were being paid out of the contingent funds was not invoked as a reason for deciding the matter although section 3 (d) of the Act provides that the Act shall not apply to

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employees paid out of contingent grants which fact has not been brought by the Transport Department to the notice of the Hon'ble Court".

Whereas, vide this Department's letter dated: 23.06.2015, the decision of the Empowered Committee Meeting held on 18-05-2015 was conveyed to the Transport Commissioner, J&K for information and appropriate necessary action; and

Whereas, as per decision of Empowered committee it was decided that the petitioners are not covered under the Act as section 3(d) of the Act provides that the Act shall not apply to employees paid out of contingent grants Petitioners challenged the rejection order before the Hon'ble court and Hon'ble High Court vide order dated 22-11-2018 allowed the service writ petition No-2319/2015 and the operative part of the order reads as under:

"Be that as it may, this petition is allowed order impugned dated 18-05-2015 is hereby quashed. the petitioners are held entitled to regularization in terms of Jammu and Kashmir civil services 9Special Provisions) Act,2010. An appropriate order in this regard shall be passed by the respondents within a period of six weeks from today. Disposed of accordingly."

Whereas, the department filed LPA against the order dated 22-11-2018 which is pending disposal before the Hon'ble court under LPA No-22/18 titled State of J and K v/s Ab Majid Bhat and others; and

Whereas, the issue regarding release of wages in favour of petitioners was taken up with the Finance Department Vide U.O No-TR-42/MVD/N/2014 dated 04-09-2017 and the file was returned vide U.O No- FD-VII-29(18)2007-08-I DATED 16-10-2017 and Finance Department advised to intimate time period of each labourer whose payment is outstanding so that the wages earned during the period are released in their favour further whether these casual labourers are still enrolled or they have been disengaged be also intimated to Finance Department; and

Whereas, the wages in respect of two petitioners (namely S/Shri Aman Kumar and Abdul Majid) stand released by the Department up to 30-09-2013 and in respect of other four petitioners (S/Sh Keshav Singh, Shamsher Singh,



Ashwani Kumar and Rakesh Kumar) were paid up to 30-10-2013 by meeting out the liability from available funds released by the Finance Department; and

Whereas, the issue regarding release of remaining wages in favour of contingent workers/petitioner was taken up with Finance department vide U.O No-TR-42/MVD/N/2014 dated 01-01-2018 and Finance Department returned file and advised this Department to approach during next financial year for provision of funds to meet out pending wages of contingent paid workers. Moreover the department is further advised to identify saving under other head(s) for re-appropriation; and

Whereas, Transport Commissioner vide communication dated 24.09.2020 worked out financial implication regarding the six petitioners for an amount of Rs. 36,10,624/- and the issue regarding release of funds has again been taken up with Finance Department vide UO No. TR-42/MVD/N/2014-I dated 24.02.2021;and

Whereas, Transport Department again in compliance of judgement approached Finance department with the request to re-appropriate an amount of Rs 38.95 lakhs out of savings as worked out by transport commissioner for release of pending wages in favour of the petitioners.

Keeping in view above facts, and in compliance to the orders of the Hon'ble court dated: 12.09.2014, and 18.02.2021 in contempt No: CPSW No: 472/2015 titled Abdul Majid and Ors V/s Kifayat H. Rizvi and Ors the case has been examined and it is found that the Transport Department may release the pending wages of consolidated wages paid workers/petitioners as and when the funds shall be released/provided by the Finance Department as has been requested vide UO No. TR-42/MVD/N/2014-I Dated 24.02.2021 followed by OM No. TR-42/MVD/N/2014-I Dated 05.03.2021 and OM No. TR-42/MVD/N/2014-I Dated 05.03.2021.

By the Order of Government of Jammu and Kashmir.

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Sd/-

(Hirdesh Kumar)IAS

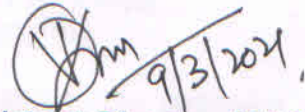
Commissioner/Secretary to Government
Transport Department

No. TR-42/MVD/N/2014-I

Dated: 09.03.2021

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Transport Commissioner J&K, Jammu.
3. OSD with Advisor (B) I/C Transport department for information of the Advisor (B).
4. Shri. Arshid Majid Malik, Deputy Advocate General, J&K High Court, Jammu.
5. Private Secretary to Commissioner Secretary to the Government, Transport Department.
6. Government order/stock file(W.2.S.C).

A handwritten signature in blue ink, possibly reading 'Dm', is written over the date '9/3/2021'.

Assistant Director (P&S)
Transport Department