

Government of Jammu and Kashmir,
Transport Department, Civil Secretariat,

J&K, Jammu.

Subject: SWP No: 556/2013- titled Abdul Rashid Bhat V/S State
& others.

Government order No: **48-JK(TR) of 2022**

Dated: **10-08-2022.**

1. WHEREAS, the petitioner namely Abdul Rashid Bhat was initially engaged on consolidated basis against the wages of Rs. 2000/- per month w.e.f. 18.02.1999 and was paid from the Contingency Fund in the office of Regional Transport Office Kashmir for a period of 89 days vide order Nos. 58/TC of 1999 dated 18-02-1999, 67/TC of 1999 dated 24-05 1999, 82/TC of 1999 dated 17-08-1999, 98/TC of 1999 dated 18 11-1999 and TC/JK/Estt/2000/2638 dated 01-08-2000 and continues in the department till date on his own risk and responsibility and on the basis of the Hon'ble Court orders; and
2. WHEREAS, the case of the petitioner among others was taken up with the Empowered Committee (Finance Department) for regularization, in terms of the provisions contained in J&K Civil Services (Special Provisions) Act, 2010. The Empowered Committee in its 12th Meeting held on 13.06.2011 under the chairmanship of Commissioner/Secretary to the Government, Finance Department rejected the case of the petitioners vide its minutes of meeting issued under endorsement No: A/105(10)-771 dated: 27.06.2011; and
3. WHEREAS, the above named petitioner filed a writ petition before the Hon'ble High Court of J&K at Srinagar, bearing No: SWP 556/2013-with the following prayers:

A writ of mandamus, the respondents be directed regularize/confirm the petitioner on a suitable post.

The respondents be further directed not to disengage the services till consideration of regularization initiated upon furnishing of list under order dated 28-06-2012.

The respondent be further directed to release the earned wages of petitioner from 2007 and be paid regularly, and

4. WHEREAS, the Hon'ble High Court vide it's judgement dated 19.11.2013 passed the directions and the operative part of which is as under:-

"...This petition is, accordingly, disposed of with the direction to the respondents to re-consider the claim of the petitioner for regularization of his services in terms of the provisions of Jammu & Kashmir Civil Services (Special Provisions) Act, 2010 and also on the analogy of similarly situated persons mentioned by the petitioner in the response filed against the reply. Respondents shall also consider the claim of the petitioner for release of his arrears of salary which according to the him, have been accumulated from 2007. Let this exercise be completed within a period of two months from the date a copy of this order is made available to the respondents by the petitioner.

Present status of the petitioner, protected under the aforesaid Act, shall not be disturbed

Disposed of along with the connected CMP"; and

5. WHEREAS, after receiving the aforesaid judgment/order dated 19.11.2013 passed by the Hon'ble High Court at Srinagar, the Transport Commissioner, J&K vide this Department letter No: TR 47/MVD/N/2014 dated 30.07.2015 was instructed to examine and process the case of the petitioner, if otherwise eligible, in terms of section 13 of J&K Civil Service (Special Provision) Act, 2010. The Transport Commissioner vide letter No TC/JK/Estt/5202 dated 10.09.2015 has suggested that issue may be reviewed holistically for a combined treatment to all these persons engaged from time to time for consideration, in terms of section 13 of J&K, Civil Services Special Provision Act, 2010; and
6. WHEREAS, in compliance of order dated 12.09.2014 passed by the Hon'ble High Court in another similar nature of case titled SWP No. 250/2013 Abdul Majid and others V/S State and others was taken up with the Empowered Committee (Finance Department) for consideration of the case of the



petitioners for regularization, in terms of the provisions contained in the J&K Civil Services Special Provisions Act, 2010. The Empowered Committee in its 47th meeting held on 18.05.2015 and rejected the case of the petitioners vide its minutes of the meeting passed under endorsement No A/105(10) 238 dated: 25.05.2015, with the following observations:-

"The cases of 5 No 1 to 7 Consolidated Workers of Transport Department were placed into the EC for review of the decision taken by the EC 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 purposive of regularization strictly in accordance with the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010."*
- b) The ground that the petitioners were being paid out of contingent funds would not be a ground for refusal of consideration for regularization nor they would be considered as disqualified for such regularization"*

The cases of these persons were examined as per provisions of J&K Civil Service (Special Provisions) 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 fulfil the criterion laid down under section 5 (i) of Jammu and Kashmir Civil Service (Special Provisions) 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 (ii) 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 employees paid out of contingent grants, which fact has not been brought by the Transport Department to the notice of the Hon'ble High Court"; and

7. WHEREAS, the Transport Commissioner J&K again forwarded the case of the petitioner for placing before the Empowered Committee for regularization of his services under the provision of J&K Civil Services (Special Provisions) Act, 2010



and the Administrative Department vide letter No. TR-47/MVD/N/2014 dated 06.04.2016 instructed Transport Commissioner J&K, Jammu to pass appropriate order in light of the order dated 19.11.2013, passed by the Hon'ble High Court at Srinagar vis-a-vis, the rules governing the subject matter and file the statement of facts/compliance report; and

8. WHEREAS, the Transport Commissioner, J&K vide order No: 86-TC of 2016 dated: 30.06.2016 rejected the claim of the petitioner for regularization as the petitioner was admittedly engaged on need basis and not against the clear vacancy or post, which was one of the pre-requisite condition under section 5 (1) the said Act 2010 and found being devoid of merit; and
9. WHEREAS, the petitioner thereafter filed a contempt petition bearing CPSW No: 784/2014-titled Abdul Rashid Bhat V/s Sh Bipul Phatik and Ors and the Hon'ble High Court, Srinagar passed an Order dated 13.12.2021 in the instant case, the operative part which is as under:

"As per the compliance report submitted by the respondents, the case of the petitioner for final consideration was found to be without any merit and the same has been rejected in this regard order bearing No. TC/JK/Legal/1065 dated 06.02.2015 stands issued by the respondent-Transport Commissioner, J&K, Jammu. However, perusal of the aforesaid order reveals that order of rejection has been passed in light of earlier order dated 19.11.2013 without actually sending it to the Empowered Committee.

The direction of writ court is clear, in as much, as the case of petitioner is required to be reconsidered. The respondents have rejected the case of the petitioners in light of earlier rejection order which means that the matter has not be reconsidered.

In view of above, learned appearing counsel for the respondents is directed to file fresh compliance report/statement of facts by or before next date of hearing."

10. WHEREAS, the Transport Commissioner, J&K vide letter No: TC/JK/Legal/2021/1679 dated: 09.12.2021 forwarded the aforementioned order to this Department for advice; and

11. WHEREAS, the Transport Department took up the matter with the General Administration Department for opinion who in turn vide U.O. No. GAD-Adm0III/22/2022-09-GAD dated: 17.03.2022 opined as:-

"Returned. The Department is advised to pass a fresh consideration order in terms of the Hon'ble Court order dated: 13.12.2021, in consultation with the Finance Department and Department of Law, Justice and Parliamentary Affairs."

12. WHEREAS, as per the opinion of the General Administration, the matter was taken up with the Finance Department who vide U.O. No: FD-Code/113/2021-03-814 dated: 01.07.2022 opined as under:-

" Returned. The Department is advised that J&K Civil Services (Special Provisions) Act, 2010 has been repealed in terms of J&K Re-organization (Adaptation of State Laws) Order, 2020 issued vide S.O. 1229(E) dated: 31.03.2020 by the Ministry of Home Affairs, Government of India. The Department take further action in consultation with the Law Department and file the compliance report before the Hon'ble Court."

13. WHEREAS, in pursuance of the opinion of the General Administration Department and Finance Department, the matter was again taken up with the Department of Law, Justice & Parliamentary Affairs, who vide U.O. No: Law/Opn1/105/2022-10 dated: 02.08.2022 has opined as under:-

"Returned. Department is advised to proceed ahead in terms of the opinion of the Finance Department read with the opinion of GAD in matter and file compliance report before the Hon'ble Court accordingly."

14. WHEREAS, the Ministry of Home Affairs, GoI vide SO 1229(E) dated 30.03.2020, has repealed the Jammu and Kashmir Civil Service (Special Provision) Act, 2010, and



WHEREAS, Empowered Committee in its 12th Meeting held on 13.06.2011 under the chairmanship of Commissioner/Secretary to the Government, Finance Department rejected the case of the petitioner vide its minutes of meeting issued under endorsement No: A/105(10)-771 dated: 27.06.2011.

Now therefore, in compliance to the Hon'ble High Court direction dated 19.11.2013, in SWP No: 556/2013 read with decision taken by the Empowered Committee in its 12th meeting, coupled with the opinion of the Finance Department and Department of Law, Justice and Parliamentary Affairs and in view of the above elucidated facts, the claim of the petitioner for regularization is found devoid of any merit, hence rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

(Hirdesh Kumar) IAS

Commissioner/Secretary to the Government,
Transport Department.

No. TRPT-MVD0LEG/38/2021-02 Dated: 10-08-2022.

Copy to:

1. Financial Commissioner (ACS), Finance Department.
2. Principal Secretary to the Government, General Administration Department.
3. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
4. Secretary to the Government, Department of Law, Justice and Parliamentary Affairs.
5. Transport Commissioner, J&K.
6. Private Secretary to Hon'ble Advisor (Incharge Transport Department).
7. Private Secretary to Commissioner/Secretary to Government, Transport Department.
8. Government Advocate, J&K High Court Srinagar with the request to apprise the Hon'ble Court at Srinagar.
9. Incharge Website.
10. Government Order/Stock file (W.2.S.C.).



(Manik Singh Rathore)

Under Secretary to the Government,
Transport Department.

