

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

Subject: SLP No. 6161/2022 in SWP No 2319/2015, IA No's 2/2015-1/2016 - titled Abdul Majid Bhat and Others V/s UT of J&K & Ors-regularization.

Refer: U.O. No. GAD-CORD/140/2022-09 dated: 28-02-2023 of General Administration Department.

**Government order: 24-JK (TR) of 2023**  
**Dated: 09-03-2023**

**WHEREAS**, an Empowered Committee (EC) under Section 10 of the Jammu and Kashmir Civil Service (Special Provision), Act, 2010 was constituted in the Finance Department to scrutinize the cases of such employees who had been appointed on Adhoc/Contractual and Consolidated basis against clear vacancy and recommend them to the concerned Department for regularization;

**WHEREAS**, the Department referred 91 cases of the employees of the Motor Vehicle Department to the Empowered Committee for scrutiny and consideration. The Empowered Committee (12<sup>th</sup> meeting 13-06-2011) vide endorsement No. A/105 (10)-746 dated 27-06-2011 returned back 83 cases including the cases of petitioners with the remarks that "**does not fall within the purview of EC being paid out of contingencies**;

**WHEREAS**, aggrieved by the decision of the Empowered Committee, the petitioner(s) filed a writ petition before Hon'ble High Court vide SWP No. 250/2013 titled Abdul Majid V/s and Ors. for their regularization against the Class-IV posts in the Motor Vehicles Department. The Hon'ble High Court vide order dated 12-09-2014 disposed of the above writ petition with the following directions:-

"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 regularization.

c. The case of the petitioners will be considered for grant of 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 ."



**WHEREAS,** in compliance to the directions of the Hon'ble High court dated 12-09-2014, the cases of the seven (07) petitioners were again forwarded to the Empowered committee for reconsideration of their cases. The Empowered committee in its 47<sup>th</sup> meeting which was held on 18-05-2015 decided as under:-

<b>List of consolidated workers found eligible/deficient pertaining to Transport Department as decided in the 47<sup>th</sup> ECM held on 18.05.2015</b>				
<b>S.N o</b>	<b>12ECM S.No.</b>	<b>Name of the Petitioners/incumbents</b>	<b>Desgn.</b>	<b>Decision</b>
1	6	Rakesh Kumar S/o Krishan Chand R/o Tilla Deoli, Kathua		<p>The Cases from S.No. 1 to 7 consolidated workers of Transport Department were placed before the EC for review of the decision taken by the EC in 12<sup>th</sup> meeting dated 13.06.2011, in view of orders of the Hon'ble High Court, issued on 12.09.2014 as under:-</p> <p>a)"Respondents are directed to consider cases of petitioners for the purpose of regularization strictly in accordance with the Jammu &amp; Kashmir Civil Services (Special Provisions) Act, 2010."</p> <p>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."</p> <p>The cases of these persons were examined as per provisions of J&amp;K Civil Services (Special Provisions) Act, 2010 and not found eligible on the following grounds:-</p> <ol style="list-style-type: none"> <li>1. 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 &amp; Kashmir Civil Services Special Provision Act, 2010.</li> <li>2. 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.</li> </ol> <p>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 Court.</p>
2	7	Shamsher Singh S/o Ragvir Singh R/o Maha, Kathua		
3	8	Ashwani Kumar S/o Chuni Lal R/o Muthi, Jammu		
4	17	Sunny Sawhney S/o Girish Chander R/o H. No. 67-A, Bikram Chowk Jammu. (Deceased)		
5	18	Abdul Majid S/o Soni Mohd R/o Khara, Madana Samba		
6	19	Aman Kumar S/o Chuni Lal R/o Akal Pur, Jammu		
7	22	Kashav Singh S/o Tabiat Singh R/o Sadyal, Khara Madana Samba		

**WHEREAS,** the Empowered Committee rejected the cases of the petitioners on both the occasions owing to the fact that they were not engaged against the clear cut vacancies, which was one of the pre-requisite condition under section 5 (1) the said Act 2010;

**WHEREAS,** the petitioners challenged the order of the Empowered committee by way of filing SWP No 2319 of 2015 and same was disposed of by the Hon'ble High Court vide its order 22.11.2018, the operative part of which reads as:-

**"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 (special Provisions) Act, 2010. An appropriate order**



***in this regard shall be passed by the respondents within a period of six weeks from today. Disposed off accordingly."***

**WHEREAS,** the Transport Department challenged the judgment of Hon'ble High Court through LPA vide No. 22 of 2019. The Division Bench of Hon'ble High Court disposed of the LPA on 17.11.2021 with the following directions: -

***"In view of all that has been said above, we find no illegality in the judgment and order passed by the writ court. The appeal as such is bereft of merits and is dismissed with no order as to costs."***

**WHEREAS,** the Transport Department assailed the above referred judgment of the Hon'ble Division Bench of the High Court before Hon'ble Supreme Court by way of SLP No. 6161 of 2022 which was also disposed of on 05.05.2022 with the following directions: -

***"However, from the material on record and, more particularly the proforma produced at Ex. P-1, it appears that the respondents herein were serving against the clear vacancy and thereof, it cannot be said that Act, 2010 shall not be applicable. Once even as per the proforma, the appointments of the respondents were against the clear vacancy, they were entitled to the regularization under the Act, 2010".***

***In that view of the above fact situation, no error has been committed by the High Court.***

***The Special Leave Petition stands dismissed."***

**WHEREAS,** the cases of the petitioners were referred to the General Administration Department for seeking the advice regarding the implementation of the judgment of the Hon'ble Supreme Court of India dated **05-05-2022** passed in Special Leave Petition (SLP) bearing No. 6161/2022 titled Union Territory of J&K and Ors. V/s Abdul Majid and Ors, owing to the fact that the Ministry of Home Affairs, GoI vide SO 1229(E) dated 30.03.2020, inter-alia, in exercise of the power conferred by Section 96 of J&K Reorganization Act, 2019 repealed the Jammu and Kashmir Civil Service (Special Provision) Act, 2010, as the Empowered Committee constituted for regularization of Adhoc/Contractual /Consolidated doesn't exist in view of the said Act having been repealed. The General Administration Department vide U.O. No. GAD-CORD/140/2022-09 dated 13-09-2022 returned the file the following observations:-

***"Returned: The department is intimated that the issue relating to 'regularization of Adhoc/Consolidated/Daily Rated Workers and other regularization schemes' were deliberated in the Establishment-cum-Selection Committee Meeting convened on 05.08.2022 and after due deliberation the consideration of the said proposal was deferred. The minutes of the said meeting are enclosed for ready reference."***



**WHEREAS,** after receiving the opinion of General Administration Department, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs, who vide U.O. No. LAW-UTS/1755/2022-10-Law, Justice and Parliamentary Affairs dated 20-09-2022 opined as under:-

**"Returned. Since the Department has exhausted all the legal remedies, the matter as such is required to be considered in relaxation of rules. The department may prepare and file the compliance report in the matter accordingly and explore an option of seeking some reasonable time from the Hon'ble Court for implementation of the judgment."**

**WHEREAS,** the Hon'ble High Court, J&K & Ladakh at Jammu vide Order dated: 21-09-2022, in CCP(S) No. 337/2019, CM No. 804/2020, 1998/2020 & 5310/2022- titled Abdul Majid Bhat V/s Hirdesh Kumar, Commissioner/Secretary, Transport Department & Ors. passed ordered as under:

- 1. The Respondent/contemnor No. 1-Commissioner /Secretary to the Government, Transport Department is present in person in compliance to order dated: 20-09-2022.**
- 2. The respondent/contemnor No. 1 states that the case of the petitioners in compliance of the judgment dated 22.11.2018 was taken up with the General Administration Department (GAD), on 24.08.2022, in view of the development that the 'Empowered Committee' of the Finance Department vested with power to process and recommend the cases of regularization of the daily wagers including that of the petitioners stands disbanded. According to the respondent contemnor No. 1. the matter was also taken up with the Law Department. in view of the above said development and the Law Department opined for deferring of the case of the petitioners till an appropriate decision is taken by the GAD.**
- 3. The respondent/contemnor No. I further states that he stands transferred from his present place of posting and relieved on 20.09.2022 and the new incumbent namely, Sh. G. Prasanna Ramaswamy, stands briefed by him about the matter. The present respondent/contemnor No. I shall stand deleted from the array of the respondents, and his personal appearance dispensed with and new incumbent Sh. G. Prasanna Ramaswamy, Commissioner Secretary to Government, Transport Department is substituted/impealed as party respondent/contemnor No. 1, owing to the fact that the said Officer stands informed by the present respondent/contemnor No. 1 about the pendency of the contempt petition and non-compliance of the judgment dated 20.11.2018.**
- 4. Be that as it may, the facts remains that the judgment passed by this Court on 22.11.2018 has remained unimplemented till date, despite the fact that the judgment has assumed finality after dismissal of Special Leave Petition on 05.05.2022 filed by the respondents and though, the non-compliance of the**





**judgment entails initiation of contempt proceedings against the contemnors. however, having regard to the statement made at bar by respondent/contemnor No. 1. same are deferred in the interest of justice for providing another opportunity to the respondents for implementing the judgment. Ordered accordingly.**

- 5. Issue notice to the newly substituted respondent/contemnor No. 1 for filing compliance report of the judgment (supra) by or before the next date of hearing.**
- 6. Registry is directed to make necessary corrections in the cause title of the contempt petition.**
- 7. List the matter for further consideration on 31-10-2022.**

**WHEREAS,** as prescribed in the Jammu and Kashmir Civil Service (Special Provision) Act, 2010, all the regularizations in the Department have to be made on prospective basis, with effect from the date of issuance of Government Order. The Vigilance Clearance is pre-requisite before issuing regularization order and in respect of the petitioners, it has not yet been received from the General Administration Department. As per records available with the Department, the details of these petitioners viz. qualification/date of birth/residential address(es) are as under:-

S. No.	Name/Parentage/ W/O S/Shri	Qualification/ D.O.B	Date of appointment	Age as on 01-01-2023
01	Rakesh Kumar S/o Krishan Chand R/o Tilla Deoli, Billawar, Kathua	8 <sup>th</sup> 04.08.1981	12-11-1999	41 Years, 04 Months & 26 days
02	Shamsher Singh, S/o Raghubir Singh, R/o Meha, Kathua	8 <sup>th</sup> 05-04-1971	12-11-1999	51 Years, 08 Months & 26 days
03	Ashwani Kumar S/O. Chuni Lal R/o Muthi Jammu	12 <sup>th</sup> 09.05.1971	12-11-1999	51 Years, 07 Months & 22 days
04	Abdul Majid S/o Soni Mohammad R/o Khara Mandana, Samba	10 <sup>th</sup> 12-11-1970	02-08-2002	52 Years, 01 Month & 19 days
05	Aman Kumar S/o Chuni Lal R/o Akalpur Jammu	10 <sup>th</sup> 18-05-1980	02-08-2002	42 Years, 07 Months & 13 days
06	Keshav Singh S/o Tabiat Singh R/o Sadyal Khara Madana, Samba	10 <sup>th</sup> 19-08-1970	10-04-2002	52 Years, 04 Months & 12 days
07	Sunny Sawhney S/o Girish Chander R/o H.No. 67-A, Bikram Chowk, Jammu (Deceased)	10 <sup>th</sup> 06-02-1984	02-08-2002	<b>The official was died on 19-11-2017</b>

**WHEREAS,** the Hon'ble High Court of Jammu and Kashmir vide its Order dated: 22-11-2018 has reserved 07 Class-IV posts, for the petitioners which as on date are as such reserved.

**WHEREAS,** the cases of seven petitioners submitted to the General Administration Department for placing the same before the Competent Authority for approval to the regularization of the following consolidated workers of the

Motor Vehicle Department as Class-IV (MTS) in the Pay Level SL-1 (14800-47100) in relaxation of rules/upper age/qualification bar shown against each on prospective basis: -

S. No.	Name of the Petitioners/incumbents	Relaxation of age/qualification bar	
		Age relaxation required as on 01-01-2023	Qualification
1	Rakesh Kumar S/o Krishan Chand R/o Tilla Deoli, Kathua	01 year, 04 Months & 26 days and qualification bar	Yes
2	Shamsher Singh S/o Ragvir Singh R/o Maha, Kathua	11 years, 08 Months & 26 days	Yes
3	Ashwani Kumar S/o Chuni Lal R/o Muthi, Jammu	11 years, 07 Months & 22 days	-NIL-
4	Sunny Sawhney S/o Girish Chander R/o H. No. 67-A, Vikram Chowk Jammu (Deceased)	The official was died on 19-11-2017	
5	Abdul Majid S/o Soni Mohd R/o Khara, Madana Samba	12 Years, 01 Month & 19 days	-NIL-
6	Aman Kumar S/o Chuni Lal R/o Akal Pur, Jammu	02 Years, 07 Months & 13 days	-NIL-
7	Kashav Singh S/o Tabiat Singh R/o Sadyal, Khara Madana Samba	12 Years, 04 Months & 12 days	-NIL-

**WHEREAS,** the General Administration Department U.O. No. GAD-CORD/140/2022-09 dated 28-02-2023 has conveyed as under: -

***"Returned: The approval of the Competent Authority (Hon'ble Lieutenant Governor) is hereby conveyed to the departmental proposal regarding "regularization of 07 number of consolidated workers of the Motor Vehicles Department as Class-IV (MTS) in the Pay Level SL-1(14800-47100) in relaxation of Rules" submitted in file bearing No. TRPT-MVD0LEG/29/2021 (E-85180) for further appropriate action in the matter.***

Now, therefore, in view of the Hon'ble Supreme Court judgment/directions dated 05-05-2022 passed in SLP No. 6161 of 2022 in SWP No 2319/2015, IA No's 2/2015-1/2016 - titled Abdul Majid Bhat and Others V/s UT of J&K & Ors and as per the approval of the Competent Authority, sanction is hereby accorded to the regularization of the following consolidated workers of the Motor Vehicle Department as Class-IV (MTS) in the Pay Level SL-1 (14800-47100) in relaxation of rules/upper age/qualification bar shown against each on prospective basis: -

S. No.	Name of the Petitioners/incumbents	Relaxation of age/qualification bar	
		Age relaxation required as on 01-01-2023	Qualification
1	Rakesh Kumar S/o Krishan Chand R/o Tilla Deoli, Kathua	1 year, 04 Months & 26 days and qualification bar	Yes
2	Shamsher Singh S/o Ragvir Singh R/o Maha, Kathua	11 years, 08 Months & 26 days	Yes
3	Ashwani Kumar S/o Chuni Lal R/o Muthi, Jammu	11 years, 07 Months & 22 days	-NIL-
4	Sunny Sawhney S/o Girish Chander R/o H. No. 67-A, Vikram Chowk Jammu (Deceased)	The official was died on 19-11-2017	
5	Abdul Majid S/o Soni Mohd R/o Khara, Madana Samba	12 Years, 01 Month & 19 days	-NIL-

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6	Aman Kumar S/o Chuni Lal R/o Akal Pur, Jammu	02 Years, 07 Months & 13 days	-NIL-
7	Kashav Singh S/o Tabiat Singh R/o Sadyal, Khara Madana Samba	12 Years, 04 Months & 12 days	-NIL-

The regularization of aforementioned petitioners shall be subject to the fulfilment of the following terms and conditions, that:

- i) **No disciplinary or criminal proceedings are pending against the consolidated worker.**
- ii) **The consolidated worker should not be figuring in any PE/FIR in the Anti Corruption Bureau, J&K/Crime Branch, J&K.**
- iii) **The consolidated workers shall not claim/be eligible for any retrospective effect and their regularization shall be on prospective basis only.**
- iv) **The allowances other than what were admissible/due have not been drawn by the consolidated worker (s).**
- v) **The Transport Commissioner, J&K shall fully verify their original qualification, date of birth, Domicile/PR Certificate, if any adverse report is received against any consolidated worker, his regularization shall deemed to have been cancelled *ab-initio*.**
- vi) **The regularization order of the petitioners shall not become a precedent for other engagee(s)/ petitioner(s) of Motor Vehicle Department or any other Government Departments/Organization.**

By order of the Government of Jammu and Kashmir.


**Sd/-**  
**(G. Prasanna Ramaswamy) IAS**  
 Secretary to the Government,  
 Transport Department.

No. TRPT-MVD0LEG/29/2021-02-TPT

Dated: 09-03-2023.

Copy to the:-

1. Commissioner/Secretary to the Government, General Administration Department.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Additional Advocate General, Hon'ble High Court, J&K, Jammu.
4. Director, Archives, Archaeology and Museums, J&K.
5. Transport Commissioner, J&K, Jammu.
6. Pvt. Secretary to Chief Secretary.
7. Pvt. Secretary to Secretary to Government, Transport Department.
8. Concerned.
9. In-charge official website, Transport Department.
10. Govt. order /stock file.

  
 (Manik Singh Rathore)  
 Under Secretary to the Government,  
 Transport Department.



