

Government of Jammu and Kashmir
Housing and Urban Development Department.
Civil Secretariat. Srinagar / Jammu

Subject: Consideration Order in terms of Hon'ble High Court Order dated 21-08-2019 passed SWP No. 874/2019, IA No. 01/2019 titled Rajesh Kumar & Ors V/S State of J&K & ors.

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Government Order No: JK (HUD) of 2020

Dated:- 13 -07-2020

1. Whereas, the following eleven (11) petitioners were initially engaged on daily wages basis for a period of 89 days in the year 1994, 1995 and 1996. The engagement of these petitioners, on daily wage basis was made without following due procedure of law. Their engagement was extended from time to time and the petitioners were being made to continue in service till date:-

S.No	Name of the Petitioner	Date of engagement	Date of regularization in terms of SR-520
01	Rajesh Kumar S/o Sardari lal	16.12.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018
02	Maharaj Krishan Bhat S/o Shamboo Nath Bhat	22.11.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018
03	Arun Kumar, S/o Ved Parkash Sharma	14.11.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018
04	Vijay Kumar, S/o Madan Lal Sharma	03.11.1995	JKHB Order No. 244 of 2018 Dated: 31.07.2018
05	Upnam Singh S/o Inder Singh	26.02.1996	JKHB Order No. 244 of 2018 Dated: 31.07.2018
06	Yograj Singh S/O Inder Singh	01.07.1995	JKHB Order No. 244 of 2018 Dated: 31.07.2018
07	Monika Khajuria D/O Sh. Madhu Khajuria	18.06.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018
08	Meenakshi Raina D/o Davinder Dogra	22.09.1995	JKHB Order No. 244 of 2018 Dated: 31.07.2018
09	Mohinder Paul Sharma S/o Sh. Birbal Sharma	06.12.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018
10	Mohinder Singh S/O Sh. Bodh Raj Kotwal	01.07.1995	JKHB Order No. 244 of 2018 Dated: 31.07.2018
11	Harbans Lal Rana S/o Late Sh. Parma Nand	01.12.1994	JKHB Order No. 244 of 2018 Dated: 31.07.2018

2. Whereas, due to the ban imposed by the Government on the engagement of casual labours/daily rated workers issued vide Govt. Order No. 144 of GAD 2001 dated: 02.02.2001, the petitioners were constrained to approach Hon'ble High Court bearing writ petition SWP No. 517/2001 titled Tilak Raj V/S J&K State & Ors, wherein the Hon'ble High Court of J&K vide judgment dated: 10.10.2002 has allowed the writ petition, the relevant extract of the judgment is reproduced as under.

“These petitions are accordingly allowed. The petitioners, who were permitted to continue in service in pursuance of interim orders passed by this court, shall be permitted to perform their duties and they would also be paid their salaries. The order by which the service tenure of the petitioners has been brought to an end shall not be given effect to. The respondent Board would consider the claims of the petitioners for regularization within a period of three months from the date a copy of this order becomes available to them.

The net result is that these petitions, as indicated above, are allowed. Petitioners are held entitled to continue in service. Let their claims for regularization be considered with the period stipulated above.

Disposed of accordingly”

3. Whereas, the petitioners have represented to the respondent authorities for regularization for quite long. Accordingly, the cases of these daily rated workers were placed before the Board of Directors of Housing Board in its 45 meeting held on 31.05.2018 at agenda item point No 45.02 which as under:

Regulation of Daily Wagers:

“Managing Director (Member Secretary) presented the details about previous efforts made in this behalf like constitution of Establishment Committee, authorization to Commissioner/Secretary H&UDD in the 44th meeting of board of Directors to take decision regarding regularization of daily wagers on case to case basis and further issuance of SRO 520 for regularization of CSLW. After threadbare discussion for regarding eligibility/financial implication, Board of Directors decided that a committee headed by Financial Commissioner, H&UDD with managing Director and FA/CAO, JKHB as its members (analogous to the Empowerment Committee will examine the individual profile of each daily wager/consolidated worker and its recommendation shall be implemented by Managing Director, J&K Housing Board.

4. Whereas, the Committee constituted in light of the decisions of 45th meeting under the Chairmanship of Mr. K.B. Aggarwal the then Financial Commissioner, H&UDD held its meeting on 29.06.2018; the committee was presented with a verified, in house list of daily wagers/consolidated workers who have been working in Housing Board since 1994, for their regularization in terms of SRO-520 dated 21.12.2017. The Committee recommended that these

daily wagers be regularized in terms of SRO 520 of 2017, so as to comply with the decisions of Board Directors.

5. Whereas, the Department vide order No. 244 of 2018 dated: 31-07-2018 has regularized 63 daily wagers and 04 consolidated workers in J&K Housing Board in terms of SR_520 dated: 21.12.2017 as GSA skilled/GSA unskilled, as per the decision of 45th Meeting of BOD's & subsequent recommendations of Empowered Committee Constituted for regularization of daily wager/consolidated workers.

6. whereas, the petitioners being aggrieved of the regularization as Government Service Assistants in terms of SRO--520 dated 21.12.2017 rather than being regularized against the post of orderly.

7 Whereas, the petitioners have approached the Hon'ble High Court and filed the writ petition No. SWP No. 874/2019, IA No. 01/2019 titled Rajesh Kumar and Ors V/S State & others wherein the petitioners have sought the following relief from the Hon'ble High Court.

“Issue writ in the nature of Ceterari to quash order No. JKHB/244 of 2018, dated 31.07.2018 to the extent it regularizes the services of the petitioners as Government Service Assistants instead of Orderly as prescribed under the Non-Gazetted Service Recruitment Rules, 2001. Issue writ in the nature of Mandamus commanding the respondent authorities to regularize the services of the petitioners as Orderly under the Non-Gazetted J&K Housing Board Recruitment Rules, 2001 retrospectively from the date they have completed 07 years of service along with consequential and monetary service benefits”.

8 Whereas, the case was listed before the Hon'ble High Court on 01.05.2019. the Hon'ble Court has passed the following directions:-

“Meanwhile, respondents shall consider the representation of petitioners and inform this court before the next date of hearing”

9. Whereas, the Hon'ble Supreme Court of India in its order dated 10.04.2016 in SLP © 9103-9105 of 2001 titled state of Karnatake v. Umadevi, inter-alia, held that engagement made without following the due process or the rule relating to engagement did not confer any right on the appointees. The Hon'ble Court further held that temporary, contractual casual or daily wage employee does not have a legal right to be made permanent unless he had been appointed in terms of relevant rules or adherence of Article 14 and 16 of the Constitution.

10. Whereas, on the basis of Hon'ble Court's direction, the petitioners have represented before the respondent authorities dated: 24.01.2019 requesting therein that their services be considered against the post orderly instead regularization as GSA.

11. Whereas, the department has already taken action in one of such cases. i.e., Simaranjeet Singh, who was also regularized in terms of SRO 520 vide order No.244 of 2018 dated 31.7.2018 and his case was rejected vide Govt.Order No.171-HUD of 2019 dated 02.08.2019.

12 Whereas from the afore stated facts, it is apparent that the engagement of petitioners, being in violation of the Recruitment Rules, without following due process, being illegal ab initio, does not confer any right to them to be made permanent/regularized. Therefore the petitioners were regularized under the provisions of SRO- 520/2017.

Now, therefore the case of the petitioners has been examined afresh in light of the orders of the Hon'ble High Court dated 01.05.2019 and record available in the department. It has been found that, keeping in view the illegality of initial engagement of the petitioners, the case of the petitioners for regularization against the post of Orderly, is devoid of merit, and hence rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

(Dheeraj Gupta)IAS

Principal Secretary to Government
Housing & Urban Dev. Department

No:- HUD/HB/Reg/38/17

Dated: 13 -07-2020

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Managing Director, J&K Housing Board.
3. Special Secretary (Legal) for information and with the directions to ensure filling of status report in the Hon'ble Court
4. Private Secretary to Chief Secretary.
5. Private Secretary to Principal Secretary to Govt. Housing & Urban Development Department.
6. Government Order file/Stock file(w.2.s.c)

(Amreet Singh)KAS

Deputy Secretary to Government,
Housing & Urban Dev. Department.