



*Government of Jammu and Kashmir,
Housing & Urban Development Department,
Civil Secretariat Jammu/Kashmir*

Subject: CMP No.729/2013 in SWP No. 286/2008 titled Mushtaq Ahmad Khan and others V/S and others

Government Order No 17 -HUD of -2016

DATED: 20 -01 -2016

Whereas, Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba were initially appointed as Architectural Assistants in Architect Organization J&K, vide order No 27 of 1991 dated: 14.03.1991; and

Whereas, Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba, Architectural Assistants were promoted as Assistant Architects in their own pay and grade vide Government Order No.78-HUD of 2002 dated 18.02.2002 against Migrant/available posts subject to the condition that they will furnish an undertaking that in the event of rejoining of the Migrants they will be reverted back to their original posts; and

Whereas, Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba, Architectural Assistants have been regularized as Assistant Architects vide Government Order No. 173-HUD of 2012 dated 05.09.2012 with effect from 01.12.2011 and 01.06.2012 respectively; and

Whereas, Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba, Assistant Architects aggrieved with this approached the Hon'ble High Court through the medium of SWP No.286/2008 tiled Mushtaq Ahmad Khan and others V/S State and others praying therein that cases of petitioners be settled for confirmation as Assistant Architect from the date they have been placed in their own pay and grade with charge allowance; and



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Whereas, Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba, Assistant Architects filed CMP No. 729/2013 in SWP No. 286/2008 the main writ petition and prayed for regularization of their service as Assistant Architect from the date the petitioner has been promoted against migrant/available vacancy. In the CMP No. 729/2013, the petitioners have prayed for extending benefits of Govt. Order No. 610-GAD of 2006 dated 16.05.2006 in their favour, the above said Govt. Order deals with the policy for regularization of migrants substitute; and

Whereas, the CMP No.729/2013 in SWP No. 286/2008 filed Mushtaq Ahmed Khan and others V/S State and others was disposed off by the Hon'ble High Court and the operative part of the Court Order is as under:-

"The petition is accordingly disposed of with direction to the respondent that they shall accord consideration to the case of the petitioners in accordance with the policy framed as envisaged under Govt. Order No. 610-GAD of 2006 dated 16.05.2006. The exercise for according consideration, in the light of the latest Government Order/policy i.e Govt. Order No. 63-IND of 2012 dated 16.03.2012, shall be undertaken and completed within a period of two months from the date the copy of the order is served upon them. Result of consideration shall be conveyed to the petitioners. Right is reserved to the petitioners to re-agitate if thereafter any cause survives."

Whereas, vide Government order No.610 GAD of 2006 dated 15.05.2006 a high level committee has been constituted under the Chairmanship of Administrative Secretary, Finance Department to consider the regularization of migrant substitutes on case to case basis after ascertaining the eligibility of such substitutes as per the recruitment rules governing the posts; and



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Whereas, the issue was referred to the Department of Law, Justice and PA to ascertain whether the benefit of Government order No. 610-GAD of 2006 dated 10.05.2006 and Government order No. 63 IND of 2012 dated 16.03.2012 can be extended to the petitioners or not as the Housing and Urban Development Department has not been mentioned in the annexure to the said Govt. Order and the Law Department opinioned as under:-

"The Department is advised to implement the judgment dated 03.06.2013 and accord consideration to the case of the petitioner in view of the Government Order dated 16.05.2006 and Government order dated 16.03.2012 non mentioned of the department in annexure to Government order dated 16.05.2006 will not come in the way of the petitioner who came within the ambit of Government Order dated 16.05.2006"

Whereas the Government Order No 610-GAD of 2006 dated 16.05.2006 dealt with the process of regularization of migrant substitutes and not for regularization of officiating promotion against the migrant/available posts, as is the case of Mr Shuja Hussan and Mushtaq Ahmed Khan who were accorded sanction as officiating promotion to incharge Assistant Architects from Architectural Assistants against migrant/available posts vide Government Order No 78-HUD of 2002 dated 18.02.2002; and

Whereas, it is amply clear that Mr. Mushtaq Ahmad Khan and Mr. Shuja Hussain Baba have not been appointed against migrant vacancies but were accorded officiating promotion against migrant/available post of Assistant Architects in the Architect Organization Kashmir for which they have been paid charge allowance and then were not eligible for any benefit as available to the candidates appointed against migrant vacancy and regularized in pursuance of Government Order No 610-GAD of 2006 dated 16.05.2006;



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Now, therefore, in compliance to the Hon'ble High Court Srinagar's Order dated: 03.06.2013, passed in CMP No.729/2013 in SWP No. 286/2008 titled Mr. Mushtaq Ahmad Khan and others v/s State & others, and in accordance with policy envisaged under Government Order No.610-GAD of 2006 dated 16.05.2006 and Government Order No.63-IND of 2012 dated 16.03.2012, the case relating to the elevation of Mr. Mushtaq Ahmad Khan and Mr Shuja Hussain Baba retrospectively to the post of Assistant Architect has been considered and found devoid of merits and hence rejected on the basis of facts given here in above.

By order of the Government of Jammu and Kashmir.

Sd/-

(Bipul Pathak) IAS

Commissioner/Secretary to Government
Housing & Urban Dev. Department.

No:- HUD/Lit/65/AF/2014/Arch

Dated: 20 01-2016


Copy for information to the:

- 1 Chief Architect, J&K Jammu.
- 2 Private Secretary to Commissioner/Secretary H&UDD.
- 3 I/C Website H&UDD.
- 4 Government Order file (w.2.s.c.)


(Nissar Ahmed)

Under Secretary to Government
Housing & Urban Dev. Department


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