



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

Subject:- Accord of retrospective effect to the promotion of Mr. Rajinder Kumar Tutoo & Mr. Pushpati Nath Koul as Divisional Town Planner Srinagar Municipal Corporation w.e.f the date Mehraj-Ud-Din Bhat was promoted as Divisional Town Planner.

Ref:- Hon'ble High Court Srinagar order dated 13.10.2015 read with order dated 15.01.2014 passed in SWP No. 1737/2015, CMP No. 01/2015 titled Sh. R.K. Tutoo & Ors V/s State and Ors.

Government Order No :- 202 -HUD of 2017

D a t e d:- 21 . 09.2017

Whereas, in compliance to Hon'ble High Court order dated 05.09.2000 and 03.09.2004 passed in SWP No. 89/2000, SWP No. 330 of 2000 and Contempt (SW) No. 92-A/2002 titled R.K. Tutoo and Ors V/s State and Ors, Mr. Rajinder Kumar Tutoo, J.E, SMC and Mr. Pushpati Nath Koul, J.E SMC were promoted to the post of Assistant Engineering prospectively vide Govt. Order No. 225-HUD of 2004 dated 20.09.2004; and

Whereas, aggrieved with Govt. Order No. 225-HUD of 2004 dated 20.09.2004, wherein prospective effect was accorded to their promotion to the post of Assistant Engineer they filed SWP No. 1278/2012 titled Rajinder Kumar Tutoo and Ors V/s State and Ors in the Hon'ble High Court pleading that their said promotion shall be given retrospective effect with all consequential benefits vis-à-vis their counterpart belonging to same service category class and grade at its initial appointment of service and to fix the seniority of the petitioners to the cadre of the post equivalent to Divisional Town Planner or Ex-Engineer as accorded to the similarly circumstanced employee vis-avis petitioners in the respondents corporation; and

Whereas, vide interim direction dated 15.06.2012 passed in SWP No. 1278/2012 titled Rajinder Kumar Tutoo & Ors V/s State and Ors the Hon'ble

Jr
Javed

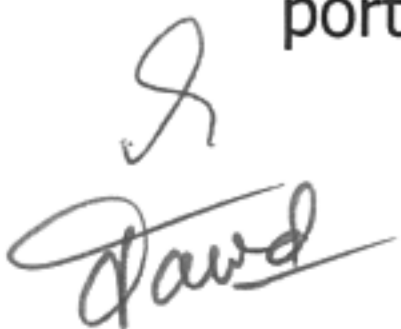
○ Court directed that in the meanwhile, it is provided that, if any representation has been filed by the petitioners, same shall be considered and decided in accordance with rules preferably within notice period. The petitioners aggrieved with the non-compliance of above said Hon'ble court directions filed Contempt petition (SW) No. 53/2012 titled R.K. Tutoo and Ors V/s State and Ors; and

Whereas, in compliance to Hon'ble Court directions dated 15.06.2012 read with Hon'ble Court direction dated 17.12.2013 passed in Contempt (SW) No. 53/2013 in SWP No. 1278/2012, the respondents vide order No. 2070 of 2013 dated 23.12.2013 considered and rejected the plea of the petitioners. The petitioners challenged the rejection order in the Hon'ble High Court through the medium of other writ petition being SWP No. 30 of 2014, which was disposed of by the Hon'ble Court vide order dated 15.01.2014, the operative part of which read as:-

"In view of case set up, petition is disposed of with a direction to respondents to accord consideration to petitioners case in light of averments made in the petition, annexures appended thereto and having regard to benefit given to their similarly situated colleague Sh. Mehraj-U-Din. Respondents shall do well to take decisions in the matter within eight weeks from the date of receipt of copy of the order. They, obviously are expected not to fill up the vacancies that on consideration of petitioners claim may be filled by petitioners."

Whereas, in compliance to the Hon'ble court order dated 15.01.2014 and as recommended by the Commissioner, Srinagar Municipal Corporation, Mr. Rajinder Kumar Tutoo Assistant Executive Engineer SMC and Mr. Pushpati Nath Koul, Assistant Executive Engineer SMC were promoted to the post of Divisional Town Planner prospectively vide Govt. Order No. 301-HUD of 2014 dated 15.12.2014; and

Whereas, Mr. Rajinder Kumar Tutoo, Divisional Town Planner SMC and Mr. Pushpati Nath Koul Divisional Town Planner SMC, thereafter, filed other writ petition being SWP No. 1737/2015 in the Hon'ble High Court which came to be disposed of vide order dated 13.10.2015, the operative portion of which is reproduced as under:-



"Mr. Aijaz Chesti, learned counsel for the petitioners states at the Bar that the petitioners would be satisfied in case the petition is hand, is disposed of in light of Judgment dated 15.01.2014 passed by the coordinate Bench in SWP No. 30/2014 title Rajinder Kumar Tutoo and Ors V/s State and Ors to which proposal other side has no objection. Statement of learned counsel for the parties are taken on record.

In view of the stand taken by learned counsel for the parties, this petition is taken up for final disposal and as such disposed of, with a direction to the respondents to consider the claim of the petitioners as projected in the writ petition, having regard the benefit given to similar situated persons and above referred judgment date 15.01.2014 provided the same is applicable to the case of petitioners. Let consideration order be passed within a period of four weeks from the date a certified copy of this order along with complete set of writ petition is made available to them."

Whereas, in order to settle the issue the department sought the opinion of Department of Law, Justice & Parliamentary Affairs who after examining the case vide U.O. No. LD(Ser)2016/16-H&UDD dated 22.04.2016 opined that:-

"Since the Hon'ble High Court has disposed of the writ petition on the basis of consent given by the parties, there is hardly any ground for filing the appeal. Department is advised to consider the claim of the petitioners in accordance with the order of Hon'ble High Court dated 13.10.2015."

Whereas, the department vide U.O No. HUD/Lit/ 323/SMC dated 27.06.2016 sought the opinion of Finance Department who vide U.O. No. A/50(05)-618 dated 23.08.2016 opined that:

"The issue has been examined. In view of the writ petition having been disposed of by the Hon'ble Court on the basis of mutual consent of parties, there is no point of reference of the case to Finance Department."

Now, therefore, in compliance to Hon'ble High Court order dated 15.01.2014 passed in SWP No. 30 of 2014 titled Rajinder Kumar Tutoo and Ors V/s State & Ors read with Hon'ble High Court order dated 13.10.2015 passed



in SWP No. 1737/2015 titled Rajinder Kumar Tutoo and Ors V/s State and Ors. The petitioners case stands considered under rules, and in supersession of earlier orders in the matter, sanction is hereby accorded to the notional placement of Mr. Rajinder Kumar Tutoo and Mr. Pushpati Nath Koul as Assistant Town Planner w.e.f 05.04.1986 to 08.08.2004 retrospectively and consequent upon their retrospective placement as Divisional Town Planner, w.e.f 09.08.2004 to 15.12.2014. They shall be entitled to all consequential benefits of their promotions as Divisional Town Planner w.e.f 09.08.2004 to 15.12.2014 i.e. the date they have actually been promoted as Divisional Town Planner vide Govt. order No. 301-HUD of 2014 dated 15.12.2014.

By Order of the Government of Jammu and Kashmir


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(Hirdesh Kumar Singh)IAS
Commissioner/Secretary to Govt.
Housing & Urban Dev. Department

No:- HUD/Lit/323/2015-SMC

Dated:- 21.09.2017

Copy to the:-

1. Commissioner Srinagar Municipal Corporation/Jammu Municipal Corporation.
2. Pvt. Secretary to Hon'ble Deputy Chief Minister (I/C Housing & Urban development Department) for information of Hon'ble Deputy Chief Minister.
3. Pvt. Secretary to Hon'ble Minister of State Housing & Urban Development Department for information of Hon'ble Minister.
4. Pvt. Secretary to Commissioner/Secretary to Government Housing & Urban development Department.
5. Senior Law Officer, H&UDD for information.
6. P.A to Additional Secretary to Govt. H& UDD.
7. Concerned.
8. Stock file.


(Dr. Javid Rehman) KAS
Under Secretary to Govt.
Housing & Urban Dev. Department