



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

Subject:- Implementation of Writ Court Judgment dated 13.11.2017 passed in SWP No. 1402/2015, MP No. 01/2015 titled Abdul Rashid Shah V/s State of J&K and others as upheld by Hon'ble Division Bench.

Government Order No. 324 - HUD of 2018
D a t e d:- 27 . 11. 2018

WHEREAS, vide Government Order No. 168-HUD of 2015 dated 30.06.2015, Sh. Abdul Rashid Shah I/C Executive Officer Municipal Committee Magam, Kashmir was prematurely retired from Government Services in the public interest in terms of Article 226 (2) of J&K CSR, Volume 1 w.e.f the forenoon of 01.07.2015, he having already rendered 22 years of service. He was allowed three months of pay and allowances in lieu of three months notice;

WHEREAS, feeling aggrieved with his premature retirement, he' filed SWP No. 1402/2015 titled Abdul Rashid Shah V/s State of J&K and other" challenging his premature retirement;

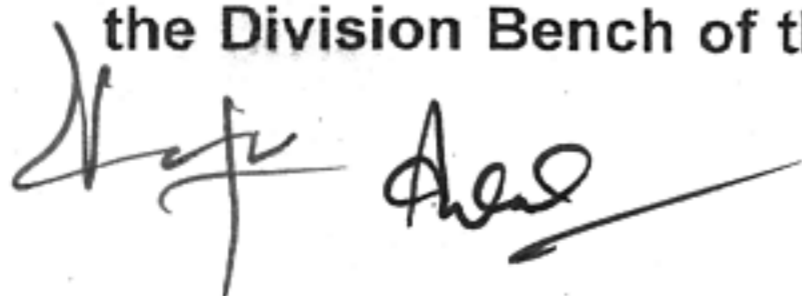
AND WHEREAS, the Hon'ble High Court at Srinagar vide Judgment dated 13.11.2017 in the matter, directed as under:-

"Viewed in the context of what has been said and done above, the impugned Order bearing No. 168-HUD of 2015 dated 30.06.2015, cannot Stand the test of law and reason. It is not based on any material from which a reasonable opinion could be derived to put forth the plea that the petitioner has outlived his utility as a Government servant or that his conduct was such that his continuance in service would be prejudicial to the public interest. Merely that a case or cases have been registered against the petitioner by the Vigilance Organization cannot from the basis of retiring him compulsorily, as a corollary to which, the impugned order bearing no. 168-HUD of 2015 dated 30.06.2015, is quashed. The Respondent are directed to reinstate the petitioner and to grant him all consequential benefits, within a period of one month from the date the certified copy of this order is served on them by the petitioner."

WHEREAS feeling aggrieved with the writ court Judgment dated 13.11.2017, an LPASW No. 88/2018, MP No. 01/2018 was filed by the State Government against the Single Bench Order dated 13.11.2017 titled State of J&K and others V/s Abdul Rashid Shah. The Hon'ble Division Bench vide Judgment dated 16.07.2018, dismissed the LPA with the following directions:-

"Learned Additional Advocate General submitted that the respondent does not enjoy good reputation in the public due to his inconsistent conduct over a period of time and various FIRs are under investigation/probe before the Vigilance Organization which pertain to the illegal/unauthorized appointments allegedly made in the Municipal Committee of Bandipora, Sumbal and Hajin, besides an FIR was registered against him that related to the disproportionate assets held by him. It is further submitted that all such appointments have been made by the respondent without making any advertisement and without adhering to normal recruitment procedure. It is further submitted that the decision was taken to compulsorily retire the respondent on overall assessment of the record. It is further submitted that the learned Single Judge ought to have appreciated that the State Government has taken steps in the public interest for retiring the respondent prematurely. It is further argued that since the respondent was involved in the corruption case and his reputation in the department was not good, therefore, the decision was taken by the Committee to compulsorily retire the respondent. It is further submitted that the principle of natural justice has no application to the fact situation of the case. However, the aforesaid aspect of the matter was not considered by the learned Single Judge. On the other hand, learned counsel for the respondent submitted that the order of the learned Single Judge is perfectly just and legal and does not call for any interference. It is further submitted by the learned counsel for the respondent that the allegation leveled against the respondent in three FIRs bearing Nos. 13/2013, 14/2013 and 15/2013 that he was involved in making illegal appointment in Municipal Committees during his tenure as Executive Officer in Bandipora, Hajin and Sumbal Municipal Committees are absolutely incorrect, as from the appointments orders, it is evident that the appointment have been made by the respective President of the above mentioned Municipal Committees and there is no even a single appointment order, which has been issued by the respondent on his own. It is further submitted by the learned counsel for the respondent that a Bench of this Court in bunch of writ petition had quashed the order of compulsory retirement passed by the appellant herein, merely on the basis of registration of First Information Report, by an order dated 22.12.2016 passed in SWP No. 1947/2015. Admittedly, the aforesaid order has been upheld by the Division Bench of this Court.

In view of the aforesaid submission and for the reasons assigned by the Division Bench of this Court in order dated 22.12.2016 passed in



LPA No. 1947/2015, we are not inclined to entertain the appeal. In the result, the appeal is dismissed along with connected IA.

WHEREAS, the case was examined in the department in light of the Division Bench judgement and referred to the Department of Law, Justice and Parliamentary Affairs Department to advise Department as to what course of action is required to be taken in the instant case;

WHEREAS, the Department of Law, Justice and Parliamentary Affairs Department returned the file with the following opinion:-

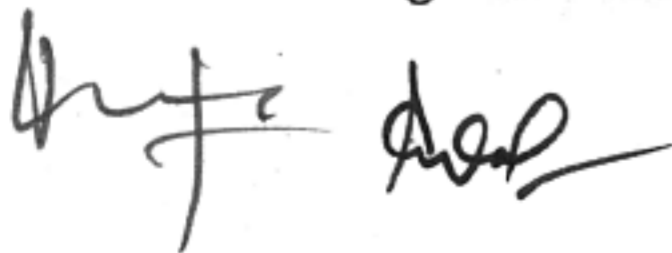
“Returned. Department is advised to implement the judgement subject to the outcome of the SLP to be filed before the Hon’ble Supreme Court as per the policy decision taken by the Government in these matters. The sanction cum engagement letter in the name of Sh. M Shoeb Alam, Advocate-on-Record in the instant matter is placed alongwith the file. The Department is thus advised to take necessary steps for filing of SLP before the Hon’ble Supreme Court at an earliest”.

Whereas, in the similar nature case the Department of Law, Justice and P.A was requested to advise whether the Department is bound to implement the order of Division Bench subject to outcome of the SLP or the mere filing of the SLP exonerates the department from implementing Division Bench's order. In the said case the Department of Law Justice and PA advised as under:

“Returned. The Department has already in the identical cases implemented the judgement of the Division Bench subject to the outcome of the SLP to be filed before the Hon’ble Supreme Court. In the instant case the SLP has already been sanctioned and the Department has been advised to implement the Judgement subject to the outcome of the SLP. Besides, the General Administration Department has also implemented a similar judgement in case titled Mohammad Bashir Rather vs State of J&K and O4rs, subject to the outcome of the SLP”.

WHEREAS , the State Government has filed SLP against the Division Bench judgement dated 03.07.2018 before the Hon’ble Supreme Court of India and the SLP is pending adjudication;

WHEREAS, in view of the judgement of the Division Bench dated 16.7.2018 and the opinions furnished by the Department of Law, Justice and Parliamentary Affairs Department the State Government has decided to implement the writ Judgment subject to outcome of SLP;



Now therefore, in view of the above, it is hereby ordered that:-

1. Government Order No. 168-HUD of 2015 dated 30.06.2015, ordering premature retirement of Shri Abdul Rashid Shah I/C Executive officer Municipal Committee Magam, Kashmir is rescinded abinitio.
2. The officer shall be entitled for payment of salary and other service benefits to which he would have been entitled to in the absence of Government Order No. 168-HUD of 2015 dated 30.06.2015 and such benefits shall be released within two months from the date of this order. However payment of salary in terms of the instant Government order shall be subject to the deduction of three month salary and allowances paid to him at the time of premature retirement in lieu of notices as envisaged under Article 226 (2) of CSR.
3. He shall furnish an undertaking to the effect that he was not gainfully employed anywhere during the period from 30.06.2015 to the date of issuance of this order.
4. The concerned officer upon reinstatement shall submit his joining report to the Administrative Department for further posting.
5. That his reinstatement/implementation of the writ court Judgment shall be subject to the final outcome of the SLP filed in the Hon'ble Supreme Court of India and cases, if any, pending against him in any matter or connected therewith.

By order of the Government of Jammu and Kashmir.

Sd/

(K.B. Aggarwal)IAS

Financial Commissioner

Housing & Urban Development Department

No:- HUD/Lit/ 233/2015/DULBK

Dated:- 27/11.2018

Copy to the:-

1. Accountant General, J&K, Srinagar.
2. Commissioner/Secretary to Govt. General Administrative Department.
3. Secretary to Govt. Department of Law, Justice and PA
4. Director Urban Local Bodies Jammu/Kashmir
5. OSD to Hon'ble Advisor(S) to Governor.
6. P.S to Chief Secretary.
7. P.S to Financial Commissioner H& UDD.
8. Mr. AB. Rashid Shah S/o Sh. Noor Ud-Din Shah R/o Papchan Bandipora.
9. Govt. Order(w.2.s.c.)/Stock File.



(Syed Nazir Ahmed)

Under Secretary to Government
Housing & Urban Dev. Department

