



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

Subject:- Implementation of Writ Court Judgment dated 27.02.2018 passed in SWP No. 1450/2015, MP No. 01/2015 titled Ab. Latief Mir V/s State of J&K and others as upheld by Hon'ble Division Bench.

Government Order No. 325-HUD of 2018
D a t e d:- 27. 11. 2018

WHEREAS, vide Government Order No. 169-HUD of 2015 dated 30.06.2015, Sh. Abdul Latief Mir I/C Executive Officer attached with Directorate Urban Local Bodies 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. 1450/2015 titled Abdul Latief Mir V/s State of J&K and other" challenging his premature retirement;

WHEREAS, the Hon'ble High Court at Srinagar vide Judgment dated 27.02.2018 in the matter, directed as under:-

" Viewed in the context of all that has been said and done above, the impugned Order bearing No. 169-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 some preliminary enquiries have been conducted 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. 169-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 27.02.2018, an LPASW No. 81/2018, MP No. 01/2018 was filed by the State Government against the Single Bench order dated 27.02.2018 titled State of J&K

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and others V/s Abdul Latief Mir. The Hon'ble Division Bench vide Judgment dated 03.07.2018, dismissed the LPA with the following directions:-

"We have considered the submissions made by the learned counsel for the parties and have perused the record. Learned Single Judge has referred to the Annual Performance Reports of the respondent in Paragraphs 19 and 20 of the judgment, which are reproduced below for the facility of reference:-

"The facts in the present case are eloquent. The petitioner has appended with the writ petition the 'annual performance reports' wherein and whereunder his achievements, from time to time, have been judged/evaluated by his superiors. In February 2009, the petitioner has been rated to be an officer of high integrity together with a skilled attitude to take official assignments. In February 2010, the petitioner has been assessed to be an officer with a highly and remarkable presence of mind, during his duties. On 04.02.2011, the petitioner has been judged to be an officer who developed Sopore Town -.Very well in the matters of drainage and development of bylanes. It has also been reported that he implemented IHSDP/ILCS schemes very effectively. On 17.02.2014, the Deputy Commissioner, Baramulla has awarded the petitioner with a letter of appreciation that reads as follows:-

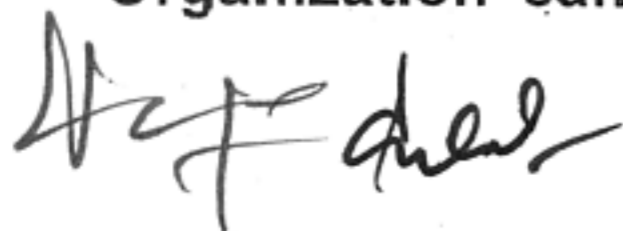
"This is to place on record my appreciation for the commendable/appreciable work done by Sh. Abdul Latief Mir, Executive Officer, MC Sopore during my tenure as Deputy Commissioner, Baramulla. The officer performed his duties with high sense-of dedication, commitment, zeal and enthusiasm, even during odd hours and trying circumstances.

I wish him all the best."

The aforementioned Appreciation letter and the 'Annual Performance Reports' have been shelved. These have escaped the scrutiny of the Committee. It appears to have been done with an ultimate aim of showing the petitioner the exit and, had these documents, been considered, the conclusion would have been otherwise."

The learned Single Judge has further held that the impugned order is not based on any material from which inference can be drawn that the respondent has outlived his utility as a Government servant. The relevant paragraph 26 of the judgment reproduced as under:-

"Viewed in the context of all that has been said and done above, the impugned Order bearing no.169-HUD of 2015 dated 30th of June, 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 some preliminary enquiries have been conducted against the petitioner by the Vigilance Organization cannot form the basis of retiring him compulsorily, as a



corollary to which, the impugned Order bearing no.169-IIIJD of 2015 dated 30th of June, 2015, is quashed. The respondents 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."

Thus, from the perusal of the order passed by the learned Single Judge, it is evident that the 'Annual Performance Reports' of the respondent were good and his integrity in the 'Annual Performance Reports' is described as beyond any shadow of doubt. There was absolutely no material before the Committee to hold that it was necessary to compulsorily retire the respondent in the public interest. Therefore, we are of the opinion that the respondent has not committed any misconduct. It was open for the appellants to hold departmental inquiry against the respondent and the power to retire the respondent in public interest could not be used as short-cut to dispense with the service of the respondent in order to avoid regular departmental inquiry against the respondent. The impugned order, therefore, does not suffer from any infirmity warranting the interference of this Court. In the result, we find no merit in the appeal. The same fails and is, accordingly, dismissed along with connected IA.

WHEREAS, the case was examined in the department in light of the Division Bench judgement dated 3.7.2018 and referred to the Department of Law, Justice and Parliamentary Affairs Department for advise the 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 the file was again referred to the Department of Law, Justice and Parliamentary Affairs for 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.

Whereas the Department of Law, Justice and P.A returned the file vide U.O.No. LD(Lit)2018/123-SC/HUDD dated 23.10.2018 with the following advise:

"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 Ors, subject to the outcome of the SLP".

WHEREAS, the State Government 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; and

WHEREAS, in view of the judgement of the Division Bench dated 3.7.2018 and the opinions furnished by the Department of Law, Justice and Parliamentary Affairs 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. 169-HUD of 2015 dated 30.06.2015, ordering premature retirement of Sh. Abdul Latief Mir I/C Executive officer attached with Directorate Urban Local Bodies 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. 169-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 his 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/ 236/2015/DULBK

Dated:-27.11.2018

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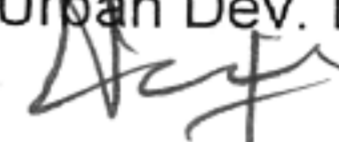
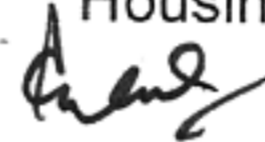
1. Accountant General, J&K, Srinagar.
2. Commissioner/Secretary to Govt. General Administrative Department.

3. Secretary to Govt. Department of Law, Justice and Parliamentary Affairs
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. Latief Mir S/o AB. Khaliq Mir R/o Mumipapy, Budgam
9. Govt. Order(w.2.s.c.)/Stock File.



(Syed Nazir Ahmed)

Under Secretary to Government
Housing & Urban Dev. Department



27/11