

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

Subject:- Implementation of Hon'ble High Court order dated 05.05.2018 passed SWP No. 2988/2001 titled "Diwan Singh V/s State and others.

Government Order No: 64 -HUD of 2021
Dated: 29.03.2021

Whereas, Shri Diwan Singh, retired Works Supervisor, in the Directorate of Urban Local Bodies, Jammu filed writ petition SWP No. 2988/2001 titled "Diwan Singh V/s State and others. The petitioner prayed before the Hon'ble Court for following relief:-

- i) *Writ of certiorari seeking quashment of Govt. Order No. 210-HUD of 2000 dated 15.09.2000 in which respondent No. 4 i.e. Sat Pal has been promoted to the post of Junior Engineer (JE).*
- ii) *Further writ of Mandamus commanding the respondents to promote the petitioner to the post of Junior Engineer with retrospective effect will all consequential benefits.*

Whereas, the Hon'ble High Court vide its interim order dated 10.12.2001 passed in SWP No. 2988/2001 titled "Diwan Singh V/s State and others directed as under:-

"Pending disposal of the aforesaid writ petition, it is ordered by this court on 10.12.2001 as follows"-

Mr. Sunil Sethi.

Issue notice. Notice in CMP also. Meanwhile in case the petitioner is eligible, his case also be considered for promotion under rules."

Whereas, in compliance with the aforesaid interim directions of Hon'ble Court, the case of the petitioner was examined and placed before the DPC alongwith the case of Shri Sat Paul, respondent No. 4. The DPC rejected the case of the petitioner with further decision taken that all the six JEs, non-technical, who have been promoted shall be reverted including the respondent No. 4.; and

Whereas, the Hon'ble High court dismissed the contempt petition so filed by the petitioner against the aforesaid interim order, which was dismissed vide order dated: 19.05.2005; and

Whereas, another interim order was passed by the Hon'ble Court on 24.10.2005 in the main writ petition, with the direction to place on record the implementation of order of the recommendations made by the DPC; and

Whereas, vide Government Order No. 166-HUD of 2010 dated 27.04.2010, the department reverted all the JEs. including the respondents No.4 and filed the statement of facts to the contempt petition No. 53/2009 filed by the petitioner for non-implementation of the Interim Order dated 24.10.2005; and

Whereas, the reversion order dated 27.04.2010 was challenged by all the six persons by filing different writ petitions and the Hon'ble High Court stayed the Government Order No. 166-HUD of 2010 dated 27.04.2010; and

Whereas, the department has filed detailed objections to all the writ petitions and in the meanwhile all the six persons have already been retired from the Govt. services including the respondent No. 4. All the six persons retired from the Government services, including the respondent No. 4, have taken the pensionary benefits as Junior Engineer because their reversion order was stayed by the Hon'ble High Court except one Mr. Ravi Kumar, who retired on 31.12.2013 whose pension case could not be settled because of some outstanding against him; and

Whereas, the main writ petition filed by the petitioner bearing SWP No. 2988/2001 titled "Diwan Singh V/s State and others was disposed off by the Hon'ble Court vide judgement dated 05.05.2018 with the following direction for appropriate action:-

"At request, this writ petition, is disposed, of with a direction to the respondents to accord consideration to the case of petitioner for grant of retiral/pensionary benefits at par with Sat Pal, provided the petitioner is similarly situated person. Let respondents take a decision in the matter and pass appropriate consideration order within a period of 04 weeks from the date certified copy of this order along with complete Set of writ petition is made available to them".

Whereas, pursuant to the above directions, the case was examined in the department and accordingly, vide U.O. No. HUD/Lit/144/2017/DULBJ dated 04.02.2020, the matter referred to the department of Law, Justice and Parliamentary Affairs, for advice. The said department returned the departmental file with the following opinion/advice:-

"Returned. The department is advised to furnish the following information in the first instance:-

- (i) to clarify as to whether the writ petition in which reversion order has been assailed is still pending consideration before the Hon'ble Court and its present status and details.*
- (ii) Whether there is any distinction between the case of petitioner and that of Sat Paul."*
- (iii) Detailed factual note of the case be also furnished to this department.*

Whereas, after seeking the requisite clarifications/inputs from Director, Urban Local Bodies, Jammu, the matter was again referred to the

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department of Law, Justice and Parliamentary Affairs for seeking advice/opinion in the matter; and

Whereas, the department of Law, Justice and Parliamentary Affairs vide U.O. No. LD(Lit)2020/10-Housing dated 04.03.2021 has opined as under-

"Returned. Department is advised to consider the case of the petitioner, Shri Dewan Singh, in compliance to the directions of the Hon'ble High Court dated 05.05.2018 passed in SWP No. 2988/2001 titled Dewan Singh Vs. State of J&K and others keeping in view all the facts of the case including the fact that the writ petitions on the subject matter are still sub-judice before the Hon'ble High Court of Jammu and Kashmir. Further equality in illegality is not permissible in the eyes of law as such the department may take a decision and pass a speaking /consideration order in the matter accordingly. Besides, the department should take immediate steps for vacation of stay order passed in the Reversion matter and contest the case vigorously before the Hon'ble High Court to ensure that the interest of the department is safeguarded."

Whereas, the petitioner's junior has been promoted as JE without following rules which prompted the petitioner to approach Hon'ble Court to seek suitable directions/benefits, though said junior namely Shri Sat Paul was reverted, later on; and

Whereas, the case has been examined in light of the above facts and opinion tendered by the department of Law, Justice and Parliamentary Affairs, and it has been found that the 'equality in illegality is not permissible in the eyes of law' which has an indirect reference to the above mentioned promotions made by the department.

Now, therefore, in compliance to the directions of the Hon'ble High Court dated 05.05.2018 passed in SWP No. 2988/2001 titled Dewan Singh Vs. State of J&K and others, also in keeping with the opinion of the Department of Law, Justice and Parliamentary Affairs, the case of the petitioner has been considered in the department and the same is found devoid of any merit and hence rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dheeraj Gupta)IAS
Principal Secretary to Government
Housing & Urban Dev. Department.

Dated 29.03.2021

No. HUD/Lit/144/2017/DULBJ

Copy to the:

1. Director, Urban Local Bodies, Jammu.
2. Special Secretary to Government (Legal), Housing and Urban Dev. Deptt.

3. Pvt. Secretary to Principal Secretary to Govt, Housing and Urban Development Department.
4. P.A to Additional Secretary to Government, Housing and Urban Development Department.
5. Concerned.
- ✓ 6. Incharge website, H&UDD.
7. Government Order file/Stock File.

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29.03.21
(Thannaji Bhat)
Thannaji Bhat Under Secretary to Government
29/3/21