



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

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Subject: Consideration Order in terms of Hon'ble High Court Order dated 13.03.2018 passed in SWP No. 461/2018, MP No. 01/2018, titled Simranjeet Singh V/s State of J&K and Ors.

Government Order No: /7/ - HUD of 2019

D a t e d: 02 -08-2019

Whereas S.Simranjeet Singh (petitioner), S/o Sh. Surjit, R/o 248, Kachi Chhawni, Jammu, was initially engaged as Assistant Manager, on consolidated wages of Rs. 9000/- per month in the Jammu and Kashmir Housing Board, vide order no.: HB-298-301 dated: 10-04-2002, for "Development of Lakhanpur Township, Jammu" project. The engagement of the petitioner was for a period till the completion of the project and the working of the official was to be reviewed every four months and his continuation was subject to efficient performance.

2. Whereas, while the initial engagement of the petitioner was till the completion of the project, which was over in 2005, the engagement of petitioner was extended from time to time and the consolidated wages of the petitioner continued to be drawn by the Deputy General Manager, Housing Unit I, Jammu w.e.f. August, 2002. The petitioner continued in the Board, through different orders issued from time to time, even after the engagement of petitioner was terminated at one point of time, vide order No. 27 of 2005 dated 11.10.2005.

3. Whereas the perusal of the record of engagement of petitioner clearly reveals that the petitioner was engaged as work-charged employee, as above, without following due process of law and in clear violations of the Non-Gazetted Service Recruitment Rules of the J&K Housing Board, 2001, and as such, the engagement of the petitioner was illegal *ab-initio*.

4. Whereas, the petitioner approached the Hon'ble High Court through the medium of Service Writ Petition numbered as SWP No. 461/2018, titled

Simranjeet Singh Vs State of J&K and another praying therein to direct respondent No. 1 to pass appropriate orders regarding the regularization of the petitioner as Assistant Manager, J&K Housing Board retrospectively w.e.f. 10-04-2002 with all consequential benefits, on the plea that the regularization of the petitioner has been recommended by the Establishment Committee constituted vide Government Order No. 173-HUD of 2015, dated 07.07.2015.

5. Whereas, as the Hon'ble Court vide order dated 13.03.2018 disposed off the Writ Petition with the directions:

*"..... to the respondents to consider the claim of the petitioner on the basis of the recommendations and having regard to the approval of the proposal for regularization of the petitioner retrospectively strictly under rules and of course, if there is no legal impediment. Let the respondents take a decision in the matter and pass consideration order within a period of six weeks' from the date a certified copy of this order along with complete set of writ petition is made available to them."*

6. Whereas, the Supreme Court of India in its order dated 10.04.2016 in SLP (C) 9103-9105 of 2001 titled State of Karnataka v. Umadevi, *inter-alia*, held that engagement made without following the due process or the rule relating to engagement did not confer any right on the appointees. The Court further held that a temporary, contractual, casual or daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of relevant rules or in adherence of Article 14 and 16 of the Constitution.

7. Whereas, the perusal of the record reveals that the case of the petitioner for regularization was first considered by the Board of Directors of the Housing Board, in its 43<sup>rd</sup> meeting as Agenda Item No. 43.18. The Board of Directors referred the matter to the Establishment Committee, constituted *vide* Govt. Order No. 173-HUD of 2015, dated 07.07.2015, for scrutiny and recommendations to the Board of Directors.

8. Whereas, the perusal of the record further reveals that the Establishment Committee in its meeting held on 09.07.2015, under the Chairmanship of the then Commissioner/Secretary to Government, Housing & Urban Development Department, did recommend the proposal of

regularization of the services of the petitioner as Assistant Manager (JE) retrospectively to the Board. However, a perusal of the Agenda and the Minutes of the said meeting clearly reveal that no ground or basis was either cited in the Agenda or in the Minutes for the said recommendation/regularization. In fact, there could not be any basis or legality in regularizing the petitioner, in terms of the established law, whether prospectively or retrospectively. Therefore, the Establishment Committee actually erred in making the recommendations for regularization, as these were without any basis and legal backing, as the initial engagement of petitioner was itself illegal and, hence, bad in the eyes of law. In any case, these recommendations were neither final nor binding in terms of the Government order constituting the Establishment Committee itself..

9. Whereas, the said recommendations of the Establishment Committee were placed before the Chairman (Hon'ble Deputy Chief Minister, J&K State), J&K Housing Board, who directed to place the same before the next meeting of the Board of Directors.

10. Whereas, the recommendations of the Establishment Committee were then placed before the 44<sup>th</sup> meeting of the Board of Directors, which authorized the Commissioner/Secretary to Government, Housing and Urban Development Department, to decide the same.

11. Whereas, the Government on 21<sup>st</sup> of December, 2017, *vide* SRO-520, came out with the Jammu and Kashmir Casual and Other Workers-Regular Engagement Rules, 2017, to enable placing the services of the casual and other workers, who have completed ten years of continuous service, under regular engagement.

12. Whereas, the case regarding regularization of petitioner, along with other casual workers, was therefore again placed before the Board of Directors, in its 45<sup>th</sup> meeting held on 31.05.2018 as Agenda item No. 45.02 along with the recommendations of the Establishment Committee. The said Agenda point *inter alia*, reads:

“.....”

“The Board may kindly take decision that whether the daily wagers

*in J&K Housing Board be regularized as per SRO 520 or as per the recommendations of the of the Establishment Committee”*

“ .....

13. The Board of Directors deliberated and decided that a Committee headed by the Financial Commissioner, H&UDD with Managing Director and FA/CAO, JKHB, as its member, (analogous to the Establishment Committee) will examine the individual profile of each casual/consolidated worker and its recommendation shall be implemented by the Managing Director, J&K Housing Board.

14. Whereas, the above constituted committee, in its meeting held on 29-06-2018, considered the case of the petitioner for regularization against the post of Assistant Manager retrospectively ,along with other daily wagers and decided that the same may be regularized under SRO 520. As would be seen, the said empowered Committee also rejected the claim of the petitioner for regularization against the post of Assistant Manager retrospectively, being devoid of any merit as the engagement of the petitioner was illegal *ab-initio* and only permitted his regular engagement under SRO 520.

15. Whereas, the petitioner, Sh Simranjeet Singh was recommended for his regular engagement in terms of SRO 520 and in pursuance to said recommendation, the petitioner, among others, has been placed in regular engagement, as GSA-Skilled vide Order No. 244 of 2018 dated 31.07.2018 issued by the Jammu and Kashmir Housing Board, in terms of provisions of SRO-520 of 2017 dated 21.12.2017. Keeping in view the past engagement, he is now being paid the monthly remuneration of Rs. 18540/-p.m. along with other benefits in terms of provisions of SRO-520 of 2017 dated 21.12.2017.

16. Whereas, from the afore stated discussion, it is apparent that the engagement of petitioner, being in violation of the Recruitment Rules, without following due process, being illegal *ab-initio*, does not confer any right to him to be made permanent/regularised. The recommendations of the Establishment Committee have therefore been already correctly rejected by the Board/its Committee as above and the petitioner appointed as GSA under the provisions of SRO 520.

17. Now, therefore, the case of the petitioner has been again examined afresh in light of the orders of the Hon'ble High Court dated: 13.03.2018, history of the case and record available in the department and it has been found that, keeping in view the illegality of initial engagement of the petitioner, the case of petitioner for regularization against the post of Assistant Manager retrospectively, being devoid of any merit, is rejected.

**By order of the Government of Jammu and Kashmir.**

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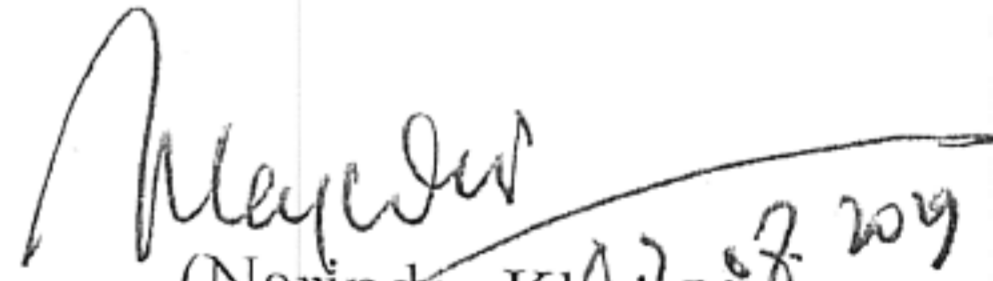
**(Dheeraj Gupta)IAS**  
Principal Secretary to Government  
Housing & Urban Dev. Department

No:- HUD/HB/Lit/99/2010

Dated:- 02.08.2019

Copy to the:-

1. MD, J&K Housing Board.
2. OSD Secretary to Advisor (I/C Housing & Urban Development Department) for information of the Advisor to Hon'ble Governor.
3. Additional Secretary (legal), for information and with the directions to ensure filing of status report in the Hon'ble Court.
4. Private Secretary to Principal Secretary to Govt. Housing & Urban Dev. Deptt.
- ✓ 5. Concerned.
6. Govt order file w.2. s.c
7. Stock file.

  
(Narinder Khajuria)  
Additional Secretary to Government  
Housing & Urban Dev. Department