



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

Subject:- Contempt Petition No. 82/2019 in SWP No. 617/2018 titled Hilal Ahmad Dewani v/s Dheeraj Gupta and others.

Government Order No. 178 HUD of 2019  
D a t e d 29 . 08 . 2019

Whereas, the Srinagar Municipal Corporation is functioning under the provisions of Municipal Corporation Act, 2000 which provides as under:-

**Section 45: Appointment of Commissioner**

- (1) The Government shall, by notification, in the Government Gazette appoint a Class I officer of the Government having a service of not less than fifteen years, as the Commissioner of the Corporation.
- (2) Subject to the provisions of sub-section (3) the Commissioner so appointed shall hold office for a term of three years in the first instance:

Provided that his appointment may be renewed for a term not exceeding three years:

Provided further that no officer who has attained the age of superannuation shall be appointed or continue as Commissioner.

- (3) The Government:-
  - a) Shall recall the Commissioner if at a special meeting of the Corporation called for the purpose, a resolution for such recall has been passed by a majority of not less than two thirds of the total number of members;
  - b) May in the public interest recall the Commissioner at any time during the term of his appointment.

**Section 46: Appointment of Joint/Assistant Commissioner and certain other officers.**

- (1) The Government may, if in its opinion it is expedient to do so in the public interest, appoint a person or persons to be called Joint/Assistant Commissioner to assist the Commissioner appointed under section 45 for the efficient performance of the functions of the Corporation and they shall be governed by such conditions of service as may be fixed by the Government from time to time.
- (2) Subject to the approval of the Corporation and rules made in this behalf the Joint/Assistant Commissioner appointed under sub-section (1) shall be subordinate to the Commissioner and shall exercise such powers and perform such duties as may be conferred and imposed upon the Commissioner under this Act and are further delegated to them by the Commissioner.

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- (3) There shall be a legal Advisor-cum-Prosecutor to aid and advice the Corporation in all legal matters, to be appointed by the Corporation, by deputation on such terms and conditions as may be prescribed.

2. Whereas, Mr. Hilal Ahmad Dewani, Secretary, Srinagar Municipal Corporation approached Hon'ble High Court through SWP 617/2018 titled Hilal Ahmad Dewani Vs State and others, wherein he requested for his promotion to the next higher post i.e. Joint Commissioner (Administration) SMC.

3. Whereas the Hon'ble High Court disposed of the writ petition vide its order dated: 06.04.2018, the operative part of which reads as under:-

*"Mr. A. Chesti appearing counsel for the petitioner submits that in the event interim orders are not passed, writ petition will become in-fructuous as the post of Joint commissioner (Adm) Srinagar Municipal Corporation, which is reportedly being filed up by deputation from the Government of J&K. He submits that petitioner is presently working as Secretary in the Srinagar Municipal Corporation and fulfilling all the eligibilities and deserves consideration for promotion as Joint Commissioner (Adm.) Srinagar Municipal Corporation.*

*On the set facts based on pleadings which is supported by the judgments reported in AIR 1989 SC 1972 and AIR 2004 (9) SCC 65, the matter needs consideration. When asked, learned appearing counsel for the respondent no. 3 submits he is appearing first time in the matter seeks time to file reply and take instructions within ten days.*

*In the meanwhile, respondent no. 1 and 2 shall consider the claim of the petitioner on the strength of his eligibility and also with reference to the judgments supra for his elevations as Joint Commissioner (Adm) Srinagar Municipal Corporation."*

4. Whereas Shri Hilal Ahmad Dewani, petitioner filed contempt petition No. 82/2019 in SWP 617/2018 titled Hilal Ahmad Dewani Vs Dheeraj Gupta and others

5. Whereas, the Hon'ble Court vide its Order dated 06.04.2018 while mentioning the Hon'ble Supreme Court judgments reported in AIR 1989, SC 1972 and AIR 2004, Vol (9), SCC-65, directed the respondents 1 & 2 to consider the claim of the petitioner on the strength of his eligibility and also with reference of judgment supra for elevation of petitioner as Joint Commissioner (Adm.) Srinagar Municipal Corporation.

6. Whereas, the Hon'ble Supreme Court in Judgment dated 12.12.2003 passed in case civil appeal No. 6253/1998 titled "State of Tripura and others V/s K.K Roy" has observed as under:-

*"Right to Promotion—In a single cadre post – The legal principle laid in this Case, states that, Government have a Constitutional obligation under Articles 14 and 16 of Constitution of India to create promotional avenue for all employees – Even when an employee agrees to join a Single Cadre post – He is entitled to two promotions at the completion of 12 years and 24 years of Service in the next higher scale of pay."*

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7. Whereas, Shri Hilal Ahmad Dewani, Secretary, Srinagar Municipal Corporation has enjoyed six promotions from the date of his first appointment, the details of which are as under:-

Date of 1 <sup>st</sup> appointment and designation	04.08.1979 as Class IV
Date of 1 <sup>st</sup> promotion	04.05.1981 as Steno-typist
Date of 2 <sup>nd</sup> promotion	29.07.1985- as Junior Stenographer
Date of 3 <sup>rd</sup> promotion	04.08.1989 as Senior Stenographer
Date of 4 <sup>th</sup> Promotion	11.12.2003 as Assistant Secretary (General Enforcement Officer)
Date of 5 <sup>th</sup> Promotion	01.07.2009 as Chief Revenue Officer
Date of 6 <sup>th</sup> promotion	01.07.2013 as Secretary

8. Whereas, the above chart clearly shows that the petitioner has not only got 6 promotions, 4 in non-Gazetted Service and 2 in Superior Service but has jumped within a period of 4 years from one post to another post on promotion every time. As per the Hon'ble Supreme Court judgment dated 12.12.2003, one is entitled to 2 promotions at the completion of 12 years and 24 years of service in the next higher scale of pay.

9. Whereas Shri Hilal Ahmad Dewani, Petitioner has even got the promotion of Secretary, Srinagar, Municipal Corporation illegally as the said post has been reckoned against the deputation service at Time Scale KAS as per Jammu and Kashmir Administrative Service Rules, 2008 issued vide SRO 386 dated 1.12.2008 read with SRO 205 dated 29.6.2016.

10. Whereas, the post of Joint Commissioner has been reckoned against deputation reserve from amongst the selection Grade cadre officers.

11. Whereas, Rule 21 (4) of Jammu and Kashmir Administrative Service Rules, 2008 issued vide SRO 386 dated 1.12.2008 provides as under.

**"A cadre post shall not ordinarily be filled by a person who is not a cadre officer except in accordance with the following criteria namely:**

- (a) **If a select list is in force, the appointment shall be made in the order in which the names of the officers appear in the select list.**
- (b) **If a select list is not in force, a junior scale member or a member of the feeding service shall be appointed to officiate against an available vacancy provided he is otherwise eligible to be promoted to the time scale."**

12. Whereas, Shri Hilal Ahmad Dewani, petitioner neither belongs to KAS cadre nor Corporation borne post are feeding services for the time scale posts of KAS

13. Whereas, having regard to the orders of the Hon'ble High Court, the claim of the petitioner Shri Hilal Ahmad Dewani for his promotion as Joint Commissioner(Adm) Srinagar Municipal Corporation has been examined and found devoid of merits as the post has been reckoned against deputation reserve from amongst the selection Grade KAS Officers.

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14. Now, therefore, the claim of petitioner Shri Hilal Ahmad Dewani for his promotion as Joint Commissioner (Adm) Srinagar Municipal Corporation is devoid of merits hence rejected.

By order of the Government of Jammu and Kashmir


Sd/  
(Dheeraj Gupta), IAS  
Principal Secretary to Government  
Housing and Urban Dev. Department.

No. HUD/Lit/SMC/28/2018

Dated 29.08.2019

Copy to the.

1. Commissioner, Municipal Corporation, Srinagar.
2. OSD to Hon'ble Advisor (S)
3. Addl. Secretary (Legal) Housing and Urban Dev. Department. He is requested to kindly file the compliance report before the Hon'ble High Court by or before the next date of hearing of the Contempt petition.
4. Private Secretary to Principal Secretary to Government, Housing and Urban Dev. Department.
5. Government Order file (w.2.s.c.)
6. Stock file.

  
(Syed Nazir Ahmad)  
Under Secretary to Government  
Housing and Urban Dev. Department.