

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

Subject: **Consideration Order in terms of Hon'ble High Court Order dated 18-08-2017 passed in SWP No. 1388/2017, MP No. 01/2017, titled Abdul Majeed Sheikh V/s State of J&K and Ors.**

Government Order No:- 81 - JK(HUD) of 2020
Dated:- 28 02 - 2020

Whereas, Sh. Abdual Majeed Sheikh (Petitioner), S/o Sh. Mohammad Mukhtar Sheikh R/o Zalchaldara, Handwara, District Kupwara, was initially engaged as Peon/Chowkidar in the year 1993, vide Order No. 17/1193 dated 04-10-1993, by Chief Executive Officer, Urban Development Agency, Kashmir, without following due process.

Whereas, in the year 1999, UDAK was provided with a vehicle to run the day-to-day office affairs. Thereafter, on 17-01-2000, the petitioner was given charge of Junior Driver, vide UDAK office order No. 134/2000 dated 17-01-2000, in the pay scale of ₹3050-4500 without any authority.

Whereas, the petitioner was promoted as Driver by CEO, UDAK, in pursuance to SRO-28 issued by the Finance Department vide notification dated 25-01-1996 w.e.f 01-12-2005. However, the CEO, UDAK, was not competent to issue such promotion order. Hence the promotion order was void ab-initio.

Whereas, the Governing Body of SUDA, in its 6th meeting held on 17-11-2017, decided to constitute a Committee comprising of Additional Secretary, H&UDD, Joint Director (P&S), CEO, JUDA and UDAK, for finalization of recruitment rules for the employees of State Urban Development Agency (SUDA), Jammu Urban Development Agency (JUDA), Urban Development Agency Kashmir (UDAK) and District Urban Development Agencies (DUDA's).

Whereas, in pursuance to decision of Governing Body, dated 17-11-2017, a Committee of Officers was constituted, vide Government Order No. 61-HUD of 2018 dated 23-02-2018, for preparation/framing of recruitment rules for the employees of State Urban Development Agency (SUDA) and District Urban Development Agency's (DUDA's) and the mandate of the committee was to prepare, draft recruitment rules/regularization policy of the employee working in various cadres in SUDA/JUDA/UDAK/DUDA's within a period of one month for review/approval of governing body.

Whereas, the above said committee has drafted the recruitment rules and the same are to be placed before the next meeting of governing body for review and approval.

Whereas, promotion/confirmation to higher posts cannot be granted in absence of Recruitment Rules. However, assigning of charge to look after such posts can be given as an administrative exigency, but that does not entitle the employee, including the petitioner to seek confirmation/promotion on such charge in absence of Recruitment Rules.

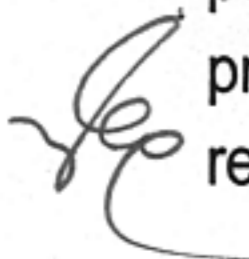
Whereas, perusal of general rules, applicable to Jammu & Kashmir State Motor Garages who is the parent department of Drivers reveals that for Drivers/Chauffeurs, the method of recruitment is as under:

1. **Driver Grade – II**
 - (i) **90% by direct recruitment.**
 - (ii) **10% by promotion from Helpers, Cleaners and having valid Heavy Goods Vehicle (HGV)/Public Service Vehicle (PSV) driving license with 05 years' service in that category and to pass departmental driving test.**
2. **Driver Grade – I**
 - (i) **100% by promotion from Driver Grade–II, having 05 years services as such.**
3. **Chauffer:**
 - (i) **100% by promotion from Driver Grade–I, having 05 years service as such.**

Whereas, as per the above Rules, the petitioner does not hold the requisite qualification for promotion to the post of Driver even on in-charge basis, as he lacks the basic criteria i.e. he should either be helper, Cleaner and has to pass the Departmental Driving Test.

Whereas, the Supreme Court of India, in its order dated 10-04-2016, in SLP (c) 9103-9105 of 2001 titled State of Karnataka Vs Uma Devi inter alia has held that engagement made without following due process or the rules relating to engagement did not confer any right upon the appointee.

Whereas, as per the above facts, it is apparent that engagement of petitioner, without following due process and subsequent assignment of charge and promotion as Driver without requisite qualification, being illegal also need to be reviewed.



Now, therefore in compliance of the Hon'ble High Court order dated: 18-08-2017, the case of the petitioner has been examined and it was found that the claim of the petitioner for promotion to the post of Chauffeur is devoid of any merit, hence rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

(Dheeraj Gupta) IAS

Principal Secretary to the Government
Housing & Urban Development Department

No: HUD/Plan/50-A/2014

Dated: 28-02-2020

Copy for information to the:-

1. Director Planning, Housing & Urban Development Department.
2. Chief Executive Officer, Urban Development Agency, Kashmir.
3. Pvt. Secretary to Principal Secretary to the Government, Housing & Urban Dev. Department.
4. Concerned.
5. Government Order file / Stock file.



(Syed Nazir Ahmad)

Under Secretary to the Government
Housing & Urban Development Department

