

Government of Jammu and Kashmir
Health & Medical Education Department
Civil Secretariat, J&K Jammu/Srinagar.

Subject: Implementation of judgment dated 12.12.2017 passed in SWP No. 1145/2015 read with CCP(S) No. 295/2020 titled Ashok Kumar v/s Sh. Atal Dulloo & Ors.

Government Order No: 1034-JK(HME) of 2023

D a t e d: 12-12-2023

WHEREAS, the petitioner Sh. Ashok S/o Bansi was engaged by the then Chief Medical Officer, Udhampur vide his office order dated 18.10.1994;

AND WHEREAS, amongst others the petitioner filed SWP No. 1145/2015, before the Hon'ble High Court at Jammu seeking regularization of his services;

AND WHEREAS, the Hon'ble High Court at Jammu disposed of the said SWP vide its order dated 12.12.2017 with the following direction:-

"Respondents are directed to take a decision on the issue of regularization purely on its own merits and in accordance with applicable law and rules as deemed fit within a period of six to eight weeks from the date of receipt of representation alongwith copy of this order."

AND WHEREAS, in the meanwhile, the petitioner filed a contempt petition bearing CCP(S) No. 295/2020 titled Ashok Kumar v/s Sh. Atal Dulloo;

AND WHEREAS, the Government from time to time has formulated different policies to regularize the adhoc/contractual/consolidated employees of different departments and subsequently different empowered committees were also constituted for the purpose. Firstly, it was the policy notified vide G.O. No. 1220-GAD of 1989 dated 11.09.1989 read with G.O. No. 1285-GAD of 2001 dated 06.11.2001 superseded by G.O. No. 168-GAD of 2004 dated 09.02.2004

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read with G.O No. 237-GAD of 2004 dated 20.02.2004, G.O. No. 794-GAD of 2004 dated 22.06.2004. The policy was once again superseded by the Jammu and Kashmir Civil Services (Special Provision) Act 2010, however the same was also repealed by the Government following the Jammu & Kashmir Re-Organization Act, 2019;

AND WHEREAS, as of now, there is no policy governing the regularization of adhoc employees in the UT of J&K;

AND WHEREAS, it has been observed that the petitioner has been engaged arbitrarily dehors the rules, without making any advertisement, framing of selection panel etc;

AND WHEREAS, no subsequent orders were issued by the competent authority for continuation/regularization of services of the petitioner;

AND WHEREAS, it has been observed that the candidates like the petitioners having entered the departmental service through illegal means continue on the basis of said wrong entry and then on misrepresentation of facts obtain court orders for their continuation in the department. Such modus operandi needs to be discouraged.

AND WHEREAS, in the instant case the Hon'ble Court without going into the merits of the case has left it to the department to take a decision on the issue of regularization purely on its own merits and in accordance with applicable law and rules. Since it is clear in the instant case that the petitioner has been appointed arbitrarily in an illegal manner, therefore the said illegality cannot be further perpetuated by regularization of the petitioner;

AND WHEREAS, similar cases have already been rejected by the department having been found devoid of merit;

AND WHEREAS, one wrong cannot justify another wrong as there can be no parity in illegality;

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AND WHEREAS, the officers who were responsible for such illegal engagements also need to be brought to book so that such instances are not repeated in future;

AND WHEREAS, the applicants having been engaged without following the proper procedure cannot claim for continuation of the said illegality;

AND WHEREAS, even otherwise, as on date, there is no policy of regularization of consolidated workers;

AND WHEREAS, the Hon'ble Supreme Court of India has laid the law in the case of Umarani Vs Registrar, Coop. Societies (2004) 7 SCC 112 that:

"...when appointments were made in contravention of mandatory provisions of the Act and statutory Rules framed thereunder and by ignoring essential qualifications, the appointment would be illegal and cannot be regularized by the State. The State could not invoke its power under Article-162 of the Constitution to regularize such appointment. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or anybody or authority governed by a statutory Act or the rules framed there under. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."

AND WHEREAS, the Hon'ble Supreme Court of India has laid a law in the case of State of Karnataka Vs Uma Devi (3), (2006) 4 SCC 1 that:

"...when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission.

Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent on the post. In view of the settled legal position the instant application is not maintainable and deserves to be dismissed..."

AND WHEREAS, the Hon'ble Supreme Court in the same case also held that:

"...a daily rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post. The term "temporary employee" is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, adhoc employee, etc. The distinction between a temporary employee and a permanent employee is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only a permanent employee who has a right to continue in service till the age of superannuation (unless he is dismissed or removed after an inquiry, or his service is terminated due to some other valid reason earlier). As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Hence, it follows that no direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation;

AND WHEREAS, in Tariq Ahmad Mir and Ors Vs State of J&K and Ors 2007 JKJ (HC) (2) 584 it was held that:-

" ... Regularization cannot be made to the post de-hors the Rules and an employee cannot invoke the jurisdiction of the court in order to seek appointment and that too de-hors the Rules"

Ans.

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AND WHEREAS, the Hon'ble Supreme Court in case titled Sunil Kumar Soni Vs State of Rajasthan vide its judgment dated 28.03.2023 passed in SLP No. 27633/2017 held as under:

"...But unfortunately for the petitioner, the question of law on the issue of eligibility of persons holding Bachelor degree in Education through the distance education mode is already settled by this Court. Therefore, if other people have secured the benefit of an order, those orders are not in accordance with the law laid down by this Court. It is well settled that there cannot be equality in the matter of illegality. Therefore, the petition deserves to be dismissed".

AND WHEREAS, the case of the petitioner has been examined in compliance to the aforesaid writ court judgment dated 12.12.2017 and also aforesaid judgments of the Hon'ble Supreme Court as well as Hon'ble High Court, it has been found that the claim of the petitioner for regularization of his services is devoid of merit as interalia at present there is no policy for regularization of candidates appointed on adhoc / contractual basis.

Now therefore, in view of above facts & the legal position quoted above and in compliance to the directions of the Hon'ble High Court at Jammu passed in SWP No. 1145/2015 read with CCP(S) No. 295/2020 titled Ashok Kumar v/s Sh. Atal Dulloo & Ors, the claim of the petitioner for regularization of his services has been considered and found devoid of any merits.

By order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar) IAS,

Secretary to the Government,

Health & Medical Education Department

No. HD-Lgal/11/2021-02(CC-21395)


Dated: 12-12-2023

Copy to the:-

1. Joint Secretary, Secretary (J&K), Ministry of Home Affairs, Government of India.

Handwritten signature in blue ink.

2. Director, Health Services, Jammu with the request to identify the officers/ officials responsible for such engagement for taking appropriate action against them.
3. Director Archives, Archaeology and Museums, J&K, Srinagar.
4. OSD with the Advisor (K).
5. Private Secretary to Secretary to Government, Health & Medical Education Department.
6. Incharge website.
7. Government Order file/Stock file (w.2 s.c)

 **(Waqar Talib)JKAS**
Under Secretary to the Government
Health & Medical Education Department