

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

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Subject:-SWP No. 707/2019 titled Mool Raj Vs State of J&K & Ors.

**Government Order No: 267-JK(HME) of 2024**

**D a t e d: 02-04-2024**

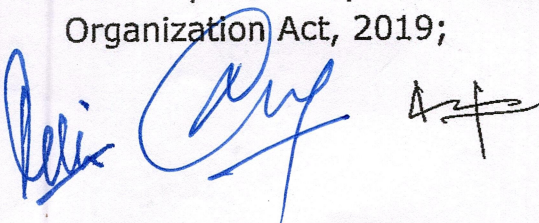
**WHEREAS,** Mr. Mool Raj S/o Mr. Shanker Dass R/o Village Pathyari, Tikri, Tehsil and District Udhampur, was initially engaged as Safaiwalla on consolidated basis by the then CMO Udhampur vide order dated 24-07-1992;

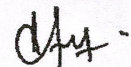
**AND WHEREAS,** the services of the applicant has not been regularized till date and as such the applicant filed the instant petition viz. SWP No 707/2019 titled Mool Raj Vs State of J&K & Ors for the regularization of his services;

**AND WHEREAS,** the Hon'ble Court disposed of the writ petition vide order dated 30.09.2019 with the following directions:-

**Accordingly, the instant writ petition is disposed of with a direction to the respondents to consider the claim of the petitioner as projected in the writ petition, having regard the communication dated 20.07.2018, of course, under rules. Let an appropriate consideration order be passed by the respondents within a period of two months from the date certified copy of this order along with complete set of paper book of the writ petition as well as annexures attached thereto, is made available to them.**

**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policy notified vide G.O. No. 1220-GAD of 1989 dated 11.09.1989 read with G.O. No. 1285-GAD of 2001 dated 06.11.2001 superseded by G.O. No. 168-GAD of 2004 dated 09.02.2004 read with G.O No. 237-GAD of 2004 dated 20.02.2004, G.O. No. 794-GAD of 2004 dated 22.06.2004. The policy was once again superseded by the Jammu and Kashmir Civil Services (Special Provision) Act 2010, however the same was also repealed by the Government following the Jammu & Kashmir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**, the applicant having been appointed by an incompetent authority, dehors the rules, and cannot claim for continuation of the said illegality;

**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 thereunder. 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**

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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"

**Now therefore**, in view of aforesaid detailed position and after considering the directions of the Hon'ble CAT at Jammu passed in SWP No. 707/2019 [(WP(C) 1272/2019] CM (2660/2019[1/2019] titled Mool Raj Vs State of J&K Ors, the claim of the petitioner for regularization of his services has been considered, found devoid of any merits and hence rejected.

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

**Sd/-**

**(Dr. Syed Abid Rasheed Shah) IAS,**  
Secretary to the Government.

**No. HD-Igal/511/2022-02**

**Dated:-02.04.2024**

Copy to the:-

1. Joint Secretary J&K, Ministry of Home Affairs, GOI.
2. Director Health Services, Jammu for information.



3. Director, Archives, Archaeology & Museums, J&K, Jammu.
4. Director Litigation, Jammu.
5. OSD with Advisor (B) to Hon'ble Lt. Governor.
6. Additional Secretary (Law), Health and Medical Education Department for information
7. Private Secretary to Secretary to the Government, H&ME Department.
8. Concerned Official.
9. In charge Website, H&ME Department.
10. Government Order file/Stock file. (w.2.s.c)

*Jalhin*  
**(Dr. Javed Iqbal) JKAS** 02/09/24

Deputy Secretary to the Government,  
Health and Medical Education Department.

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02/04.

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