

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

Subject: Implementation of judgment dated 22.05.2023 passed by the Hon'ble Central Administrative Tribunal in O.A No. 516/2023 titled Surju Devi v/s UT of J&K and ors.

Government Order No: 836 -JK(HME) of 2023

D a t e d : 11.10.2023

Whereas, the J&K Civil Service (Special Provisions) Act 2010 was enacted for regularization of the employees on adhoc/contractual/ consolidated basis. An Empowered Committee had also been constituted under Section 10 of Jammu and Kashmir Civil Service (Special Provisions) Act, 2010 vide Government Order No. 1423-GAD of 2009 dated 14.10.2009 to scrutinize the cases of such employees and recommend regularization of such adhoc/contractual/ consolidated employees to the concerned departments;

And whereas, the Health and Medical Education Department also made appointments/regularization to various gazetted and non-gazetted posts, on adhoc/contractual/ consolidated basis, from time to time under Jammu and Kashmir Civil Service (Special Provisions) Act, 2010;

And whereas, regularization of all the employees made under J&K Civil Services (Special Provisions) Act 2010 have been given prospective effect in terms of first proviso under section-5 of the said act, which provides:-

*Provided that the regularization of the eligible adhoc or contractual or consolidated appointees under the Act **shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization.***

And whereas, Smt. Surju Devi (petitioner) was initially engaged as Safaiwalla in 1988 on consolidated basis and her services were regularized in terms of O.M. No. GDC-166/CM/2016 dated 12.06.2017 of General Administration Department, in relaxation of upper age limit by 12 years and 09 days as on 01.01.2017, after she was cleared by the Empowered Committee;

And whereas, Smt. Surju Devi filed an O.A No. 516/2023 before the Hon'ble Central Administrative Tribunal at Jammu seeking retrospective effect to her regularization i.e., the date from which she was engaged initially on consolidated basis in the year 1988;

And whereas, the Hon'ble Tribunal disposed of the O.A No. 516/2023 titled Surju Devi v/s UT of J&K and ors vide its order dated 22.05.2023 with the following directions:-

Accordingly, the Original Application is disposed of with a direction to the Secretary to Government, Department of Health and Medical Education, Union Territory of Jammu & Kashmir (Respondent No. 1 herein) to decide the applicant's pending representation dated 01.09.2022 and pass a reasoned and speaking order in accordance with law. If a supplementary representation is submitted by the applicant within a period of two weeks from today, the same shall also be taken into consideration. Before taking such a decision, the applicant shall be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of six weeks from the date of receipt of a certified copy of this order.

And whereas, the petitioner through the medium of application dated 01.09.2022 (as referred by Hon'ble Court), addressed to DHS-Jammu had requested for release of full salary w.e.f. 1988 upto 2017 i.e., from her initial appointment as consolidated Safaiwalla upto her regularization under J&K Civil Services (Special Provisions) Act 2010;

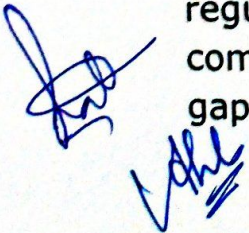
And whereas, consequent upon the directions of Hon'ble Tribunal, through the medium of Notice dated 11.09.2023, the petitioner was directed to report in the H&ME Department, Jammu with her contention within a period of seven (07) days for consideration of her representation;

And whereas, the petitioner, accordingly, attended the office of Deputy Secretary, H&ME Department at Jammu on 15.09.2023 and submitted that the representation may kindly be considered and full salary be released in her favour for the period she served on adhoc basis w.e.f. 1988 upto 2017;

And whereas, since the regularization, in terms of J&K Civil Services (Special Provisions) Act, 2010, is having the prospective effect as stated in above paras, the claim of the petitioner is not tenable and, as such, cannot be considered;

And whereas, the regularization was accepted by the applicant in the year, 2017 without any demur and drew her salary since the year, 2017 onwards in terms of the said Act alongwith the terms and conditions guiding her regularization;

And whereas, it is a settled law that no person can claim regularization in service until and unless the regularization is provided under any statute or rule. The service of the applicant have been regularized in terms of J&K Civil Services (Special Provisions) Act, 2010, as earlier to this Act and Proviso first to section-5 of this Act, clearly lays down a stipulation that the regularization of eligible adhoc, contractual or consolidated appointees under the Act shall have effect only from the date of regularization, irrespective of the fact that appointees have completed more than seven years of services. As such the applicant/petitioner is entitled for regularization only from the year 2017 and not from the date of completion of seven years of services on Adhoc/Contractual/stop-gap basis;



Now therefore, in compliance to judgment dated 22.05.2023 passed by the Hon'ble Central Administrative Tribunal in O.A No. 516/2023 titled Surju Devi v/s UT of J&K and ors, the claim of the petitioner has been considered and found devoid of any merits on the facts elaborated above, and hence rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar)IAS

Secretary to Government,
Health & Medical Education Department

No. HD-Lgal/168/2023-02

Dated: 11.10.2023

Copy to the:-

1. Joint Secretary, Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Principal Secretary to Government, Finance Department.
3. Commissioner/Secretary to Government, General Administration Department.
4. Secretary to Government, Department of Law, Justice & Parliamentary Affairs.
5. Director, Health Services, Kashmir/Jammu.
6. Director Archives, Archaeology and Museums, J&K, Srinagar.
7. OSD with the Advisor (B).
8. Private Secretary to Secretary to Govt., Health & Medical Education Department.
9. Government Order file/Stock file (w.2 s.c)

(Shakoor Ahmad)JKAS

Deputy Secretary to Government
Health & Medical Education Department