



Government of Jammu and Kashmir
Higher Education Department
Civil Secretariat, J&K.

Subject: - OA No. 321/2022 titled Ali Mohammad Lone V/s UT of J&K and others.

Reference:- (i) Govt. Order No. 73-JK(HE) of 2023 dated 10.03.2023.
(ii) U.O No. Law/Ser2/68/2022-10 dated 10.11.2022 from Department of Law Justice and Parliamentary Affairs.

Government Order No. 604 -JK(HED) of 2024
Dated: 31 .12.2024

Whereas; Mr. Ali Mohammad Lone was initially appointed as Lab. Assistant on adhoc basis for a period of 89 days or till regular selection was made by the recruitment Board whichever is earlier, vide no. PF/270-73 dated 25.03.1991 on recommendations of Special Commissioner Baramulla. However no regular selection was made against the said post and resultantly petitioner/applicant continued to work against the said post and;

Whereas vide Govt. Order No. 154 – (HE) of 2013 dated 24.10.2013, among others Mr. Ali Mohammad Lone was regularized against the post of Lab. Assistant in terms of J&K Civil Services (Special Provisions) Act, 2010 and;

Whereas; petitioner approached Central Administrative Tribunal (CAT) Srinagar and filed OA No:-321/2022 seeking direction to consider his past services rendered in the Department as per Apex Court Judgment dated 18.02.2022 passed in SLP No. 1109/2022 titled State of Gujrat and others vs. Talsiibhai Dhanjibhai Patel and;

Whereas; the Hon'ble Tribunal disposed of the Original Application vide order dated 21.04.2022 directing the respondents/competent authority to consider case of applicant for grant of benefits of his past service treating the present OA as representation of the applicant and dispose of the same by passing the reasoned and speaking order in accordance with the rules;

Whereas; the case was examined and it was observed that the applicant was initially appointed against the post of Lab. Assistant in the Govt. Degree College for Women's Baramulla vide order no. PF/1270-73 Dated 25.03.1991 for a period on 89 days or till regular selection was made by the recruitment board. The applicant continued against the post of Lab. Assistant and was finally regularized in terms of J&K Civil Services (Special Provisions) Act, 2010, among others vide Govt. Order No. 154 – (HE) of 2013 dated 24.10.2013 and;

Whereas; section 5 of the J&K Special Provisions Act 2010 provides for regularization of adhoc or contractual or consolidated appointees as under:-

Notwithstanding anything of the contrary contained in any law for the time being in force or any judgment or order of any court or tribunal, the adhoc or contractual or consolidated appointees referred to in section 3 shall be regularized on fulfillment of the following conditions, namely:-

- i. That he has been appointed against a clear vacancy or post.*
- ii. That he continues as such on the appointed day.*
- iii. That he possessed the requisite qualification and eligibility for the post on the date of his initial appointment on adhoc or contractual or consolidated basis as prescribed under the recruitment rules governing the service or post.*
- iv. That no disciplinary or criminal proceedings are pending against him on the appointed day, and*
- v. That he has completed seven years of service as such on the appointed day.*

Provided that the regularization of the eligible adhoc or contractual or consolidated appointees under this 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 dated or thereafter but before such regularization.

Provided further that any adhoc or contractual or consolidated appointee who has not completed seven years service on the appointed day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act.

Whereas, the regularization of the applicant has already been considered by the Government in relaxation of his upper age bar on the post of Lab. Assistant. The applicant is substantively holding the post with effect from 24.10.2013 as such is not covered for the pensionary benefits and;

Whereas, the Higher Education Department vide Government Order No. 73-JK(HE) of 2023 dated 10-03-2023, rejected the claim of the applicant for counting his past service keeping in view the Section 5 of the J&K Special Provisions Act, 2010 and;

Whereas, the case of Ali Mohammad Lone was re-examined following the Central Administrative Tribunal's (CAT) Order dated 29.11.2023, which suggested that his case be considered similarly to other retrospectively regularized cases, such as Pervaiz Ahmad Shah and Manzoor Ahmad Dar. However, the Department issued Government Order No. 73-JK (HE) of 2023 dated 10.03.2023 stating that employees who have not completed seven years of service are not eligible for regularization. The petitioner's previous regularization under Government Order No. 154-(HE) of 2013 was based on prospective effect as per the J&K Civil Services (Special Provisions) Act, 2010.

The facts and circumstances of Lone's case differ significantly from those cited by the CAT. Therefore, the petitioner's case cannot be considered retrospectively.

Now, therefore, in compliance to the directions of the Hon'ble Tribunal the case of the applicant has again been considered keeping in view the Section 5 of the J&K Special Provisions Act, 2010, the claim of the applicant for counting his past service has been found without any merit, hence rejected.

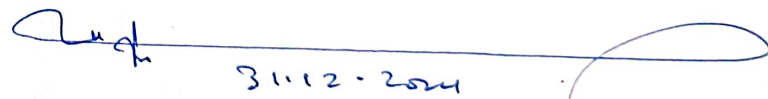
Sd/-
(Dr. Rashmi Singh) IAS
Commissioner/Secretary to the Government
Higher Education Department

No. HED-LEG/94/2022-04(182838)

Dated: 31 .12.2024

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Director, Archives, Archaeology and Museums, J&K.
3. Director, Information, J&K, with the request to get this order published in two leading newspapers both at Srinagar and Jammu for information of the concerned.
4. Director Finance, Higher Education Department.
5. Director Colleges, Jammu & Kashmir.
6. Private Secretary to Commissioner Secretary to the Government, General Administration Department.
7. Private Secretary to Commissioner Secretary to the Government, Higher Education Department.
8. Concerned Deputy Commissioner / District Magistrate.
9. In-charge Website, HED.
10. Concerned candidate for information.
11. Government Order file (w.2.s.c.).
12. Stock/Personal files.


31.12.2024

(P.N. Hamid) JKAS
Deputy Secretary to the Government
Higher Education Department

