

**Government of Jammu and Kashmir.**

**Jal Shakti Department**

**Civil Secretariat, Jammu/Srinagar**

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**Subject:** CCP (S) No. 732/2019, LPA No. 545/2001 titled Waryam Das Vs UT of J&K and Ors.

**Government Order No. 21 -JK (JSD) of 2024.**

**Dated: 29 -01-2024**

1. Whereas, Shri Waryam Dass (hereinafter called petitioner) had filed the writ petition bearing No. SWP No. 1775/1998, claiming therein for his regularization under SRO-64 of 1994 as he has been engaged as Daily Rated Worker in the month of June 1991 and completed seven years of service as such is entitled for regularization in terms of SRO-64 of 1994. The Hon'ble High Court while considering the writ petition on 31.05.2001 passed the following directions:-

***"to consider the case of the writ petitioner respondent herein, for regularization in terms of SRO-64 of 1994."***

2. Whereas, pursuant to the above directions passed by the Hon'ble High Court, the consideration order was passed by the Respondent No. 5 i.e Executive Engineer, MICD Jammu vide No. 29 of 2001 dated 28.08.2001 whereby, the claim of the petitioner was rejected on the ground that the petitioner was engaged on casual basis, therefore does not fall within the preview of SRO 64 of 1994.
3. Whereas, aggrieved upon the said order the petitioner challenged the same before the Hon'ble High Court bearing SWP No. 2304/2001 and the Hon'ble Court while considering the matter on 31.10.2001 was pleased to dispose of the writ petition with the following directions:-

***"Respondents authorities would take notice of above legal position and also the recent policy decision taken by them and would consider the claim of the petitioner for regularization of their services. Let appropriate orders be passed and conveyed to the petitioners within a period of three months from the date a copy of this order is made available to the respondents by the petitioners. Till this is done, the petitioner, in service shall be allowed to continue. In case, any adverse order is passed, that be kept in abeyance for a period of six weeks."***

4. Whereas, Department while considering the Judgment dated 31.10.2001, challenged the same vide an LPA bearing No. 545/2001, before the Hon'ble Division Bench of Hon'ble High Court of J&K at Jammu and the said LPA was dismissed on 18.02.2014 by the Hon'ble Division Bench.
5. Whereas, the case of the petitioner was placed before the Empowered Committee (constituted vide Government Order No. 139-F of 2015 dated 19.08.2015) who vide its 13th meeting held on 04.04.2018 decided as under.

**"The committee came to the conclusion that the orders of the Hon'ble High Court, the department mandate of the Empowered Committee is to screen left out cases of DRW's covered under provisions of SRO 64/1994. In view of the orders of the Hon'ble Court, the department shall have to take further appropriate action in the matter for implementation of orders of the Hon'ble Court at its level."**

6. Whereas, matter needs to be considered without the approval of Empowered Committee which requires relaxation of rules and the department has to follow the prescribed procedure for placement before the competent authority; and
7. Whereas, the Department has no competence to create the post of Class IV, therefore, the matter was taken up Department of Law; who advised to seek the advice of the GAD in the first instance, and the GAD after consultation advised that the Hon'ble Court has no-where in the Judgment dated 31.10.2001 and 18.02.2014 directed that the department shall take steps for regularization of the petitioner in relaxation of rules.



8. Whereas, the Hon'ble Supreme Court of India in "Secretary, State of Karnataka Vs. Uma Devi" (2006) 4 SCC 1 has held as under:-

- i. Equality of opportunity is the hallmark for public employment and it is in terms of the Constitutional scheme only (Para 1).
- ii. The filling of vacancies cannot be done in a haphazard manner or based on patronage or other considerations (Para 2).
- iii. The State is meant to be a model employer and can make appointments only in accordance with the rules framed under Article 309 of the Constitution (Para 5).
- iv. Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, or any body or authority governed by a statutory Act or the Rules framed there under. Regularization, furthermore, cannot give permanence to an employee whose services are ad hoc in nature. The fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. (Para 27).
- v. Any regular appointment made on a post under the State or Union without Issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (Para 30).
- vi. If it is a contractual appointment, the appointment comes to an end at the end of the contract (Para 34).
- vii. Regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further by- passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme (Para 44).
- viii. In cases relating to service in the commercial/ taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit.

They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their Cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them (Para 46).

9. Whereas, in light of the law laid down by the Hon'ble Supreme Court of India in a Constitutional Bench judgment rendered in case titled "Secretary, State of Karnataka Vs. Uma Devi" (2006) 4 SCC 1 the Administrative Council has repealed the Jammu & Kashmir daily rated workers/work charged employees(Regularization) Rules, 1994 notified vide SRO 64 of 1994 dated 24-03-1994 and the Jammu & Kashmir casual and other workers - Regular Engagement Rules 2017(SRO 520 of 2017) vide S.O No. 514 dated 06.10.2023

Now, therefore, the claim of the petitioner has been considered with due deference to the order dated 31.10.2001 passed in SWP No. 2304/2001 titled Waryam Dass & Ors Vs Ajeet Kumar Sahu and others, coupled with the advice of Department of Law, Justice & P.A; as well as latest decision of Administrative Council, issued vide S.O No. 514 dated 06.10.2023 and has been found devoid of any merit for the aforesaid reasons and is accordingly rejected.

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

*Sd/-*

**(Shaleen Kabra) IAS**  
Financial Commissioner (ACS),  
Jal Shakti Department.

Computer No.23446

Dated: 29-01-2024

**Copy to the:-**

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Chief Engineer, (I&FC) Jal Shakti Department, Jammu for information and necessary action.

3. Ld. Additional Advocate General, J&K High Court, Jammu for information and filing of compliance before the Hon'ble Court.
4. Private Secretary to the Financial Commissioner (ACS) Jal Shakti Department for information of the Financial Commissioner (ACS)
5. Additional Secretary to Government, Jal Shakti Department for information.
6. Petitioner.
7. Incharge website, Jal Shakti Department.
8. Monday Return file (w.2.s.c).
9. Government order file.

*Anjali Koul* 29/1/24  
**(Anjali Koul)**

Under Secretary to Government,  
Jal Shakti Department