

**Government of Jammu and Kashmir.**  
**Jal Shakti Department**  
Civil Secretariat, Jammu

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**Subject: -** CPSW No. 242/2017 in SWP NO: 1085/2016 titled Aadil Hussain Raina & Ors Vs M.Raju and others .

**Government Order No. 216-JK (JSD) of 2022.**

**Dated: 06 -10-2022**

1. Whereas, Aadil Hussai Raina & Ors (here called petitioners) filed a writ petition bearing SWP No. 1085/2016 before the Hon'ble High Court at Srinagar wherein petitioners had prayed to direct the respondents to give same and similar treatment to the petitioners which has been given to the persons mentioned in the order forming Annexure C to the writ petition: and
2. Whereas, the Hon'ble High Court while considered the case of the petitioners on 25.05.2016 disposed of the case with the following directions:-

**This writ petition is disposed along with connected IAs is disposed of and respondents are directed to consider the prayer of the petitioner for their engagement on the analogy of the persons, whose details are give in the communication dated 21st June, 2014 send by the Chief Engineer PHE Department, Srinagar to Superintending Engineer Hyd. Circle, Anantnag provided the (petitioners) are similarly circumstanced with the persons mentioned in the said communication.**

**Respondents to consider and take decision within eight weeks from the date copy of this order served on them.**

**Disposed of along with connected IAS."**

3. Whereas, on examination of the matter in pursuance to the judgment passed by the Hon'ble court at different levels and apparent from the departmental records that in the year 2015 the Finance Department had already advised to explore the option of payment of due compensation, in all such cases including "Jabran" on account of compulsive land acquisition which is a

routine matter in all other department. and the policy of engagement of more Casual Labourers on one alibi or the other needs to be discouraged; and

4. Whereas, in the year 2017 the Finance Department issued SRO-520, dated 21st December 2017 framed rules known as Jammu & Kashmir and other Workers – Regular Engagement Rules 2017 and Sub-Rule (b) of Rule 11 of the said SRO has authorized the Administrative Department to engage Land donors as casual labourers on the recommendation of the committee.; and
5. Whereas, Department has observed that there is no clarity and it was felt that in view of the policy issue which has far reaching consequences it will be appropriate to consult the Finance Department and the Department of Law Justice and Parliamentary Affairs before proceeding further in the matter and, therefore the process of inter-departmental consultation was taken and the advice received from the departments is produced hereunder :-
  - i. Whereas, the Finance Department has opined as under:-

**“Returned:- The case has been Examined in the Finance Department. The Department is intimated that on the issue of Legality of SRO-520/SRO-64, the Department of Law, Justice and Parliamentary Affairs has opined that these executive orders, statutory rules and legislative enactments are violative of Article 14, 15 and 16 of Constitution of India and in view of law laid down by Hon’ble Supreme Court of India in constitutional bench judgment rendered in “Uma Devi” case. The Law Department has advised that SRO-64 and SRO-520 may be reviewed by Finance Department and General Administration Department.**

- ii. Whereas, the General Administration Department has opined as under:

**“The Department is advised to resubmit the proposal in consultation with the Department of Law, Justice and Parliamentary Affairs having regard to the fact that those who have donated land may be compensated. If donation was not voluntary and claim is within the time limit as per law on limitation.”**



- iii. Whereas, the Department of Law, Justice & Parliamentary Affairs has opined as under:

The attention of the department is invited towards judgment/order passed by the Division Bench of the Hon'ble High Court of J&K and Ladakh at Srinagar in OWP No. 1497/2014 titled Ali Mohammad Ahanger & Anr v/s State of J&K and Ors vide order dated 08.07.2021 wherein the Hon'ble Court has inter-alia held that the land holders in lieu of the acquired land are entitled to compensation alone. The relevant portion of the said judgment/order is excerpted as under for facility of reference:-

The Full Bench of the Allahabad High Court in the case reported in Ravinder Kumar vs District Magistrate & Ors. 2005 (2) AWC 1650 All. has clearly laid down that the Land Acquisition Act is a self contained Code in itself and that where land is acquired, compensation alone is payable in respect of the acquired land as per the provisions of the Act and if there are any Government Orders, Circulars or Policy providing for some additional benefits in the shape of employment or rehabilitation, such Circulars, Government Orders and the Policy shall be treated as an void and ignored. Even the High Court of J&K in Residents of Areas around Civil Airport, Satwari Jammu and Anr. Vs. Union of India & Ors. Reported in 2010(2) JKJ 202(HC) recognizing the Right to Property a constitutional right holds that where there is acquisition of land for public purpose, the land holder is entitled to the compensation only as there is no provision for rehabilitation or for conferring any other benefit.

In view the aforesaid position and the advice/opinion rendered by the Finance Department and General Administration Department in the instant matter supports the contention that engagement /appointment in lieu of the Land donated to the Government should not be encouraged. The department as such is advised to proceed in the instant matter in accordance with the advice rendered by the Finance department and General Administration Departments from time to time and also keeping in view the directions passed by the Hon'ble Division Bench in the above titled matter."

6. Whereas, in view of the advices received from the aforementioned Departments, the Department took all necessary measures to ascertain the

information of Genuine and authentic donors who have donated their land for construction of departmental assets, in order to compensate them under rules, instead of making any sought of engagement, whatsoever will not be made in violation of the laws laid down in various judgments of Hon'ble Courts, as inferred by the Department of law, Justice and Parliamentary Affairs in their above referred advice.

Now, therefore, the claim of the petitioners has been considered with due deference to the order/judgment dated 25.05.2016 passed by the Hon'ble High Court Srinagar in SWP No. 1085/2016, titled titled Aadil Hussai Raina & Ors Vs State and Others with regard to engagement as Casual Labour in lieu of land, is found devoid of any merit for the foregoing reasons and is accordingly rejected.

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

*Sd/-*

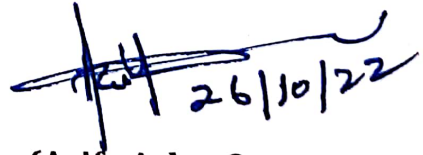
**(Shaleen Kabra) IAS**

Principal/Secretary to the Government,  
Jal Shakti Department.

Computer No. 7010

Dated: 26-10-2022

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Chief Engineer, (PHE) Jal Shakti Department, Kashmir for information and necessary action.
3. Ld. Deputy Advocate General, J&K High Court, Srinagar for information and filing of compliance before the Hon'ble Court.
4. Private Secretary to the Principal Secretary to Government Jal Shakti Department for information of the Principal Secretary.
5. Petitioners.
6. Incharge website, Jal Shakti Department.
7. Monday Return file (w.2.s.c).
8. Government order file.

 26/10/22

**(Arifa Ashraf)**

Under Secretary to Government,  
Jal Shakti Department

