

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

Subject: Review Petition No. 4042/2023 in SLP (C) No. 12068-12069 of 2022 in LPA No 87/2019 in SWP No. 700/2010 titled Abdul Aziz & Other Vs State & CPSW No. 137/2019 Munir Hussain Vs Ajit Kumar Sahu & Ors.

Government Order No. 64-JK (JSD) of 2024.

Dated:- 14-03-2024.

1. Whereas, Shri Abdul Aziz among 17 (hereinafter called petitioners) filed Service Writ Petition No. 700/2010 before the Hon'ble High Court at Jammu and challenged the order dated 29-03-2010 issued by Executive Engineer PHE Division Poonch; whereby the sanction was accorded for premature/voluntarily retirement of these petitioners/officials working in PHE Division Poonch. The Hon'ble High Court in terms of order dated 26-03-2010 in MP No. 1005/2010 was pleased to direct as under:-

"In the meantime, subject to objections from other side and till next date of hearing, the operation of impugned order is stayed.

2. Whereas, pursuant to the above directions passed by the Hon'ble High Court the department filed its reply and Hon'ble Court while considering the matter on 01-02-2016 finally disposed of the said writ petition, and passed the judgment the operative part of which reads as under:-

"Thus order Annexure F dated 29th March 2010 was merely a clever device resorted to by respondent No. 4 to circumvent the interim orders of stay of operation of order Annexure A dated 09-03-2010. The action of the respondent's does not reflect fairness of action. In fact, the action of the respondents discloses violation of the principles of Natural Justice as well as the Rule of Law. The same tantamount to overreaching the process of law by showing blatant defiance to the order of stay passed by the High Court. The impugned action is clearly a gross misuse of the process of law. Viewed in the context of the position as has been noted above, the impugned orders i.e. Annexure A and F dated 9th of March 2010 and 29th of March 2010 respectively are legally unsustainable and are liable to be quashed. Accordingly, impugned orders Annexure A and F dated 9th of March 2010 are quashed.

Petitioners are held entitled to be treated as continuing in service up to the date of their attaining the age of superannuation as also to all consequential benefits including salary for the period w.e.f. 01-04-2010 till their attaining the age of superannuation. Likewise petitioners are entitled to calculation of their retrial benefits by treating them to have continued in-service upon to the age on which they would have retired on attaining the age of superannuation as per rules applicable. Any benefit admissible to an employee on account of extension in the

age of superannuation would be admissible to the petitioners provided the petitioners had not already attained the maximum age of superannuation prior to the date w.e.f. which the enhancement in age of superannuation was effective.

Consequential benefits be released to the petitioners within a period of 3 months from today failing which the same shall carry interest at the rate of 6% per annum with effect from the date of entitlement to the consequential benefits till the same are paid. In case the benefits are not released to the petitioners within the stipulated period of time, interest payable on the amount payable to the petitioners, would be payable by the Government which would be entitled to recover the same from the officer concerned responsible for non-compliance with the orders of this Court within stipulated period of time. It is further ordered that since the impugned order have been passed in derogation of the Rule of Law as well as the principles of Natural Justice and despite the petitioners having made a categorical request vide representations Annexure D & E dated 16-03-2010 denying having made any request for premature retirement and requesting for ignoring any such request and allowing them to continue in service till their attaining the age of superannuation, the Government has been burdened with having to pay salary and consequential benefits to the petitioners without work having been taken from the petitioners. Consequentially, the Government through the Chief Secretary is directed to initiate departmental/judicial proceedings against those responsible for recovery of loss caused to the Government. Needful be done within six months and compliance report be submitted with Registrar Judicial within one month thereafter. Writ petition allowed in aforementioned terms. Copy of this order be forthwith communicated to the Chief Secretary, State of J&K for ensuring compliance."

3. Whereas, the department filed LPA along with the COD against the order dated 01-02-2016 and the Hon'ble Division Bench of J&K High Court at Jammu on 03-03-2021 dismissed the COD along with LPA. After dismissal of LPA the Department filed an SLP against the Judgment/order dated 03-03-2021 passed by the Division bench of Hon'ble High Court of J&K in LPA No 87/2019 titled UT of J&k Vs Abdul Aziz & Ors, on the advise of Law Department.

4. Whereas, the Hon'ble Supreme Court dismissed the SLP on 18-07-2022 and after the dismissal of SLP the matter was again taken up with the Department of Law, Justices & Parliamentary Affairs, who advised to file and conduct review petition against the order dated 18.07.2022 passed by the Hon'ble Supreme Court in SLP (C) No. 12068-12069 of 2022 titled State of Jammu and Kashmir and Order Vs Abdul Aziz & Ors.

5. Whereas, in the meantime, one of the petitioner had filed the contempt petition bearing CPSW No. 137/2019 titled Munir Hussain Vs Ajit Kumar Sahu & Ors, which is pending disposal before the Hon'ble Court.

6. Whereas, the Chief Engineer (PHE) Jal Shakti Department Jammu vide letter dated 26.04.2023 forwarded copy of order dated 18.04.2023 passed by the Hon'ble Supreme Court, whereby Review Petition filed by the Department has also been dismissed.

7. Whereas, Department carried out the interdepartmental consultation with the Finance Department, Department of Law Justice & Parliamentary Affairs and GAD. The advice received from the departments is reproduced hereunder

The Department of Law, Justice & Parliamentary Affairs advised as under:-

"Department is advised to take necessary action in view of the dismissal of the review petition by the Apex Court vide order dated 18.04.2023 in consultation with the GAD and Finance Department."

The department re-referred the matter to Law Department for clarification and Law Department advised as under:-

"As per the business rules wherever there is financial implications Finance Department needs to be taken on board in the first instance. More being a case to be sent for relaxation GAD need also to be contracted. As Such the opinion already conveyed vide U.O No. LAW-LIT10/321/2023-10 dated 08.05.2023 still holds good."

The Finance Department has opined as under:

"The Department is advised to intimate whether the officials were attending the offices till their date of retirement consequent to stay order issued by the Hon'ble Court on 26- 08-2010 on the operation of the order issued by Executive Engineer PHE Division Poonch. The Department is also advised to intimate the financial implications involved in implementation of the Hon'ble Court orders".

8. Whereas, accordingly, the details were collected in light of advise of the Finance Department from the Chief Engineer, Jal Shakti (PHE) Department, Jammu, and accordingly the matter was again referred to the Finance Department. Finance department advised as under:-

Returned- The Department is advised on the following lines:
a) If the Court orders are to be implemented, the pension cases already settled will need to be re-sanctioned taking into the consideration the period from the date of voluntary retirement to the actual date of retirement as per their service records.
b) The pension paid for this period also needs to be recovered/ adjusted from the arrears of salary pertaining to this period.
c) The Department must initiate departmental proceedings for recovery of loss caused to the Government against the officers responsible for this and recover the arrears for 17 persons from the dues of the responsible officers.
d) The Department may, as advised by Law Department, put up the proposal accordingly to General Administration Department for seeking the approval of the Competent Authority.

9. Whereas, as per the advise of Law Department coupled with the advise of Finance Department, the matter was referred to General Administration Department and GAD, who returned the filed with the advise as under:-

"The Department advised to submit a concrete proposal along-with rule position, the relaxation of which is to be considered for approval in coordination by

the Competent Authority, in case it intends to go by the advise of the Finance Department."

10. Whereas, pursuant to the advise of the GAD supra, the matter was again referred to the Department of Law, Justice & P.A and the Department of Law, Justice & P.A advise as under.

"Department is advised to follow the advise/concurrence of the Finance Department in the first instance and thereafter consult the GAD regarding the initiation of departmental/judicial proceedings against those responsible for recovery of loss caused to the Government by burdening it to pay the salary and other consequential benefits to the petitioners without work having been taken from them"

Now, therefore, the claim of the petitioner has been considered with due deference to the order dated 01.02.2016 passed in SWP No. 700/2010 titled Abdul Aziz & Other Vs State and others, coupled with the advise of Finance Department Department, Law, Justice & P.A & GAD and it is hereby ordered that the Chief Engineer (PHE) Jal Shakti Department Jammu shall ***treat the petitioners as continuing in service up to the date of their attaining the age of superannuation and entitled to all consequential benefits including salary for the period w.e.f. 01-04-2010 till their attaining the age of superannuation. Further, the Chief Engineer shall re-sanction the pension of the petitioner, taking into consideration the period w.e.f the date of voluntary retirement to the actual date of retirement as per the service records and the pension paid for the period shall be recovered/adjusted from the arrears of salary pertaining to this period, and accordingly, shall work out the losses recoverable against those responsible for loss caused to the Government by burdening it to pay the salary and other consequential benefits to the petitioners, without work having been taken from them.***

By order of the Government of Jammu and Kashmir.

Sd/-

(Shaleen Kabra) IAS

Financial Commissioner (ACS),
Jal Shakti Department.

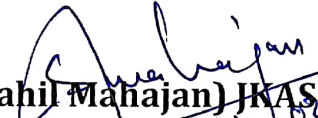
File No. JSD-LS02(1)/62/2021-O/o DLR PHE (40150)

Dated: 14-03-2024

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Chief Engineer, (PHE) 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) to Government Jal Shakti Department for information of the Financial Commissioner (ACS)
5. Additional Secretary to Government, Jal Shakti Department for information.
6. Petitioners.
7. Incharge website, Jal Shakti Department.
8. Monday Return file (w.2.s.c).
9. Government order file.


(Sahil Mahajan) JKAS
Under Secretary to Government,
Jal Shakti Department