



**Government of Jammu and Kashmir**  
**Agriculture Production Department**  
**Civil Secretariat, Jammu/Kashmir.**

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Subject:- Implementation of Judgment dated 05.10.2009 passed by the Hon'ble High Court at Srinagar in SWP No. 151/1999 titled Afshan Mushtaq & Ors. V/s State of J&K and others.

**Government Order No. 04-Agri of 2019**  
**D a t e d: 07-01-2019**

Whereas, J&K Service Selection Board had recommended the selection list of 08 candidates for the post of Draftsman in the Pay Scale of Rs. 5000-8000 (revised) vide communication No. SSB/PS/1051-55/96 dated 16.06.1996 to the Agriculture Production Department; and

Whereas, the Director Agriculture, Kashmir issued appointment order in favour of 07 candidates vide Agricultural Order No. 300/Estt of 1998 dated 20.07.1998, on the post of Draftsman in the Grade of Rs. 5000-8000 (revised) and consequent to the said order the posting of these candidates was made vide Agriculture Order No. 352/Estt. of 1998 dated 05.10.1998; and

Whereas, the Director Agriculture, Kashmir issued corrigendum under endorsement No. Agri/Estt/Ng/6092-6100 dated 21.10.21998 in the above said orders, whereby, the Grade of Rs. 5000-8000 was replaced with the Grade of Rs. 4000-6000 in terms of SRO-18 of 1998 dated 19.01.1998; and

Whereas, the candidates being aggrieved by their placement in the Grade of Rs. 4000-6000 instead of 5000-8000 against which their initial appointment was made in terms of Order dated 20.07.1998 filed Writ Petition bearing SWP No. 151/1999 titled Afshan Mushtaq and Ors. V/s State of J&K & Ors. before the Hon'ble High Court, Srinagar and the same was disposed of by the Hon'ble Court on 05.10.2009 with the following directions:-

*".....this Writ petition is allowed. The respondents are directed to release the grade of Rs. 1400-2600(unrevised), which subsequently came to be revised to Rs. 5000-8000 in favour of the petitioners against which they came to be selected in terms of Advertisement Notice issued by the respondents referred to above. Let this exercise be done within a period of three months from the date a copy of this*

***order is served upon the respondents. The petitioners would also be entitled to arrears of salary in the said grade which would be released in their favour with a further period of two months."***

Whereas, pursuant to the Court directions the matter was examined in the department and the same was taken up with the Finance Department vide U.O No. Agri/NG/Legal/05/2011 dated 31.01.2012 for its advice regarding implementation of the judgment, which returned the same vide its U.O No. A/24 (98)-143 dated 24.02.2012 with the advice as under:-

***"The Department is advised to consult Law Department for filing LPA."***

Whereas, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs, which returned the departmental file vide its U.O No. 2012/06-agri dated 27.03.2012 with the advice that:-

***"The Department is advised to furnish grounds for filing of LPA at this stage against the judgment which has been passed on 05.10.2009 in the case in which the Department has failed to file counter affidavit despite availing a number opportunities from the Hon'ble Court in this regard."***

Whereas, the Director Agriculture, Kashmir was directed to specifically furnish the grounds for filing of LPA immediately and also appraise as to why the Department has failed to file the counter affidavit despite number of opportunities being given by the Hon'ble High Court. In response the Director Agriculture, Kashmir vide his communication dated 09.08.2012 has stated that the only ground which can be considered for filing of LPA is SRO-18 dated 19.01.1998, wherein it has been provided that:-

***"All the Draftsman (two year diploma/certificate holders) carrying the existing pay scale of Rs. 1600-2660 will be placed in the revised pay scale of Rs. 5000-8000. The fresh recruitment to the post of Draftsman will be made in the pay scale of Rs. 4000-6000 and such fresh appointees will be placed in the pay scale of Rs. 5000-8000 after putting in 08 years of service."***

Whereas, the Director Agriculture, Kashmir has further stated that Public Works Department vide Govt. Order No. 395-PW(R&B) of 2007 dated 06.12.2007 with the concurrence of Finance Department has placed 56 Draftsman (Petitioners) in the higher pay scale with effect from the date of issuance of Court Order in their personal capacity, recommended that similar treatment may be considered in favour of petitioners herein; and

Whereas, the department vide U.O No. Agri/NG/Legal/05/2011 dated 25.09.2012 again took up the issue with the Finance Department who returned the same vide U.O dated 15.11.2012 with the following advice:-

***Returned. The Department is advised to take up the matter with the law Department and justify the grounds for possibility of filing of LPA against the order of Single Bench.***

Whereas, accordingly, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs number of times but finally the Department of Law, Justice and Parliamentary Affairs vide U.O NO. LD(Lit)2012/06-Agri dated 09.06.2014 advised as under:-

***"Returned. The Department is advised to file LPA against the judgment dated 05.10.2009, passed in SWP No. 151/1999, titled Afshan Mushtaq and others V/s State and Others before the Hon'ble Division Bench of High Court with an application for condonation of delay through Mir Shahbaz Sikandar, Government Advocate who has been engaged by this Department Vide letter No. LD 9(Lit) 2012/06-Agri dated 09-06-2014."***

Whereas, accordingly, the Department filed LPA bearing No. 220/2014 against the judgment dated 05.10.2009 passed in SWP No. 151/1999 before the Hon'ble Divisional Bench, J&K High Court at Srinagar and the same was dismissed on 17.09.2015 with the following observation:-

***"This application is filed seeking condoning the delay of 05 years and 26 days in filing the appeal against the order made in SWP No. 151/1999 dated 05.10.2009. The delay being huge and the applicants have slept over the matter. Even before the Writ Court, no objections were filled to oppose the prayer made in the Writ petition. Learned Single Judge has notice the fact the pay fixed was cancelled with issuing notice to the respondents as the same is in violation of the judgment of Hon'ble Supreme Court reported as AIR 2005 SC 2090, Canara Bank V.V. Awasthy.***

***Hence there is no merit in the COD application as well as in the appeal; the application as well as LPA is dismissed. No costs."***

Whereas, consequent upon the dismissal of above said LPA the matter was taken up with the Finance Department vide U.O dated 13.11.2015 and the Finance Department returned the file vide U.O dated 28.12.2015 with the following advice:-

***"Returned. The case has been examined. The department is advised to take up the matter with Law Department to explore option of filing SLP in the matter."***

Whereas, the matter was again taken up with the Department of Law, Justice and Parliamentary Affairs vide U.O dated 06.01.2016, as was advises by the Finance

Department. The Department of Law vide its U.O dated 20.01.2016 returned the file with the following advice:-

***"Returned. Department is advise to file an SLP against the judgment dated 17.09.2015 in COD No. 354/2014, C/W LPA No. 225/2012 in the case titled State of J&K and Others V/s Afshan Mushtaq and Others through Shri Sunil Fernandes (AOR) standing counsel for the State, Supreme Court of India."***

Whereas, the SLP filed by the department in the matter before the Hon'ble Supreme Court bearing SLP No. 5628-5629/2016 was dismissed on 04.04.2016 with the following directions:-

***"Delay condoned.  
The Special leave petitions are dismissed.  
Pending application, if any, stand disposed of."***

Whereas, the matter was again taken up with the Department of Law, Justice and Parliamentary Affairs vide U.O No. Agri/NG/Legal/05/2013 dated 31.07.2017, who returned the same vide its U.O No. LD (lit) 2015/123-SC/Agri dated 08.09.2017 and had advised as under:-

***"Returned. Department is advised to file review petition against the order dated 04.04.2016 passed by the Hon'ble Supreme Court at New Delhi in SLP © CC No(s) 5628-5629/2016 through Sh. M. Shoeb Alam, Advocate-on-record, Standing counsel for J&K State, who has been engaged vide this department letter No. LD (lit) 2015/123-Sc/Agri dated 08.09.2017 (Copy alongside)."***

Whereas, the department filed Review Petition © No. 2673-2674 before the Hon'ble Supreme Court against the order dated 04.04.2016 passed in SLP © No. 9610-9611/2016 and the same was dismissed by the Hon'ble Supreme Court on 28.11.2017 with the following directions:-

***"..... the review petitions are, therefore, dismissed both on the ground of delay and merit."***

Whereas, after the dismissal of Review Petition the matter was examined in the department and was taken up with the Finance department vide U.O. No. Agri/NG/Legal/05/2011 dated 17.07.2018, who returned the same vide U.O No. A/24 (98)-856 dated 25.09.2018 with the following advice:-

***Returned; the department is advised to implement the Hon'ble High Court judgment dated 05.10.2009 in SWP No. 151/2009 in personal capacity of the petitioners only, besides taking disciplinary action against the officials responsible for advertising the post of Draftsman in the incorrect Pay Scale.***

Now, therefore, in view of above position and in compliance of the judgment/order dated 05.10.2009 passed by the Hon'ble High Court at Srinagar in SWP No. 151/1999, it is hereby ordered to upgrade the post of Draftsman in the pay scale of Rs. 5000-8000 (revised) in favour of below named petitioners w.e.f. the date they have been appointed in the department vide Agriculture Order No. 300/Esstt of 1998 dated 20.07.1998 and till such time they hold the post. The upgradation of the post shall be in personal capacity and the said post shall be reverted back to the original Pay Scale after the posts are vacated by them due to retirement/promotion etc. The upgradation shall not confer any right on them to be considered against the higher post.

| S. No. | Name               | Parentage              |
|--------|--------------------|------------------------|
| 01     | Afshan Mushtaq     | Mushtaq Ahmad Haji     |
| 02     | Nighat Jalal       | Late Haji Jalal-ud-Din |
| 03     | Ulfat Jan          | Gh. Mohd Itoo          |
| 04     | Mehraj-ud-Din Bhat | Gh. Rasool Bhat        |
| 05     | Farida             | Ab. Kabir Wadoo        |
| 06     | Naiema Bano        | Ab. Rahim Malik        |
| 07     | Shabir Ahmed Mir   | Bashir Ahmed Mir       |

By order of the Government of Jammu & Kashmir.

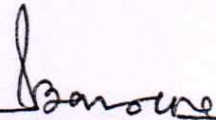
Sd/-  
(Manzoor Ahmad Lone) IAS  
Secretary to the Government,  
Agriculture Production Department

No. Agri/NG/Legal/05/2011

Dated, 07-01-2019

Copy to the:

1. Director, Archives, Archaeology & Museums, J&K, Jammu.
2. Director Agriculture, Kashmir.
3. Director Command Area Development, Kashmir.
4. OSD to Advisor (K) to Hon'ble Governor, J&K State.
5. Private Secretary to Secretary, Agriculture Production Department.
6. Concerned Officials/petitioners.
7. ✓ I/C Website Operator, Agriculture Production Department.
8. Govt. Order file/Stock file (W.3.S.C).

  
(Sat Paul Bavouria) KAS  
Deputy Secretary to Government,  
Agriculture Production Department