

Government of Jammu and Kashmir
Agriculture Production & Farmers Welfare Department
Civil Secretariat, J&K, Srinagar/Jammu.

Subject:- CPLPA No. 05/2018 , CM No.4326/2020 titled Parmodh Kumar Sharma & others V/s Showkat Hussain Beigh, Secretary Agriculture Production Department and others.

Government Order No. **86** -JK(Agri) of 2021
D a t e d: **20** -05-2021

Whereas, Shri Parmodh Kumar Sharma among other 20 petitioners/Casual Labours who were disengaged by Director of Agriculture, Jammu in terms of Government Order No. 144-GAD of 2001 dated 02.02.2001 filed a writ petition bearing SWP No. 1025/2001 titled Parmodh Kumar Sharma & others V/s State of Jammu and Kashmir and others before the Hon'ble High Court at Jammu with the following prayers:-

“..... to direct the respondents by means of Writ of mandamus to allow the petitioners to work as Casual Labourers against the existing need of the respondent and to regularize the petitioners under rules.

A writ of prohibition may be issued restraining the respondents from dis-continuing the petitioners from working as Casual Labourers by engaging others in their places, your lordships may be further pleased to quash the implementation of Govt. Order No. 144-GAD of 2001 dated 02-02-2001 as against the petitioners inter-alia for the reasons that it conflicts with SRO No. 64 OF 1994.....”

Whereas, the Hon'ble High Court disposed of the above titled writ petition along with other clubbed matters with the following directions:-

“Petitioners in this petition submit that they were engaged as Casual/seasonal workers. The respective dates on which they were so engaged have been mentioned in para 3 of the writ petition. It is submitted that some of the petitioners have been working with the respondents for the last more than six years. Placing reliance on SRO 64/94, petitioners seek regularizations of their service.

When this petition was taken up on 22nd May, 2001 following interim orders came to be passed;

‘Notice in the CMP also returnable within the same period. Status-quo till next date shall be maintained.


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On 27th Nov. 2001, when this petition was admitted, the interim directions issued were allowed to be continued."

Whereas, the Government decided to challenge the said judgment by way of filing of LPAs which were also clubbed together and disposed of on 25.02.2015 by the Hon'ble Division Bench of J&K at Jammu with the following directions:-

".....We see no reason to take a view different from the one, which has already been taken by a Division Bench of this Court in Mushtaq Ahmad Sohail's case (supra). Accordingly, following the said judgment, as also the observations of the Apex Court reproduced in paragraph 13 and 14 hereinabove, we dismiss the appeals and uphold the judgment and order dated 04-03-2002, 19-02-2002, 18-03-2002, 17-10-2001 and 07.11.2001 providing for according consideration to the cases of the petitioners for regularization.

The appellants are directed to consider the cases of the petitioners for regularization within three months from today....."

Whereas, in pursuance to the aforesaid directions, Director Agriculture, Jammu vide order No. 167/E of 2017 dated 17.06.2017 considered the case of petitioners and considered the rule position, particularly, the fact that the petitioners have been engaged as Casual Labours and came to be disengaged, concluded that the claim of the petitioners is devoid of any merit, as the same does not fall under the ambit of SRO-64 of 1994 and rejected the same; and

Whereas, the contempt petition has been filed by 08(eight) out of the 21(twenty one) disengaged Casual Labours bearing CPLPA No. 05/2018 titled Parmodh Kumar Sharma Vs Showkat Hussain Beigh, Secretary Agriculture Production Department and others. The contempt petition was considered by the Hon'ble High Court and vide order dated 29.03.2021 following directions were passed:-

"We feel there has been a gross error in understanding the judgment of this court by the respondents and, therefore, the respondents needs to rectify the same and pass fresh orders within a period of three weeks. We, direct that instead of giving the issue of compliance of an officer of the level of Director who has passed the order of consideration in the present case, the issue be considered and decision taken for compliance at the level of the Chief Secretary.

[Signature]
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We, therefore, direct the Chief Secretary to consider the entire case and pass appropriate orders within a period of four weeks. Such other senior level officer from the concerned department as the Chief Secretary deems necessary may also be associated in the decision making process".

Whereas, the matter was placed before the Chief Secretary UT of J&K and in pursuance to Govt. order No. 390-JK(GAD) of 2021 dated 29.04.2021 a committee was constituted under the Chairmanship of Chief Secretary and comprising of the Principal Secretary to Government, Agriculture Production & Farmers Welfare Department, Commissioner/ Secretary to Government, General Administration Department and Secretary, Department of Law, Justice and Parliamentary Affairs as Members; and

Whereas, the committee considered the aforementioned facts and circumstances, the rule position and the law laid down on the subject and concluded its recommendations as follows:-

- a. That the petitioners engaged as Casual Labours, as such, are not entitled to regularization in terms of SRO 64 of 1994, i.e. The Jammu and Kashmir Daily Rated Workers/Work Charged Employees (Regularization) Rules, 1994 as the said rules are applicable to Daily Rated Workers/Work Charge Employees and not to Casual Labourers.
- b. That in case titled Supreme Court in "**State of Karnataka V/s Uma Devi**" (2006) 4 SCC1, Hon'ble Supreme Court has held that when a person enters the temporary employment and gets engagement as a contractual or casual worker and the engagement is not based on proper selection as recognized by relevant rules or procedure or through open advertisement, such a person cannot invoke the theory of legitimate expectation for being confirmed in the post. The Hon'ble Supreme Court has deprecated such practice of regularization of illegal appointments.
- c. That the petition of the present petitioners has been decided by a common judgment whereby cases of similarly situated employees of other departments have also been considered by Hon'ble High Court. The petitioners in the clubbed matters (other than the case of petitioners) have also filed contempt petition and when the cases of those petitioners were considered by the Government and rejected, those petitioners had also invoked the contempt jurisdiction of Hon'ble High Court. The contempt petitions filed by those


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petitioners have been dismissed. A reference can be made to Hon'ble High Court order dated 29.08.2017 in case titled "Yash Pal & others Vs. Sanjeev Verma, Secretary Irrigation & others" bearing No. Contempt (LPA) No. 17/2016. Similarly, contempt (LPA) No. 10/2016 titled "Niaz Ahmad and ors. Vs. Rohit Kansal and ors." has also been dismissed by Hon'ble High Court on 08.11.2016.

Whereas, after considering the above mentioned facts and circumstances, the committee came to the conclusion that Agriculture Production & Farmer's Welfare Department shall pass a speaking order considering the aforementioned facts and circumstances of the case ; and

Now, therefore, in the above backdrop, the claim of the petitioners has been considered and in pursuance to the order passed by the Hon'ble Court in CPLPA No. 05/2018 and the rule position governing the subject and the same was found devoid of any merits and is hereby rejected;

By order of the Government of Jammu & Kashmir.

Sd/-
(Navin K. Choudhary) IAS
Principal Secretary to the Government,
Agriculture Production & Farmers Welfare Deptt

No. Agri/NG/Legal/39/2015

Dated -05-2021

Copy to the:

1. Director, Agriculture, Jammu.
2. OSD to Advisor (F) to Hon'ble Lieutenant Governor, J&K.
3. Private Secretary to Chief Secretary for information of Chief Secretary.
4. Private Secretary to Principal Secretary to Government, Agriculture Production & Farmers Welfare Department.
5. Private Secretary to Commissioner/Secretary to Government, General Administration Department.
6. Private Secretary to Secretary, Law, Justice & Parliamentary Affairs, Department.
7. Concerned Officials/petitioners.
8. I/C Website, Agriculture Production and Farmers Welfare Department.
9. Govt. Order file/Stock file (W.3.S.C)


(Kritika Raina) IAS

Under Secretary to Government,
Agriculture Production & Farmer's Welfare Deptt