

Government of Jammu and Kashmir
Department of Soil & Water Conservation

Subject: SWP No.711/2016 titled Baljit Kour V/s State of J&K and others
-Speaking orders thereof.

Reference: Hon'ble High court order dated: 16.04.2016 and Administrative
Department No.FST/Lit/Soil/86/2016 dated: 26.10.2016.

Soil & Water Conservation Order No. 72 -SWCD of 2017

Dated: 16 - 06 - 2017

:-z:-

Whereas, Smt. Baljit Kour W/o Mr. Manmohan Singh R/o Akali Kour Singh Nagar, Digiana Jammu, who has worked on need basis in the Department of Soil & Water Conservation, filed a writ petition bearing No.711/2016 before the Hon'ble High Court at Jammu seeking direction for regularization of her services; and

Whereas, the Hon'ble Court on 16.04.2016 disposed off the aforesaid writ petition with following directions:

"This petitioner is, accordingly, disposed of with the a direction to the respondents to consider the case of the petitioner for regularization in terms of relevant rules within a period of six weeks from the date a copy of this order is served upon them. While doing so, the ratio of the aforementioned judgment be also kept in mind."

Whereas, the Joint Director, SWCD, Jammu has reported that after scrutinizing the records, it has been observed that the petitioner has worked as **casual labour w.e.f. 12/1998 to 01/2001** in erstwhile office of Divisional Soil Conservation Office Jammu and then as **needbased** from **12/2004 onwards** from time to time in District office Jammu and has been paid on the basis of actual work done. Thus the claim of petitioner to have worked as daily wager is not true and she has not put correct position before the Hon'ble Court; and

Whereas; this Department vide communication No.DSC/Ltg-190/G/1427 dated: 20.10.2016 informed the Administrative Department regarding aforesaid details about the petitioner furnished by the Joint Director, Soil & Water Conservation Department, Jammu; and

Whereas, the Administrative Department vide communication No.FST/Lit/Soil/86/2016 invited the attention of this Department towards the Govt. Order No.65-F of 2016 dated: 03.03.2016 issued by the Finance Department and advised to examine/consider the case of the petitioner in light of the above mentioned Government order and after such consideration pass appropriate order that should be speaking one; and

Whereas, the Finance Department vide Govt. order No.65-F of 2016 dated: 03.03.2016 constituted a High Level Empowered Committee to look into:-

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- a. The extent / magnitude of problems relating to Casual workers i.e. financial, legal and administrative that may arise in regularization of such employees.
- b. To work out an appropriate policy outlining all possible options in this regard.

Whereas, the Finance Department vide OM No.A/143(94)-B-1183 dated 08.12.2015 intimated the Administrative Department (Forests) that the issue about the persons engaged as casual labours before or after imposition of ban i.e. 31.01.1994, as they do not attract application of SRO 64 of 1994, was taken with the Law Department for legal opinion. The Department of Law, Justice & PA conveyed the following opinion:

"The Judgment of the Division Bench of Hon'ble High Court in Ashok Kumar vs State of Jammu and Kashmir and others was based on the law laid down by the Hon'ble Supreme Court in case state of Haryana vs Piara Singh (1992) 4-Sc-118. The Piara Singh's Judgment has since overruled by the Hon'ble Supreme Court in case State of Karnatak vs Umadevi decided in 2006. In the Umadevi Judgment, Hon'ble Supreme Court has held that equity arising out of giving temporary employment or engagement on daily wages and continuance for a certain length of time has no place in the law and orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment. The approving of such acts also results in depriving many of their opportunity to compete for public employment.

After the law laid down by the Supreme court in Umadevi case, the Judgment of the Division Bench in Ashok Kumar vs State of Jammu and Kashmir and ors is no more relevant and does not hold the field. In view of this principal of law, no right has accrued to the casual labours for regularization no matter how long they have been in such employment/engagement."

Whereas, the Hon'ble Court vide judgment dated 16.04.2016 in the instant case has directed the respondents to consider the case of the petitioner for regularization in terms of relevant rules; and

Whereas, the provisions of Jammu and Kashmir Daily Rated Workers/Work-Charged Employees (Regularization) Rules 1994, provides regularization of Daily Rated Workers/Work Charged Employees engaged prior to ban; and


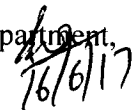
Whereas, there is no provision relating to the regularization of the services of the casual labours/need basis who have worked from time to time; and

Whereas, after examining and considering the case of the petitioner Smt. Baljit Kour W/o Mr. Manmohan Singh R/o: Digiana Jammu in pursuance of the aforesaid judgment of the Hon'ble High Court and opinion

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of the Department of Law, Justice & Parliamentary Affairs, it has been observed that the petitioner who has worked as casual/ need based labour from time to time cannot be regularized as there is no provision at present relating to the regularization of the services of the casual labourers/need based workers.

Now therefore, **in compliance to the judgment dated 16.04.2016** passed by the Hon'ble High Court at Jammu in SWP No. 711/2016 titled Baljit Kour V/s State of J&K & ors, the case of the petitioner has been found devoid of any merit and **hence, the claim is rejected.**


(Javed Iqbal) IFS,
Director,
Soil & Water Conservation Department,
J&K, Srinagar 

No: DSC/Ltg-190/ **892-96**
Copy to the:-

Dated: **16.06.2017.**

1. Commissioner / Secretary to Government, Forest, Ecology & Environment Department, J&K, Srinagar, for information. This has reference to the communications referred to above and dated 01.06.2017.
2. Joint Director, Soil & Water Conservation Department, Jammu, for information and follow up action.
3. District Soil Conservation Officer, Soil & Water Conservation Department, Jammu, for necessary action. The copy of the consideration order may be provided to the petitioner against proper acknowledgement.
4. Private Secretary to Ld. Advocate General, High Court, Jammu/Srinagar, for information with request to frame the statement of facts in the contempt petition No.417/2016 filed by the petitioner.
5. Concerned petitioner through official website.
6. Order file / Concerned file.