

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- **WP(C) No. 326/2021**
CM No. 3348/2021
CM No. 1695/2021
CM No. 1696/2021
CM No. 5166/2021
CM No. 5169/2021

Ashok Kumar, Aged 59 years,
S/o Sh. Jia Lal Bhat,
R/o TRT No. 23, Block-E, Purkoo Camp,
Dhami, Jammu.

.....Petitioner

Through: **Mr. P. N. Goja, Sr, Advocate with**
Mr. Abhinav Jamwal, Advocate

Vs

- 1. Union Territory of Jammu & Kashmir**
Through Principal Secretary
Housing & Urban Development Department.
Jammu.
- 2. Directorate of Urban Local Bodies,**
Jammu.
- 3. Executive Officer,**
Municipal committee Akhnoor.
- 4. Joint Commissioner,**
Municipal Corporation, Jammu.

..... Respondents

Through: **Mr. S. S. Nanda, Sr. AAG**

Case:- **WP(C) No. 349/2021**
CM No. 3349/2021
CM No. 1748/2021
CM No. 1750/2021
CM No. 5172/2021
CM No. 5175/2021

Pritam Lal, Aged 52 years,
S/o Sh. Girdhari Lal,
R/o Ward No. 7, Rakh Dhok,
Jourian Akhnoor, Jammu.

.....Petitioner

Through: Mr. P. N. Goja, Sr. Advocate with
Mr. Abhinav Jamwal, Advocate

Vs

1. **Union Territory of Jammu & Kashmir
Through Principal Secretary
Housing & Urban Development Department.
Jammu.**
2. **Directorate of Urban Local Bodies,
Jammu.**
3. **Executive Officer,
Municipal committee Akhnoor.**
4. **Joint Commissioner,
Municipal Corporation, Jammu.**

..... Respondents

Through: Mr. S. S. Nanda, Sr. AAG

Case:- **WP(C) No. 351/2021
CM No.3350/2021
CM No. 1752/2021
CM No. 1753/2021
CM No. 5170/2021
CM No. 5171/2021**



सत्यमेव जयते

**Rakesh Sharma, Aged 40 years,
S/o Sh. Kuldeep Raj,
R/o Allah Bishnah, Jammu.**

.....Petitioner

Through: Mr. P. N. Goja, Sr. Advocate with
Mr. Abhinav Jamwal, Advocate

Vs

1. **Union Territory of Jammu & Kashmir
Through Principal Secretary
Housing & Urban Development Department.
Jammu.**
2. **Directorate of Urban Local Bodies,
Jammu.**

3. Executive Officer,
Municipal committee Akhnoor.
4. Joint Commissioner,
Municipal Corporation, Jammu.

..... Respondents

Through: Mr. S. S. Nanda, Sr. AAG

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
22.02.2024

(Oral)

The instant petitions involve issues which are analogous and akin to each other, as such, are being disposed of by this common judgment.

Before proceeding further in the matter, it would be appropriate to give a brief background of the petitions hereunder:-

WP(C) No. 326/2021

01. In the instant petition, the petitioner has sought the following reliefs:-

- a. Writ of Certiorari quashing order No. 164-DULBJ of 2021 dated 08.02.2021 issued by the respondent No. 2.
- b. Writ of Certiorari quashing communication No. HUD/LSG/ULBJ/35/2020 dated 25.01.2021 read with letter No. HUD/LSG/ULBJ/35/2020 dated 22.12.2020.
- c. Writ of Mandamus directing the respondents not to terminate the services of the petitioner as Tax Collector, Municipal Committee Akhnoor or any other post in the department and to release the pay scale in favour of the

petitioner attached to the post of Tax Collector from 28.02.2002.

- The aforesaid reliefs are prayed on the premise that the petitioner being a graduate having six months certificate course in computer application to his credit as also being a member of RBA category, came to be appointed as Revenue Assistant by the respondent 2 on consolidated salary of Rs. 950/- per month for a period of 89 days in terms of Order No.DLBJ/97/Adm/6658-61 dated 06.05.1997 which came to be further extended for a period of 89 days in terms of Order No. DLJBK/97/Adm/9920-22 dated 06.08.1997 and subsequently the services of the petitioner regularized vide Order No. 91-HUD of 2002 dated 28.02.2002 as Sanitary Supervisor on consolidated pay of Rs. 2000/- per month against an available vacancy in Town Area Committee Udhampur.
- Subsequent to the aforesaid regularization of the petitioner, since the services of the petitioner was not placed in a proper pay-scale and that petitioner in the meantime, have had been transferred to Municipal Committee, Akhnoor, the case of the petitioner for placing him in a regular pay-scale came to be considered in the Elected House of Municipal

Committee, Akhnoor in its meeting held on 19.12.2009, wherein it came to be resolved that the petitioner's service be placed in regular pay-scale of Rs. 3050-4590 and consequently upon the recommendation made in this regard vide letter No. MCA/2009/1223/24 dated 24.12.2009 followed by further recommendation in letter No. MCA/2012/505 dated 08.10.2012, the respondent 2 in terms of Order No. DULBJ/2013/17147 dated 22.12.2012 placed the petitioner in the grade of Rs. 3050-4590 against the post of Tax Collector, Municipal Committee, Akhnoor.

- Since the petitioner was not extended the benefit of his past service after he was placed in the regular pay-scale by the respondents, the petitioner approached this court through SWP No. 745-A/2002 for seeking redressal of his grievances.
- There were no recruitment rules in the respondents-department in place and the same came into being on 18.12.2008 as the Jammu & Kashmir Urban Local Bodies Institution (Management) Service Recruitment Rules, 2008 (for short '**the Rules of 2008**').
- An FIR came to be registered being FIR No. 08/2014 by the then Vigilance Organization, Jammu against various

persons on the ground that the appointments had been secured and made in the respondents-department without following the rules which FIR came to be challenged by some of the accused persons before this court in CRMC No. 409/2018 pending before this court.

- The respondent 2 in the year 2020 issued a show cause notice No. DUDLJ/2019-20/18083-84 dated 02.03.2020 to the petitioner, calling upon him to explain as to why his services be not terminated being illegal and made in contravention of rules/law, which show cause notice was replied by the petitioner, justifying his appointment and regularization in the department, while relying upon similar engagements and regularizations of various other persons in the respondents-department as also the report of a committee to enquire into the said illegal appointments, which committee had opined in its report that no permanent illegal appointments had been made.

- The respondents in terms of Order No. 164-DULBJ of 2021 dated 08.02.2021 terminated the services of the petitioner.

- The impugned order dated 08.02.2021 is being challenged by the petitioner *inter-alia* on the grounds that the same came to be issued by the respondents at his back in breach and violation of the rules of principal of natural justice and overlooking the facts and law.

02. Objections to the instant petition have been filed by the respondents, wherein the petition of the petitioner is being opposed on the premise that the petitioner entered into the service of the respondents-department in breach of the procedure prescribed by law at the instance of an authority lacking competence and upon taking cognizance of the same, an FIR in the matter came to be registered being FIR No. 08/2014 by the then Vigilance Organization Jammu implicating the then Director Urban Local Bodies, Jammu as an accused besides the beneficiaries and that an in-depth enquiry was also conducted by the department under the directions of the respondent 1, which enquiry established that the engagements/appointments made in the department including that of the petitioner have had been made without following due procedure of law.

WP(C) No. 349/2021

03. In the instant petition, the petitioner has implored for the following reliefs:-

- a. *Writ of Certiorari quashing order No. 163-DULBJ of 2021 dated 08.02.2021 issued by respondent No. 2.*
- b. *Writ of Certiorari quashing communication No. HUD/LSG/ ULBJ/35/2020 dated 25.01.2021 read with letter No. HUD/LSG/ULBJ/35/2020 dated 22.12.2020.*
- c. *Writ of Mandamus directing the respondents not to terminate the services of the petitioner as Driver, Municipal Committee Akhnoor or any other post in the department.*

- The aforesaid reliefs are being prayed on the premise that the petitioner came to be appointed as a Driver by the respondents for a period of 89 days in terms of Order No. DLBY/98/9564 dated 22.12.1998 read with Order No.WAC/98-99/A/740/41 dated 24.12.1998 and subsequently was placed in the pay-scale of Rs. 3000/- per month whereafter his case was recommended for regularization on 15.06.2004, yet his services were not regularized and instead consolidated salary of the petitioner came to be enhanced from Rs. 3000/- to Rs. 5000/- per month in terms of Order No.DULBJ/2011/9027 dated 13.06.2011 and thereafter the petitioner came to be regularized vide Order No. DULBJ/2023/4249 dated 04.04.2013 with effect from 04.04.2013, though the petitioner was entitled to be regularized with effect from 2004 and that there were no recruitment rules in place in the respondents-

department, which, however, came into being on 18.12.2008 under the name and style of the Jammu & Kashmir Urban Local Bodies Institution (Management) Service Recruitment Rules, 2008.

- That the respondents got an FIR No. 08/2014 registered on the allegations that the appointments/engagements in the department have had been made without following the procedure prescribed by law, inasmuch as, the recruitment rules and that the petitioner was wrongly shown to be beneficiary in the said FIR and that the said FIR came to be challenged by one of the persons accused in the said FIR before this Court in CRMC No. 409/2018.
- That the respondent 2 issued a show cause notice No. DUBLJ/2019-20/18085-86 dated 02.03.2020 to the petitioner calling upon him to explain as to why his services be not terminated having been obtained illegally and in contravention of the rules, which show cause notice came to be replied by the petitioner, justifying therein his engagement /appointment and regularization *inter-alia* on the strength of the engagement/regularization of some similarly situated employees as also be a report of a committee constituted for enquiring into the allegation of illegal appointments made in

Urban Local Bodies, Jammu which reported provided that no permanent illegal appointments were made in the Urban Local Bodies Jammu Division.

- That the respondents yet proceeded to issue Order No. 163-DULBJ of 2021 dated 08.02.2021 terminating the services of the petitioner, which is impugned in the instant petition.
- The impugned order is being challenged in the instant petition almost on similar contentions and grounds as are urged in WP(C) No. 326/2021 supra, as such, in order to avoid repetition and for the sake of brevity, the said grounds of challenge are not being referred herein and would be considered as grounds of challenge in the instant petition as well.

04. Objections to the petition have been filed by the respondents, wherein the respondents have opposed the petition on similar and identical grounds on which WP(C) No. 326/2021 supra has been opposed, as such in order to avoid repetition and for the sake of brevity, the said objections as well are not referred herein and the said objections would be considered as the objections to the instant petition as well.

WP(C) No. 351/2021

05. In the instant petition, the petitioner has sought the following reliefs:-

- a. *Writ of Certiorari quashing order No. 165-DULBJ of 2021 dated 08.02.2021 issued by the respondent No. 2.*
- b. *Writ of Certiorari quashing communication No.HUD/LSG/ULBJ/35/2020 dated 25.01.2021 read with letter No.HUD/LSG/ULBJ/35/2020 dated 22.12.2020.*
- c. *Writ of Mandamus directing the' respondents not to terminate the services of the petitioner as Computer Assistant, Local Bodies Division-I, Jammu.*

- The aforesaid reliefs are being sought by the petitioner on the premise that the petitioner being a graduate and having one year diploma in computer application to his credit came to be appointed as a Casual Labourer/Daily Wager in the respondents-department in terms of Order No. DULBJ/2004/6762 dated 08.11.2004 pursuant to a proposal forwarded by the respondent 3 to respondent 2 vide No. LB/Tech/2004/J-1/1186 dated 06.11.2004, whereafter the petitioner in terms of Order No. LB/Tech/J/2007/Estt/270-72 dated 24.04.2007 came to be assigned the duties of Computer Assistant by respondent 3 and also in terms of Order No. LB/Tech/J-1/2009/4807-08 dated 12.12.2009 assigned the

additional charge of accounts being dealt by one Mr. Varinder Koul.

- That pursuant to the recommendations made by the respondent 3, case of the petitioner came to be recommended for regularization as Computer Operator in the pay-scale of Rs. 3050-4590 against the vacant post on which post the petitioner has been working, which recommendation followed by other recommendations made by respondent 3 vide letters dated 08.04.2011 and 24.09.2011, the services of the petitioner came to be regularized as Computer Assistant by respondent 2 in terms of Order No. LB/Tech/J-1/2013/4783-85 dated 06.03.2013.
- That the petitioner prior to the filing of the instant petition and while working in the respondents-department filed SWP No. 960/2017 before this Court seeking release of payment of salary which came to be disposed of vide order dated 09.05.2017 with a direction to the respondents to release the salary of the petitioner for the period he has rendered his services which salary came to be released by the respondents vide Order No.DULBJ/2018/16834 dated 20.02.2018.

- That there were no recruitment rules in place in the respondents-department and same came into being on 18.12.2008 as the Jammu & Kashmir Urban Local Bodies Institution (Management) Service Recruitment Rules, 2008.
- That an FIR being FIR No. 04/2014 came to be got registered by the respondents on the allegations that the appointments/engagements have had been made in the department without following the procedure prescribed by law, as also the recruitment rules and the petitioner was wrongly shown to be beneficiary in the said FIR which FIR came to be challenged by one of the accused persons before this Court in CRMC No. 409/2018.
- That the respondent 2 issued a show cause notice No. DUBLJ/2019-20/18081-82 dated 02.03.2020 to the petitioner calling upon him to show cause as to why his services be not terminated having been obtained illegally and in contravention of the rules, which show cause notice came to be replied by the petitioner, justifying therein his engagement/appointment and regularization *inter-alia* on the strength of the engagement/ regularization of some similarly situated employees as also report of a committee constituted for enquiring into the allegation of illegal appointments made in

Urban Local Bodies, Jammu which committee in its report opined that no permanent legal appointments were made in the Urban Local Bodies Jammu Division.

- That respondent 2 yet proceeded to issue Order No. 165-DULBJ of 2021 dated 08.02.2021 terminating the services of the petitioner, which is impugned in the instant petition.
- The impugned order is being challenged in the instant petition almost on similar and identical grounds as are urged in WP(C) No. 326/2021 supra & WP(C) No. 349/2021 supra, as such, in order to avoid repetition and for the sake of brevity, the said grounds of challenge are not being referred herein and would be considered as grounds of challenge in the instant petition as well.

06. Objections to the petition have been filed by the respondents, wherein the respondents also have opposed the petition on similar and identical grounds on which the aforesaid petitions WP(C) No. 326/2021 & WP(C) No. 349/2021 have been opposed, as such, in order to avoid repetition and for the sake of brevity, the said objections are not referred herein and the said objections would be considered as the objections in the instant petition as well.

Heard learned counsel for the parties and perused the record.

07. The core issue involved in the aforesaid petitions that falls for consideration of this Court would be as to whether the orders impugned in the instant petitions have been issued by the respondents in breach of the procedure prescribed by law, inasmuch as, in violation of the rights and interests of the petitioners.

08. Before proceeding to address to the said issue, it is pertinent to note here that Article 16 of the Constitution which finds its place in part-III of the Constitution relating to the fundamental rights provides that there shall be an equality of opportunity for all citizens in all matters relating to employment or appointment to any office under the State, the main object whereof is to create a constitutional right to equality and opportunity of employment in public offices. Based on the said constitutional right of equality of opportunity to public employment, law has also been laid down by the Apex Court in series of judgments that the appointments to any post under the State can be made after proper advertisement has been made inviting applications from eligible candidates and holding of a selection process by a body of experts or specially constituted committee, through a written examination or interview or some

other rational criteria for judging the *inter-se* merit of the candidates who have applied in response to the advertisement made, thus, indisputably suggesting that the regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner and that any appointment made on a post under the State or Union without issuance of advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would be violative of the guarantee enshrined in Article 16 of the Constitution.

09. Keeping in mind the aforesaid fundamental proposition and principles of law and reverting back to the case/s in hand, admittedly the petitioners herein have entered in the respondents-department without following the aforesaid procedure prescribed by law irrespective of the fact that the Rules of 2008 came into being thereafter therein the said appointments. The petitioners could not have been engaged/appointed and regularized by the respondents without taking recourse to a proper selection process by issuance of advertisement providing a fair opportunity to all eligible candidates to participate in the said selection process.

The claim of the petitioners that they came to be appointed by the Govt./Higher Authority possessed with a power to

appoint cannot be accepted in view of the aforesaid position of law as the appointment made by any authority, howsoever high it may be, without conducting selection process cannot, but, said to be arbitrary, illegal and violative of Article 16 of the Constitution.

10. The petitioners under these circumstances cannot be said to have any right much less a legal, statutory or fundamental enforceable against the respondents in the instant petitions on any grounds including that they have had been working for a considerable period of time with the respondents. A reference in this regard to the judgment of the Apex Court passed in case **“Secretary, State of Karnataka and others Vs Uma Devi (3) and others”** reported in **(2006)4 SCC 1** would be relevant, wherein **“absorption, regularization, or permanent continuance of temporary, contractual, casual, daily -wage or ad hoc employees appointed/recruited dehors the constitutional scheme of public employment has been deprecated.”**

11. Viewed thus, in the light of the aforesaid analysis, it can safely be said and held that the impugned orders have been issued by the respondents against the petitioners validly and legally after following the principles of natural justice without there being violation of the rights and interests of the petitioners in the process.

12. Resultantly, the petitions fail and are accordingly dismissed along with all connected applications.

(JAVED IQBAL WANI)
JUDGE

JAMMU
22.02.2024
Muneesh

Whether the order is speaking : Yes

Whether the order is reportable: Yes

