



Government of Jammu and Kashmir
Floriculture, Gardens & Parks Department
Civil Secretariat

Subject: Settlement of intervening period of 30 Gardeners of
Floriculture, Gardens & Parks Department

Government Order No: 29-Flori/G&P of 2018
Dated : 24-04-2018

Whereas, 31 incumbents were appointed as Gardeners in the
Floriculture Gardens, Parks Department, Jammu/Kashmir in the year 1999;
and

Whereas, they were paid their due emoluments upto the year of
2001; and

Whereas a complaint was lodged with J&K Vigilance
Organization claiming the above appointments as illegal; and

Whereas, FIR No. 17 (2000) was registered against the then
Director Floriculture J&K; and

Whereas, on the basis of the investigation report furnished by the
Vigilance Organization, the General Administration Department, cancelled
said appointment order, vide Govt. order No. 626-GAD of 2001 dated:
12.06.2001 on the grounds that the appointments have been made in violation
of rules; and

Whereas, the incumbents challenged the Government Order No.
626-GAD of 2001 dated: 12.06.2001 before the Hon'ble Court under S.W.P.
No. 914/2001 titled "Syed Pervaz Ahmed and Ors V/s State & Ors"; and

Whereas, the Hon'ble Court while disposed of the S.W.P. No.
914/2001 titled "Syed Pervaz Ahmed and Ors V/s State & Ors" quashed the
Govt. order No: 626-GAD of 2001 dated: 12.06.2001 the court order among
other thing reads as under: -

*".....In view of the facts and
circumstances of the case this petition is allowed. The order
impugned being passed in violation of the principles of
natural justice is hereby quashed."*

Whereas, the LPA 85/2006 IA No. 146/2006 was filed before the Division Bench of High Court J&K against the orders passed by the Hon'ble Singh Bench; and


Whereas, LPA was dismissed alongwith connected CMP on 20.08.2011 by the Division Bench of Hon'ble High Court. The Division Bench ordered as under: -

”.....In the abovestated background, the issuance of the order of cancellation of the appointment of writ petitioners was wholly unjustified and we, therefore, do not find any scope to interfere with the order of the Learned Single Judge.

The appeal stands dismissed alongwith connected CMP.”

Whereas, the matter was referred to the Department of Law, Justice and Parliamentary Affairs for advice vide U.O. No. Tsm/Legal/136/2001 dated 29.12.2011 in order passed by the Division Bench on 20.08.2011 in LPA 85/2006 IA No. 146/2006. The Department of Law, Justice & Parliamentary Affairs advised vide U.O No. LD(Lit)2012/01-SC/Agri/GAD dated 23.01.2012 as under: -

“The Department is advised to file SLP against the Judgment dated 20.08.2011 passed in LLPA No. 85/2006, IA No. 146/2006 titled State of J&K and others Vs Syed Parvaiz and others with an application for condonation of delay through Shri Gaurav Pachnanda, Senior Additional Advocate General along with Shri Sunil Farnandes, Standing Counsel for J&K State Supreme Court of India at New Delhi who have been engaged by this Department vide letter No. LD(Lit)2012/01-SC/Agri/GAD dated 23.01.2012.”

Whereas, the SLP CC 5972/2012 was filed before the Hon'ble Supreme Court against the judgment and order dated 20.08.2011 in LPA No. 85/2006 of the High Court of J&K at Srinagar. The Hon'ble Supreme Court of India dismissed the SLP on 09.05.2012 stating: -

“Delay condoned.

Having regard to the facts and circumstances of the case, we do not find it to be a fit case for exercise of our jurisdiction under Article 136 of the Constitution of India. The special leave petition is dismissed accordingly. We may clarify that this order is confined to the facts of the present case only.”

Whereas, Director Floriculture J&K was directed vide letter No. Agri/Flori/TSM/Legal/136/2001 dated 28.09.2012 to implement the judgment dated 16.12.2005 of Learned Single Judge of Hon'ble High Court. Accordingly speaking order was issued by Director Floriculture Kashmir vide Order No. 949- of 2012 dated 03.10.2012 in favour of 17 petitioners and Director Floriculture Jammu vide order No. DFJ/Estt/15/3564-81 dated 10.10.2012 in favour of 12 petitioners. In speaking orders the petitioners were asked to join/resume their duties in the department. The 29 petitioners joined their duties in the Directorate of Jammu/Kashmir. The Director Floriculture requested the department to settle their intervening period for which they remained out of service.

Whereas, the incumbents remained out of service/duty w.e.f. June 2001 to October 2012 but the intervening period w.e.f. 16.12.2005 to November 2012 has already been decided by Director Jammu as well as Kashmir from the date of judgment of Learned Single Judge of Hon'ble High Court J&K Srinagar i.e. 16.12.2005 under S.W.P. No. 914/2001 titled Syed Pervaz Ahmed and Ors V/s State & Ors. Moreover the emoluments for the above said period has also been released by them in favour of petitioners.

Whereas, the Directorate of Floriculture recommended for considering of intervening period from June 2001 to October 2005 in favour of the petitioners. -

Whereas, the matter was referred to the Department of Law, Justice & Parliamentary Affairs for deciding the intervening period of petitioners vide U.O. No. Agri/Flori/TSM/Legal/136/2001 dated 16.05.2013, and the Department of Law, Justice & Parliamentary Affairs opined the department vide U.O. No. LD(Ser)2006/28-GAD dated 12.06.2013 as under: -

"Department is advised to release the salary of petitioners for the intervening period subject to the condition that they were not gainfully engaged anywhere during the said period."

Whereas, the issue was taken up with the General Administration Department vide U.O. No. Agri/Flori/TSM/Legal/136/2001 dated 11.02.2014 whereas the GAD advised the department vide U.O. No. GAD(LegalF-215/2001/Part file/269 dated 28.03.2014 as under: -

"The department is advised to proceed further in the matter as per advice of Department of Law, Justice and Parliamentary Affairs."

Whereas, the matter was taken up with the Criminal Investigation Department (CID) by the Director Floriculture Jammu to verify that the incumbents were not gainfully engaged during the period for which they remain out of service from June 2001 to October 2012. Whereas, the Inspector General of Police CID J&K furnished the verification vide letter No. CID/GB/Abs/2013/05/8038 dated 28.11.2014. Whereas, the issue was again referred to the Department of Law, Justice & Parliamentary Affairs for examining and advice. Whereas in response, the Department of Law, Justice & Parliamentary Affairs vide U.O. No. LD(Ser)2006/28-GAD dated 19.03.2015 advised the department on "gainfully engaged" which as under: -

".....the department is advised that the word "gainfully engaged" would mean that such employee must not have been employed with any establishment and should not be receiving adequate remuneration by way of salary or wages from an employer."

Whereas, the arrears for intervening period were prepared by the both Directors and matter was referred through Director Finance, Agriculture Production to the Finance Department vide U.O. No. Agri/Flori/TSM/Legal/136/2001 dated 22.12.2015. In response the Finance Department advice vide U.O. No. FD-VII-12(Df) 2015-16 dated 19.01.2016 that the department is requested to specify issue on which comments of the Finance Department are required and the Finance Department vide U.O. No. A/72 (93)temp-842 dated 06.01.2017 conveyed as under: -

"The Department is advised to examine the case in terms of the provisions of Note 2 below Art. 108 (C) of J&K CSRs Vol-I and come up with a specific proposal with the approval of the competent authority, if required, for the concurrence of the Finance Department."

Whereas, the case has been examined as per the advice of Finance Department in terms of provisions of Article 108-C of J&K CSRs Vol-I which provides as under: -

108-C. In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribed. Provided that such proportion of such pay and allowances shall not be less than the subsistence allowance admissible under Article 108(a)."

Whereas, the matter has been again examined as per the opinion of Finance Department and again referred to the Finance Department for its concurrence vide U.O. No. Agri/Flori/TSM/Legal/136/2001 dated 15.02.2018 and finally Finance Department vide U.O. No. A/72(93)-temp-220 dated 22.03.2018 conveyed as under: -

“The department is advised that the issue needs to be settled strictly in conformity with the orders of the Hon’ble Court since the judgment has attained finality and as such the left out period from June 2001 to 15.12.2005 may be treated as duty only, if the relevant orders provide for the same which needs to be examined by the department at its level without further reference to the Finance Department.”

Whereas, the case has been examined as per advice of Finance Department in terms of provision of Article CSR Rule 14-B(a) Note-2 and 108-B of J&K CSR Vol-I which provides as under: -

“.....The circumstances under which any period of suspension, removal or dismissal may count as duty or otherwise for purposes of pay and allowances, increments, leave and pension have been specified in Article 108(b).

Article 108-B. (i) When a Government servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuation, or suspended is reinstated the authority competent to order the reinstatement shall consider and make a specific order: -

(a) Regarding the pay and allowance to be paid to such Government servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(ii) Where the authority mentioned in sub-rule (i) is of opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had

he not been dismissed, removed, compulsorily retired before attaining the age of superannuation or suspended, as the case may be. The period of absence from duty shall be treated as period spent on duty.

Now therefore the period w.e.f. June 2001 to December 2005 shall be treated as “**duty only**” in favour of the petitioners who have resumed their duties.

By order of the Government of Jammu and Kashmir.

Sd/-

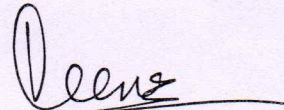
(Talat Parvez Rohella) KAS
Secretary to the Government,
Floriculture, Gardens & Parks Deptt.

No: Agri/Flori/TSM/Legal/136/2001-I

Dated: 24 -04-2018

Copy to the:

1. Director General Finance, Agriculture Production/Floriculture, Gardens & Parks Department for information and necessary action.
2. Director, Floriculture, Jammu/Kashmir are requested for making necessary budgetary projections, if required, in the relevant head of account to meet the demands on account of arrears.
3. Director, Archives, Archaeology and Museums, J&K.
4. OSD to Hon'ble Minister, Floriculture, Gardens & Parks for kind information of Hon'ble Minister.
5. Pvt. Secy. to Hon'ble Minister of State Floriculture, Gardens & Parks for kind information of Hon'ble Minister of State.
6. Pvt. Secy. to Secretary to the Government, Floriculture, Gardens & Parks Department for information of the Secretary.
7. In-charge Website, Floriculture, Gardens & Parks Department.
8. Concerned Officer.
9. Govt. Order file/ Stock file (w.3.s.c.)


(Veena Saraf)

Under Secretary to Government,
Floriculture, Gardens & Parks Deptt.

