

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

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**Subject: Original Application No. 61/180/2023 titled Umesh Kumar V/s Union Territory of J&K and Others.**

**Reference:** Hon'ble Central Administrative Tribunal Order dated 21-02-2023.

**Government Order No: 21 - JK (Flori) of 2023**

**Dated: 22-08-2023**

Whereas, petitioner Shri. Umesh Kumar among others was appointed as Gardener (Mallie) on contractual basis on consolidated pay vide Order No. DF-137 of 2004 dated 30-12-2004 by Director Floriculture J&K, Jammu on the same pattern adopted by the Education Department for appointment of Teachers as Rehbar-E-Taleem against the post created vide Govt Order No. 249-TSM of 2004 dated 06-12-2004; and

Whereas, Shri Umesh Kumar filed Original Application (OA) No. 61/180/2023 titled Umesh Kumar V/s Union Territory of J&K and Others. before the Hon'ble Central Administrative Tribunal Jammu and the Hon'ble Central Administrative Tribunal (Jammu) vide order dated 21-02-2023 was pleased to dispose off the Original Application No. 61/180/2023 as under:

*"The original application is disposed of with a direction to the Secretary to Government, Department of Floriculture, Gardens & Parks UT of Jammu and Kashmir (Respondent No. 1 herein) to consider the applicant's case for regularization of his services while keeping in view the recommendations made by the Empowered Committee vide office letter No DFJ/Estt/6437 dated 01-02-2019 and issue the appropriate order in accordance with law within a period of six weeks from the date of receipt of a certified copy of order"*

Whereas in compliance to order dated 21.02.2023 passed by Hon'ble Central Administrative Tribunal, Jammu the case of the petitioner/applicant was examined in the department and on examination it was found that the department had submitted the cases of 47 contractual Gardeners (Mallis) which include petitioner to Finance department ( Empowered Committee) but the empowered committee in its 38<sup>th</sup> meeting which was held on 29.01.2014 & 30.01.2014 cleared/found eligible only 41 cases and 06 cases were found deficient which include the case of petitioner and the observation of the empowered committee shown against name of Shri Umesh Kumar S/o Jai Raj R/o Dugga Chinta Bhaderwah is:



**Break in service needs to be condoned by the competent Authority and then resubmit the case to EC for consideration”**

Whereas, in order to condone the break in service of the petitioner the case of the petitioner was submitted to General Administration Department vide U.O. No. Agri/Coord/09/2009-V dated 26.05.2017 to be placed before the Competent Authority i.e. the then Hon'ble Chief Minister through Chief Secretary in coordination for condonation of breaks.

Whereas, the General Administration Department returned the file and advised the department to re-visit the proposal and settle the break period of incumbent caused due to illness to the extent of entitlement of leave in terms of SRO-418 dated 11.12.2007 and accordingly Director Floriculture, Jammu was requested to examine the case of incumbent in terms of SRO 418 dated 11.12.2007. The Director Floriculture, Jammu after examining the case of incumbent in terms of SRO 418 dated 11<sup>th</sup> December, 2007 informed vide letter dated 22.12.2017 that break period of the petitioner/applicant has been settled in-terms of SRO-418 dated 11.12.2007 and does not require condonation of break and,

Whereas, the department again submitted the case of petitioner/applicant to Finance department/Empowered Committee and the Finance department vide O.M No. PS/DC/Misc-403/14 dated: 03.08.2018, forwarded the name of applicant for further necessary action and issuance of Regularization order in his favour in accordance with the provisions of J&K Civil Services (Special Provisions) Act, 2010 and subject to fulfillment of Nine (09) conditions mentioned in the O.M dated: 03.08.2018.

Whereas this department forwarded the Nine (09) conditions of the empowered committee to Director Floriculture, Jammu which were replied by the Director Floriculture Jammu vide letter No. DFJ/Estt/6437 dated 01.02.2019

Whereas, after fulfilling the conditions laid down by the Finance Department the case file vide this Department's U.O. NO. Agri/Flori/Coord/09/2009V (Part file) dated 18/07/2019 was submitted to the General Administration Department in-terms of J&K, Civil Services (Special Provisions) Act, 2010 and,

Whereas, the General Administration Department vide U.O. No. GDC-265/CM/2017 dated 23.02.2021 returned the Departmental file with the request to furnish the information as per the devised format enabling them to place the matter before the establishment Selection Committee and this department vide O.M. No. dated:25-08-2021 forwarded requisite information as per the devised format to General Administration Department, and also submitted the file in terms of section 10(5) of the Jammu & Kashmir Civil Services(Special Provisions Act), 2010.



Whereas. the General Administration Department vide U.O No. GAD-CORD/91/2023-09 dated 19-06-2023 returned the departmental file with the following Advise:

**Returned:** The opinion of Department of Law, Justice & Parliamentary affairs was sought with regard to the regularization schemes, which opined as under:

*“All the engagements made illegally are void ab-initio and the same would not give any justifiable right to the illegal appointee to claim regularization. The said principle has been upheld in state of Karnataka Vs Uma Devi case .*

*The Department is advised to proceed further in the matter in terms of the above opinion tendered by the Department of Law, Justice & Parliamentary Affairs”*

Whereas, while considering the applicant's case for regularization of his services in view of the recommendations made by the Empowered Committee vide office letter No DFJ/Estt/6437 dated 01-02-2019 it was observed that Jammu & Kashmir Civil Service (Special Provisions) Act. 2010 stands repealed by J&K reorganization Act, 2019 and no action can be taken under repealed Act.

Now, therefore, in view of the rule position explained above and the advice of the Department of Law, Justice & Parliamentary Affairs, the case of the applicant for regularization of his services was considered in view of the recommendations made by the Empowered Committee and office letter No DFJ/Estt/6437 dated 01-02-2019 and was found devoid of merit and accordingly rejected.

**By order of the Government of Jammu and Kashmir.**

Sd/-

**(Sheikh Fayaz Ahmad)JKAS**

Commissioner/Secretary to Government,  
Floriculture, Gardens & Parks Deptt.

No: FLORI-Genl/18/2021-09(CC -29667)

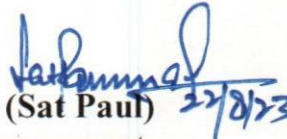
Dated: 22-08-2023

Copy to the:-

1. Joint Secretary, (J&K) Ministry of Home Affairs, Government, of India New Delhi.
2. Director General Floriculture, Jammu.
3. Director Finance, Agriculture Production/Floriculture, Gardens & Parks Department.
4. Director, Archives, Archaeology and Museums, J&K Srinagar.
5. Additional Secretary to Government, Floriculture, Gardens & Parks Department.
6. Private Secretary to Chief Secretary, UT of J&K.

/26/169/2023

7. Private Secretary to Commissioner/Secretary to Government, Floriculture, Gardens & Parks Department.
8. Concerned.
9. In-charge website, Department of Floriculture, Gardens and Parks.
10. Govt. Order file/Stock file

  
(Sat Paul) 22/8/23

Under Secretary to Government,  
FLORICULTURE DEPARTEMENT