

Government of Jammu and Kashmir
Home Department
Civil Secretariat Jammu/Srinagar

Subject: LPA No. 06/2020 in SWP No. 2244/2018 titled *Mohammad Rafiq Wani and others v/s Union Territory of J&K and others.*

- Reference: i) Communication No. Estt/G-2/2016/16068 dated 10.03.2020 of the Director General of Police, J&K.
- ii) Order dated 20.08.2020 passed by the Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar in LPA No. 06/2020 titled *Mohammad Rafiq Wani and others vs. UT of JK and others;*
- iii) Order dated 05.01.2022 passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu in T.A. No. 61/1415/2020 titled *Parmanand Sharma and others vs. State of Jammu and Kashmir through Commissioner Secretary to Government Home Department and others.*

Government Order No.: 342- Home of 2022
Dated :22.09.2022

Whereas, a writ petition, SWP No. 483/2016 titled *Mohammad Rafiq Wani and others vs. State of J&K and Ors.* was filed in the Hon'ble High Court of J&K at Srinagar, wherein the petitioners prayed for the following relief:

- a) By issuance of an appropriate writ, order or direction, including one in the nature of writ of mandamus, the respondents be commanded to treat the petitioners who belong to the Class of Water Couriers, Sweepers, Cobblers, Non-Traders at par with the Followers in the Police Department designated as Cook, Washerman, Barber, Tailor, Carpenter;

- b) By issuance of an appropriate writ, order or direction, including one in the nature of writ of mandamus, the respondents be commanded to implement the Judgment dated 13.03.1989 in respect of petitioners also by releasing in their favour same grade pay/scale as that of Followers in the Police Department designated as Cook, Washerman, Barber, Tailor, Carpenter, retrospectively;
- c) By issuance of an appropriate writ, order or direction, including one in the nature of writ of mandamus, the respondents be commanded to take steps to create promotional avenues for the petitioners (Followers);

OR in the alternative

- a) By issuance of an appropriate writ, order or direction, including one in the nature of writ of mandamus, the respondents be directed to grant same pay scale and grade to the petitioners as that of the one given to the Followers of the Hospitality and Protocol Department as also in the Health Department.
- b) Any other writ, order or direction, though not specifically prayed for, yet the Hon'ble court may deem fit & proper in light of the facts & circumstances of the case, may also be granted in favour of petitioner & against respondents. Same shall be in consonance with law and justice."

2. Whereas, the Ld. Single Judge of the Hon'ble High Court vide his order dated 13.11.2019 dismissed the writ petition ibid with the following observations:

"13. Law regulating the pay scale and release of further avenues in the shape of In situ/functional promotions notified in terms of SRO 14 of 1996, takes care of all the grievances of the petitioners. There is no strength or substance in the pleadings of the petitioners with no further justification for claiming a different pay scale than one provided in terms of rules. Court cannot sit in appeal against the decision of the Government regulating the conditions of the service of employees, including payment of salary. Law on this issue is no more res-integra.

The grant of pay scales is solely the domain of the Government/ employer based on vast surveys/expert reports on the subject. Court by no stretch of imagination can enter the zone of considering the grant of pay scales against different posts in the Government.

14. For the above reasons, the instant writ petition having no merit deserves to be dismissed, as such, shall stand dismissed."

3. Whereas, the Director General of Police vide his communication dated 10.03.2020 while, inter-alia, mentioning about the diverse trades performed by the Followers referred to the Government Order dated 06.10.1993, issued in compliance to the court orders passed in SWP No. 224/1983, recommended that pay grade SL-1 14800-47100 applicable to the category-B may be unified to pay grade SL-2 15900-50400 applicable to category-A; and

4. Whereas, upon examination of the above proposal of the DGP, J&K, it was observed that in compliance to the court orders dated 13.03.1989 passed in SWP No. 224/1983, the Government vide order dated 06.10.1993 had categorized the Followers into two categories viz. Category-A and Category-B, based on the trades performed by them, after making consultation with the Finance Department; and

5. Whereas, while the proposal of the DGP, J&K was under examination, the petitioners aggrieved of the order dated 13.11.2019 filed LPA No. 06/2020 titled *Mohammad Rafiq Wani and others vs. State of J&K and others* before the Division Bench of the Hon'ble High Court of J&K and Ladakh at Srinagar, which was disposed of by the Hon'ble Division Bench vide its order dated 20.08.2020 with the following direction:

"4. In view of the above, this Letters Patent Appeal is disposed with a direction to the Principal Secretary to Government, Home Department, Union Territory of Jammu and Kashmir, to consider the case of the appellants in the light of the above communication dated 10.03.2020.

5. We make it clear that we have not expressed any opinion on the merits of the rival contentions of the parties.

6. Disposed of along with connected CM"

6. Whereas, the matter was further examined in light of the order dated 20.08.2020 passed by the Division Bench of the Hon'ble High Court in LPA No. 06/2020 titled *Mohammad Rafiq Wani and others vs. UT of J&K and others* and it was found that the genesis of the controversy dates back to the prayer made by the petitioners in writ petition WP No. 224/1983 titled *Ghulam Mohammad and others vs. State and others* for a direction upon the respondents therein to pay the same grade to the followers in the Police Department as was being paid to the persons doing the same job in the Hospitality & Protocol Department, as also in the Health Department; and

7. Whereas, it was observed that the writ petition WP No. 224/1983 came to be decided by the Hon'ble High Court on 13.03.1989 with the following direction:

"..under the circumstances this writ petition is allowed with direction to the respondents to pay similar grade to the petitioners as is being paid to the persons doing the same job in other departments of the respondent-State. The petitioners' cooks, washermen, barbers, Safai-karamcharis, cobblers and Water Couriers would therefore be paid the same pay as is being paid to such persons holding posts under the Hospitality and Protocol Department and Health Department of the State. The Petitioners are also held entitled to payment of costs which are assessed at Rs. 200/- CMP No. 533/1993 is also disposed of"

8. Whereas, the relevant records revealed that in compliance to the Order dated 13.03.1989 passed by the Hon'ble High Court in the ibid writ petition, the Home Department, after making consultations with the Finance Department, vide Government Order No. Home-339(P) of 1993, dated 06.10.1993 read with the corrigendum dated 24.01.1996 had accorded sanction to the placement of petitioners and the other followers of the Police Department in the revised pay scales on the basis of different trades and devised a roadmap for their periodic monetary upgradation; and

9. Whereas, while the matter was under examination in light of the direction of the Hon'ble High Court contained in the order dated 20.08.2020 passed in LPA No. 06/2020 and the proposal submitted by the Director General of Police, J&K vide Communication dated 10.03.2020, it was observed that in the communication ibid a reference was made to the contempt proceedings in SWP No. 2523/2018 titled *Parmanand Sharma vs. State* and others pending against the Department, which fact was not in the knowledge of the Home Department. Accordingly, the details/records pertaining to the above contempt petition and SWP No. 2523/2018 were obtained from the PHQ, which vide communication dated 14.09.2022, confirmed that no contempt petition was pending against the department as on 10.03.2020. Further, the relevant records pertaining to the writ petition, SWP No. 2523/2018 titled *Parmanand Sharma and Ors. vs. State of J&K and Ors* brought out that the petition ibid had been filed by the petitioners namely, Parmanand Sharma and others in the Hon'ble High Court at Jammu, wherein, they had, inter-alia, prayed for the following relief:

"A) For issuance of an appropriate writ, order or direction

in the nature of writ of mandamus commanding the respondents to compute/determine, fix and disburse the arrears of salary in the revision of pay with effect from 01-04-1987 in the pay scale of Rs. 775-1025, w.ef. 01.01.1996 in the pay scale of Rs. 2610-3540, and w.ef 01-01-2006 in the pay scale of Rs. 4440-7440 + 1400 GP, in favours of the petitioners from the dates the petitioners become entitled/joined the service, along with all consequential benefits followings out same, on the Analogy and principle such benefits came to be provided to the others similarly situated employees of government departments and writ petitioners of SWP No. 224/1983 titled as Ghulam Mohd. & Ors., V. State and Ors, which is also the Import of Judgment dated 26-Oct-2016 titled as State of Punjab & Ors V. Jagjit Singh & ors, passed by the Hon 'ble Supreme

Court, with further direction to implement the provisions of SRO 14 of 1996 dated 15.01.1996 in the interest of Justice and fair play."

A handwritten signature in black ink, followed by the date '22/9' written below it.

10. Whereas, it also came to the notice that subsequently, upon establishment of the CAT Bench at Jammu, the writ petition SWP No. 2523/2018 titled *Parmanand Sharma and Ors. Vs. State of J&K and Ors* came to be transferred by the Hon'ble High Court vide order dated 04.08.2020 to the Central Administrative Tribunal Jammu Bench, Jammu and the Hon'ble Tribunal renumbered the writ petition ibid as T.A No. 61/1415/2020 titled *Parmanand Sharma and others vs. State of J&K through Commissioner Secretary to Government Home Department and others* and disposed of the same vide its order dated 05.01.2022 with the following directions:

"3. In view of the submissions made, we direct the respondents to consider the case of the applicants in light of Judgments passed by the Hon'ble High Court in SWP No. 224 of 1983 titled Ghulam Mohammad & Ors. Vs State and Ors. as well as in SWP No. 1055 of 2006 titled Parmanand Vs State and Ors. and decide it with a reasoned and speaking order within a period of four weeks from the date of receipt of a certified copy of this order, and within one week thereafter to communicate a copy of the speaking order to the applicants.

4. It is made clear that we have not expressed any opinion on merits of the case.

5. The TA is disposed of as above. No costs."

 11. Whereas, it was further observed that one more writ petition WP No. 1055/2006 titled *Perma Nand Sharma and others Vs. State through Finance Department and others*, as referred to in the order ibid, was filed in the Hon'ble High Court at Jammu, wherein the petitioners had, inter-alia, prayed for the following relief:

"...respondents be directed to treat the services of petitioners in the Police Department at par with the other departments of the State of Jammu and Kashmir i.e. Department of Hospitality and Protocol and Hospitals and pay them same grade as is being given to the person performing the same job, same work

with same responsibilities and duties in the aforesaid other departments of the State; and with further writ, order or direction, commanding the respondents to implement the judgment dated 13th March, 1989 passed in writ petition titled " Ghulam Mohd. & Ors V/s State of Jammu and Kashmir & Ors" bearing Writ Petition 224/1983, whereby the services of the petitioners have been treated at par with the services of other persons doing same job in other departments and are held entitled to same pay as is being paid to such persons holding posts under Hospitality and Protocol Department and Health Department of the State and grant the same grade to the petitioners as is given to the Cooks in the Department, having the same rank of Followers as of petitioners."

12. Whereas, the writ petition ibid was disposed of by the Hon'ble Court vide its order dated 28.11.2016 with the following directions:

" In view of the aforesaid submissions, no useful purpose will be served by keeping the instant writ petition pending. Accordingly, the same is disposed of with the direction to the competent authority to consider and decide the claim of the petitioners by passing a speaking order in the light of the judgment dated 13.03.1989 passed in SWP No. 224/1983 and judgment of Supreme Court in case State of Punjab v. Jagjit Singh, in Civil Appeal No., 213 of 2013 and connected matters; decided on 26.10.2016 within a period of three months from the date of receipt of a certified copy of the order passed today."

 13. Whereas, in its judgment dated 26.10.2016, passed by the Hon'ble Supreme Court in State of Punjab v. Jagjit Singh, in Civil Appeal No. 213 of 2013, referred to in the order ibid of the Hon'ble High Court, the Hon'ble Supreme Court had observed as under:

"57. Having traversed the legal parameters with reference to the application of the principle of equal pay for equal work, in relation to temporary employees (daily-wage employees, ad-hoc

appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of equal pay for equal work summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of equal pay for equal work would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of

regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (- at the lowest grade, in the regular pay scale), extended to regular employees, holding the same post.

59. Disposed of in the above terms."

14. Whereas, the DGP, J&K's proposal dated 10.03.2020 was further examined with reference to the raising of five IR Battalions vide Government Order dated 07.09.2016 and it was found that the grade of Followers indicated in the Government Order ibid was based on the scales provided by the PHQ at that point in time and no examination or consideration was accorded by the Government to the categorization of the Followers in the J&K Police. Based on the examination detailed hereinabove and the records, it was found that the proposal sans merit for the reason that vide Government Order No. Home-339(P) of 1993 dated 06.10.1993, read with the corrigendum dated 24.01.1996, the revision of pay scale of followers and subsequent categorization in terms of Pay Scale was carried out in consultation with the Finance Department, with reference to the pay scales attached to analogous posts of similar trades in other Departments, which prima-facie was made with due diligence on the basis of nature of jobs and the specific skill set required to perform each job, as is evident from the categorization that the trades requiring specific skills/training to perform duties of their domain were granted higher grades than those trades requiring less skill sets or to perform the duties of their domain; and

15. Whereas, the matter was also examined in light of the judgment dated 26.10.2016, passed by Hon'ble the Supreme Court in State of Punjab v. Jagjit Singh, in Civil Appeal No. 213 of 2013 and it was found that the judgment ibid is not applicable to the case of the appellants/petitioners for the reason that in that case, the Hon'ble Supreme Court had not decided the issue on the basis of trades/skills performed by the employees, rather the Hon'ble Court had decided the matter on the basis of the duties and responsibilities performed by the regular employees, holding the same/corresponding posts viz-a-viz the duties and responsibilities performed by the temporary employees.

16. Now, therefore, the recommendations of the DGP, J&K dated 10.03.2020 and the claim of the petitioners of T.A No. 61/1415/2020 titled *Parmanand Sharma and Ors. vs. State and Ors*, having been considered in due deference to the Order dated 20.08.2020, passed by the Division Bench of the Hon'ble High Court in LPA No. 06/2020 titled *Mohammad Rafiq Wani and Ors Vs UT of J&K*, read with the order dated 05.01.2022, passed by the Hon'ble Central Administrative Tribunal Bench, Jammu in T.A No. 61/1415/2020 titled *Parmanand Sharma and Ors. vs. State and Ors*, have been found devoid of merit and accordingly rejected for the reasons recorded hereinabove.

Sd/-

(Raj Kumar Goyal) IAS

Financial Commissioner /Additional Chief Secretary

No.Home-ACC01/9/2021-FIN-Home

Dated.22.09.2022

Copy to the:

1. Director General of Police, J&K. This has reference to his communication dated 10.03.2020.
2. Director, Archives, Archaeology & Museums, J&K.
3. Ld. AAG Hon'ble High Court, J&K at Srinagar for information and necessary action.
4. Ld. AAG, Hon'ble Central Administrative Tribunal, Bench, Jammu for information and necessary action.
5. Private Secretary to the Financial Commissioner (Additional Chief Secretary) Home Department.
6. I/c Website, Home Department.
7. Government Order file (w.2.s.c)
8. Stock file

Copy also to the:

1. Additional Secretary (JKL), Ministry of Home Affairs, Government of India, New Delhi.

(Dr. Arvind Karwani) JKAS

Additional Secretary to the Government