



**GOVERNMENT OF JAMMU AND KASHMIR
INDUSTRIES AND COMMERCE DEPARTMENT
Civil Secretariat, Srinagar**

Subject:- SWP No. 365/2008, MP Nos. 561/2008, 1/2016, & 1/2018 titled Munisha Devi Vs State of J&K & Ors regarding compassionate appointment of Ms. Munisha Devi against the post of Supervisor (Cooperatives) in the Handloom Development Department.

**Government Order No: 176- IND of 2019
Dated: 30 - 08 - 2019**

WHEREAS, Ms. Munisha Devi D/o Late Bodh Raj R/o Village Sagoon, District Udhampur was initially appointed as Orderly-cum-Chowkidar in the pay scale of Rs. 2550-3200 (pre-revised) under SRO-43 of 1994 vide appointment order No. DHD/116 of 2003 dated 19.08.2003 issued by the then Director, Handloom Development Department, Jammu;

AND WHEREAS, Ms. Munisha Devi did not join duty as Orderly-cum-Chowkidar and claimed her eligibility for appointment against the lowest non-gazetted post i.e. Junior Assistant;

AND WHEREAS, the post of Junior Assistant was not available in the Handloom Development Department, therefore, Ms Munisha Devi was appointed as Supervisor (Cooperatives) in the Handloom Development Department vide Order No. DHD/282 of 2004 dated 07.01.2004, issued by the then Director, Handloom Development Department, in the pay scale of Rs. 3050-4590 (pre-revised), in partial modification of the earlier order dated 19.08.2003;

AND WHEREAS, Ms. Munisha Devi was subsequently deputed for Cooperative Training by the Handloom Development Department vide letter No. DHD/Estt/3395-96 dated 04.11.2004 and she successfully completed the said Co-operative Training;

AND WHEREAS, lateron, vide letter No. DHD/Estt/2969/2387 dated 07.10.2006 followed by letter No. DHD/Estt/2144 dated 11.12.2007, the Director Handloom Development Department approached the Administrative Department for confirmation of the appointment of Ms. Munisha Devi as Cooperative Supervisor;

AND WHEREAS, the Industries & Commerce Department vide letter No. IND/HL-58/2005 dated 11.03.2008 rejected the recommendation of Director Handloom Development Department and issued following instructions:-

"advise you to allow Smt. Munisha Devi to work against the original post for which she was appointed vide order No. DHD/116 of 2003 dated 19.08.2003."

AND WHEREAS, aggrieved of the above instructions, Ms. Munisha Devi filed a writ petition bearing SWP No. 561/08 before the Hon'ble High Court at Jammu. The Hon'ble High Court passed the following direction on 18.12.2017 in the matter:-

"Notice until further orders, operation of Under Secretary to Government, Industries and Commerce Department's Order No. Ind/HL-58/2005 dated 11.03.2008 shall remain stayed and the petitioner shall be allowed to work as Co-operative Supervisor".

AND WHEREAS, the Hon'ble High Court vide judgement dated 18.12.2017, disposed off the writ petition. The operative part of the judgement reads as under:-

"In sum, aforesaid settled legal position makes it clear that the impugned communication by way of punishment and has been issued without show cause notice and without holding any enquiry against the petitioner, same is as such, in violation of Article 11 of the Constitution of India as also Section 126 of the Constitution of J&K. The impugned communication dated 11.02.2008 issued by Under Secretary to Government, Industries and Commerce, whereby petitioner has been asked to work on the post of Orderly-cum Chowkidar, is quashed.

Quashment of impugned communication however, will not prevent the competent authority to take appropriate action under rules. Respondents shall also consider for release of the salary of the petitioner, if any due.

Disposed of as above along with connected MPs."

AND WHEREAS, the case was examined in the Department and referred to General Administration Department. The GAD furnished the following advise vide U.O No GDC-172/CM/2018 dated 28.09.2018:-

"The department is advised to contest the case in higher forum on priority. Further, the department is advised that the division need to carefully reach to "quashment of impugned

by

communication, however, will not prevent the competent authority to take appropriate action under rules. Respondents shall also consider for release of salary of the petitioner, if any, due. Disposed of along with connected MPs".

AND WHEREAS, the matter was further taken up with the Department of Law, Justice and Parliamentary Affairs for obtaining the advice with regard to the further course of action to be taken. The Department of Law, Justice and Parliamentary Affairs advised vide U.O. No. LD(Ser)2018/123-I&C dated 27.02.2019, as under:

Returned. It is a well settled legal position that any order which is bad in law can be withdrawn / revoked at any time. A right in law exists only when it has lawful origin. The continuation of a person appointed wrongly on a post does not create any right in her favour. In view of the aforesaid legal position, the department shall take steps for rectifying the wrong which has been committed by an incompetent authority.

Chief Secretary, J&K has desired that before taking any action, the Department should set up an Enquiry Committee of 03 officers (Director, Handicrafts, Special Secretary, I&C and Director, I&C, Jammu) to ascertain the full facts of the case and pinpoint the delinquent officers/officials responsible for this flagrant violation of rules. Based upon the report of enquiry and after affording an opportunity of being heard to the petitioner, the Department will have to accord consideration to the claim of the petitioner for the post of Supervisor (Co-operatives) and reject it through a speaking order. The appointment of the petitioner as Orderly cum Chowkidar with effect from 19.08.2003 has to be reiterated and to be given the salary/wages attached to the said post. The process may be completed by 31.03.2019.

AND WHEREAS, an Enquiry Committee comprising of the officers was set up vide Government Order No 66-IND of 2019 dated 20.03.2019 to ascertain the full facts of the case related to compassionate appointment of Ms. Munisha Devi against the post of Supervisor (Cooperative) in the Handloom Development Department and pinpoint the delinquent officer/officials responsible for the violation of rules;

AND WHEREAS, the Enquiry Committee met thrice on 02.04.2019, 24.04.2019 and 11.06.2019, and perused the record {file No. DHD/Estt/2969 (part file), file No DHD/Estt/2969 (original file) and letter No DHD/Estt/CO/52 dated 20.05.2019} furnished by the Director, Handloom Development Department and observed that the file in which

the compassionate appointment case of Ms. Munisha Devi was processed was not placed before it for perusal as the Director Handloom Development Department informed vide communication DHD/Estt/C.O/52 dated 20.05.2019 that after hectic search by the staff, the file couldnot be retrieved from the records as the same has got damaged, alongwith other record of the Handloom Department, in the floods that occurred in the Valley in September, 2014. The record in file No. DHD/Estt/2969 (part file) and file No. DHD/Estt/2969 (original file) placed before it pertain to the events post issuance of the appointment orders in favour of Ms. Munisha Devi;

AND WHEREAS, the Committee took note of the averments made by the Director Handloom Development Department in communication dated 20.05.2019 that Mr. D.K Sharma was then holding the post of Director, Handloom and Mr. Chuni Lal and Mr. Kishori Lal were Section officer and Head Assistant, respectively, in the Directorate of Handloom when the appointment of Ms. Munish Devi has been done by the Directorate of Handlooms and that all these officer/officials have since retired;

AND WHEREAS, the Committee has decided to go by the averments made by the Director Handloom Development Department and opined that Mr. D.K Sharma, the then Director Handloom, Mr. Chuni Lal, the then Section officer and Mr. Kishori Lal, the then Head Assistant in the Direction Office of the Handloom Development Department were involved in issuance of compassionate appointment order in favour of Ms. Munisha Devi as Supervisor (Cooperative), in violation of rules;

AND WHEREAS, Ms. Munisha Devi was, thereafter, afforded an opportunity of being heard and requested through Director Handloom Development Department vide letter dated 20.06.2019 either to appear in person or to furnish in writing her point of view as to why she may not be appointed as Class-IV under SRO 43 instead of Cooperative Supervisor;

AND WHEREAS, Ms. Munisha Devi furnished a written statement vide communication received in Industries and Commerce Department on 03.07.2019;

AND WHEREAS, the matter has been further examined and it has been found that the perusal of the Order No. DHD/116 of 2003 dated 19.08.2003 and Order no. DHD/282 of 2004 dated 07.01.2004, both issued by the then Director Handloom Development Department makes it evident that a post of Junior Assistant in the pay scale of Rs. 3050-4590 (PR) was not available and hence Ms. Munisha Devi was appointed as Cooperative Supervisor in the lower grade of Rs. 3050-4590 on probation for a period of one year or till she qualifies the Cooperative Training in violation of Rule

4 of the Jammu and Kashmir Compassionate Appointment Rules, 1994 as the case was to be referred to the Administrative Department for consideration and the Director Handloom Development Department had not the competence to make appointment either by changing the nomenclature of the post carrying a particular pay scale or change in the pay scale attached to a particular post.

NOW THEREFORE, in view of well settled legal position that any order which is bad in law can be withdrawn / revoked at any time, the appointment of Ms. Munisha Devi as Ordrely-cum-Chowkidar w.e.f 19.08.2003 made vide Order No. DHD/116 of 2003 dated 19.08.2003 is hereby reiterated and her claim for release of salary of Cooperative Supervisor w.e.f 07.01.2004 alongwith all the benefits such as increment, revision in grade, etc., is rejected.

By Order of the Jammu and Kashmir Government.

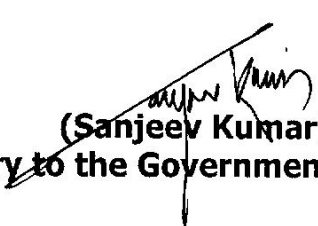
**Sd/-
(Navin K. Choudhary), IAS
Principal Secretary to the Government.**

No: IND/Legal-54/2018

Dated: 30.08.2019

Copy to the:

1. Secretary to the Government, General Administration Department.
2. Secretary to the Government, Department of Law Justice & Parliamentary Affairs.
3. Director Industries & Commerce Department, Jammu.
4. Director Handicrafts Department J&K.
5. Director, Handloom Development Department, J&K.
6. Director, Archives, Archeology and Museums, J&K Srinagar.
7. OSD to the Hon'ble Advisor Industries & Commerce Department.
8. Pvt. Secretary to the Principal Secretary to Govt., I&C Department.
9. Incharge Website, I&C Department.
10. Govt. Order File (W.2.spcs)/Monday Return.
11. Stock File.


**(Sanjeev Kumar)
Under Secretary to the Government**