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Union Territory of Jammu and Kashmir  
Social Welfare Department,  
Civil Secretariat, J&K

Subject: Consideration Order in terms of Hon'ble High Court Order dated 03.03.2023 passed in WP (C) 423/2023, titled Malik Rifat ul Islam V/s Union Territory of J&K and Ors.

Government Order No. 233.JK(SWD) of 2023  
Dated: 24.11.2023

Whereas, the General Administration Department vide letter No. GAD-VIGORDA/173/2021-02-GAD dated 19.01.2023 forwarded a copy of letter No. ACB/Veri/BK-17/2017-34760-63 dated 07.12.2021 received from Anti Corruption Bureau, J&K (regarding case verification No. BK-17/2017), with the intimation that action w.r.t initiation of RDA against Abdul Hafiz Shah, the then District Programme Officer, ICDS, Kupwara, shall be taken by the GAD and advised this Department to take appropriate action on the other recommendations of the ACB in the instant case viz:-

- i. *Recovery of the amount from the beneficiaries placed in the pay band temporarily, thus drawn higher pay than consolidated basis.*
- ii. *Immediate reversal to the original position on consolidated basis in order to prevent loss to Government exchequer.*
- iii. *Filling of vacant posts as per procedure and in a transparent manner.*

Whereas, as per the report of the ACB, verification was conducted based on a complaint lodged by Ghulam Nabi Sheikh and others against officers/officials of Social Welfare Department, Kupwara regarding illegal appointment of Syed Mohammad Shoib Andrabi and Malik Rifat-u-Islam, as Class-IV in DPO ICDS Kupwara without following codal formalities and after verification conducted by the Bureau, the following discrepancies have surfaced:

*".....Malik Rifat-u-Islam was engaged as sweeper on consolidated monthly charges of Rs. 1200 on 06.11.2012 by the order of then DPO, ICDS Kupwara. His wages were enhanced to Rs. 4500 from 01.04.2013 as per order dated 06.09.2013 of DPO ICDS Kupwara. He was temporarily placed and allowed to work as an orderly in the pay band of 4440-7440 with grade pay of Rs. 1300 against available vacancy of orderly on 23.11.2015 in ICDS Sector in District Kupwara till the post was filled by the due selection process by the Government.*

*.....Syed Mohammad Shoib Andrabi, was engaged by the then DPO ICDS Kupwara Abdul Hafiz Shah as a full time sweeper on consolidated monthly charges on 31.12.2015. The said officer further placed him temporarily to work as orderly*

*in the pay band of Rs. 4440-7440 with grade pay of Rs. 1300 against available vacancy of orderly in ICDS Sector in District Kupwara for a period of 89 days on 08.09.2015. He was further allowed to continue the work vide another order issued 09.12.2016 as orderly till the post was to be filled by due selection process. The said beneficiary was placed as Incharge Jr. Assistant in the own grade on 22.12.2017 issued by the Directorate of State Mission Director ICDS, J&K.*

*.....The District Officer was nominated as Chairman of District Level Departmental Committee for recruitment of Class-IV posts vide order No. 698-DSWK of 2013 dated 06.11.2013 of Director Social Welfare Kashmir. A committee comprising of four officers under the chairmanship of DPO of concerned District was designated by the Government for the recruitment of Class-IV posts under laid down norms, however, the then District Programme Officer ICDS Kupwara namely Abdul Hafiz Shah issued alleged engagement orders in individual capacity as being chairman of the Committee, without consulting other members of the committee, as such breached the Rules."*

Whereas, following the above instructions conveyed by the General Administration Department, this Department vide letter No. SWD-COM/4/2023 dated 23.02.2023 advised the Mission Director, Mission Poshan, J&K to take following actions in the instant case:

- i. Recovery of the amount from the beneficiaries placed in the pay band temporarily, thus drawn higher pay than consolidated basis.*
- ii. Immediate reversal to the original position on consolidated basis in order to prevent loss to Government exchequer.*
- iii. To terminate the illegal appointment of Malik Rifat-u-Islam and Syed Mohd Shoib Andrabi immediately, as per rules.*

Whereas, pursuant to the department's letter dated 23.02.2023, the Mission Director, Mission Poshan vide Order No. 118-MD of 2023 dated 23.03.2023 terminated appointment of Malik Rifat-u-Islam and Syed Mohammad Shoib Andrabi with immediate effect, as follows:-

*".....the appointment of Malik Rifat-u-Islam and Syed Mohammad Shoib Andrabi is hereby terminated void ab-initio with immediate effect. The Accounts Officer, Mission Poshan, J&K is directed to calculate the emoluments paid to the aforesaid beneficiaries placed on account of higher pay than consolidated basis and recover the same from them. Both the beneficiaries are reversed to their original position on consolidated basis."*

Whereas, the official namely Malik Rifat-u-Islam filed a writ petition bearing WP(C) No. 423/2023, titled Malik Rifat-ul-Islam V/s Union Territory of J&K and Ors, seeking permanent absorption/regularization against the available post of Class-IV/Orderly in ICDS Project District Kupwara, retrospectively w.e.f 23.11.2015 and also to release all consequential / monetary benefits in his favour;

Whereas, the Hon'ble High Court, issued an order dated 03.03.2023, the operative part of which is reproduced as follows:

*"...In the meantime, subject to objections and till next date of hearing, respondents are directed to consider the claim of the petitioner for his regularization against the post of Orderly/Class-IV in ICDS Project District Kupwara, if admissible under rules."*

Whereas, as is evident from the aforesaid report of the ACB, that without following due procedure and without having any such competence, the DPO Kupwara has initially engaged the petitioner and subsequently placed and allowed him to work as orderly in the prescribed pay band, thereby breaching the law, which necessitated the termination of the services of the petitioner along with another namely Syed Mohammad Shoib Andrabi;

Whereas, the petitioner was not only engaged without following proper procedure but also the then DPO, Kupwara circumvented rules and norms to give him undue benefit of continuing on a permanent post which was required to be filled after open advertisement and through a Committee after following due procedure;

Whereas, the engagement of the petitioner has been found void ab-initio and therefore, as per the orders of General Administration Department, his services have been terminated and therefore, the question of regularization of his services does not arise.

Now, therefore, in light of the circumstances referred heretofore and in compliance to the Hon'ble High Court Order dated 03.03.2023 passed in WP(C) 432/2023, the claim of the petitioner has been considered and found devoid of merits and hence rejected.

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

Sd/-

**(Sheetal Nanda)IAS**

Commissioner/Secretary to the Government,  
Social Welfare Department.


No: SWD-COM/24/2023

Dated: 24.11.2023

Copy to the:

1. Joint Secretary, (J&K) Ministry of Home Affairs, Government of India.

2. Commissioner/Secretary to the Government, General Administration Department.
3. Mission Director, Mission Poshan, J&K
4. Director, Archives, Archaeology and Museums, J&K.
5. Director, Litigation, Kashmir.
6. Senior Law Officer, Social Welfare Department.
7. Private Secretary to Commissioner/Secretary to Govt., Social Welfare Department.
8. Mr. Malik Rifat-ul-Islam (Petitioner).
9. Government Order file.

  
24.11.2023  
(Mohd Imran Naik)JKAS  
Under Secretary to the Government  
Social Welfare Department