

Government of Jammu and Kashmir, Housing A Urban Development Department, Civil Secretariat Jammu/Kashmir

Subject:- Withdrawl of Government Order No. 273-HUD of 2006 dated: 16.10.2006.

> Government Order No: 51 -HUD of -2016 DATED: 25 - 02 -2016

Whereas, the following officials were initially appointed against the posts indicated below against each on substantive basis in the Urban Local Bodies, Kashmir:-

S.No.	Name of the official	Name of the Post
01	Mr. Arshid Zahid	Sanitary Inspector
02	Kousar Ali	Junior Assistant
03	Mr. Imtiaz Ahmad	Dharat Mahaldar
04	Mr. Mohammad Ayoub Dar	Entry Fee Collector(Class-IV)

Whereas, these officials were deputed as in-service candidates for three months training course in Food Inspection and sampling work to state Food(Health)A Authority, Panchkula, Haryana;

Whereas, these officials were placed as I/C Food Inspectors in their own pay and grade, Pending clearance by the Departmental Promotion Committee(DPC), vide Government Order No. 273-HUD of 2006 dated: 16.10.2006;

Whereas, as per Schedule II of the Jammu and Kashmir Urban Local Body Institutions(management) Service Recruitment Rules, 2008, notified vide SRO-417 dated 18.12.2008, the method of recruitment for the post of Food Inspector including the in-service candidates is as under:

"i. 75% by Direct Recruitment.
ii. 25% by promotion from Class-III Category(a) with three years substantive service in the class and having qualification as per Rule-8 of Prevention of Food Adulteration Rules, 1955." (Class III Category 'a' includes the Post i.e. Sanitary Inspector).

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Whereas, as per the said schedule the minimum audification for direct recruitment against the post of Food Inspector is as under:-

"Degree in Medicine with at least one month's training in Food Inspection and sampling work approved for the purpose by the Government of India or a State Government or Degree in Science with Chemistry as one of the subject or degree in Agriculture or public Health or Pharmacy or in Veterinary Sciences or a graduate in Food Technology or Dairy Technology from a University or institution established in India by Law or has equivalent qualification recognized and notified by the Central Government for the purpose with three months satisfactory training in Food Inspection and Sampling Work under a food (Health Authority) or in an institution approved for the purpose by the Central Government."

Whereas, the matter regarding Regularization/Confirmation of these officials against the post of Focd Inspectors was placed before the Departmental Promotion Committee(DPC) held on 08.02.2011 and the Departmental Promotion Committee, after taking into consideration the Jammu and Kashmir Urban Local Body Institutions (management) Service Recruitment Rules, 2008, did not approve these cases for Regularization/Confirmation for the reasons as mentioned below:-

S.No.	Name of the Officials	Remarks
	Arshid Zahid, Sanitary Inspector.	Sh. Arshad Zahid was initially appointed as Sanitary Inspector vide Government Order No. 333-HUD/LSG of 1984 Dated: 08.10.1984. Even though, he was deputed for three months Training Course in Food Inspection and Sampling Works, he was not eligible to be appointed as Sanitary Inspector as he did not have the basic qualification of One year's Sanitary Inspectors Diploma Course from any recognized Institution. Therefore, he cannot be considered for the post of Food Inspector.
2		Mrs. Kounsar Ali was appointed as Junior Assistant in the pay scale of 950-1500 (pre-revised) vide Order No. DULB/Estt/242 of 1995 dated: 05.09.1995 issued by the Director, Urban Local Bodies, Kashmir. Further, she was promoted as Senior Assistant in the pay scale of 4000-6000 (pre-revised) vide Order No. DULB/Estt/1801/255 dated: 12.06.2003. As per the Recruitment Rules, for promotion to the post of Food Inspector one must be a Sanitary.

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		Inspector with one year's Sanitary Inspectors Dicioma Course from any recognized Institute. Even though she was deputed for three months Training Course in Food Inspection and Sampling Work, she does not belong to the category of Sanitary Inspector which is the feeding cadre for the post of Food Inspector. Furtner to be a Sanitary Inspector, one must have One Year's Sanitary Inspectors Diploma Course from any recognized Institution. Therefore, she cannot be considered for the post of Food Inspector.
3		Sh. Imfiaz Ahmed was initially appointed as Dharat Mahaldar in the pre-revised pay scale of 950-1500, vide order No.DULB/Estt/1381/479 of 1996 dated: 23.11.1996, under SRO 43 of 1994, issued by the Director, Urban Local Bodies, Kashmir. Even though, he was deputed for three months training in Food Inspection and Sampling work, he does not belong to the category of Sanitary Inspector which is the feeding cadre for the post of Food Inspector. Further to be a Sanitary Inspector, one must have one year's Sanitary Inspectors Diploma Course from any recognized Institution. Therefore, he cannot be considered for the post of Food Inspector.
4	Mohd. Ayoub Dar, Entry Fee Collector	Sh. Mohd. Ayoub was initially appointed as Entry Fee Collector(Class IV post) in the pay scale of 2610-3540 (pre-revised) Vide Order No. DULB/Estb/PA/333 of 1999 dated: 14.07.1999 issued by Director, Urban Local Bodies, Kashmir. Even though he was deputed for three months training in Food Inspection and Sampling work, he does not belong to the category of Sanitary Inspector which is the feeding cadre for the post of Food Inspector. Further to be a Sanitary Inspector, one must have One Year's Sanitary Inspectors Diploma Course from any recognized Institution. Therefore, he cannot be considered for the post of Food Inspector.

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Whereas these official approached the Department and the Directorate of Urban Local Bodies, Kashmir, from time to time with the request that their case may be considered for Regularization/Confirmation as Food Inspectors on the analogy adopted in case of one Mr. Naeem Rizvi. Director, Urban Local Bodies, Kashmir vide his letter dated: 03.03.2015, sought instructions from Administrative Department for issuance of final seniority list of Food Inspectors by including the names of these four officials;

Whereas, the case was examined in the Housing & Urban Development Department, and after examination of the same, it was referred to Department of Law, Justice and parliamentary Affairs for their opinion;

Whereas, the Department of Law, Justice and Parliamentary Affairs vide their U.O No. LD(Ser)2015/59-HUD dated: 11.08.2015 opined as under:-

"Department is advised to withdraw the order of placement of incumbents as in-charge Food Inspectors as they do not possess eligibility for holding said posts so as to avoid any adverse order from the Hon'ble Court in case they choose to file writ petition and claim the analogy of Mr. Naeem Rizvi."

Whereas, these incumbents have been placed as I/C Food Inspectors, prior to the issuance of the J&K Urban Local Body Institutions (Management) Service Recruitment Rules, 2008 notified vide SRO-417 dated: 18.11.2008, accordingly, the case was re-examined in the Department and was again referred to the Department of Law, Justice and Parliamentary Affairs for seeking their opinion as to whether these promotions come within the purview of the SRO-417 dated: 18.12.2008;

Whereas, the department of Law, Justice & Parliamentary Affairs has conveyed their opinion vide U.O No. LD(Ser)2015/59-U&UD dated: 26.10.2015 as under:-

"An analogy cannot be claimed on a wrongful action as one wrong cannot justify another. Before claiming an analogy, a person has to establish that he is entitled what he is claiming for. As per the recruitment rules of the department, the incumbents are not entitled to promotion to the post of Food Inspector as the posts they hold substantively are not the feeding source for the promotion of Food Inspector. Merely holding of post on temporary basis does not entitle a person to claim permanent absorption on that post or the promotion avenue attached to that post. The promotion of Mr. Naeem Rizvi as Food Inspector was in difference of the court order. That cannot be made analogy to confer similar benefits to the



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present applicants. Besides, Mr. Naeem Rizvi succeeded in getting a favourable order on the basis of an order issued by department itself on 26.08.2010 under which the petitioner was confirmed on the post of Food Inspector and also the fact that Departmental Promotion Committee had cleared the claim of the petitioner for his placement as in-charge Executive Officer. In other words, the petitioner in that case was benefitted by the departmental lapses. It would be advisable for the department to withdraw the order of placement of incumbents as in-charge Food Inspectors as they do not possess eligibility for holding said posts so as to avoid any adverse order from the Hon'ble High Court in case they choose to file writ petition and claim the analogy of Mr. Naeem Rizvi."

Now, therefore, in view of the opinion given by the Law Department on the subject and as per the existing Rules in vogue, the Govt. Order No. 273-HUD of 2006 dated: 16.10.2006 is hereby withdrawn with immediate effect.

By order of Government of Jammu and Kashmir.

Sd/(Bipul Pathak) IAS

Commissioner/Secretary to Government Housing & Urban Dev. Department

Dated:->>5-02-2016

No:- HUD/LSG/ULBK/87/2015

Copy to the:-

01. Commissioner/Secretary, Department of Law, Justice & P.A.

02. Director, Urban Local Bodies, Kashmir.

03. Senior Law officer, H&UDD.

04. Pvt. Secretary to the Commissioner/Secretary, H&UDD.

05. I/C website, H&UDD.

06. Government Order/Stock file.

Under Secretary to Government Housing & Urban Dev. Department