

GOVERNMENT OF JAMMU AND KASHMIR
DIRECTORATE OF HORTICULTURE, KASHMIR
Rajbagh, Srinagar, opposite Presentation Convent School -190008
TELEFAX: 01942311287/2311484 Email: Kashmirhorticulture@gmail.com

Subject: O.A. No. 1811/2021 titled Gulzar Ahmad Wani Vs. U.T. of J&K and Ors - consideration order thereof.

Horticulture Order No.: 15/Lit of 2022
D a t e d: 25/06/2022

WHEREAS, Mr. Gulzar Ahmad Wani (Petitioner), was initially engaged on temporary basis in the Directorate of Horticulture, Kashmir to operate computer, on a consolidated salary of Rs. 1200/- per month, vide Horticulture Department, Kashmir Order No. 46/E of 1992, dated 07/09/1992;

AND WHEREAS, subsequently vide Order No. 18/E of 1992 dated 23/11/1992 of the Directorate of Horticulture, he was temporarily appointed against the migrant vacancy of Senior Assistant (Grade 1200-2040), which had fallen vacant in the office of the then Deputy Director Horticulture (Dry Fruits), Srinagar due to migration of one Smt. Raj Dulari Koul (Senior Assistant) but in the lower grade of Rs. 950-1500. The appointment was made for a period of 89 days (retrospectively w.e.f. the date of joining in Direction Office viz. 07/09/1992) or till the resumption of duty by the migrant employee, whichever earlier;

AND WHEREAS, from time to time, orders for accord of sanction for temporary appointment of the applicant for 89 days were issued with usual breaks;

AND WHEREAS, vide Horticulture Order No. 217/E of 1998 dated 25/06/1998, sanction for temporary substitute engagement of Mr. Gulzar Ahmad Wani was accorded against Migrant vacancy of Senior Assistant but in the lower grade/rank of 3090-4590 pre-revised (i.e. on the post of Junior Assistant);

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AND WHEREAS, the matter was thereafter taken up with the Administrative Department and vide Government order No. 10-Agri of 2013 dated 08/01/2013, the petitioner, among others, was regularized as Migrant substitute against the post of Junior Assistant, retrospectively w.e.f. 16/05/2006 alongwith relaxation of upper age bar;

AND WHEREAS, vide this office letter No. DHK/Adm/NG/1120 dated 24/04/2015, the Administrative Department was requested to convey necessary approval for fixation of seniority of Mr. Gulzar Ahmad Wani in the relevant cadre in the category of Junior Assistants. In response, the Administrative Department vide communication No. Horti/56/2015 dated 27/07/2015 conveyed that the seniority of the petitioner may be fixed against the post he has been regularized in the cadre the post has been established as per Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956. Accordingly, vide this Office Order issued under endorsement No. DHK/Adm/NG/2015/8905-08 dated 03/09/2015, the seniority of Mr. Gulzar Ahmad Wani was fixed in the Divisional Cadre in the category of Junior Assistants;

AND WHEREAS, following the fixation of seniority in the Divisional Cadre, Mr. Gulzar Ahmad Wani represented in this Directorate, seeking fixation of his seniority in District Cadre, Pulwama instead of Divisional Cadre. He also filed a Writ Petition in this regard before the Hon'ble High Court, which was later on withdrawn by him. Besides, the then Junior Assistants, working/holding lien in the Divisional Cadre objected to the placement/fixation of seniority of the applicant in the Divisional Cadre;

AND WHEREAS, in order to examine the issue and to ascertain the genuineness of representations made by the applicant as well as other Junior Assistants holding lien in the Divisional Cadre, this

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Directorate constituted a Committee of four Officers, vide Order No. DHK/Adm/NG/18484-87 of the Hon'ble High Court, dated 27/03/2017;

AND WHEREAS, on the basis of report of the Committee, this Directorate, vide Order No. 13/E of 2018, dated 09/05/2018 withdrew the Order issued by this Directorate (under endorsement No. DHK/Adm/NG/2015/8905-08 dated 03/09/2015), whereunder the seniority of Mr. Gulzar Ahmad Wani was fixed in the Divisional Cadre, and directed that his seniority shall be fixed in District Cadre Pulwama from the date of his regularization and adjustment in the said District;

AND WHEREAS, on fixation of seniority of the petitioner in District Cadre, Pulwama, one Ms. Shahnaza Akhtar, Jr. Assistant of District Cadre Pulwama, preferred a Service Writ Petition No. 1387/2018 before the Hon'ble High Court, wherein she challenged the fixation of seniority of the applicant in District Cadre, Pulwama from the date of his regularization and adjustment in the said District, on the assertions that her seniority is getting affected;

AND WHEREAS, on 27/06/2018, the Hon'ble High Court of J&K, passed interim direction in the said case, which is reproduced as under;

“Taking an overall view of the matter, it is directed that subject to objections and till next date of listing before the bench, the impugned order No. 13/E of 2018 dated 09/05/2015 issued by the respondent No. 2 where under order dated 03/09/2015 has been withdrawn and the seniority of respondent No. 5 has been directed to be fixed in the category of junior Assistants in District Cadre Pulwama from the date of his regularization and adjustment in the District shall stay...”

AND WHEREAS, the said case was later on transferred from the Hon'ble High of J&K to the Central Administrative Tribunal (CAT) vide Order dated 26/08/2020, where it is pending adjudication;

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AND WHEREAS, meanwhile this office vide Order, issued under endorsement No. DHK/Adm/NG/205/12330-32 dated 16/02/2021, constituted a Committee to examine the issues regarding creation of promotion avenues for the Junior Assistants, Orderlies and equivalent, as many Junior Assistants had represented in the Directorate for the said purpose. The said committee submitted its report on 27/04/2021 with the recommendations that seniority of all Ministerial staff, which will include Junior Assistants, Orderlies and equivalent, be centralized and maintained at Divisional Level;

AND WHEREAS, this Office, vide circular No. DHK/Adm/NG/205/1021-41 dated 01/05/2021, directed the subordinate offices for furnishing of service particulars of all Ministerial Staff (Junior Assistant/Orderlies and equivalent) for consolidation purposes at Directorate Level. Consequent upon receiving of service bio-data from the subordinate offices, among other feeding category of ministerial staff, tentative seniority list of Junior Assistants/Cashier was framed and circulated among the concerned vide Office Order No. 369/E of 2021 dated 01/06/2021 for filing of representation/objections, if any, within stipulated time period of 21 days.

AND WHEREAS, after expiry of stipulated time line, final common consolidated Divisional level seniority list of Junior Assistants/Cashier/Telephone Operator etc. was issued by this Department vide Horticulture Order No. 408/E of 2021 dated 18/08/2021, whereunder Mr. Gulzar Ahmad Wani was listed at Serial No. 6 in the seniority list of Junior Assistants;

AND WHEREAS, on 31/08/2021, the seniority list of Senior Assistants was also issued by this Directorate vide Horticulture order No. 410/E of 2021 dated 31/08/2021, whereunder Private Respondents namely; Ms. Kounser Rasool Zargar, Mr. Mohammad Amin Wani, Mr. Manzoor Ahmad Malik, Mr. Tsetan Dolma, Ms. Sakeena Akhtar, Mr.



Farooq Ahmad Hajam and Mr. Abdul Rouf Panoo have been listed at Serial No. 9 to 15 respectively;

AND WHEREAS, pursuant to the issuance of final seniority list of Junior Assistants at Divisional Level vide Order No. 408/E of 2021, Mr. Gulzar Ahmad Wani, among others, was temporarily placed as Incharge Senior Assistant in his own pay and grade and posted in the Office of Divisional Manager Plant Protection, Lalmandi, Srinagar, vide Horticulture Order No. 466/E of 2021 dated 02/12/2021;

AND WHEREAS, many Orderlies of the Department filed objections against the fixation of Common Seniority of Junior Assistants at Divisional level, as their seniority was getting affected when clubbed at Divisional level. The representations of these officials were examined with reference to Section 12 of the J&K Civil Services Decentralization & Recruitment Act, 2010 which provides as under:-

“Seniority:- Every Department shall maintain a separate seniority list for each District, Divisional and the State cadre for all category of posts included in the respective cadres in accordance with the rules.”

AND WHEREAS, in light of the above position, it was found that seniority of Orderlies and Junior Assistants, if combined at Divisional level, will be against the Service Rules. Accordingly, this Office, vide circular issued under endorsement No. DHK/Adm/NG/13/652-71 dated 18/04/2022, directed all the Chief Horticulture Officers to notify tentative seniority lists of Orderlies and Junior Assistants borne under District Cadre as on 01/01/2022. It was also decided that the Seniority of employees borne on Divisional level posts shall be maintained by the Directorate;

AND WHEREAS, consequent upon the fixation of seniority of Junior Assistants and Orderlies in the District Cadre, the Directorate, accordingly, in terms of Order issued under endorsement No. DHK/Adm/NG/40/786-99 dated 20/04/2022, withdrew the placement

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order of Mr. Gulzar Ahmad Wani and others issued vide Horticulture Order No. 466/E of 2021 dated 02/12/2021, which was based on their seniority earlier fixed at the Divisional level;

AND WHEREAS, in the meantime this Office received an O.A. No. 62/1811/2021 from the Directorate of Litigations, Kashmir, preferred by Mr. Gulzar Ahmad Wani, before the Hon'ble Central Administrative Tribunal, Srinagar, with the plea, among others, that due to failure on the part of Department to fix his seniority either in the District cadre or Divisional Cadre, some employees who are junior to him in the Department, have been elevated to the higher Posts. He, therefore, pleaded before the Hon'ble Central Administrative Tribunal, among others, that the seniority list issued by the Directorate in respect of Senior Assistants, vide Order No. 410/E of 2021 dated 31/08/2021, be quashed to the extent of some Senior Assistants (Private Respondents).

AND WHEREAS, the O.A. came up for hearing on 06/04/2022 and the Hon'ble Central Administrative Tribunal was pleased to dispose of the petition with the following directions to the respondents:

“..O.A is disposed of by directing the respondents to treat the contents of the present O.A as representation of the applicant and dispose of the same, by passing a reasoned and speaking order, within a span of 2 weeks from the date of receipt of a certified copy of this order and decision so taken shall be communicated to the applicant forthwith. Till such time the speaking order is passed, the impugned seniority list dated 31/08/2021 shall not be acted upon.”

AND WHEREAS, the contents of the O.A/representation filed by Mr. Gulzar Ahmad Wani reveal that the pleadings made by the applicant are that due to failure on the part of respondents to fix his seniority some employees who are junior to him, have been promoted as Senior Assistants. Therefore he seeks quashment of seniority list dated 31/08/2021 to the extent of private respondents (Senior Assistants). He also pleads for fixation of his seniority and so also consideration of his

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case for giving retrospective effect to his promotion to the post of Senior Assistant;

AND WHEREAS, as regards quashment of Seniority list of Senior Assistants dated: 31/08/2021 issued by this Directorate to the extent of some Senior Assistants, who the petitioner claims have been elevated to higher posts despite being junior to him, perusal of records reveal that the Private respondents have been confirmed as Senior Assistants between the period from 20/10/2015 to 01/08/2017. If at all these officials were Junior to the petitioner and have overtaken him in promotion to higher position of Senior Assistant, it was only at that point of time that the applicant should have represented in this regard, however, he did not raise any objection on their promotion at that point of time and has now stalked a claim after around 5 to 7 years of their promotion;


AND WHEREAS, regarding other issue about the fixation of seniority of applicant, the record reveals that pursuant to the communication No. Horti/56/2015 dated 27/07/2015 received from the Administrative Department, this Office fixed the seniority of the applicant in Divisional Cadre. However, aggrieved by the same, the applicant through an application dated 19/09/2015 submitted in this Directorate, while making reference of the Jammu and Kashmir, Civil Services (Classification, Control & Appeal), Rules, 1956, stated that his seniority in Divisional Cadre does not seem appropriate and does not coincide with the said Rules. The applicant in his representation requested for fixation of his seniority in the District Cadre. The case was accordingly processed in this Directorate and it was proposed that the seniority of Shri Gulzar Ahmad Wani be fixed in the category of Junior Assistants in District Cadre instead of Divisional Cadre in order to redress his genuine grievances. A committee was constituted to examine the case of the applicant by this Directorate for fixation of his seniority. The Committee after examining the matter, opined and recommended

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that the seniority of Mr. Gulzar Ahmad Wani, Junior Assistant, instead of Divisional Cadre, be fixed in the category of Junior Assistants in District Cadre, Pulwama where he was adjusted consequent upon his regularization in the Department. On the basis of committee report, the seniority of the applicant was directed to be fixed in District Cadre, Pulwama in terms of Order No. 13/E of 2018, dated 09/05/2018 issued under endorsement No. DHK/Adm/NG/205/2017/1159-61 from the date of his regularization and adjustment in the said District. However, one Mst. Shahnaza Akhtar, Junior Assistant, who was holding lien in District Cadre, Pulwama, challenged the Order issued by this office regarding change of seniority of the applicant from Divisional Cadre to District Cadre, Pulwama, in SWP No. 1387/2018. The Hon'ble High Court in an interim direction passed in the said case put on stay the said Order issued by this Directorate. Thus, there is an embargo put in by the Hon'ble Court in respect of fixation of seniority of the applicant in District Cadre, Pulwama. Further, through its Order dated 26/08/2020, the Hon'ble High Court transferred this Case to the Hon'ble Central Administrative Tribunal, where it is pending adjudication;

AND WHEREAS, another plea of the applicant regarding grant of retrospective effect to the promotion of applicant as Senior Assistant has been examined in light of the rules governing the field. In this regard, Government Order No. 743 GAD of 2007 dated 28/06/2007 provides as under:-

"Promotion of a Government employee shall take effect from the date, he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of vacancy. His clearance/regularization shall take effect from the date of the placement against the higher post or availability of vacancy or acquiring of his eligibility, whichever is later. In all other cases the promotion of Government employee to the next higher post shall take effect from the date of issuance of the order."



AND WHEREAS, in light of the above Government Order, the claim of Mr. Gulzar Ahmad Wani does not hold any merit, since he does not fulfill the conditions as provided in the Government Order, as he has not been formally put in-charge of the post of the Senior Assistant. Although, vide Horticulture Order No. 466/E of 2021 dated 02/12/2021, Mr. Gulzar Ahmad Wani, among others, was temporarily placed as Incharge Senior Assistant in his Own Pay and Grade, pursuant to issuance of common seniority list of Junior Assistants at Divisional Level however, the said Order was subsequently withdrawn (vide this office endorsement No. DHK/Adm/NG/786-99 dated: 20/04/2022), since the seniority of Junior Assistants/Orderlies was directed to be restored back and to be maintained in their respective Districts. Also Seniority of Gulzar Ahmad Wani in District Cadre, Pulwama was earlier fixed on his own representation, which was later on put on stay by the Hon'ble High Court.

Now, therefore, the case of Mr. Gulzar Ahmad Wani having been considered in light of the directions of the Hon'ble Central Administrative Tribunal, Srinagar passed on 06/04/2022, in O.A. No. O.A/62/1811/2021, has been found that his claim regarding quashment of seniority list dated 31/08/2021 of Senior Assistants to the extent of Private respondents, seems to be devoid of merit being time barred as these officials have been promoted as Senior Assistants between the period from 20/10/2015 to 01/08/2017 and the applicant has chosen to remain silent during all these years. As regards the fixation of seniority of the applicant in District Cadre, Pulwama, there is an embargo put in by the Hon'ble High Court by virtue of its order dated 27/06/2018 passed in SWP No. 1387/2018 titled "Shahnaza Akhtar Vs. State and Ors." whereunder the fixation of seniority of the applicant in District Cadre, Pulwama was challenged and in view of this impediment, his seniority in District Cadre Pulwama cannot be finalized unless the stay is vacated. So far as another claim of petitioner regarding giving

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retrospective effect to his promotion as Senior Assistant is concerned, the same has been considered in light of the relevant rules occupying the field, as discussed in the foregoing paras of this Order, and has been found to be devoid of merits and is accordingly rejected.


(G.R. Mir)JKAS
DIRECTOR


No: DHK/Lit/2022/ 3707-11

Dated: 25 /06/2022

Copy to the:

1. Financial Commissioner (Additional Chief Secretary), Agriculture Production Department, Civil Secretariat Jammu/Srinagar for favour of information.
2. Mr. Hakim Amaan Ali, Dy. Advocate General, Hon'ble High Court of J&K for information and necessary action.
3. Chief Horticulture Officer, Pulwama for information.
4. Mr. Gulzar Ahmad Wani, Junior Assistant (Applicant/petitioner) for information.