



Government of Jammu and Kashmir
OFFICE OF THE LABOUR COMMISSIONER
Shram Bhawan-Railway Road, Jammu-180004 (Winter: Nov-April)
Near General Bus Stand, Batamaloo Srinagar-190009 (Summer: May-Oct)
(Establishment Section)

Subject: - Appointment of Ms. Hafsa Qayoom and Ms. Roopali Gandotra, as Labour Officers—Notional effect thereof.

Ref. No.1. No. PS/Adv/F/H/2020/93 dated 13.082020.
2. Joint representation of Ms. Hafsa Qayoom and Ms. Roopali Gandotra.

Office Order No: 115-LC of 2020.
D a t e d : - 21-08- 2020.

WHEREAS, the Service Selection Board furnished the selection of Labour Officers, vide its communication bearing No.SSB/Sel/Secy/012/14-17/012 dated:-02-01-2012, relevant extract where of reads as under:-

"On the basis of requisition received from the Labour Commissioner, J&K Srinagar vide No.LC/Estt/GF-150 dated:-13-05-2010 the Service Selection Board Advertised 09(OM-5/RBA-02/SC-01/ST-01) vacancy/vacancies of Labour Officer (Labour & Employment Department) State Cadre advertised vide advertisement notice No.08 of 2010 dated:-24-12-2010 against item No.21. The select list so finalized by the respective Selection Committee and approved by the Board in terms of Jammu & Kashmir Civil Services Decentralization and Recruitment Act-2010 and Rules thereof is enclosed herewith as Annexure-A.

The appointment orders in favour of the selectees may kindly be issued only after checking/verifying/authenticating the genuineness of their all original documents/qualifications, date of birth, marks certificates, state subject certificates, technical/professional qualification certificates from the Institutes/Universities/ Departments and also reorganization of University/ Institution by J&K Govt. and character and antecedents as required under rules. Besides, certificates of the candidates recommended under RBA/SC/ST categories may also be got verified from the competent authorities/

agencies in view of the facts that the Board don't have any mechanism to ascertain the genuineness of the same. However, variation, if any noticed at the time of issuance of appointment orders the same may be brought to the notice of the Board for rectification.

A copy of order so issued may kindly be endorsed to this office for record and reference. The select list recommended is subject to outcome of any writ petition(s) pending in any competent Court of Law".

AND WHEREAS, vide aforesaid communication, the recommendations were made in favour of the following candidates, as per the details given below: -

S. No.	Name of the selectee	Sr. no. in the selection list
Open Merit.		
1	Ms. Rabia Iqbal Mir	2
2	Ms. Brijnesh	3
3	Pradyot Gupta	4
RBA		
1	Ms. Nida Yousuf	1
2	Mohammad Arif	2
SC		
1	Maneesha	1
ST		
1	Abazar	1

AND WHEREAS, recommendations in respect of Sh. Varun Mangotra (Sr. No.1) falling under (OM) category was kept withheld for want of clarification regarding genuineness of his certificates/ documents and the recommendations of Ms. Hafsa Qayoom (Sr. No. 5) falling under (OM) category was also kept withheld on the directions of the Hon'ble High Court passed in SWP No. 2584/2011 titled "Feroz Hamid Vs State".

AND WHEREAS, following seven (07) candidates were appointed as Labour Officers vide Order No.162-LC of 2012 dated:-16-02-2012: -

1. Rabia Iqbal Mir.
2. Brijnesh Kumari.
3. Pradyot Gupta.
4. Abazar.
5. Maneesha
6. Nida Yousuf.
7. Mohammad Arif.

AND WHEREAS, the Service Selection Board (SSB) vide its communication No.SSB/Sel/Secy/1257-63 dated:-21-05-2012 informed as under: -

"..... the selection of candidate selected at Sr. No. 01 under OM category namely Varun Mangotra S/o Ashok Kumar Mangotra R/o 137-Parjithi Jammu has been cancelled vide SSB/Sel/Secy/12/1233-38 dated 18.05.2012 and as such the resultant alteration in the selection list shall occur as follows: -

The candidate at Sr. No. 2,3,4 and 5 shall now figure at Sr. No. 1,2,3 and 4 of the selection list respectively. As such Miss. Hafsa Qayoom D/o Abdul Qayoom Bazaz R/o Mirza Kamil Sahab Hawal Shahjar Lane Srinagar, initially falling at Sr. No. 5 and whose recommendations was kept with held in deference to the court order dated 09.12.2011 passed in SWP No. 2584/11 titled Feroz Hamid Vs. State and others, is now released and recommended at Sr. No. 4 of the selection list.

Miss. Roopali Gandotra D/o V. D Gandotra R/o 22 sector 1-A, East Extension, Trikuta Nagar Jammu shall now make the grade in the selection zone at Sr. No.05. However, her recommendation is kept withheld in the deference to the court order dated:-09-01-2011 passed in the SWP No.2584/11 mentioned supra.

Miss. Pallavi D/o Raj Paul Gupta R/o C/o Gupta General Store near Old PO Rehmabla Udhampur shall now figure at Sr. No.01 of the wait list of the candidates under OM category.

The detailed particulars of Ms. Hafsa Qayoom and Ms. Pallavi are given in Annexure-A to this letter, other terms and condition shall remain same as communicated in the letter dated:-02-01-2012".

AND WHEREAS, Ms. Hafsa Qayoom was appointed as Labour Officer vide Order No. 30-LC of 2012 dated 21.06.2012;

AND WHEREAS, subsequently, the Service Selection Board (SSB) released the recommendation in favour of Miss Roopali Gandotra falling at S.No 05 in the OM category vide its communication No.SSB/Sel/ Secy/013/ 2632-35 dated: 04.07. 2013, reading as under: -

"..... the recommendation of candidate namely Roopali Gandotra D/o V.D. Gandotra R/o 22-Sector I-A East Extension Trikuta Nagar Jammu who is making grade in the selection zone at Sr. No. 5 under OM category was kept with held in pursuance to the court order dated 09.01.2011 passed in SWP No.2584/11 titled as Feroze Ahmad Vs State and Ors. In the meanwhile, the writ petition aforementioned stands dismissed by the Hon'ble High Court vide order dated 03.05.2013 for want of prosecution alongwith connected CMP. The interim direction dated 09.01.2011 as such stands vacated.

Therefore, in view of the aforementioned circumstances, the recommendation of the said candidate is hereby released and recommended for appointment after fulfilling all the codal formalities as required under Rules and only after verifying the genuineness of all the certificates. The particulars of the candidate/selectee are given in **Annexure "A"** to this letter.

However, the other terms and conditions conveyed vide above quoted letter shall remain same".

AND WHEREAS, Ms. Roopali Gandotra was appointed as Labour Officer vide Order No. 93-LC of 2013 dated 31.07.2013;

AND WHEREAS, the final seniority list of Labour Officers as it stood on 01-01-2015 was issued vide Order No.234-LC of 2015 dated:-30-11-2015 with inter-se seniority position of both direct recruits and promotees wherein Ms. Hafsa Qayoom and Ms. Roopali Gandotra were shown figuring at Sr. No. 14 and Sr. No. 19 respectively;

AND WHEREAS, the placement of Ms. Hafsa Qayoom and Ms. Roopali Gandotra at Sr. No. 14 and Sr. No. 19 in the above mentioned seniority list was reviewed and they were assigned seniority position at Sr. No. 10 and Sr. No. 11 respectively vide Order No. 169-LC of 2017 dated 11.09.2017;

AND WHEREAS, Hon'ble High Court of J&K in SWP 2174/2017 titled Ms. Nida Yousuf Vs State of JK & Ors, which was filed by Ms. Nida Yousuf passed the following interim direction: -

".....In the meantime, subject to objections and till the next date of hearing before the Bench, the Respondents are

restrained from acting in furtherance to the impugned order dated 11th of September, 2017....."

AND WHEREAS, the revised seniority list of Labour Officers, as it stood on 07-12-2017 was issued vide Order No.251-LC of 2017 dated 07.12.2017 in which Ms. Hafsa Qayoom and Ms. Roopali Gandotra were shown at Sr. No. 10 and Sr. No. 11 respectively below Mr. Pradyot Gupta Sr. No. 9 and above Ms. Maneesha Sr. No.12;

AND WHEREAS, Ms. Hafsa Qayoom and Ms. Roopali Gandotra represented, in furtherance whereof inter-se placement of all the nine (09) Labour Officers including Ms. Hafsa Qayoom and Ms. Roopali Gandotra being part of the same selection process was determined with reference to the merit obtained by them as per the following details: -

S.No.	Name of the appointee	Merit obtained in the selection list of SSB
Open Merit		
1.	Ms. Rabia Iqbal Mir	63.19
2.	Ms. Brijnesh	61.49
3.	Pradyot Gupta	61.43
4.	Hafsa Qayoom	60.85
5.	Roopali Gandotra	60.64
RBA		
6.	Ms. Nida Yousuf	57.41
7.	Mohammad Arif	57.37
SC		
8.	Mancesha	54.90
ST		
9.	Abazar	53.83

AND WHEREAS, Rule 24 of J&K Civil Services Classification, Control and Appeal Rules, 1956, is relevant for determining the seniority of Government employees, which reads as under: -

24 "Seniority.....Provided that the inter se seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being, posted to different stations, be determined

(a) In the case of those promoted by their relative seniority in the lower service, class, category or grade;

(b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections.....”

AND WHEREAS, the matter has also been examined in light of the orders passed by the Hon'ble High Court in case titled "Siraj-uddin Shah and others Vs Aijaz Rasool Wani and others" in which the issue of seniority on the basis of merit inspite of different dates of appointment was the main issue for adjudication. The operative part of the judgment delivered in the case, is reproduced herein below: -

“.....We do not find any force in the contention of the learned counsel for the appellants that Rule 24(b) was not applicable in the present case as the dates of the appointment of appellants and private respondents were different and that the seniority in such a situation would be governed by the main Rule 24 itself. Learned Single Judge has considered this contention also and found that the parties were direct recruits and their selection has been held by a common selection process. Their inter-se seniority, thus, has to be maintained in terms of the merit obtained by them in the selection process. We are in agreement with the learned Single Judge on this issue.

Word 'simultaneously' used in proviso to Rule 24 is to be read in the context and background of the Rule. **Where appointment is the result of same selection process, persons concerned would be treated as appointed 'simultaneously' even if their orders of appointment bear different dates.** Different dates of appointment & joining would not in such cases effect their inter se seniority unless it is shown that they are themselves guilty of laches & delay.

Merely because appointment orders of the private respondents got delayed would not render their merit vis-à-vis the appellants irrelevant. Since the appointment of the both the

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appellants and private respondents is the outcome of same selection process, merit obtained by them would determine their seniority in terms of Rule 24(b).

Both the appellants & private respondents got selected in the same selection process. By getting appointment order ahead of private respondents the appellants have already enjoyed more perks than private respondents by way of pay etc. This became possible because they got appointment orders ahead of the respondents. The injustice to the private respondents cannot be compounded by relegating them in matter of seniority also by placing the appellants en-bloc above the respondents especially when both of the (appellants to the private respondents) were selected against same requisition and in the same competitive test.

In these circumstances, we find no force in the present LPA and therefore no ground to admit it.

Dismissed".

AND WHEREAS, the Hon^{ble} Supreme Court in case titled Balwant Singh Narwal & Ors Vs State of Haryana & Ors has also disposed of a matter of similar nature in the following manner: -

"1. This appeal by special leave is preferred by the writ petitioners in CWP No. 18727 of 2003 being aggrieved by the dismissal of their writ petition by the Punjab & Haryana High Court by judgment dated 5.10.2004. The appellants, appointed as Principals between 1995 and 2000 (either by direct recruitment or promotion) are aggrieved by the seniority given to respondents 4 to 16 appointed as Principals on 26.5.2000, with retrospective effect from 2.6.1994.

2. The Haryana Public Service Commission - the third respondent ('Commission' for short) issued an advertisement in January, 1992 inviting applications for 18 posts of temporary Principals in Higher Secondary Schools. The advertisement made it clear that the number of posts advertised was subject to variations to any extent. On 1.6.1993, the State Education Department made a fresh requisition to the Commission in regard to additional vacancies, thereby increasing the posts to be filled to 37. Respondents 4 to 16 were applicants against the said advertisement and underwent the process of selection. The

Commission declared the merit list of 30 selected candidates on 30.9.1993 (published on 1.10.1993), which included Respondents 4 to 16. However, before the State Government could make appointment in terms of the said list, a non-selected candidate filed WP No.12700 of 1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The said writ petition was allowed by a learned Single Judge of the Punjab & Haryana High Court on 4.4.1994 and the recommendations in excess of the 18 vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised. A Division Bench dismissed the appeal against the judgment of the learned Single Judge on 18.1.1999. In the meanwhile, in view of the order of the learned Single Judge, the State Government appointed only 16 candidates from the list of 30 by order dated 2.6.1994. The State Government appointed only 16 as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing other two candidates.

.....

9. This Court while allowing the appeals by respondents 4 to 16 by order dated 6.12.1999 made it clear that all the 30 persons recommended by the Commission as per merit list dated 1.10.1993, including respondents 4 to 16 are entitled to be appointed. The State Government submitted that but for the order dated 4.4.1994 of the High Court, respondents 4 to 6 would have been appointed on 2.6.1994 itself. The order dated 4.4.1994 was ultimately set aside by this court and respondents 4 to 16 who were consequently appointed should not be denied the benefit of seniority. Therefore, the State Government was justified in giving them only notional seniority and placing them immediately below the other 16 candidates selected in the common merit list (published on 1.10.1993) and appointed on 2.6.1994. Respondents 4 to 16 have been given retrospective seniority not from the date of their selection as wrongly assumed by appellants, but from 2.06.1994, when other selected candidates in their merit list were appointed.

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10. *In view of the above, we find no reason to interfere with the order of the high Court and these appeals are accordingly dismissed."*

AND WHEREAS, the delay caused in the appointment of Ms Hafsa Qayoom and Ms. Roopali Gandotra was due to wrong selection of one candidate and in deference of court orders, otherwise they would have been appointed on 16.2.2012, along with other selected candidates and on account of their higher merit would have figured in the seniority over and above Ms. Nida Yousuf, Mohd Arif, Abazaar, and Maneesha;

AND WHEREAS, the appointment of Ms. Hafsa Qayoom, Ms. Roopali Gandotra alongwith other seven (07) selectees is the outcome of the same selection process, their seniority would be determined in terms of Rule 24(b) of J&K Civil Services Classification, Control and Appeal Rules, 1956 on the basis of merit obtained by them, deeming them to have been appointed notionally w.e.f. 16.2.2012 i.e. from the date the other selectees were appointed which shall be without payment of arrears;

Now, therefore, in view of what has been stated above and law settled on the subject, Ms. Hafsa Qayoom and Ms. Roopali Gandotra Labour Officers presently working as Incharge Assistant Labour Commissioner, Budgam and Incharge Assistant Labour Commissioner, Central shall be deemed to have been appointed as Labour Officers on notional basis w.e.f. 16.2.2012, which shall be only for purpose of determining their seniority in accordance with Rule 24 (b) of J&K Civil Services Classification, Control and Appeal Rules, 1956. The notional appointment of these two officials shall not confer any monetary benefit upon them. Their date of appointment shall accordingly be deemed to have been substituted as 16.2.2012 (on notional basis) and w.e.f. 21.06.2012 and 31.07.2013 on substantive basis in respect of Ms. Hafsa Qayoom and Ms. Roopali Gandotra respectively in the final seniority list of Labour Officers issued vide Order No. 32-LC of 2020 dated 28.02.2020.

This will, however, be without prejudice to the outcome of any writ petition/s pending in the competent court of law.



Sd/-
(Abdul Rashid War) KAS,
Labour Commissioner,
J&K Govt. Srinagar.

No.LC/Estt/LO-15/2020/585-92.

Dated: - 21-08-2020.

Copy to the: -

1. Commissioner/Secretary to Govt. Labour and Employment, Civil Secretariat, Srinagar for information.
2. Deputy Labour Commissioner, Jammu/Kashmir/Delhi for information.
3. OSD to Advisor (F) to Hon'ble Lieutenant Governor, Civil Secretariat Srinagar for information.
4. Concerned officials/officers for information.
5. Incharge Website.
6. Office Order/concerned file.


(Abdul Star) KAS,
Deputy Labour Commissioner,
Central