

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 2008/2022

**Sameena, Age 52 years,
W/o Late Sh. Amin,
R/o H. No. 205, Lane No. 05,
New Plot, Rehari,
Jammu.**

.....Applicant(s)/Petitioner(s)

Through :- Mr. M A Bhat, Advocate with
Mr. Tauseef Zargar, Advocate

v/s

.....Respondent(s)

- 1. UT of J & K through
Commissioner/Secretary,
Law, Justice & Parliamentary Affairs,
Civil Secretariat, Jammu/Srinagar.**
- 2. Registrar General,
High Court of J & K and Ladakh,
Jammu.**
- 3. Accounts Officer (Codes),
Finance Department,
Jammu.**
- 4. Principal Accountant General (A&E),
J & K, Jammu.**

Through :- Mrs. Monika Kohli, Sr. AAG
Mr. H A Siddiqui, Advocate
Ms. Monika Thakur, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
11.08.2025**

- This petition by one Sameena, W/o Late Sh. Amin who died in harness as Safaiwala of this Court on 11.11.2020 is directed against the Government Order No. 3456-LD (A) of 2019 dated 22.10.2019 to the extent it treats the regularization of the husband of the petitioner w.e.f. 24.06.2002 till 21.02.2014 on notional basis without payment of arrears.

2. The petitioner also seeks a direction to the respondents to settle the pension case of the deceased employee, treating him to be in regular service of this Court right from the year 2002.
3. The writ petition is contested by the respondents. Respondent No. 2 in its reply affidavit has taken a stand that the husband of the petitioner was granted notional benefit of regularization w.e.f. 24.06.2002 till 21.02.2014 without any monetary benefits and, therefore, while fixing salary in the year 2014, the husband of the petitioner was put under New Pension Scheme [“NPS”]. It is submitted that upon the death of the deceased employee, the case was referred to the Accountant General, J & K, Jammu for settlement of pension. The Accountant General, however, denied the pension on the ground that the cases of the employees who were otherwise due for regularization prior to 01.01.2010 but could not be so regularized for administrative reasons would be considered in the defined pension scheme i.e. NPS.
4. The Respondent No. 1 who has passed the impugned order dated 22.10.2019 has chosen not to file any reply affidavit and contest the petition by taking any specific stand. Mrs. Monika Kohli, learned Sr. AAG appearing on behalf of Respondent No. 1 only supports the impugned order dated 22.10.2019 and submits the same is passed strictly in accordance with law.
5. Before we advert to the challenge thrown to the impugned order dated 22.10.2019 to the extent aforesaid, we deem it appropriate to give brief resume of the admitted factual position.

6. The husband of the petitioner was engaged as Safaiwala on daily wage basis in the High Court of J & K in the year 1995. On completion of his continuous service of 07 years as daily wager, he became entitled to regularization of his services as Class-IV employee in the High Court in terms of SRO-64 of 1994. With a view to give the benefit of regularization to the deceased husband of the petitioner in terms of SRO-64 of 1994, the High Court of J & K through its Registrar General issued Order No. 903 dated 10.12.2014 regularizing the services of the husband of the petitioner as Safaiwala w.e.f. 24.06.2002, providing further that the arrears from the date of his regularization shall be paid to him to the extent of 50% and rest of the arrears be kept in his G.P. Fund Account till the creation of supernumerary post of Safaiwala w.e.f. 24.06.2002 to 21.02.2014. The matter was thereafter taken up with the Respondent No. 1 for creation of post of Safaiwala to give effect to the regularization of the husband of the petitioner. Vide Government Order No. 3456-LD (A) of 2019 dated 22.10.2019 (the order impugned), a post of Safaiwala came to be created w.e.f. 24.06.2002 till 21.02.2014. However, in the impugned order, it was provided that the benefit of regularization from 24.06.2002 till 21.02.2014 shall be on notional basis and will count for fixation of pay on notional basis without payment of arrears. There is, however, no dispute that w.e.f. 21.02.2014, the post of Safaiwala was available with the High Court. It is this Government Order

which is assailed by the petitioner in this petition to the extent we have mentioned hereinabove.

7. **Having heard learned counsel for the parties at length and perused the material available on record,** we are of the considered opinion that the Government Order, impugned in this petition, to the extent it provides for treating the regularization of the husband of the petitioner w.e.f. 24.06.2002 till 21.02.2014 on notional basis without payment of arrears is illegal, arbitrary and preposterous to say the least.
8. It is not in dispute that the husband of the petitioner having been appointed in the year 1995, completed 07 years service as daily wager in the year 2002. The husband of the petitioner was entitled to the benefit of regularization under SRO-64 of 1994. Having found him eligible for regularization, the High Court vide order dated 10.12.2014 regularized his services w.e.f. 24.06.2002 only with a rider that he would be entitled to only 50% of the arrears and the rest would be paid upon the creation of supernumerary post of Safaiwala w.e.f. 24.06.2002 till 21.02.2014.
9. The matter was taken up with the Government and it was expected that the Government would grant the approval for creation of post of Safaiwala w.e.f. 24.06.2002 as the same was mandated by the provisions of SRO-64 of 1994 itself.
10. Be that as it may, the Respondent No. 1 vide the order impugned dated 22.10.2019 did create a post w.e.f. 24.06.2002 till 21.02.2014 but without any reason or justification put a rider that the

regularization ordered by the High Court w.e.f. 24.06.2002 till 21.02.2014 shall only be on notional basis and without the payment of arrears, least realizing that during all these years, the husband of the petitioner had worked as Safaiwala in substantive capacity. There is also no warrant under the provisions of SRO-64 of 1994 to deny such benefit to an employee whose regularization is delayed due to non-creation of Class-IV post by the Government. The creation of post for regularization of an employee having completed 07 years daily wage service is not in the discretion of the Government but has to be mandatorily created to accommodate such employee to give effect to SRO-64 of 1994. On this analogy, thousands of posts have been created by the Government and equal number of daily wagers have been regularized against the Class-IV posts.

11. It is, thus, totally unthinkable that the Government could take such a stance that too in respect of an employee working at the lowest rank in the Department. सत्यमेव जयते

12. **For all these reasons, we allow this petition and quash the Government Order No. 3456-LD (A) of 2019 dated 22.10.2019** to the extent it treats the regularization of the husband of the petitioner w.e.f. 24.06.2002 till 21.02.2014 on notional basis without payment of arrears and direct the respondents to treat the husband of the petitioner as having been regularly appointed against the substantive post of Safaiwala w.e.f. 24.06.2002 till his death. We also hold the deceased husband entitled to all the arrears of the

salary payable for the period w.e.f. 24.06.2002 till 21.02.2014. Since we have held the deceased husband of the petitioner as having been appointed on regular basis for all practical purposes w.e.f. 24.06.2002, as such, he would be governed by the old pension scheme.

13. Let the case of the deceased husband of the petitioner be processed again by the High Court in light of this decision so that the retiral benefits which are payable to the husband of the petitioner are released to the petitioner without any waste of time.

14. Six weeks' time is granted to High Court to process the case of the petitioner for family pension and other post-retiral benefits in terms of this judgment, with further direction to the Accountant General to accord priority to the case and release due benefits to the petitioner within a period of 02 months from the receipt of complete case from the High Court.

15. ***Disposed of along with connected application(s), if any.***

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
11.08.2025
Manan

Whether the order is speaking : *Yes/No*
Whether the order is reportable : *Yes/No*