Government of Jammu and Kashmir
Civil Secretariat, Home Department
Jammu/ Srinagar

Subject:- Implementation of the Judgment dated 01-08-2008 passed by the Hon'ble High Court of J&K at Jammu in Contempt petition No 51/2012 in SWP No 3735/1997 titled Mr. Mohammad Abass Najar and Mr. Mohammad Amin Ganaie.

II) Letter No Legal/SWP/197-40561-64 dated 26-08-2013
III) Letter No Legal/SWP/197/J/97/42245-48 dated 4-09-2013 from Director General of Police.

Government Order No: Home 545 (P) of 2013

D a t e d : 09.2013.

1. Whereas, the following in-service graduate Head Constable, Selection Grade Constables and Constables of the Jammu and Kashmir Police had submitted representations in 1987 seeking appointment as Sub-Inspectors against the 50% direct quota in relaxation of the recruitment rules:-
   S/Shri
   a. Mehraj Krishan Bhat, Constable No. 49/CID
   b. Bansi Lal Bhat, Selection Grade Constable No. 72/5 JKAP
   c. Mohammad Abass Najar, Constable No. 780/CID.
   d. Mohammad Amin Ganaie, Sgct No. 36/CID.
   e. Hamidullah Dar, Constable No. 559/S
   f. Abdul Rashid Rather, Head Constable NO. 1940/S

2. Whereas, the PHQ after examining the representations, recommended that Shri Hamidullah Dar, Constable No. 559/S alone be considered for such appointment and accordingly he was appointed as Sub Inspector in J&K Police in relaxation of recruitment rules under 50% direct recruitment quota on 23-01-1987 vide Government order No. Home 202 - (P) 1987 dated 01-04-1987.

3. Whereas, Shri Abdul Rashid Rather one of the colleagues of Shri Dar aggrieved with the aforesaid Govt. order approached the Hon'ble High Court and filed SWP No 519/87 titled Ad. Rashid Rather Vs State and others seeking similar treatment as was extended to Shri Dar. The Hon'ble High Court passed a judgment dated 24-09-1998 which was challenged by the State respondents by filing of LPA No 40/99. The LPA was later on dismissed leading to the appointment of petitioner Shri Ab. Rashid Rather as Sub Inspector vide Government order No Home- 545 (P) of 1999 dated 16-12-1999.

4. Whereas, the other colleagues of the above petitioners namely Shri Maharaj Krishan Bhat, Mohd Amin Ganaie, Bansi Lal Bhat and Mohammad Abass Najar filed SWP No 3735/1997. The Hon'ble High Court vide Judgement dated 30-04-2001 has passed the following directions:-

"The position in this case is similar. Same relief granted to the writ petitioners in Writ Petition NO. 519/87 shall stand granted in favour of the
petitioners. Let this be done within a period of three months from the date, copy of the order passed by this Court is made available to the respondents by the petitioners."

5. Whereas, the state respondents challenged the said judgment of Ld. Single Judge before the Division Bench of Hon’ble High Court by filing LPA No 466 of 2001. The said LPA after having been heard by Division Bench was allowed and the judgment of Single Bench was set-aside vide order dated 11-10-2002. The petitioners filed review petition No. 42/2002 but that too was dismissed by the Hon’ble High Court order dated 11-02-2003.

6. Whereas, later, among these four petitioners S/Shri Maharaj Krishan and Shri Bansi Lal Bhat approached Hon’ble Supreme Court of India against the above Division Bench Judgment through the medium of SLP No 8481-8482 of 2003 titled Maharaj Krishan and another V/s State of J&K. The SLP came to be decided by the Apex Court vide judgment dated 01-08-2008. The operative part of the said judgement is given as under:-

"....for the foregoing reasons, the present appeals deserve to be allowed and are accordingly allowed. The judgement passed by the Division Bench in Letters Patent Appeal as well as Review Petition are set aside and the order passed by the learned Single Judge in SWP No. 3735 of 1997 is restored. The appellants are held entitled to all the reliefs which had been granted to Abdul Rashid Rather in pursuance of the judgement and order dated September 24, 1998 in SWP No. 519 of 1987. The respondents-State of Jammu & Kashmir will grant all the benefits as have been granted to Abdul Rashid Rather within a period of three months from today. On the facts and in the circumstances, the appeals are allowed with costs."

7. Whereas, in view of the Apex Court Judgment, the case was submitted to Hon’ble Chief Minister through Chief Secretary in co-ordination. The General Administration Department vide No. GDC-49/CMl2009 dated 15-07-2009 conveyed the approval of Hon’ble Chief Minister to the departmental proposal.

8. Whereas, accordingly, sanction has been accorded to the appointment of Mr. Maharaj Krishan Bhat and Mr. Bansi Lal Bhat as Sub- Inspectors in the J&K Police with effect from 01-04-1987. It has been ordered that the pay of the officers shall be fixed notionally from time to time up to 23-08-1998. They shall be allowed arrears of pay from 24-08-1998 onwards vide Government order No Home-628 (P) of 2009 dated 17-07-2009.

9. Whereas, the two petitioners namely Mr. Mohammed Abbas Najar and Mr. Mohammed Amin Ganai issued a notice through council for implementation of judgement within 4 weeks as has been accorded to Shri Abdul Rashid, Maharaj Krishan and Bansi Lal Bhat. This was followed by directions of the Hon’ble High Court in contempt SWP No 51/2012 in SWP No 3735/1997 dated 13-03-2012.

10. Whereas, the PHQ has already recommended the case of petitioners for their appointment as Sub- Inspectors in Executive Police with effect from 01-04-1987 vide their letter dated 21-11-2008.

11. Whereas, since, the cases of Mr. Mohammad Abass Najar and Mr. Mohammad Amin Ganaie are similar in nature, however, the matter was referred to the Department of Law, Justice & PA for opinion as to whether the orders of the Hon’ble Supreme/High Court are applicable in their case also as they were also the petitioners of
SWP No. 3735/97 which was decided on 30-04-2001 and which stand restored by the Hon’ble Apex Court vide its order dated 01-08-2008 are applicable in their case also.

12. Whereas, the Department of Law, Justice & PA vide their U.O.No. LD(Ser)2013/10-Home dated 10-05-2013 has returned the case with the following opinion:-

   “The petitioners are similarly situated. The Department is therefore, advised to treat them on the same analogy as has been decided by the Hon’ble Supreme Court in SLP.”

13. Whereas the case has been further examined and has been decided to implement the judgment of the Hon’ble High Court as per the advice of Law, Justice and Parliamentary Affairs Department.

14 Now, therefore, Sanction is hereby accorded to the appointment of Mr. Mohammad Abass Najar and Mr. Mohammad Amin Ganaie as Sub-Inspectors in the J&K Police w.e.f 01-04-1987. The pay of the officers shall be fixed notionally from time to time up to 23-08-1998 and shall be allowed arrears of pay from 24-08-1998 onwards.


Sd/-
(Suresh Kumar) IAS
Principal Secretary to the Government
Home Department
Dated: 24-09-2013

No: Home/PB-IV/148/2001
Copy to the:-
1) Principal Secretary to the Hon’ble Chief Minister.
2) Director General of Police, J&K, Srinagar
3) Secretary to Government, General Administration Department
4) Secretary to the Government Department of Law, Justice and Parliamentary Affairs.
5) Registrar General, Hon’ble High Court at Jammu.
6) Sh. Gagan Basotra, Senior Additional Advocate General, Hon’ble J&K High Court at Jammu.
7) PS to the Principal Secretary to Government, Home Department.
8) Concerned.
9) Government order file (w.2.s.c)
10) Stock file
Web site, Home Department.

(Mohammad Yaqoob Malik)
Under Secretary to the Government
Home Department