



Government of Jammu and Kashmir  
Agriculture Production Department  
Civil Secretariat- Jammu

\*\*\*\*

**Subject:** Implementation of Order dated 29.07.2022 passed by the Hon'ble Central Administrative Tribunal in OA No: 109/2021 titled Mohammad Ramzan Wani & Ors V/s UT of J&K and Ors.

**Government Order No: 104-JK(APD) of 2023**  
**Dated: 08.02.2023**

Whereas, the issue relates to the grant of benefit of advance increment(s) in favour of the employees who possess the higher qualification at the time of initial appointment, as well as the officers, who acquired such qualification while in service, in terms of Rule 12 of 1982 notified vide SRO No. 91 dated 22.03.1982 followed by J&K Civil Services Rules of 1987 which reads as under:

*"12. Advance increments on acquisition of higher qualification either while in service or at the time of initial appointment, as admissible under the relevant rules and orders in various departments like Education, Agriculture, Animal Husbandry, Health and Medical Education etc will continue to be allowed in the revised scales on the existing terms and conditions."*

Whereas, the Rules of 1987 were followed by the J&K Civil Services (Revised Pay) Rules, 1992 which were notified vide SRO-75 dated 30.03.1992, there was change in grant of benefit for higher qualification under the Rules of 1992, in as much as the benefit of advance increment(s) to the fresh recruits in the aforementioned Departments was temporarily withdrawn. The benefit to be granted for higher qualification was incorporated in Rule 8, which is extracted:

*"8. The existing provisions of Rule(10) and Rule (12) of the Jammu and Kashmir Civil Service (Revised Pay) Rules, 1987, relating to the benefit of higher starting salary/advance increment(s) for higher qualification, in respect of all Department, except to the extent of the posts of Police constables and Junior Engineers, as provided in Rule 9(d) and (f), shall remain inoperative temporarily for fresh recruits till*

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*such time as fresh orders are issued in this behalf by the Government."*

Whereas, the Finance Department vide OM No.: A/37(92)-633 dated 15.09.1992 has clarified that the terms, "Fresh Recruitments", "Fresh Appointments", "New Appointments", "Future Appointments" appearing in the Rules of 1992 shall mean appointments as have been made or shall be made on or before 31.03.1992.

Whereas, the Agriculture Production Department vide letter No. Agri-E-104/04-Gnl dated 30.05.2005 directed Director Agriculture Jammu to take further action on observation/clarification issued by Finance Department, which reads as under:

*"It is clarified that advance increments for acquiring higher qualification by in-service employees and fresh recruits made from 01.04.1992 is inoperative."*

Whereas, apprehending the withdrawal of the benefits, some officers submitted representations, the Finance Department rejected the representation(s) of the Agriculture Officers for withdrawal of the benefit of the advance increments given to in-service officers, who were appointed prior to the Rules of 1992 but obtained the higher qualification after that. The benefit of advance increments (excess pay and allowances) given to all such officers upto 12.09.2001 was waived off and it was ordered that the fixation of their pay shall be reviewed and regulated correctly and the excess payment made w.e.f. 12.09.2001 shall be recovered, which interalia reproduced as under:

*"9. Thereafter, consequent upon the representation of in-service Agriculture Asstts, who were in service as on 31.03.1992 and acquired Post Graduation qualification, the matter was re-examined in consultation with Law Department and it is accordingly clarified that the benefits of advance increment to in-service candidates/employees shall strictly be regulated in terms of Rule 8 of SRO 75 of 30.03.1992 read with Finance Department clarification OM No. A/37(2)-633 dated 15.09.1992 upto the date of issue of opinion to Health and Medical Education Department vide FA/Med/21/2001 dated 12.09.2001. The benefit of advance increment (excess pay and allowance) drawn/paid up to be reviewed and regulated correctly treating higher qualified in-service candidates on par with fresh recruits and excess pay and allowances w.e.f. 12.09.2001 shall be recovered and credited to relevant Government Account Head."*

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Whereas, some of the Agriculture officers filed *SWP No. 1791/2006 titled Jawahar Lal Raina & Ors V/s State & Ors* and the Hon'ble High Court, Jammu vide Order dated 31.08.2017 has passed the following directions:

*".... the Finance Department by withdrawing the benefit of advance increment(s) even to the officers, who have joined service prior to coming into force of these rules has infact rewritten Rules 8. Administrative Departments have the power to issue orders and circulars to clarify the meaning and the purport of a legislative provision but no such administrative device can be used to re-write a statutory provision and to render it ineffective. Legal position in this regard, para 10 of the Supreme Court judgment in State of M.P and ors. V. Yogendra Shrivastava, (2010) 10 SCC 539 is reproduced:*

*The contention that the executive orders issued from time to time or the appointment letters issued in accordance with such executive orders will prevail over the Rules cannot be accepted. When there is conflict between the Statutory Rules and executive orders, the Statutory Rules will prevail (See: K. Dayandal Lal V. State of Kerela- 1996(9) SCC 728, T.N Housing Board V/s N. Balasubramaniam 2004 (6) SCC 85, State of Karnataka vs. K.G.S.D. Canteen Employees Welfare Association 2006 (1) SCC 370). Executive orders cannot be made or give effect in violation of what is mandated by the Rules. If appointment letter provides for payment of NPA which is not in consonance with Rules, they cannot be corrected or set right by Tribunals/courts.*

*In result of the above analysis, it is that the Finance Department has fallen in error by depriving benefit of Rules 8 of the Rules of 1992 even to those officers who had joined service prior to coming into force of these rules but acquired the higher qualification after that. Accordingly, this writ petition success as it has strong merit.*

*This writ petition is, therefore, allowed and by issue of a writ of certiorari the communication Nos. Agri-E-104/04-Gnl dated: 30.05.2005 and OM No. A/9(81)1-888 dated: 28.07.2006 are quashed and by issue a writ of prohibition respondents are restrained from withdrawing the benefit of advance increment(s) given to them in terms of Rule 8 of the Rules of 1992."*

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Whereas, the Hon'ble High Court in the above said judgment has quashed the communications dated 30.03.2005 and 28.07.2006 and directed that the respondents are to be restrained from withdrawing the benefits of advance increments given to the petitioners in terms of Rule 8 of the Rules of 1992.

Whereas, the matter was again referred to the Finance Department for consideration of the case in view of Hon'ble High Court judgment/order.

Whereas, the Finance Department vide U.O. No. A/53(2010)-II-233 dated: 05.04.2018 conveyed its approval for implementation of Order/Judgment dated 31.08.2017 with following conditions:-

***"The Department shall need to implement the orders of the Hon'ble Court in favour of the petitioners subject to the condition that it is verified and established that all the petitioners in the writ petition have been appointed in the department prior to 31.03.1992".***

Whereas, the matter was examined in the department and as per approval of the competent authority, vide Govt. Order No. 129- Agri of 2018 dated 16.05.2018, sanction was accorded to the grant of two advance increments on acquisition of higher qualification i.e. M.Sc. Agriculture in favour of petitioners herein/ Agriculture Officers who have been appointed in the department prior to 31.03.1992.

Whereas, the Accountant General, J&K vide communication No PNR-4/S-3/18-19/770 dated 11.09.2018, had sought clarification with regard to whether the benefit of two Advance increments on acquisition of higher qualification is to be given to all the officers of the Agriculture Department or petitioners only.

Whereas, the matter was again examined in the Department and vide No. Agri/Legal/16/2017 dated 17.10.2018, the Accountant General, was clarified that the benefit of two advance increments on acquisition of higher qualification shall be given to all the officers of Agriculture Production Department including petitioners herein who have been appointed in the department prior to 31.03.1992.

Whereas, while glancing the opinion of the Finance Department it was observed that the Department had to implement the Order of the Hon'ble Court in favour of petitioners only, then the matter was again taken up with Department of Law, Justice and Parliamentary Affairs vide U.O. NO. Agri/Legal/16/2017 dated 17.11.2020, which observed as under:

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*"The judgment passed by the Court is judgment in personam and not a Judgment in rem. It is petitioner specific. Finance Department has also given it concurrence for implementation of the judgment with respect to petitioner only. Any person who has not approached the court of law and acquiesced is not entitled to claim benefit of judgment."*

Whereas, keeping in view the opinion of Finance Department and Department of Law Justice and Parliamentary affairs, it was decided to rescind/withdraw Govt. Order No. 129- Agri of 2018 dated 16.05.2018 issued under endorsement No. Agri/Legal/16/2017 dated 16.05.2018 and communication Agri/Legal/16/2017 dated 17.10.2018 and vide Government Order No. 05-JK(Agri) of 2021 dated 07.01.2021 and sanction to grant of two advance increments on acquisition of higher qualification in favour of petitioners only.

Whereas, the aforesaid Government Order was challenged before Hon'ble Central Administrative Tribunal in OA No.- 109/2021 titled **Mohammad Ramzan Wani & Ors** and finally disposed of vide Order dated 29.07.2022 whereby Government Order No. 05-JK(Agri) of 2021 dated 07.01.2021 has been set aside and directed to give all consequential benefits of advance increments as granted in terms of Government Order No. 129-Agri of 2018 dated 16.05.2018. In case of retired employees no recovery be effected and extend all benefits in their favour.

Whereas, the matter was examined and taken up with the Finance Department who have opined as under:

*"The Department is advised to avail all legal remedies against the order passed by the Hon'ble Tribunal in consultation with Law Department."*

Whereas, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs who have opined as under:

*"The Department is advised to examine the judgment and take a considered view whether it intends to implement the judgment or to challenge it. Department may also specify the grounds of challenge."*

Whereas, the matter was examined in the legal section and keeping in view the import of judgment rendered by the Hon'ble High Court on 31.08.2017 the SWP No. 1791/2006 titled **Jawahar Lal Raina & Ors V/s State and Ors** by the Hon'ble Central Administrative Tribunal on 29.07.2022 in OA No. 109/2021 titled **Mohammad Ramzan Wani & Ors V/s UT of J&K and Ors**, there is

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no justifiable grounds for restricting the benefits to the petitioners only and excluding the other similarly situated officers who had acquired the higher qualification either at the time of 1st appointment or inservice provided that they were appointed prior to the coming into force of Rule 1992, as such decided to implement the judgment dated 29.07.2021 in letter and spirit.

Whereas, the Director Agriculture Jammu/ Kashmir were requested to implement the judgment passed by the Hon'ble CAT and detailed orders were issued by the Directors. However, the Accountant General (A&E), UT of J&K, Jammu vide communication dated 24.01.2023 has conveyed that his office has not received any communication/Government Order for implementation of the judgment from the Administrative Department.

Now, therefore, in view of above, the Government Order No. 05-JK(Agri) of 2021 dated 07.01.2021 is hereby rescinded abinitio and Government Order NO. 129-Agri of 2018 dated 16.05.2018 is restored.

**By Order of the Government of Jammu and Kashmir.**

Sd/-  
(Atal Dulloo), IAS  
Financial Commissioner  
(Additional Chief Secretary)

No:Agri-Legl/17/2021 (CC12409)

Dated: 08.02.2023

**Copy to the:**

1. Principal Accountant General (A&E), UT of J&K, Jammu
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India
3. Director, Archives, Archaeology and Museums, J&K, Jammu
4. Director General, Command Area Development, Jammu.
5. Director General, Sericulture Development Department J&K.
6. Director, Horticulture Development Department, Jammu/Kashmir.
7. Director, Command Area Development, Kashmir.
8. Director, Agriculture Jammu/Kashmir
9. Private Secretary to Financial Commissioner (Additional Chief Secretary), Agriculture Production Department
10. Private Secretary to Secretary, Agriculture Production Department
11. Concerned Officers.
12. In-charge website, APD.
13. Government Order file (w.2.Sc)/Stock file.

*Mir Tajamul Mir*  
08.02.2023

(Mir Tajamul) JKAS  
Under Secretary to the Government