

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**WP(C) No.241/2022 c/w  
WP(C) No.2789/2021**

**WASEEM AHAD AND OTHERS**

... Petitioner(s)

Through: -Mr. Salih Pirzada, Advocate.

Vs.

**UT OF J&K AND OTHERS**

...Respondent(s)

Through: -Mr.Mubashir Majid Malik, Dy.AG

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**Dt:20.05.2024**

1. By this common order afore titled two writ petitions, whereby the petitioners have challenged Government Orders No.21-IND of 2021 dated 28.10.2021 and No.190-IND of 2020 dated 28.12.2020, are proposed to be disposed of. It is pertinent to mention here that the petitioners in these two writ petitions have also sought a direction upon the respondents to release the salary and other benefits in their favour without any deduction.

2. Briefly stated, the case of the petitioners is that they were appointed on various posts with Jammu & Kashmir Entrepreneurship Development Institute (for short "JKEDI"). The said Institute has been regularly receiving grant from the Finance Department, Government of J&K for meeting the salary expenditures and other

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recurring expenditures. It seems that upon the direction of the Department of Finance, issued in terms of Communication No.FD-VII-119/24/2005 dated 06.03.2020, Directorate of Audit and Inspections, J&K was asked to conduct special audit of JKEDI. The report was submitted by the Directorate of Audit and Inspections vide communication No.DAI/Audit/SA/EDI/1026 dated 16.09.2020.

3. It seems that in light of the audit report impugned Government orders dated 28.12.2020 and 28.10.2021 came to be issued by the Industries and Commerce Department, Government of J&K, whereby, while sanctioning release of funds in favour of JKEDI, certain conditions were imposed. The conditions mentioned in impugned order dated 28.12.2020 are reproduced as under:-

- “1. The organizational structure of J&K EDI needs to be streamlined in view of Audit report and necessary approval of competent authority obtained for expansion of staff from 33 posts to 56 posts and subsequently to 166 posts without seeking concurrence.
2. The Grant in Aid of Rs.4.00 Crore released shall be utilized for meeting the expenditure on account of salary for only 56 posts created by the Government and other recurring expenditure of the institute and balance shall be met for salary out of own resources.
3. No further regularization or appointment shall be made by the Institution unless posts are created by the competent authority which is to be funded by the Government.
4. Director, EDI shall vouchsafe the availability of funds
5. The expenditure shall be made on admissible items only as approved by the competent authority.
6. The expenditure shall be made after observing all the required codal formalities.
7. The Director, EDI shall submit utilization certificate of the funds released soon after the utilization to the concerned quarters within stipulated time but before 31.03.2021.
8. There shall be no diversion/deviation in any case and funds shall be drawn, if immediately required and not just to park in the bank account
9. The ceiling under above authorized Object Head shall be kept within the authorized/allocated funds for financial year 2020-21.
10. UC's/Red accounts of the funds being released shall be furnished to all the concerned quarters including Principal Accountant General, J&K.”

4. The conditions mentioned in the impugned order dated 28.10.2021 read as under:-

“1. J&K EDI shall furnish the point wise action taken reports to the observation/stipulation conveyed earlier in light of Finance Department’s UO No.FD-VII-11(124)JKED/II dated 20.09.2020 and UO No.FD-VII-11(124)JKEDI/II dated 22.12.2020 to this Department. Besides, the report of the committee constituted by the GAD to look into the nature and quantum of illegalities pointed out in Special Audit Report of JKEDI may also be furnished to this Department.

2. JKEDI shall meet out the requirement of balance salary of the employees appointed from the year 2013 as approved by the Governing Body of the Institute out of its own available resources in the bank accounts.

3. JKEDI shall take up its restructuring immediately for streamlining its organizational structure, hierarchy and pay scales similar to other Government agencies in view of Audit Report in consultation with Finance Department, ARI and Training and Law Department and shall get it approved from the competent authority.

4. No further regularization or appointment shall be made by the Institution unless post(s) is/are created by the competent authority which is/are to be funded by the Government.”

5. Pursuant to passing of the aforesaid orders, it seems that the JKEDI is withholding about 20% salary of the petitioners. This action of the respondents is under challenge in these writ petitions.

6. Respondent/Finance Department as well as JKEDI have filed separate replies to the writ petitions in which they have taken a stand that, only those posts which were borne on the Government exchequer, have to be covered under Grant in Aid by way of shifting revenue budget from plan to non-plan. But the posts borne on Institute’s own resources cannot be shifted to Grant in Aid. As per the stand taken by the Finance Department, the Government is not liable on account of any decision by governing body of JKEDI, until and unless, the Government, through its competent authority does not approve all these posts. It has been submitted that as per the

report of the Auditor, several irregularities were found with regard to the appointment of the petitioners.

7. A similar stand has been taken by JKEDI and it has been stated that the petitioners have come under the Audit scanner for irregular adjustment and they have been appointed in excess of advertised posts, promoted during probation and adjusted in violation of rules. This action has been established by the Special Audit conducted by DG Audits and Inspection and also upheld by eight member interdepartmental high powered Committee constituted by General Administration Department vide order No.1076-JK (GAD) of 2020 dated 27.11.2020

8. I have heard learned counsel for the parties and perused the record of the case.

9. Grievance of the petitioners is that they were being paid salaries out of Grant in Aid by Government of J&K released in favour of JKEDI, but now vide the impugned orders certain conditions have been imposed, according to which, Grant in Aid has to be utilized only for meeting the expenditure on account of salary for only 56 posts created by the Government, whereas for rest of the posts arrangement has to be made by JKEDI out of its own resources. The petitioners seek quashment of the aforesaid conditions, so that Grant in Aid sanctioned in favour of JKEDI is utilized for payment of salary to all the employees working with

respondent/JKEDI, including the petitioners as was being done prior to the issuance of impugned orders.

10. The respondents claim that there have been irregularities in the appointment and promotion of the petitioners and financial concurrence of the department of Finance, Government of J&K in respect of creation of posts beyond 56 has not been accorded. Therefore, employees like the petitioners cannot be paid salaries out of the Grant in Aid sanctioned in favour of respondent/JKEDI.

11. It is not in dispute that the petitioners are working with respondent/JKEDI. Once the said position is admitted, the respondents cannot deny to them the wages/salary in accordance with the terms of their engagement. The contention of the respondents that appointment/promotion of the petitioners is irregular, does not absolve them of their obligation to pay salary/wages to them for the period they have actually worked. It is not discernible from the response submitted by the respondents as to whether any action has been taken by the respondents against the petitioners in the face of their alleged irregular appointment/promotions and it is not even the case of the respondents that they are proposing to take any such action. In the face of this situation, the respondents are legally bound to release the salaries of the petitioners in full in accordance with terms of their engagement/pay scales.

12. The respondents have no justification in withholding any part of the salary due to the petitioners. Whether the respondents pay the salary out of the funds relating to Grant in Aid or out of the funds from the resources of JKEDI, it is none of the concern of the petitioners. The *inter se* issue between the respondent JKEDI and Finance Department of Government of J&K cannot come in the way of release of legitimately earned salaries of the petitioners. Therefore, the respondents would do well to sort out the technical issue with regard to the salary component to be released in favour of the petitioners at the earliest.

13. For the foregoing reasons, both the writ petitions are **disposed of** with a direction to the respondents to release full salary in favour of the petitioners, including the arrears, in accordance with the terms of their orders of engagement/pay scales, without attaching any condition to the same. The Government of UT of J&K and the JKEDI shall resolve the issue with regard to the salary component of the employees of JKEDI and ensure that the legitimately earned salary of the petitioners is released in their favour forthwith. Ordered accordingly.

(SANJAY DHAR)  
JUDGE

**SRINAGAR**  
20.05.2024  
*Sarveeda Nissar*

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

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