Government of Jammu and Kashmir
Health & Medical Education Department
Civil Secretariat, Jammu.
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Subject: Implementation of Orders passed by the Hon'ble High Court at
Srinagar in SWP No.139/2019, IA No.01/2019 Caveat No. 97/2019
and also in other similarly situated Writ Petitions.

Government Order No: 177-HME of 2019
Dated: 12-02-2019

WHEREAS, a meeting under the chairmanship of Hon'ble
Governor J&K state was held on 13/08/2018 in which various issues
pertaining to the Health and Medical Education Department including the
issue of shortage of Doctors were discussed in detail and it was noted that
non availability of doctors is affecting healthcare in peripheral areas more so
in remote areas. It was therefore decided to undertake fast track recruitment
of Medical Officers and Health and Medical Education Department was asked
to refer vacancies of Medical officers including the reserves to the J&K PSC,
after seeking the approval of Finance Department.

AND, WHEREAS, as a first step to ensure fast track recruitment of
Medical Officers, the Government issued Notification SRO 388 dated 10th
September, 2018 by virtue of which oral/viva-voce for the posts of Medical
Officers was dispensed with and these posts were ordered to be filled up on
the basis of written test only to be conducted by the J&K PSC.

AND WHEREAS, the Health & Medical Education Department
worked out a proposal to utilize all the vacancies of Medical Officers including
those earmarked for Leave, Training & Deputation Reserves by referring the
vacancies to the J&K Public Service Commission for selection purpose on fast
track basis in the larger public interest;

AND WHEREAS, the matter was taken up with the Finance
Department for seeking their concurrence prior to referral of these vacancies
to the J&K PSC, and the Finance Department, conveyed its concurrence to
the referral of one thousand (1000) posts of Doctors to the J&K State Public
Service Commission for selection process under SRO 202 dated 30.06.2015
with the advice to Consider mandatory rural posting of 5-7 years by these
Doctors by way of obtaining agreement from them;

AND WHEREAS, in the meantime, the General Administration
Department in pursuance of Rule (3) of the Jammu and Kashmir Special
Recruitment Rules, 2015 issued vide SRO 202 dated 30-06-2015, notified
these posts of Medical Officers (Gazetted) of Health and Family Welfare
Department to be filled up on fast track recruitment policy subject to the
implementation of the conditions contained in the concurrence of the Finance Department;

AND WHEREAS, the J&K Special Recruitment Rules, 2015 notified vide SRO 202 dated 30.06.2015 inter-alia, provides that the appointee shall have to necessarily work for a period of five years on the post against which he/she has been appointed and such appointee shall not be eligible for transfer for whatsoever reason during the temporary service of five years and also that any person appointed against any available vacancy on the basis of being a resident of backward area or an area adjoining Line of Actual Control shall serve in such areas for a period of not less than seven years;

AND WHEREAS, the Health & Medical Education Department, vide communication No. HME/HRM/54/2013 dated 27.09.2018, referred one thousand (1000) vacancies of Medical Officers of the Jammu and Kashmir Health and Family Welfare (Gazetted) Service to the J&K Public Service Commission for making selections in consonance with the J&K Reservation Rules, 2005 (Amended) and also under SRO-202 dated 30.06.2018;

AND WHEREAS, during the earlier process of recruitment of Medical Officers it had been observed that a substantial chunk of selectees are undergoing PG/Senior Residency/ Registrarship/Demonstratorship at the time of their selection and as a consequence, such selectees often plead for permission to continue their higher study courses. These posts, though substantively occupied, physically/practically remain vacant which in turn leads to great resentment in the public and consequent crisis of non availability of doctors in the concerned health institution in the rural/peripheral areas;

AND WHEREAS, taking cognizance of this issue, and also in the interest of patient and health care, the State Administrative Council (SAC) took a policy decision on 14/11/2018 which provides that in future selections/appointments of Medical Officers, selectee Medical Officers shall not be allowed to continue with PG/ tenures of Senior Residency/ Registrarship/ Demonstratorship and they will have only one choice either to opt for appointment or opt out and go for PG/ tenures of Senior Residency/ Registrarship/ Demonstratorship;

AND WHEREAS, the above referred posts were notified by the J&K PSC, vide Notification No. 12-PSC(DR-P)of 2018 dated 15.10.2018, for inviting applications from eligible candidates for selection against the advertised posts to be governed by the Jammu & Kashmir Special Recruitment Rules issued vide SRO-202 of 2015 dated 30.06.2015;

AND WHEREAS, the Petitioners knowingly/willingly applied for these advertised posts to be governed by the J&K Special Recruitment Rules, 2015 notified vide SRO 202 dated 30.06.2015;

AND WHEREAS, on 02.12.2018 PSC conducted written test of 2694 candidates for selection against the said posts of Medical Officers;
AND WHEREAS, J&K Public Service Commission declared the result of said written test on 08.12.2018;

AND WHEREAS, the J&K Public Service Commission, vide communication No. PSC/Exam/M0(Allo)/2018 dated 21-12-2018 furnished the select list of 958 candidates, out of which recommendations in respect of 37 candidates were kept withheld;

AND WHEREAS, on the recommendations of the J&K Public Service Commission, sanction vide Government Order No 49 of 2019 dated 14/01/2019 was accorded to the temporary appointment of nine hundred and twenty one (921) candidates as Medical Officers in the Jammu and Kashmir Health and Family Welfare (Gazetted) Service in the pay band of Rs. 9300-34800+GP 5400 {(pre-revised); now revised to Level-9 (52700-166700)}, along with their postings, subject inter-alia to the following conditions:-

A) The appointment of the candidates shall be strictly governed by the conditions laid down in the Jammu and Kashmir Special Recruitment Rules notified vide SRO 202 of 2015 dated 30.06.2015.

B) The appointee(s) shall not be allowed to continue with PG/tenures of Senior Residency/Registrarship/ Demonstratorship and they will have only one choice either to opt for appointment or opt out and go for PG/tenures of Senior Residency/Registrarship/ Demonstratorship in which case candidates from the waiting list will be considered for appointment.

C) The appointee(s) shall submit their joining reports to their concerned Drawing and Disbursing officers (DDOs) within a period of 21 days from the date of issuance of appointment order and in case of failure of any appointee to join within the stipulated period, his/her appointment shall be deemed to have been cancelled ab-initio without any further notice.

D) The appointee(s) shall be allowed to join by the concerned Drawing and Disbursing officers (DDOs) only on production of the following certificates in original:-

i. Academic/Technical Qualification Certificates.
ii. Matriculation/Date of Birth Certificate.
iii. Health Certificate issued by the Standing Medical Board.
iv. Permanent Resident Certificate issued by the Competent Authority.
v. Certificates from the District Industries Centre (DIC) and District Employment & Counseling Centre to the effect that no loan under the self employment scheme has been taken by the appointee.
vi. Relevant category certificate(s), (in case of candidates belonging to reserved categories).
vii. Any other certificates/documents as required under rules/norms.

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E) The appointee(s) shall give an undertaking duly attested by the First Class Judicial Magistrate in the shape of an affidavit to the effect that in case adverse report about his/her character and antecedents is received from Inspector General of Police (CID), J&K to whom a reference shall be made by the Directorate Health Services Jammu/Kashmir, after the cases for such verifications are received from the concerned Drawing and Disbursing officers (DDOs), the candidate(s) shall have no right to claim his/her appointment as Medical Officer and his/her appointment as such shall be deemed to have been cancelled ab-initio without further notice.

F) If on verification, the Certificate(s) produced by the appointee(s) are proved to be fake or forged, the appointment shall be deemed to have been cancelled ab-initio without further notice.

G) The salary of the appointee shall not be drawn and disbursed to him/her unless the satisfactory reports in respect of (E) and (F) above are received in his favour.

H) The appointees shall be initially on probation for a period of Five (05) years and after completion of 05 years of their services, they shall be declared as permanent as per SRO 202 dated: 30.06.2015 and J&K Civil Services (Classification, Control and Appeal) Rules 1956.

I) The appointees shall give an undertaking duly attested by the First Class Judicial Magistrate in the shape of an affidavit to the effect that:-

i. he/she shall abide by all the terms & conditions as laid down in the appointment order.

ii. he/she shall not claim for any kind of leave, permission or exception to continue with his/her PG/tenures of Senior Residency/Registrarship/Demonstratorship.

iii. he/she shall necessarily work for a period of Five (05) years of probation on the post against which he/she has been appointed.

iv. he/she shall not be eligible for transfer for whatsoever reason during the temporary service of 05 years and in case of candidates who are residents of backward area or an area adjoining Line of Actual Control, for a period of not less than seven years.

v. he/she shall be liable for action as warranted under rules for violating any of the laid down conditions in the appointment order.
J) The interim arrangement, if any, made on contract/deputation or an academic arrangement basis against the aforesaid posts of Medical Officers shall be deemed to have been terminated forthwith.

K) The inter-se-seniority of the appointees shall be drawn in accordance with the merit secured by these appointees in the selection list prepared by the J&K Public Service Commission.

L) The appointment of the candidates shall be subject to outcome of the writ petition(s), if any, pending before any Competent Court of Law.

AND WHEREAS, Dr. Mohammad Iqbal Lone & Ors have filed SWP No. No. 139/2019, IA No. 1/2019, Caveat no. 97/2019 titled Mohammad Iqbal Lone Vs State and others before the Hon’ble High Court at Srinagar wherein the petitioner has prayed as under:-

i. That it be declared that Rule 8, 9 and 10 of SRO-202 dated 30.06.2015 are ultra vires the Constitution.

ii. By a writ of certiorari Government Order No. 49-HME of 2019 dated 14.01.2019 in so far as it provides impugned conditions and posting of the petitioners be quashed and by a writ of mandamus respondents be directed to adopt the principal of “closer to residence” as far as practicable, as the basis for posting the appointees made under the said order.

iii. By writ of mandamus respondents be directed to fix the period of probation of the petitioners same as is fixed for Medical Officer appointed under Jammu and Kashmir Health and Family Welfare (Gazetted) Service Recruitment Rules, 2013. The posting of petitioners be also made subject to Rule 27 of CCA Rules and other Rules are applicable to the appointments made under Jammu & Kashmir Health and Family Welfare(Gazetted) Service, Recruitment Rules, 2013. The respondents be further directed to place the petitioners in time scale of pay as is applicable to the post of Medical Officer. The respondents be directed to grant annual increments, dearness, allowance, house rent allowance and city compensatory allowance to the petitioners as is done in the case of Medical Officers appointed under Jammu and Kashmir Health and Family Welfare(Gazetted) Service Recruitment Rules, 2013.

iv. Any other appropriate writ direction or order as the Hon’ble Court may deem fit in the facts and circumstances of the case be also passed in favour of the petitioners and against the respondent.

AND WHEREAS, the Hon’ble High Court has passed interim order dated 30.01.2019 in SWP No. No. 139/2019, IA No. 1/2019, Caveat no.
97/2019 titled Dr. Mohammad Iqbal Lone and others Vs State and others, which reads as under:-

"In the meantime, the petitioners whose posting has been made in Ladakh region, shall on account of closure of the Road to Ladakh, submit their joining report before the Director Health Services Kashmir in view of the time limit fixed for their joining up to 4.2.2019. However, as and when the Road to Ladakh shall open, these Medical Officers/ petitioners shall be placed at their respective places of posting in Ladakh region. Respondents shall also reconsider posting of the petitioners as per their convenience as far as possible."

AND WHEREAS, the department have also received representations wherein unemployed doctors have requested that in no case candidates pursuing their PG courses should be allowed to join as Medical Officers as they intend to block the posts and go back to continue their PG courses and have also requested that the residual vacancies may be filled up from the waiting list.

AND WHEREAS, the Rule 27 (Posting and transfers) of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 envisages as under:-

(1) A member of service or class of a service may be required to serve in any part of the Jammu & Kashmir in any post borne on the cadre of such service or class.

a) All transfers and postings shall be made by the authority prescribed by Government in this behalf.

AND WHEREAS, Section 24 of the Constitution of Jammu & Kashmir provides that the State shall make every effort to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

AND WHEREAS, the Public Interest Litigation bearing PIL No.16/2018 titled Balvinder Singh Vs State of J&K and Others has been filed before the Hon'ble Court wherein the petitioner among other prayers also prayed for following relief:-

"Commanding the respondents to undertake fast track recruitments of Medical Officers/ Dental Surgeons/
Specialists /Consultants and para-medical staff so that the vacant slots are filled up in all the Health Institutions;”

AND WHEREAS, the Hon’ble Court on 20.11.2018 passed the following order in the aforesaid Public Interest Litigation:

“The respondents shall place a status report regarding the steps taken to fill up the vacancies and the expected date by which the vacancies shall be filled up before this Court on the next date. The status report shall be filed in a tabulated form by adding the information furnished by the petitioner in paragraph No’s 5 to 26 of the writ petition. The status report shall include the details with regard to the posts of Consultants and Dental Surgeons.”

AND WHEREAS, Hon’ble Supreme Court in the case titled Paschim Banga Khet Mazdoor Samity Vs State of West Bengal, AIR 1996 SC 2426: (1995)6 SCC 213 has ruled that the constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the Government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centers to provide medical care to those who need them “Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance;”

AND WHEREAS, this whole recruitment process of Medical Officers has been completed within a period of three months with the sole purpose to remove the crises of non availability of doctors and consequently to provide better health care facilities to the people living in peripheral and far flung areas of the state;

AND WHEREAS, any deviation from Govt. Order No 49-HME of 2019 dated 14.01.2019 will be against the interest of General public and is bound to defeat the very purpose of providing healthcare facilities to the people living in peripheral/far flung areas of the state, thereby infringing their right to live with dignity as established under Article 21 of the constitution of India.

AND WHEREAS, the Government after examining/considering the case of the petitioners in pursuance of the directions passed by the Hon’ble High Court at Srinagar in aforesaid Writ Petition and also in similarly situated writ petitions and taking into account above mentioned provisions of the law on the subject and the facts and circumstances explained above and also in the interest of health and patient care has decided that the petitioners including other appointees(Medical Officers) posted in Ladakh Division from Kashmir valley shall be directed to travel by air for joining at their respective place of postings made vide Government Order No 49-HME of 2019 dated 14.01.2019 and their air fare will be reimbursed to them after obtaining the concurrence from Finance Department as an exceptional case.
Now therefore, in compliance to the directions of Hon’ble High Court at Srinagar passed in SWP No: 139/2019 titled Mohammad Iqbal Lone & Ors. Vs State of J&K Ors. on 30-01-2019 the case of the petitioners has duly been considered and it is hereby ordered that the petitioners including other appointees (Medical Officers) posted in Ladakh Division from Kashmir valley are directed to travel by air for joining at their respective place of postings made vide Government Order No. 49-HME of 2019 dated 14.01.2019 within a period of 15 days from the date of issuance of this order failing which their appointments shall be deemed to have been cancelled ab-initio without any further notice and the candidates from the waiting list will be considered for appointment against the posts of non-joining candidates.

It is further ordered that the air fare from Srinagar to Ladakh will be reimbursed to these petitioners/other appointees (Medical Officers) as an exceptional case after obtaining the concurrence from Finance Department.


Sd/-
(Atal Dulloo) IAS
Principal Secretary to the Government
Health and Medical Education Department

No. HD/Gaz/Legal/03/2019 Dated: 12.02.2019
Copy to the:-
1. Ld. Advocate General, J&K.
2. Principal Secretary to the Hon’ble Governor.
4. Commissioner/Secretary to the Government, General Administration Department.
5. Secretary to the Government, Department of Law, Justice & Parliamentary Affairs.
6. Director Information, J&K, Jammu. He is requested to give wide publicity to the same.
7. Director, Health Services, Jammu.
8. Director, Health Services, Kashmir.
9. OSD with Advisor (K) to Hon’ble Governor.
11. Private Secretary to the Chief Secretary.
13. Private Secretary to the Principal Secretary to Government, Health and Medical Education Department.
14. I/C Website, Health and Medical Education Department.

(Mohammad Iqbal Lone)
Under Secretary to the Government
Health & Medical Education Department