GOVERNMENT OF JAMMU AND KASHMIR
HEALTH & MEDICAL EDUCATION DEPARTMENT
Civil Secretariat, Jammu.

Subject: Implementation of judgment dated 20-12-2017 passed by the Hon'ble Court at Jammu in SWP No.2951/2017 titled Dr. Kamal Kant Gupta V/S State of J&K and others.

Government Order No. 106 -HME of 2018
Dated: 08.02.2018

Whereas, the Health & Medical Education Department vide Government order No. 666-HME of 2017 dated 14-12-2017, among others, also transferred Dr. Kamal Kant Gupta, Consultant Surgeon from Government Hospital, Gandhi Nagar, Jammu to District Hospital Kathua; and

Whereas, the above Doctor approached before the Hon'ble High Court at Jammu by way of SWP No. 2951/2017 seeking direction to continue work at his present place of posting i.e. Government Hospital, Gandhi Nagar, Jammu as he had just completed four months in the said Hospital; and

Whereas, the Hon'ble Court on 20.12.2017 disposed of the aforesaid writ petition and directed the petitioner to make a representation today itself to the respondents and the same shall be accorded consideration by them within a period of two weeks, the Hon'ble Court further directed that till such time consideration order is passed and if no other person has already joined, the petitioner may be allowed to continue at present place of posting; and

Whereas, the Director, Health Services, Jammu after examining the case of the petitioner has requested vide communication dated 27.12.2017 to accord consideration as per the judgment of the Hon'ble court and communicate necessary instruction/orders in the matter and has also forwarded copy of representation submitted by the petitioner; and
Whereas, Clause (II) para-4 under heading “Tenure of posting” provided in the policy on transfer/posting of Government employee issued vide Government order No. 861-GAD of 2010 dated 28.07.2010 is reproduced as under:-

“A government employee holding any post may be transferred even before the completion of minimum tenure if it is not in public Interest or in the interest of administration to allow the employee to continue on a post for a full tenure.”

Whereas, the Hon’ble High Court at Jammu in a similar situated case in SWP No.3077/2015 titled Narinder Singh Vs State of J&K and others on 06.04.2015 has observed as under:-

“As regards the contention of the petitioner that he has been transferred prematurely, it can be safely held that transfer order cannot be termed as premature, because even under the transfer policy the Government is empowered to pass a premature transfer order depending upon the exigency of service. The Government being employer is master to transfer its employees as per the administrative exigency and depending upon the need of service of efficient employees required at a particular place. Such discretion of the Government cannot be interfered with without any proper and substantial reasons.”

Whereas, the Department after examining/considering the representation of the petitioner has observed that the petitioner has not specified any ground for retention his posting at Government Hospital Gandhi Nagar, Jammu and that the claim of the petitioner that he had completed only four months in the said Hospital is found devoid of any merit and has accordingly been decided to be treated as null and void, as the Government under policy on transfer /posting of Government employees issued vide Government order No. 861-GAD of 2010 dated 28.02.2010 has empowered to pass premature transfer order depending upon the exigency of the services and same view has also been upheld by the Hon’ble High Court at Jammu in the above mentioned judgment passed in a similar situated case.
Now, therefore, in compliance to the judgment dated 20.12.2017 passed by the Hon’ble High Court at Jammu in SWP No. 2951/2017 titled Dr. Kamal Kant Gupta V/S state of J&K and others, the representation of the petitioner has duly been considered and found devoid of merit, accordingly treating the same as null and void. The petitioner is, therefore, directed to join the place of posting i.e. District Hospital, Kathua made vide Government No. 666-HME of 2017 dated 14.12.2017.


Sd/-
(Dr. Pawan Kotwal) IAS
Principal Secretary to the Government Health and Medical Education Department

No. HD/Legal/Gaz/MR/MR-188/2017

Copy to the:-
1. Director, Health Services, Jammu, for information and necessary action.
2. Director Finance, Health and Medical Education Department. (Nodal Officer, Website H&ME).
3. Director, Archives, Archaeology & Museums, J&K, Jammu.
4. OSD with Hon’ble Minister for Health and Medical Education for information of the Hon’ble Minister.
5. Special Assistant to Hon’ble Minister of State for Health and Medical Education for information of Hon’ble Minister
6. Concerned doctor.
7. Shri Sanjeev Kumar Padha, Government Advocate, Jammu.
8. Pvt. Secretary to the Principal Secretary to the Government, Health and Medical Education Department.
9. Govt. Order file/Stock File/Website H&ME.

Under Secretary to the Government Health & Medical Education Department

Date: 02.02.2018