

Government of Jammu and Kashmir
Health & Medical Education Department

Civil Secretariat, Jammu.

Subject: SWP No. 916/2018 titled Aijaz Ahmad Naik Vs State and Others and orders dated 02-11-2020 & dated 02-12-2020 passed in contempt petition bearing No. 325/2020 in SWP No. 916/2018 - titled Ajaz Ahmad Naik Vs Mr. Atal Dulloo.

Government Order No: 914 -JK(HME) of 2020

Dated: 22 -12-2020

WHEREAS, Dr. Aijaz Ahmad Naik has been appointed as Dental Surgeon in the Health Services, Department in the year 1998.

AND WHEREAS, among others, Dr. Aijaz Ahmad Naik has been nominated for admission to MDS Course (Oral Surgery) for the year 2007-08 in UP King George's University of Dental Sciences, Lucknow as per communication dated 30.05.2007 of Government of India, Ministry of Health & Family Welfare.

AND WHEREAS, while taking cognizance of the admission of the concerned doctor, the H&ME Department vide letter No.ME-GM-49/2001-II dated 12.06.2007 asked Director Health Services, Kashmir to inform concerned doctor about his admission and to report concerned institute immediately.

AND WHEREAS, accordingly, the concerned doctor was relieved by the Directorate of Health Services, Kashmir on 12.06.2007 with the directions to report concerned institute.

AND WHEREAS, in the meantime, the H&ME Department vide Government Order No. 774-HME of 2007 dated 19.11.2007, accorded sanction to the grant of study leave without allowance for two years in favour of Dr. Aijaz Ahmad Naik, Dental Surgeon w.e.f. 12.06.2007 in connection with undergoing the MDS Course of Oral Surgery at the UP King George University of Dental Sciences, Lucknow.

AND WHEREAS, besides, the H&ME Department vide communication No. ME/Gaz/Dental/72/2008 dated 09-05-2008 specifically clarified to the Director Health Services, Kashmir that study leave without allowance for two years was granted in favour of Dr. Aijaz Ahmad Naik, Dental Surgeon vide Government Order No. 774-HME of 2007 dated 19.11.2007, and as such instruction were conveyed to Director Health Services, Kashmir not to pay any salary to said doctor and if any emoluments

M. W. J.

M. J. Smit

have been paid w.e.f. 12.06.2007 till date the same be recovered from him immediately as he is not entitled for any salary during the study leave period.

AND WHEREAS, aggrieved of the above clarification/recovery of irregularly drawn allowances by the concerned doctor, the plaintiff filed a suit titled Dr. Aijaz Ahmad Naik Vs State & Ors. before the Hon'ble Court of Sub Judge (CJM) Srinagar who issued decree dated 28.09.2012 as under:-

".....For the reasons stated above, suit of plaintiff is partly decreed. Decree of declaration is passed whereby plaintiff is declared to be entitled to be paid salary without allowances during the period of study leave of plaintiff and the order No.DHSK/Acctt/705 dated 28.04.2008 is declared to be illegal and imperative and consequent direction for recovery of salary drawn by plaintiff is also declared to be illegal and imperative plaintiff to bear costs. Office is directed to draw decree sheet accordingly and send the file to records after completion."

AND WHEREAS, in the meantime, on the basis of request of concerned doctor and recommendations of the Director Health Services, Kashmir, vide letter No. Legal/Antg-319 dated 19.12.2012, the H&ME Department vide Government Order No. 202-HME of 2013 dated 25.03.2013, accorded sanction to the extension of study leave without pay and allowances, in terms of SRO-122 of 2000 in favour of Dr. Aijaz Ahmad Naik, Dental Surgeon w.e.f. 12.06.2009 to 23.01.2010 for completion of MDS Course of Oral Surgery at the UP King George University of Dental Sciences, Lucknow.

AND WHEREAS, again, pursuant to the aforesaid decree dated 28.09.2012, the H&ME Department vide Government Order No. 302-HME of 2017 dated 06-06-2017, has passed a speaking order whereby sanction has been accorded to the grant of study leave without allowances in terms of SRO-122 of 2000 w.e.f 12.06.2007 to 23.01.2010 in favour of the plaintiff namely Dr. Aijaz Ahmad Naik, Dental Surgeon, minus allowances already received by him during the period.

AND WHEREAS, the concerned doctor filed another SWP No. 916/2018 titled Aijaz Ahmad Naik Vs State and Others and the Hon'ble High Court passed Order dated 27.04.2018 in the said writ petition, the operative part of the order reads as under:-

*"The petitioners claim with reference to grant of benefit as has been given to other similarly situated Doctors who were treated on deputation while pursuing higher studies is pending with the Government.
Learned counsel for the petitioner has invited the attention of this Court towards the Government Order passed in similarly situated cases vide Government No. 513-HME of 2014 dated 22.08.2014 and Government Order No.257-HME of 2015 dated 08.07.2015. Petitioner claims that his case can be*



considered in light of the judgment also passed by this Court in case SWP No. 2089/2012 dated 04.09.2013.

Notice returnable within four weeks.

Notice in MP as well returnable with the same period.

In the meantime, respondents shall consider the claim of the petitioner in tune with the similarly situated cases detailed out hereinabove."

AND WHEREAS, again, pursuant to the aforesaid order dated 27.04.2018 as well as decision of the designated committee, the H&ME Department vide Government Order No. 557-HME of 2018 dated 04-10-2018, has passed a speaking order whereby claim of the petitioner for considering his study as deputation was rejected.

AND WHEREAS, now, Legal Section, H&ME Department have informed that a contempt petition bearing No. 325/2020 – titled Ajaz Ahmad Naik Vs Mr. Atal Dulloo filed by the above Doctor is pending before the Hon'ble Court. The above contempt petition was listed before the Hon'ble Court and the petitioner brought into the notice of the Hon'ble Court the aforesaid Government Order issued by the Health & Medical Education Department.

AND WHEREAS, the order of the Hon'ble High Court dated 02-11-2020 passed in contempt petition bearing No. 325/2020 in SWP No. 916/2018 – titled Ajaz Ahmad Naik Vs Mr. Atal Dulloo reads as under:-

"Petitioner has placed on record Government Order No. 557-HME of 2018 dated: 04-10-2018 in terms whereof the respondent Principal Secretary to Government, Health & Medical Education Department while considering the claim of the petitioner has rejected the same. Mr. Naik, Learned Senior Advocate submits that rejection is solely based on the report of the Committee dated: 19-02-2018 which was conveyed to the petitioner in terms of the Government Order No. 302-HME of 2016 dated: 06-06-2016 which order is under challenge in the writ petition, therefore, as submitted the basis of the rejection order being contrary to the order passed by this Court amounts to contempt of the Court.

Prima facie, this Court is of the view that the order passed by this Court has not been complied with as the rejection is based on the report of the Committee dated: 19-02-2018 and the decisions of the Government order supra which is already under challenge before this Court, prior to the passing order."

AND WHEREAS, to avoid any adverse order from the Hon'ble Court, the Legal Section of this Department has filed response / compliance report before the Hon'ble Court in terms of the aforesaid order of the Hon'ble Court. However, the Hon'ble Court has passed another order dated 02-12-2020 after filing the response / compliance report by the Department which reads as under:-



"Without noticing the order passed on 2nd of November, 2020, the respondent – Financial Commissioner, Health & Medical Education Department, has filed the response / compliance, may be because of the non-communication of the order to the said respondent.

Shri Shah Aamir, Additional Advocate General, Srinagar seeks some more time to apprise the respondent about the order passed on 2nd of November, 2020 as also the order passed today for submitting for fresh compliance. While accepting his submission, two week's time is granted to file fresh compliance.

To ensure that the order passed on 2nd of November, 2020 as also the one passed today, is furnished to Shri Shah Aamir, Additional Advocate General, Srinagar it has become necessary to ask the Bench Secretary of this Court to convey the orders, to Shri Shah Aamir, Additional Advocate General, Srinagar under his seal and signature. Bench Secretary of this Court shall verify the status of receipt of orders from the Learned AAG and put a detailed report on the file.

List again on 18th of December, 2020."

AND WHEREAS, it may be relevant to mention here that, during the years 2007-2009, study leave was being governed under the J&K Civil Service (Leave) Rules, 1979 and Rule 67 & Rule 73 of the J&K Civil Service (Leave) Rules, 1979 read with SRO 122 dated 25-04-2000 and SRO 133 dated 17.04.2006 reads as under:-

"Study leave under these rules shall be sanctioned as leave without allowances. However, the period of study Leave without allowances shall not constitute any break in service but the period as spent on Study leave without allowances shall count towards service and other pensionary benefits. No substitute shall be appointed in place of officers proceedings for Study leave."

"Authority competent is sanction Study Leave—The concerned Administrative Department shall be competent to sanction Study leave without allowances under these rules within/outside the State but within and outside the country."

AND WHEREAS, furthermore, Article 44(F) & Clause (viii) Article 44(F) of the J&K Civil Service Regulations Vol-I read with SRO 122 dated 25-04-2000, reads as under:-

"Government Servants sponsored by the Competent Authority for training courses outside the State but within the Country shall be governed with the certain terms and conditions....."

"Authority competent to sanction deputation under these rules shall be the Administrative Department concerned to the extent of their budget allocation. However no substitute appointments/promotions shall be made in palce of the officers/officials deputed for such training.

AND WHEREAS, in compliance of Order dated 27.04.2018 passed by the Hon'ble High Court in SWP No. 916/2018 titled Aijaz Ahmad Naik Vs State and Others and orders dated 02-11-2020 & dated 02-12-2020 passed in contempt petition bearing No. 325/2020 in SWP No. 916/2018 - titled Ajaz Ahmad Naik Vs Mr. Atal Dulloo, the above said issue has been reconsidered in consultation with Director Finance, Health & Medical Education Department (Chairman, Departmental Designated Committee) and it has been found that Article 44-F of J&K Civil Service Regulations Vol-1 cannot be misinterpreted for the vested interests of Government Employees as it is specifically for training courses which are departmental obligatory for Government Servants and not for availing higher study courses by the Government Employees for their own benefit on pretext of training courses. As such, any wrong committed earlier cannot be basis for doing multiplying wrongs. The present study course being a higher study course of Post Graduation i.e. MDS Course of Oral Surgery can no way be treated as Training Course for taking undue benefit of salary/allowances by the concerned doctor. Therefore, the instant case of the petitioner has rightly been settled as per standing provisions of study leave in vogue at that time in terms of SRO-122 dated 25.04.2000.

Now therefore, in compliance of Order dated 27.04.2018 passed by the Hon'ble High Court in SWP No. 916/2018 titled Aijaz Ahmad Naik Vs State and Others and orders dated 02-11-2020 & dated 02-12-2020 passed in contempt petition bearing No. 325/2020 in SWP No. 916/2018 - titled Ajaz Ahmad Naik Vs Mr. Atal Dulloo, the claim of the petitioner namely Dr. Ajaz Ahmad Naik, Dental Surgeon is rejected for considering his case in terms of Article 44(F) of the J&K Civil Service Regulations Vol-I read with SRO 122 dated 25-04-2000 which governs only departmental obligatory training courses.

By order of the Government of Jammu & Kashmir.

Sd/-

(Atal Dulloo) IAS

Financial Commissioner

Health and Medical Education Department

Dated: 22-12-2020

No. HD/Legal/Gaz/MR-29/2018

Copy to the:-

1. Principal Secretary to the Lieutenant Governor.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
3. Director, Health Services, Kashmir.
4. Additional Secretary (Legal), Health & Medical Education Department.
5. Director, Archives, Archaeology & Museums, J&K, Srinagar.
6. OSD to Advisor(B) to Hon'ble Lieutenant Governor.
7. Private Secretary to Financial Commissioner, Health & Medical Education Department.
8. Concerned.







5/6

- 9. I/C Website Health & Medical Education Department.
- 10. Government Order File/Stock File.

MIL

(Mohammad Iqbal Lone)

Under Secretary to the Government
Health & Medical Education Department

Gmail

By order of the Government of Punjab at Lahore
Date: 11-11-2019

6/6