

Government of Jammu and Kashmir  
**Health & Medical Education Department**

Civil Secretariat, J&K Jammu.

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Subject: SWP No. 2038/2011 titled Dr. Rakshanda Rashid V/s State & others - passing of consideration order with regard to regularization of services of Dr. Rakshanda Rashid, Medical Officer (Adhoc).

- Ref: i. No. Legal/Bla-455/914 dated 21-11-2011, No. DHSK/Legal/Bla-445/1014 dated 17-12-2013 and No. Est/3/1-133/718 dated 23.10.2019 from Directorate of Health Services, Kashmir.
- ii. No. A/Spl.Codes-D/2014 dated 24-11-2014 & No. PS/DC/Misc-291/14 dated 02-02-2016 from Finance Department.
- iii. U.O No. GDC-174/CM/2017 dated 08-02-2018, U.O No. GDC-174/CM/2017 dated 22-06-2018 & U.O No. GDC-174/CM/2017 dated 24-10-2018 from General Administration Department.

**Government Order No: 124 -JK(HME) of 2020**  
**Dated: 05-02-2020**

WHEREAS, Dr. Rakshanda Rashid was initially appointed as Assistant Surgeon in the J&K Health and Family Welfare (Gazetted) Service on adhoc basis vide Government Order No: 03-HME of 2002 dated 01.01.2002 and the concerned Doctor while posted in Block Sopore left for undergoing Diploma in Gynae. & Obst. w.e.f. 01.05.2010 without obtaining prior permission from the competent authority;

AND WHEREAS, as per the certificate issued by the University of Kashmir, Dr. Rakshanda Rashid passed the course on 05.09.2012 under Roll NO: 615 through Government Medical College, Srinagar and submitted her joining report in Directorate of Health Services, Kashmir on 07-06-2010 which was not entertained by Directorate of Health Services, Kashmir;

AND WHEREAS, Dr. Rakshanda Rashid, Medical Officer (Adhoc) filed SWP No. 2038/2011 titled Dr. Rakshanda Rashid V/s State & others and the Hon'ble High Court passed the interim order, operative part of which reads as under:-

*"...it is provided that the respondents may consider the case of the petitioner for regularizing her services as Assistant Surgeon in terms of J&K Civil Services (Special Provisions) Act, 2010. It is made clear that pursuing her diploma course at LD Hospital shall not come in the way of the respondents to consider her case".*

AND WHEREAS, while disposing of SWP No. 2038/2011, the Hon'ble High Court has passed order on 09.10.2013, operative part of which reads as under:-

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"... Petitioner was directed to undergo higher course in obstetrics and Gynaecology which course she has completed. Her undergoing for higher studies cannot become stumbling block in considering her case for regularization of services. In fact her attaining the higher qualification is in public interest and shall be given due weightage. The petition alongwith connected CMP's is disposed of and respondents are directed to accord consideration to the claim of the petitioner for regularization of services in terms of J&K Civil Services (Special Provisions Act, 2010) and in light of the observations made in this order".

Respondents to consider and take decision preferably within eight weeks from the date of copy of this order is served."

AND WHEREAS, on examination of the case, the Health & Medical Education Department vide letter No: HD/Legal/Gaz/MR-928/2013-R dated 23.04.2014, allowed Dr. Rakshanda Rashid (Petitioner) to resume her duties in light of the aforesaid directions of the Hon'ble High Court passed in SWP No: 2038/2011, CMPs. However, resumption of duties by the doctor shall take effect retrospectively w.e.f. 07-06-2012 when she had reported for duty and will draw her honorarium/emoluments prospectively;

AND WHEREAS, the Section 5 of the J&K Civil Services (Special Provisions) Act, 2010 reads as under:-

*"5. Regularization of adhoc or contractual or consolidated appointees.- Notwithstanding anything to the contrary contained in any law for the time being in force or any judgment or order of any court or tribunal, the adhoc or contractual or consolidated appointees referred to in section 3 shall be regularized on fulfillment of the following conditions, namely:-*

- i) that he has been appointed against a clear vacancy or post;
- ii) that he continues as such on the appointed day;
- iii) that he possessed the requisite qualification and eligibility for the post on the date of his initial appointment on adhoc or contractual or consolidated basis as prescribed under the recruitment rules governing the service or post;
- iv) that no disciplinary or criminal proceedings are pending against him on the appointed day; and
- v) that he has completed seven years of service as such on the appointed day;

*Provided that the regularization of the eligible adhoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization:*

*Provided further that any adhoc or contractual or consolidated appointee who has not completed seven years service on the appointed*

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day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act."

AND WHEREAS, vide U.O. No. HD/Legal/Gaz/MR-928/2013-R dated 31-07-2014, Principal Secretary to the Government, Finance Department was intimated about allowing of resumption of the petitioner and requested for placing the case of Dr. Rakshanda Rashid, Medical Officer (Adhoc) before the Empowered Committee for regularization under the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010;

AND WHEREAS, Finance Department vide their No. A/Spl.Codes-D/2014 dated 24-11-2014 requested for furnishing initial appointment order, academic qualification certificates, PRC, DoB, Work & Conduct certificate and upto date salary statement as required under the provisions of the Act;

AND WHEREAS, vide this department's communication No.HD/Legal/G/MR-928/2013-R dated 30-11-2015 the requisite documents were forwarded to Commissioner/Secretary to the Government, Finance Department for further necessary action;

AND WHEREAS, pursuant to communication No. PS/DC/Misc-291/14 dated 02-02-2016, Empowered Committee(Finance Department) has recommended regularization of the aforesaid adhoc doctor subject to the condition that the department shall have the break on account of pursuing MD condoned;

AND WHEREAS, in terms of Sub Section (5) of Section 10 of J&K Civil Services (Special Provisions) Act, 2010, the recommendations of the Empowered Committee were to be placed before the then Hon'ble Governor through Chief Secretary in Coordination for approval;

AND WHEREAS, powers to condone break, being relaxation in rules, also rested with the then Hon'ble Governor through Chief Secretary in Coordination;

AND WHEREAS, after fulfilling all pre-requisite conditions laid down by the Finance Department, a proposal (Coordination note) was submitted to the General Administration Department vide this Department's U.O No.HD/Legal/Gaz/MR-928/2013 dated 19-07-2017 for placing the same before the Hon'ble Governor through Chief Secretary in Coordination for approval. The General Administration Department returned the case twice with some observations and finally vide U.O No. GDC-174/CM/2017-I dated 24-10-2018, it was conveyed as under:-

"Returned. The department is advised that the case is not covered under the rules which requires continued appointment with no breaks".

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AND WHEREAS, the aforesaid observations of General Administration Department were conveyed to Directorate of Health Services, Kashmir for information vide this departments communication No: HD/Legal/Gaz/MR-928/2013 dated 17-12-2018;

AND WHEREAS, the Director Health Services, Kashmir vide communication No. Est/3/1-133/1718 dated 23-10-2019 resubmitted the case of the adhoc doctor with her plea that she has now again completed 07 years of service after completion of course and resumption of duties i.e w.e.f 07-06-2012 to 07-06-2019.

AND WHEREAS, the issue has been again examined in consultation with Director Finance, H&ME Department and the case has not been found covered in terms of Section 14 of the J&K Civil Services (Special Provisions) Act, 2010 which reads as under:-

*"14. Restrictions on further adhoc or contractual or consolidated appointments - (1) with effect from the commencement of this Act, no appointment shall be made by any department against any post on adhoc or contractual or consolidated or temporary basis and all the vacant posts shall be filled up strictly in accordance with the rules governing the recruitment to the respective services or posts."*

Now, therefore, in compliance to order dated 09-10-2013 passed by Hon'ble High Court in SWP No. 2038/2011 titled Dr. Rakhsharda Rashid V/s State & others, the claim of the Dr. Rakshanda Rashid (Petitioner/adhoc appointee) for regularization of her services as Assistant Surgeon (now Medical Officer) has been considered and found devoid of merits, as the case is not covered under the rules which requires continued appointment with no breaks as conveyed by the General Administration Department vide U.O No. GDC-174/CM/2017-I dated 24-10-2018.

By order of the Government of Jammu & Kashmir.

Sd/-

(Atal Dulloo) IAS

Financial Commissioner

Health and Medical Education Department

Dated: 05.02.2020

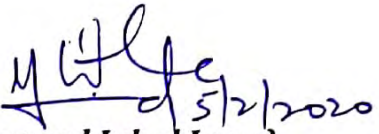
No. HD/Legal/Gaz/MR-928/2013

Copy to the:-

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

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S. M. L.  
K. P.

9. Private Secretary to Financial Commissioner, Health & Medical Education Department.
10. Concerned doctor.
11. I/C Website Health & Medical Education Department.
12. Government Order File/Stock File.

  
(Mohammad Iqbal Lone)

Under Secretary to the Government  
Health & Medical Education Department

