

GOVERNMENT OF JAMMU AND KASHMIR
HEALTH & MEDICAL EDUCATION DEPARTMENT
(HUMAN RESOURCE MANAGEMENT)
Civil Secretariat, J&K, Jammu.

Subject: SWP No. 1751/2014, CMP No. 01/2015 – titled Dr. Sheikh Maqbool Ahmad versus State & Ors.

Government Order No. 388-JK(HME) of 2020

Dated: 22.04.2020

WHEREAS, The petitioner namely Dr. Sheikh Maqbool Ahmad while posted as District Health Officer, Ganderbal was vide Government Order No. 265-HME of 2010 dated 27.04.2010, placed under suspension for his alleged involvement in illegal appointments/ transfers/ promotions of the employees during his tenure as Deputy Chief Medical Officer, Srinagar;

2. AND WHEREAS, vide Government Order No. 87-HME of 2011 dated 02.02.2011, the Commissioner of Inquiries was appointed as Inquiry Officer to conduct the enquiry in this case. The Inquiry Officer was asked to submit report with definite recommendations within a period of three months from the date of issuance of said order;

3. AND WHEREAS, Dr. Mohammad Maqbool Sheikh retired on superannuation on 31.03.2011 on attainment of 58 years of age which was the age of superannuation of Government employees as per the applicable rules in vogue at that point of time;

4. AND WHEREAS, Dr. Mohammad Maqbool Sheikh after his retirement on superannuation challenged his suspension order before the Hon'ble High Court at Srinagar by way of SWP No. 1751/2014 seeking writ of Certiorari to the effect that Government Order No. 265-HME of 2010 dated 27.04.2010 be quashed and appropriate writ to direct the respondents to pay the petitioner full monthly pension as would be found payable to him and disbursement of pensionary benefits;

5. AND WHEREAS, the Hon'ble High Court on 12.04.2016 disposed of the writ petition with the following directions;

"In view of the above, the writ petition succeeds and is allowed as such alongwith all CMPs. Respondents, by a writ of mandamus, are commanded to process, settle and release all the pensionary and retiral benefits in favour of petitioner, with effect for the date the same has become due to him viz. February, 2012, as if nothing incriminating was alleged or found against him and pay him the unpaid salary also notwithstanding the order of suspension. All the respondents in general and respondent No. 2 in particular, is directed to release pensionary and retiral benefits in favour of petitioner including the arrears etc., as also the unpaid salary, if any, within a period of two months from the date copy of the order is served upon him. "



6. AND WHEREAS, the matter was examined in the Health & Medical Education Department and referred to the Department of Law, Justice & Parliamentary Affairs for opinion. The said Department vide UO No. LD(LIT)2014/29-HME dated 06.06.2016 advised to file an LPA against the judgment/order dated 12.04.2016 passed in SWP No. 1751/2014 titled Dr. Sheikh Maqbool Ahmad Vs. State and others;

7. AND WHEREAS, the Department accordingly filed LPA bearing LPA No. 91/2017 against the said judgment. The Hon'ble High Court on 22.08.2017 dismissed the LPA for non-prosecution;

8. AND WHEREAS, since the enquiry could not be completed by the Commission of Enquiries as of 2019, vide Government Order No. 947-HME of 2019 dated 23.10.2019, the Director Finance, Health & Medical Education Department was appointed as Inquiry Officer to conduct enquiry regarding release of provisional pension in respect of Dr. Mohammad Maqbool Sheikh, Ex-Dy. Chief Medical Officer, Srinagar. Besides, Chief Accounts Officer, Directorate of Health Services, Kashmir was nominated as the Presenting Officer;

9. AND WHEREAS, the petitioner filed contempt petition bearing CP(SW) No. 34/2018 – titled Dr. Sheikh Maqbool Ahmad Vs Dr. Pawan Kotwal and another for initiating contempt proceedings against the respondents for non-compliance of the aforesaid writ Court judgment. After filing the status report in the contempt petition, the Hon'ble High Court on 18.03.2020 passed following observations/ directions in the above titled case:-

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06. Mr. Shah Aamir, learned AAG submits that the Government is actively taking decision on the matter with reference to implementation of the judgment. Seemingly, there is no response showing activeness in the decision of the Government. The Principal Secretary to Government, Health and Medical Education, in the year 2018 had filed a status where the delay in the complying with the judgment was made with reference to filing of Letters Patent Appeal, which appeal stands also dismissed.

07. How long will the respondent drag the petitioner in this litigation which as per the order/ judgment of this Court is now finalized. In simply terminology, the respondents are only required to settle the case for the purpose of release of pensionary/ retiral benefits and also pay him the unpaid salary for the period not paid. Court believes that the red-tapism involved in the working system of the Government is not over as this process is tossed from one table to another, without any concrete decision. It is the responsibility of Respondent- Financial Commissioner, Health and that of the Director, Health Services, to ensure implementation of the judgment of this Court.



08. Petitioner who succeeded in getting the relief in April, 2016, is yet to take the benefit of the judgment, which of course for him, will only shake the confidence on this institution. The Court will not allow the respondents to add to the feelings of the petitioner with reference to shaking the confidence on the Courts.

09. In the above background, there is no other option for the Court but to issue rule, however, with intervention of Mr. Shah Aamir, learned AAG, same is deferred for two weeks to ensure that the judgment is implemented in letter and spirit. Respondent No. 1- Financial Commissioner, Health and Respondent No. 2- Director, Health Services, Kashmir, shall ensure that all the benefits are released in favour of the petitioner as directed by the writ Court in terms of the judgment, by the next date, failing which both of them shall appear in person before the Court on the next date of hearing. It is made clear to the respondents that there shall be no scope for seeking any exemption in the event the judgment is not implemented.

10. AND WHEREAS, in compliance to Government Order No. 947-HME of 2019 dated 23.10.2019, the Director Finance, Health & Medical Education Department (Inquiry Officer) submitted the enquiry report on 31.03.2020 with the findings and recommendation, reproduced as under:-

"It is pertinent to mention that to conclude the case for an appropriate departmental action an enquiry was instituted in February 2011 but the same could not be completed as of 2019, which might have exposed the Officer to many avoidable hardships and accordingly the Hon'ble High Court vide Order dated 08.05.2019 passed in SWP No. 1751/2014 has directed the respondents to release pensionary, other retiral benefits and unpaid salary in favour of the petitioner.

Rule position clearly indicates that after retirement such action (Departmental Proceedings) shall not be initiated save with the sanction of Government, however, on other hand the case has attained finality in terms of Hon'ble High Court judgment.

It is as such advisable to take the final call in consultation with the legal section of the department. Meanwhile, the Directorate of Health Service needs to be instructed to work out the extra/ undue payments made in favour of the illegal appointees for an immediate recovery. "

11. AND WHEREAS, the case was examined in the Department in light of the report of the Inquiry Officer and directions of the Hon'ble High Court passed in the Contempt petition on 18.03.2020 and it was decided to seek the opinion of the Department of Law, Justice & Parliamentary Affairs as to the desirability of filing of SLP or otherwise;

12. AND WHEREAS, the Department of Law, Justice & Parliamentary Affairs returned the file with the advise that the Division bench has dismissed the LPA on 22.08.2017 and till date no steps have been taken for filing of SLP. Filing of SLP at this stage will be a futile exercise. As such, the department is advised to

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Implement the judgement in its letter and spirit subject to the outcome of disciplinary proceedings;

13. AND WHEREAS, after examining the case in light of the directions of the Hon'ble High Court, report of the Inquiry Officer and opinion of the Department of Law, Justice & Parliamentary Affairs, it has been decided that for settlement and release of all pensionary/retiral benefits and also unpaid salary in his favour, it is required to re-Instate Dr. Mohammad Maqbool Sheikh prior to the date of his retirement and the period from his date of suspension i.e. 24.04.2010 to the date of his retirement i.e. 31.03.2011 need to be settled by the department;

Now, therefore, in the above backdrop, sanction is hereby accorded to the:-

- i) Reinstatement of Dr. Mohammad Maqbool Sheikh on 31.03.2011 i.e. the date he has retired on superannuation from Government Service on attainment of 58 years of age;
- ii) Treatment of the period of suspension of Dr. Mohammad Maqbool Sheikh w.e.f. 24.04.2010 to 31.03.2011 as the period spent on duty.


It is further ordered that the Director, Health Services, Kashmir shall settle/release all pensionary/retiral benefits and also unpaid salary in favour of Dr. Mohammad Maqbool Sheikh in accordance with the Hon'ble High Court judgment dated 12.04.2016 read with judgment dated 18.03.2020.

By order of the Government of Jammu & Kashmir.

Sd/-
(Atal Dulloo) IAS
Financial Commissioner
Health & Medical Education Department
Dated: 22.04.2020

No. HD/Legal/Gaz/MR-175/2014
Copy to the:-

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Additional Advocate General, Srinagar. He is requested to apprise the Hon'ble Court about the action taken by the Department.
4. Director, Archives, Archaeology & Museums, J&K, Jammu.
5. Director, Health Services, Kashmir. He is requested to work out the extra/undue payments made in favour of the illegal appointees for its immediate recovery.
6. OSD with the Advisor (B) to the Hon'ble Lieutenant Governor.
7. Concerned doctor.
8. Private Secretary to the Financial Commissioner, Health & Medical Education Department.
9. Incharge, Website, Health & Medical Education Department.
10. Government Order file/Stock file/Monday Return.


(Rajeshwar Singh Charak) KAS
Additional Secretary to the Government
Health & Medical Education Department