



Government of Jammu & Kashmir
Health & Medical Education Department
Civil Secretariat, Srinagar/Jammu.

Subject: SWP No. 878/2015- titled Dr. Naseer Bashir Khanday Vs State & others.

Government Order No. 698 -HME of 2017
Dated: 26 .12.2017

Whereas, Dr. Naseer Bashir Khanday was appointed as Medical Officer vide Government Order No. 132-HME of 2014 dated 04.03.2014 on the recommendations of J&K Public Service Commission; and

Whereas, Dr. Naseer Bashir Khanday was recommended for selection in MD Anaesthesia by J&K BOPEE vide their notification No. 64-BOPEE of 2014 dated 02.07.2014 and allotted ASCOMS, Jammu; and

Whereas, out of the newly appointed Medical Officers vide Government Order No. 132-HME of 2014 dated 04.03.2014, 99 Medical Officers who were pursuing PG Courses in GMC, Srinagar were placed on inter-cadre deputation to that college and 69 Medical Officers who were pursuing PG Courses in GMC, Jammu were also placed on inter-cadre deputation to that college vide Govt. Order No. 302-HME of 2014 dated 13.06.2014; and

Whereas, vide Government Order No. 635-HME of 2014 dated 25.10.2014 permission was granted in favour of the Medical Officers appointed vide Government Order No. 132-HME of 2014 dated 04.03.2014 to continue their Post Graduate Courses at Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar and the two Government Medical Colleges, Jammu/Srinagar, allowing them to continue their studies from the date of their appointment or from the date of their selection for undergoing the Post Graduate Course, whichever is earlier. Their period of study was to be regularized separately; and

Whereas, Dr. Naseer Bashir Khanday represented to the Government requesting that he may also be given the same treatment which has been given to the newly appointed Medical Officers who were doing PG courses in GMC, Jammu and GMC, Srinagar respectively; and

Whereas, the Health & Medical Education Department took up the matter with the Finance Department regarding amendment in rule 4 of J&K Civil Services (Leave) Rules, 1979 to the extent that sub rule (i) is omitted so far it relates to Health & Medical Education Department, so that the department is able to allow the doctors to undergo PG Courses in

SKIMS/ASCOMS and any other institutions outside the state vide this department's UO No. HD/Gaz/Gen-132/2014 dated 14.07.2014; and

Whereas, the Finance Department vide their UO No. A/49(83)-II-520 dated 29.01.2015 returned the departmental proposal with the following opinion:

"Returned. Departmental proposal has been examined and found devoid of merits. As such, Finance Department conveys regrets to the department."

Whereas, aggrieved of this, Dr. Naseer Bashir Khanday filed a writ petition in the Hon'ble High Court Srinagar under SWP No. 878/2015 – titled Naseer Bashir Khanday versus Commr. Secy. to Govt. and others and Hon'ble High Court vide its judgment dated 04.02.2016 disposed of the case. The operative part of the judgment is reproduced as under:

"The petitioner formed a class with those doctors who were appointed in terms of Government Order No. 132-HME of 2014 dated 04th March, 2014. He also constituted a class with those doctors who were selected to undergo PG Course. Like other doctors, petitioner was selected to undergo the Post Graduation Course by BOPEE. The petitioner in all fours thus formed class with the doctors who were appointed vide Government Order No. 635-HME of 2014 dated 25th October 2014.

The Government could not restrict operation of the Government order only to those doctors who were selected to undergo post graduation course at SKIMS, Soura, Srinagar and two Government Medical Colleges, Jammu/Srinagar.

The petitioner was also to be given benefit of the said Government Order, in as much as, he constituted class with other similarly circumstanced doctors.

Petitioner has been subjected to invidious discrimination, by violating rights guaranteed to him under Article 14 of Constitution of India.

For the above reasons, this writ petition is disposed of and respondents are directed to give same treatment to the petitioner which has been given to the doctors in terms of Government Order No. 635-HME of 2014 dated 25th October, 2014."

Whereas, the Director, Health Services, Kashmir vide this department's letter No. HD/Legal/G/MR-99/2015-N dated 26.02.2016 was conveyed approval to allow Dr. Naseer Bashir Khanday, Medical Officer to continue his PG Course at ASCOMS, Jammu on the analogy of doctors allowed vide Government Order No. 635-HME of 2014 dated 25.10.2014; and

Whereas, the case was examined in the department and it has been observed that Hon'ble Court has directed the respondents to give same treatment to the petitioner which has been given to the doctors in terms of Government Order No. 635-HME of 2014 dated 25.10.2014. The department should have assailed the judgment dated 08.02.2016 before the superior benches of the Hon'ble High Court on the grounds that the departmental proposal for giving similar treatment to the doctors undergoing PG Courses in SKIMS/ASCOMS was not agreed to by the Finance Department as mentioned above. Due to non-assailing of judgment before the superior benches, the same has attained finality and it will not be feasible to assail the same at this stage.

Now, therefore, in compliance to the order of the Hon'ble High Court dated 04.02.2016 in SWP No. 878/2015 – titled Naseer Bashir Khanday versus Commr. Secy. to Govt. and others and in light of the selection of the petitioner doctor by the J&K BOPEE for MD Anaesthesia vide their notification No. 64-BOPEE of 2014 dated 02.07.2014, Dr. Naseer Bashir Khanday is given the same treatment as has been given to other similarly circumstanced doctors who had pursued their PG Courses in Government Medical College, Jammu/Srinagar.

By order of the Government of Jammu and Kashmir.

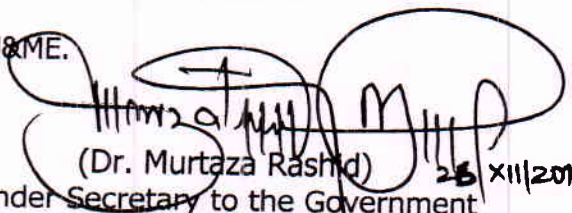
Sd/-
(Dr. Pawan Kotwal) IAS
Principal Secretary to the Government

No. HD/Legal/G/MR-99/2015-N

Dated: 26 .12.2017

Copy to the:-

1. Director, Health Services, Kashmir.
- ✓ 2. Director Finance, Health & Medical Department (Nodal Officer, Website H&ME).
3. Director, Archives, Archaeology & Museums, J&K, Jammu.
4. OSD with Minister for Health & Medical Education for information of Hon'ble Minister.
5. Special Assistant to Minister of State for Health & Medical Education for information of Hon'ble MoS.
6. Concerned doctor.
7. Pvt. Secretary to the Principal Secretary to the Government, Health & Medical Education Department.
8. Government Order file/Stock file/Website H&ME.


(Dr. Murtaza Rashid) 26 XII 2017
Under Secretary to the Government
