

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

Subject:- SWP No. 418/2008 titled Syed Javid Ahmad Bihaqi Vs State;
consideration order thereof.

Government Order No. / / / -JK (HME) of 2024
Dated: 19-02-2024.

Whereas, Dr. Syed Javid Ahmad Bihaqi was appointed as Assistant Surgeon on 1st of February 1986; and

Whereas, the aforementioned doctor was appointed as B-Grade ENT Specialist in terms of Government Order No.1462-HME of 1998 dated 01.07.1998; and

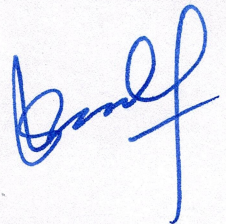
Whereas, Dr. Syed Javid Ahmad Bihaqi working as a B-Grade Specialist having applied for 30 days earned leave in 1999; and

Whereas, above Specialist applied for extension of the leave which was not granted and finally resumed his duty on 17.09.2001; and

Whereas, the Dr. Syed Javid Ahmad Bihaqi B-Grade E.N.T Specialist has remained absent w.e.f 02.06.1999 to 03.06.2002 and was allowed to join back his duties vide Government order No. 446-HME of 2002 dated 15.04.2002; and

Whereas, the absence period of Dr. Syed Javid Ahmad Bihaqi B-Grade E.N.T Specialist w.e.f 02.06.1999 to 03.06.2002 vide Government Order No.446 HME of 2002 dated 15.04.2002 was treated as "**dies non**" in-terms of article 163 CSR read with SRO- 514 of 1999 ; and

Whereas, Dr. Syed Javid Ahmad Bihaqi B-Grade E.N.T Specialist (petitioner) aggrieved with the ibid Government Order, filed a writ petition bearing SWP 418/2008 praying therein that the period of his absence be treated as Leave whatever kind due instead of Dies Non; and



Whereas, the Hon'ble High court vide its judgment dated 08.12.2011 disposed of the case as under:-

In view of averments made and stand taken by the learned counsel for the petitioner, the writ petition is disposed of with the direction to respondents to accord consideration to the petitioners case in the same manner as the period of absence of other doctors has been dealt with. The respondents as far as possible shall decide the matter within four weeks from the date copy of this order is served upon them. Petitioner may at his option, handover copy of the writ petition alongwith the copies of all its annexures to the respondents so as to enable them to dispose of the matter at an earliest.

Whereas, the case was examined in terms of ibid judgment and it was found that ,the petitioner (Dr. Syed Javid Ahmad Bihagi B-Grade E.N.T Specialist) has only 264 days Earned leave on his account upto 31.05.1999 while as the period of absence was around 3 years; and

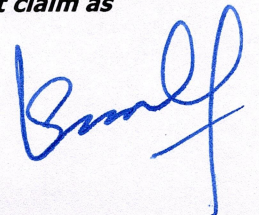
Whereas, a lenient view has already been taken in favour of the petitioner by allowing him to join back the service and treating the period of absence as **dies-non**, which has in fact saved his service, otherwise he was liable to be terminated; and

Whereas, there are so many similar cases in the Department where period of absence was treated as **dies-non**, like the case of Dr. Syed Javed Farooq Qadri and Dr. Mohammad Younis, Medical Officer; and

Whereas, even if, assuming but not admitting that the period of absence in respect of some doctors was treated as leave whatever kind due, the same has been done wrongly and therefore, cannot be perpetuated further by repeating the same as one wrong cannot justify another wrong; and

Whereas, the Hon'ble Supreme Court in case titled Tarun Kumar Vs Assistant Director Directorate of Enforcement vide its judgment dated 20.11.2023 passed in SLP (Crl.) No. 9431 of 2023 held as under:

It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.



Whereas, the Hon'ble Supreme Court in another case titled Sunil Kumar Soni Vs State of Rajasthan vide its judgment dated 28.03.2023 passed in SLP No. 27633/2017 held as under:

"...But unfortunately for the petitioner, the question of law on the issue of eligibility of persons holding Bachelor degree in Education through the distance education mode is already settled by this Court. Therefore, if other people have secured the benefit of an order, those orders are not in accordance with the law laid down by this Court. It is well settled that there cannot be equality in the matter of illegality. Therefore, the petition deserves to be dismissed".

Now, therefore, the claim of the petitioner namely Dr. Syed Javid Ahmad Bihagi, B-Grade E.N.T Specialist has been considered with due deference to order dated 08.12.2011 passed by the Hon'ble High Court in SWP No.418/2008 titled Syed Javid Ahmad Bihagi Vs. State, and has been found to be bereft of any merit for the aforesaid reasons and accordingly rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dr. Syed Abid Rasheed Shah) IAS

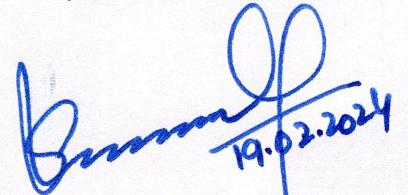
Secretary to the Government
Health and Medical Education Department

Dated: 19-02-2024

No. HD-Lgal/433/2023-02 (E-7373498)

Copy for information to the:-

1. Principal Secretary to the Lieutenant Governor.
2. Joint Secretary (JK&L), Ministry of Home Affairs, Government of India.
3. Additional Advocate General, Hon'ble High Court J&K
4. Director, Archives, Archaeology and Museums, J&K.
5. OSD with Advisor (B) to the Lieutenant Governor.
6. Director Health Services Kashmir.
7. PS to Secretary to Government, Health & Medical Education Department.
8. I/C Website.
10. Government Order file/Stock file/Monday Return file.



(Mohsin Raza) JKAS

Deputy Secretary to the Government
Health and Medical Education Department