

GOVERNMENT OF JAMMU AND KASHMIR
HEALTH & MEDICAL EDUCATION DEPARTMENT
HUMAN RESOURCE MANAGEMENT BRANCH
Civil Secretariat, J&K

Subject: Implementation of Judgment dated 01.09.2021 passed in OA No. 349/2021 titled Dr. Parveen Ahmed Sofi Vs UT of J&K and Ors.

Government Order No. 526 -JK (HME) of 2023
Dated: 22-06-2023

WHEREAS, the applicant, Dr. Parveen Ahmed Sofi, the then Assistant Surgeon/Medical Officer in Health and Medical Education Department was placed under suspension by the Director Health Services, Kashmir vide Order No. Es-3/1-133/5204 dated 08.08.2014 on account of registration of Criminal Case FIR No. 24/2013 for commission of offences punishable U/S 5(1) read with Section 5(2) PC Act 420, 120 B RPC P/S Crime Branch, Kashmir; and

WHEREAS, the Learned Court of Special Judge, Anti Corruption, Srinagar vide judgment dated 25.04.2018 convicted and sentenced the applicant in the case titled State through P/S Crime Branch Kashmir Vs Mustaq Ahmad Peer & Ors.; and

WHEREAS, the applicant (convict) filed an appeal before the Hon'ble High Court at Srinagar under CRA No. 20/2018- titled Dr. Parveen Ahmed Vs State of J&K and Ors. against the judgment dated 25.04.2018 passed by the Special Judge, Anti Corruption, Srinagar whereunder the petitioner was convicted and sentenced in the case titled State through P/S Crime Branch Kashmir Vs Mustaq Ahmad Peer & Ors. The Hon'ble High Court at Srinagar on 11.05.2018 passed following order:-

"Taking an overall view of the application buttressed with the fact that the matter raises debatable questions of law and requires to be examined threadbare before arriving at a reasonable conclusion as also the law laid down in the case of Bhagwan Rama Shinde Gosai and Ors. V/s State of Gujarat reported in (1999) 4 SCC the judgment dated 25.04.2018, whereby the accused/applicant herein has been convicted and sentenced in case titled "State through P/S Crime Branch Kashmir V/s Mushtaq Ahmad Peer & Ors." by the court of Learned Special Judge Anti Corruption Srinagar, is suspended till the next date of hearing before the Bench and the accused/applicant herein shall be released from custody in case she furnishes a bail bond to the tune of Rs. 50,000/- with a surety of the like amount to the satisfaction of Incharge Jail, where she is lodged at the moment. List on 22nd May 2018."

Nishal

WHEREAS, taking cognizance of Court orders, vide Memorandum dated 11.02.2020, Department served charge-sheet to Dr. Parveen Ahmed Sofi, the then Assistant Surgeon/Medical Officer; and

WHEREAS, in response, Dr. Parveen Ahmed Sofi, the then Assistant Surgeon/Medical Officer submitted her reply/statement of defense, wherein, she denied the charges leveled against her and also stated that the matter is sub-judice in the Hon'ble High Court of J&K; and

WHEREAS, vide Government Order No. 653-JK(HME) of 2020 dated 03.09.2020 read with Government Order No. 479-JK(HME) of 2021 dated 08.07.2021, Director Finance, Health and Medical Education Department was appointed as Inquiry Officer to enquire into the matter. Mr. Nasir Bilal Shah, the then Under Secretary to Government, Health and Medical Education was appointed as Presenting Officer; and

WHEREAS, in the meanwhile, Dr. Parveen Ahmed Sofi, superannuated on 31.10.2020 and she represented in the Administrative Department with an application dated 19.04.2021 for consideration of provisional pension in her favour under rules; and

WHEREAS, the Inquiry Officer submitted his enquiry report and the conclusion of the enquiry report is reproduced as under:-

"x. Though, the conviction and the sentence awarded by Special Judge, Anti-Corruption Court, Srinagar in favour of the officer has been suspended by the Hon'ble High Court, yet she has not been absolved of the charges which lead to her conviction. As can be seen from the above rule position, a provisional pension can be sanctioned in favour of an officer where any departmental or judicial proceedings are pending against him/ her and the provisional pension is adjusted against the final retirement benefits upon conclusion of the proceedings. In the instant case, the conviction and the sentence is pending adjudication under an appeal in the Hon'ble High Court. Thus, Inquiry Officer viewed that the officer may be entitled to provisional pension till the final outcome of the appeal. However, the department may seek an opinion from the Law Department before sanctioning a provisional pension in favour of the Medical Officer viz. Dr. Parveen Ahmad Sofi."

WHEREAS, thereafter the supra CRA No. 20/2018 was listed several times including on 30.12.2020 on which date the Hon'ble Court passed the following order:-

"Learned counsel for the respondent is stated to be out of station.

Nishal

Adjourned.

List for final consideration on 01.02.2021".

WHEREAS, the SWP No. 2231/2018 has been transferred by the Hon'ble High Court of J&K at Srinagar to Central Administrative Tribunal, Srinagar under TA No. 4850/2021 and the case is listed for hearing on 18.08.2023; and

WHEREAS, in the meantime the applicant filed an OA No. 349/2021 titled Dr. Parveen Ahmad Sofi Vs UT of J&K and Ors before the Hon'ble Central Administrative Tribunal which was disposed of vide judgment dated 01.09.2021 as under:-

"Looking to the limited prayer made by the learned counsel for the applicant as well as the facts and circumstances of the case, we dispose of the O.A. with direction to the respondents to release the provisional pension in favour of the applicant as per rules and regulations within a period of two months from the date of receipt of a certified copy of this order. Needless to say that, in case, there is some impediment in granting provisional pension in favour of the applicant, the respondents need to pass a reasoned and speaking order."

WHEREAS, in pursuance to aforementioned order dated 01.09.2021 passed by the Hon'ble CAT and on the advice of the Inquiry Officer, the matter was taken up with the Department of Law, Justice & PA for their advice, who vide their U.O. No. LAW-LIT3/1077/2022-10 dated 24.11.2022 returned the file with following advice:-

"Returned. In terms of the order dated 01.09.2021 passed by the Central Administrative Tribunal, Jammu Bench, Jammu in OA No. 62/340/2021 titled 'Dr Parveen Ahmad Sofi Vs. UT of J&K & Ors', the Hon'ble Tribunal has directed to release the provisional pension in favour of the applicant as per rules and regulations, and the said order is innocuous in nature. Accordingly, the department is advised to examine the claim of the petitioner in accordance with rules particularly having regard to the mandate of Article-168 of the Jammu and Kashmir Civil Services Regulations, 1956 by way of speaking order."

WHEREAS, Article 168 of the Jammu and Kashmir Civil Services Regulations, 1956 states as under:-

"168. Implied condition for grant of pension.

Further good conduct is an implied condition of every grant of a pension. The Government reserves to itself the right of withholding or withdrawing a pension, if a pensioner be convicted of serious crime or be guilty of grave misconduct.

Further, the grant will be subject to the condition that the pensioner does not engage himself in any contract, lease or any profession which, has anything to do with the Department or Departments of the State wherein he served prior to his retirement”.

WHEREAS, in view of misuse of her official position and involvement followed by conviction of the applicant in a serious crime that has ruined the career of hundreds of students and has brought government agencies to disrepute, thereby, wavering the public faith in the established institutions, it is clear that the conduct of the applicant has not been good during her service carrier.

NOW, THEREFORE, in compliance to Judgment dated 01.09.2021 passed by the Hon'ble Central Administrative Tribunal in OA No. 349/2021 titled Dr. Parveen Ahmad Sofi Vs UT of J&K and Ors, the claim of the applicant for grant of provisional pension has been considered and found devoid of any merit.

This order is subject to outcome of writ petition/OAs/court cases mentioned above.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar) IAS

Secretary to the Government
Health & Medical Education Department

No. HD-Lgal/121/2022-02 (CC: 175086)

Dated: 22.06.2023

Copy to the:-

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

(Waqar Talib) JKAS

Under Secretary to the Government
Health & Medical Education Department