



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

Subject:- SWP No. 842/2004 titled Suresh Bhagat Vs State & Ors - consideration thereof.

**Government Order No. 77-JK(HME) of 2024
Dated : 31.01.2024**

WHEREAS, on the recommendations of the Public Service Commission, Dr. Suresh Kumar Bhagat was appointed as Assistant Surgeon in the Health and Medical Education Department vide Government Order No. 619-GR (HME) of 1986 dated 06.08.1986 and the said doctor had assumed his duties in the Department w.e.f. 30.06.1987;

AND WHEREAS, the doctor while being posted at District Hospital Poonch, applied for 90 days earned leave and simultaneously went on un-authorized absence from duties w.e.f. 22.06.2002. However, his earned leave application was rejected, therefore, the Director Health Services, Jammu directed him to resume duties but he failed to do so. Despite directions of the DHS Jammu as well as the Administrative Department, directing the petitioner to resume duties, he failed to respond and didn't join back in the Department;

AND WHEREAS, an Inquiry Officer was appointed vide Govt. Order No: 340-H&ME of 2003 dated: 03.04.2003 to inquire into the un-authorized absence from duty of the petitioner. The Inquiry Officer issued a notice to the concerned doctor and the same was also published in two dailies of Jammu asking him to present himself before the Inquiry Officer;

AND WHEREAS, the Inquiry Officer submitted his report to the Administrative Department on 14.05.2003 which was examined in the Department and it was observed that since the continued absence of the petitioner from his duty has hampered the working of the institution where he was posted, as such, his services are liable to be terminated w.e.f the date he remained on unauthorised absence in terms of Article 128 of J&K CSR;

AND WHEREAS, vide Govt Order No. 1249-HME of 2003 dated 09.12.2003, the services of Dr. Suresh Kumar Bhagat, Assistant Surgeon were terminated from the date he went on un-authorized absence from duties;

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AND WHEREAS, Dr. Suresh Bhagat challenged the aforesaid Government Order in the Hon'ble High Court at Jammu vide SWP No. 842/2004 titled Dr. Suresh Bhagat Vs State & Ors which was disposed of by the Hon'ble High Court on 02-04-2009, the operative part of which reads as under:

"In view of above, I find there is no compliance of the procedures envisaged by Rule 33 & 34 of the classification, Control & Appeal Rules, 1956 in the present case. Neither enquiry report has been given to the petitioner nor has any show cause notice regarding proposed punishment been served upon the petitioner. There is no material which shows that an enquiry has been conducted against the petitioner. For the reasons stated above, the petition is allowed and the termination of the petitioner dated 09-12-2003 is set aside. The respondents are directed to re-instate the petitioner forthwith alongwith all consequent benefits. It is however, made clear that he will not be entitled to any pay for the period he has not worked."

AND WHEREAS, in pursuance to the supra judgment of the Hon'ble High Court, the Health and Medical Education Department vide Government Order No. 620-HME of 2010 dated 27.12.2010 accorded sanction to the re-joining of the petitioner, Dr. Suresh Bhagat as Assistant Surgeon in the Health and Medical Education Department and the period of his un-authorized absence from duty w.e.f. 22.06.2002 till the date he joins was treated as "Dies-Non".

AND WHEREAS, in the meantime, the petitioner filed a contempt petition bearing CPSW No. 327/2010 seeking implementation of supra judgment.

AND WHEREAS, in light of Government Order No. 620-HME of 2010 dated 27.12.2010, compliance report was filed by the Department. The Hon'ble Court on 31.05.2023 passed the following order in the contempt petition:

"3. The direction of the writ court in terms of its judgment dated 02.04.2009 in a very explicit and expressed terms mandated the reinstatement of the petitioner with all consequential benefits except for the pay of the intervening period. The direction so given thus admitted of no interpretation at the end of the writ respondents to attend with respect to reinstatement of the petitioner.

4. However, in the name of compliance to the directions of the writ Court, the respondents came forward with a Govt. Order no. 620-HME of 2010 dated 27.12.2010 wherein by reference to the opinion of the Law Department, sanction came to be accorded to the rejoining of the petitioner as Assistant Surgeon in the Health Department, Jammu Division and his unauthorized absence w. e. f 22.06.2002 till the date of his re-joining was treated as 'dies non'.

5. The very use of words 'unauthorized absence w.e.f 22.06.2002 finds place in the Govt. Order no. 620-HME of 2010 dated 27.12.2010 was not only uncalled for but unwarranted at the end of the Govt., and further the tagging of the petitioner's absence to be treated as 'dies-non' was also unwarranted and uncalled for which amounted to diluting the intent and import of the writ court direction passed in the judgment dated 02.04.2009. Accordingly, the petitioner did not join, pursuant to the Govt. Order no. 620-HME of 2010 dated 27.12.2010, as the same reckoned by him was prejudicial to his status as vindicated by the judgment of the writ court in his favour.....

.....10. This Court, in terms of an order dated 21.02.2023, allowed the application by impleading the officials so named in the application as co- respondents and directed the issuance of notice to them which stands issued to them on 01.05.2023 as is evident from the office noting dated 30.05.2023. Thirty days' time period has expired. There is no appearance on behalf of the newly impleaded respondents today."

AND WHEREAS, the Hon'ble Court on 01.09.2023 passed following order in the aforesaid contempt petition ;

*"Ms. Monika Kohli, learned Sr. AAG appearing vice Mr. Amit Gupta, AAG seeks and is granted two weeks' time to file fresh compliance report/statement of facts, failing which, the concerned respondents shall appear in person before the Court on the next date of hearing.
List on 20.09.2023. "*

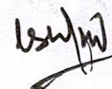
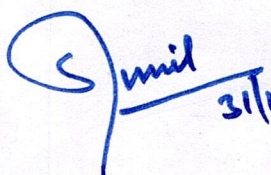
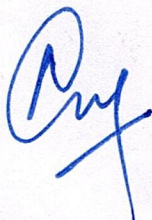
AND WHEREAS, the Hon'ble Court on 10.11.2023 passed following orders in the instant contempt petition:

"... Since the respondents have failed to comply with the orders, therefore, bailable warrants of arrest be issued against the respondents for securing their presence. However, in case, by the next date, the orders are complied with in letter and spirit and compliance report is filed by the respondents, then they need not to appear before this Court on the next date of hearing. "

AND WHEREAS, after examining the aforesaid observations passed by the Hon'ble Court vide order dated 31.05.2023 and 01.09.2023 read with order dated 10.11.2023 passed in the aforesaid contempt petition, the matter has been taken up with the Department of Law, Justice & Parliamentary Affairs for advice;

AND WHEREAS, the Department of Law, Justice & PA vide U.O. No. LAW-LIT3/939/2023-10 dated 08.12.2023 advised as under:

"Returned. This case was discussed with Ld. AG also. Department has not challenged judgment dated 02.04.2009 passed by the Writ Court which has attained finality, as such, Department is advised to implement the same."



AND WHEREAS, in view of pending contempt proceedings and the latest advice of the Department of Law, Justice & PA, Govt Order No. 620-HME of 2010 dated 27.12.2010 needs to be revisited wherein sanction was accorded to the rejoining of the petitioner Dr. Suresh Bhagat as Assistant Surgeon in the Health Department, Jammu Division and period of unauthorized absence from duty w.e.f 22.06.2002 till the date he joins was treated as 'Dies-Non'

AND WHEREAS, the Hon'ble Court has vide its judgment dated 02.04.2009 clarified that the petitioner **will not be entitled to any pay for the period he has not worked**, therefore the question of payment of wages for the period the petitioner has not actually worked does not arise;

AND WHEREAS, it has been observed that the petitioner has never joined back even after issuing the Govt Order No. 620-HME of 2010 dated 27.12.2010 till his age of superannuation in 2014;

AND WHEREAS, after re-considering the case of the petitioner in light of the Hon'ble High Court judgment dated 02.04.2009 read with orders passed in the contempt petition and the advise of the Department of Law, Justice and PA, the Department, while taking considerate view, has observed that the period of absence treated as dies-non in terms of Government Order No. 620-HME of 2010 dated 27.12.2010 needs to be revisited and the period of absence is to be counted for grant of pensionary benefits only on notional basis and the Director, Health Services, Jammu shall fix his pension accordingly.

NOW, THEREFORE, in partial modification of the Government Order No. 620-HME of 2010 dated 27.12.2010, it is, hereby, ordered that the period of absence of Dr. Suresh Bhagat w.e.f. 22.06.2002 till the date of his superannuation shall count for pensionary benefits only on notional basis and the Director, Health Services, Jammu shall fix his pension case accordingly. However, the petitioner shall not be entitled to any other monetary benefit.

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

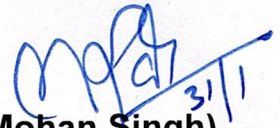
Dated: 31.01.2024

No. HD-Lgal/118/2023-02

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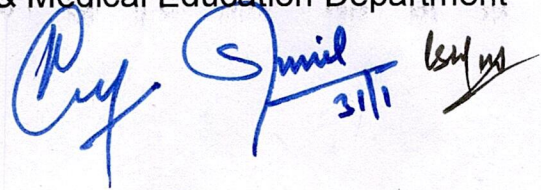
1. Principal Secretary to the Lieutenant Governor.
2. Joint Secretary (Jammu, Kashmir & Ladakh), Ministry of Home Affairs, Government of India.
3. Director, Archives, Archaeology & Museums, J&K.

4. Special Secretary (Law), Health and Medical Education Department for further necessary action.
5. Director, Health Services, Jammu for further necessary action.
6. OSD with Advisor (B) to the Lt. Governor.
7. Private Secretary to the Secretary to the Government, H&ME Department.
8. Concerned/petitioner- for information with the advise to submit all the relevant documents in the office of Director Health Services Jammu within 15 days positively.
9. Government Order file/stock file/In-charge website.


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(Mohan Singh)

Under Secretary to the Government
Health & Medical Education Department


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