

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

**Subject:- Regularization of Adhoc/Contractual/Consolidated employees of Health Department-titled Mohammad Ashraf Khanday & Others V/S State of JK & Ors dated 26.12.2017.**

Ref: DFO/Estt/WP-2609/3547 dated 11.09.2018 from Office of the Controller Drug and Food Control Organization, J&K, Srinagar.

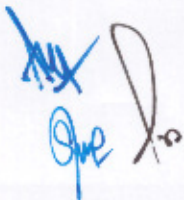
**Government Order No. 590-JK(HME) of 2022**  
**Dated: 04.08.2022**

**WHEREAS**, Mr. Mohammad Ashraf Khanday was initially appointed as Drug Inspector on Adhoc basis in the Drug and Food Control Organization vide Government Order No.1397-GAD of 2002 dated 02.08.2002 issued by the General Administration Department, J&K and subsequently vide Government Order No.621-HME of 2012 dated 12.10.2012 his services was regularized on the basis of the recommendations of the Empowered Committee.

**AND WHEREAS**, Mr. Mohammad Ashraf Khanday, filed a writ petition before the Hon'ble High Court of Jammu and Kashmir at Srinagar under SWP No.2609/2017, CMP No.01/2017 titled Mohammad Ashraf Khanday & others Vs State of J&K & Others, praying therein for regularization with retrospective effect. The Hon'ble High Court of Jammu and Kashmir passed an Order dated 26.12.2017 which is reproduced as under:-

***"In the meanwhile, the respondent are directed to accord consideration to the grant of retrospective benefit of regularization in favour of the petitioners in tune with the judgment dated 07.08.2014, delivered by a division Bench of this Court in LPA No.242/2011 titled District judge Srinagar & Anr Vs Manzoor Ahmad Bhat."***

**AND WHEREAS**, Shri. Mohd Ashraf Khanday S/O Abdul Gani Khanday, was regularized vide Government Order No. 621-HME of 2012 dated 12.10.2012, on the basis of recommendation of the Empowered Committee constituted under the provision of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 and the proviso to Services point (V) of the section 5 of said Act provides as under:-



**"provided that the regularization of the eligible Adhoc or Contractual or consolidated appointees under this Act, shall have effect only from the date of such regularization irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization".**

**AND WHEREAS,** from the above interpretation it becomes clear that the effect to the regularization in favour of Adhoc/Consolidated/contractual officials is prospective which has been done in a well way in favour of the plaintiff while regularizing his services vide Govt. Order No.621-HME of 2012 dated 12.10.2012 further more the section 9 of the Jammu and Kashmir Civil Services (Special Provision) Act, 2010, provide as under:-

**9. Seniority:- The seniority of the regularized employees shall be determined with reference to the date of their regularization. Provided that the inter-se-seniority of the regularized employees shall be determined with reference to the date of their initial appointment on adhoc or contractual or consolidated basis, as the case may be, subject to the merit/select, if any. Provided further that the date of initial appointment on adhoc or contractual or consolidated basis of two or more employees is same, then an employee older in age shall rank senior to an employee younger in age subject to merit list if any,**

**AND WHEREAS,** due to reorganization of erstwhile State of Jammu and Kashmir into two different Union Territories, viz. Union Territory of Jammu & Kashmir and Union Territory of Ladakh, vide S.O 1229(E) issued by the Ministry of Home Affairs, among others, the Jammu and Kashmir Civil Services (Special Provision) Act, 2010 was repealed as whole by virtue of which there is no existence of the said regulation in the Union Territory of Jammu and Kashmir, for implementation as on date.

**AND WHEREAS,** the matter with regard to the case bearing No. 2609/2017 and CMP No.1/2017 titled Mohammad Ashraf Khanday and Anr. V/S State and others stands referred to the Finance Department vide letter dated 07.06.2019. The Finance Department vide their UO dated 13.06.2022, returned the proposal with the following observations:-

**"Returned. The case has been examined in the Finance Department. The Department is intimated that J&K Civil Services (Special Provision) Act, 2010 has been repealed by MHA vide SO 1229 (E) dated 31.03.2020. The Department may also obtain the opinion of the Law Department in the matter."**



**AND WHEREAS,** the matter was accordingly taken up with the Department of Law, Justice and Parliamentary Affairs, who vide their UO No.LAW-LIT3/708/2022-10 dated 22.07.2022 returned the proposal with the following opinion:-

**"Returned the Department is advised to issue a Speaking consideration order rejecting the claim of the petitioner(s)/applicant(s) in deference to the order dated 09.06.2022 passed by the Hon'ble Tribunal T.A No.2677 of 2021" "titled Mohammad Ashraf Khanday & Anr Vs State of J&K and Ors, as the Jammu and Kashmir Civil, Services (Special Provision) Act, 2010 has been repealed as a whole in terms of the provisions of the Jammu and Kashmir Reorganization(Adaptation of state Law) order, 2020 notified vide S.O 1229(E) dated 31.03.2020 issued by the Ministry of Home Affairs and claim is otherwise not legally tenable as first proviso to section 5 of the said repealed act provided in explicit and unambiguous terms that the regularization of eligible adhoc or contractual or consolidated appointees under the act Shall have effect only from the date of regularization, irrespective of the fact that appointees have completed more than 7 years of service on the appointed date or thereafter but before such regularization."**

Now therefore, in back drop of above, the claim put forth by Mr. Mohammad Ashraf Khanday, Drug Control Officer, Drug and Food Control Organization, J&K for effect to his dated of regularization, retrospectively, is found devoid of merits and is rejected forthwith.

**By order of the Government of Jammu and Kashmir.**

**Sd/**  
**(Manoj Kumar Dwivedi)IAS,**  
Principal Secretary to the Government,  
Health and Medical Education Department.

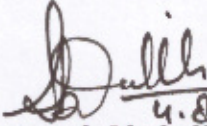
**No:- HME-GRS/1/2022-02**

**Dated: 04 .08.2022**

**Copy to the:-**

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
2. Joint Secretary (J&K), Ministry of Home Affairs, (J&K) Government of India, New Delhi.
3. Secretary to the Government Department of Law, Justice and Parliamentary Affairs.
4. Commissioner Food and Drugs Administration, J&K.
5. State Drugs Controller Drug and Food Control Organization, J&K, Jammu.
6. Director, Archives, Archeology & Museums, J&K.
7. OSD to Advisor (B) Incharge,( Health and Medical Education).

8. Additional Secretary (Legal) Health and Medical Education Department.
9. Private Secretary to the Principal Secretary to the Government, Health and Medical Education Department.
10. Concerned
11. Monday return (w.2.s.c).
12. Government Order file **(HME-GRS/1/2022-02)**
13. Incharge website.

  
4.8.2022

**(Mohammad Abdullah),**

Under Secretary to the Government,  
Health & Medical Education Department

