

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

Subject: SWP No. 1512/2016, M.P.No. 01/2016 & 02/2016 dated 20.04.2017 titled Dr. Ishfaq Ahmad Ganai Vs State of J&K and Ors.

Ref: i. No. Est/3/1-133/4490 dated 04.09.2018 & No. DHSK/Est-3/1-133/63/I/10348 dated 10.05.2022 from Directorate of Health Services, Kashmir.  
ii. U.O No. Law-LIT3/890/2022-10 dated 12.09.2022 from Department of Law, Justice & Parliamentary Affairs.

**Government Order No: 695 -JK(HME) of 2022**  
**Dated: 30 -09-2022**

**WHEREAS,** the Health & Medical Education Department had referred 31 posts of Consultant (Surgery) vide letter No. HME/HRM/80/2013 dated 24.03.2014 to the J&K Public Service Commission for selection of suitable candidates;

**AND WHEREAS,** the J&K Public Service Commission (PSC) advertised these posts vide their notification No. 13-PSC (DR-P) of 2014 dated 20.06.2014 and subsequently issued the selection list of Consultant Surgery vide notification No. 17-PSC (DR-S) of 2015 dated 21.10.2015 and forwarded the same to Health & Medical Education Department vide letter No. PSC/DR/Consultant Surgery/2014 dated 23.10.2015;

**AND WHEREAS,** accordingly, vide Government Order No. 777-HME of 2015 dated 10.12.2015, the Health & Medical Education Department appointed 31 doctors as Consultant (Surgery), on regular temporary basis, in the Pay Band of Rs. 15600-39100 with Grade Pay of Rs. 6600/- in the Health (Gazetted) Services;

**AND WHEREAS,** subsequently, vide Government Order No.115-HME of 2016 dated 01.03.2016, among others, these appointees viz. Consultants (Surgery), were adjusted in the various health institutions;

**AND WHEREAS,** Dr. Ishfaq Ahmed Ganie, Medical Officer, SDH Bandipora approached Administrative department with a plea that he had also appeared in the interview for the post of Consultant (Surgery) and stands





selected in waiting list S. No. 1 as per the notification issued by PSC vide Notification No. 17-PSC (DR-S) of 2015 dated 21.10.2015 and accordingly requested for operation of waiting list;

**AND WHEREAS**, the case was examined in the department and vide this department's communication No. HD(Gaz)Gen-181/2015 dated 22.07.2016 followed by reminder issued vide communication No. HD/Legal/Gaz/MR-164/2016 dated 22.11.2016, the Director Health Services, Jammu as well as Director Health Services, Kashmir were requested to intimate as to how many doctors have joined as Consultant Surgery in response to Government Order No. 777 HME of 2015 dated 10.12.2015;

**AND WHEREAS**, in the meantime, the department received Contempt No. 444/2017 in SWP No. 1512/2016 titled Dr. Ishfaq Ahmad Ganai Vs State of JK & Ors. and an another Order dated 27.03.2018 passed by the Hon'ble High Court, J&K Srinagar which is reproduced as under:

*"Order passed by this Court has not been complied with despite extension of time. Respondent No. 1 was directed to remain personally present, but is conspicuous he is absent today. Post the matter for his presence after two weeks. List on 17th April, 2018."*

**AND WHEREAS**, the matter was re-examined in the department and vide this department's letter dated 31.07.2018, clarification was sought from the Director, Health Services, Kashmir on the various points;

**AND WHEREAS**, in response, Directorate of Health Services, Kashmir vide communication No. Est/3/1-133/4490 dated 04.09.2018 submitted that the following doctors upon their appointment as Consultant Surgery joined in Directorate of Health Services, Kashmir:-

S. No.	Name of Doctor	S. No. in appointment order
1	Dr. Nazir Ahmad Rather	20
2	Dr. Tufail Ahmad Dass	10
3	Dr. Basharat Ahmad Kanth	14
4	Dr. Javeed Ahmad	05
5	Dr. Rajandeep Singh	06
6	Dr. Shamima Akhter	01
7	Dr. Hamidullah Dar	09
8	Dr. Raashid Hamid	18
9	Dr. Mukhtar Ahmad Thoker	17



10	Dr. Feroze Ahmad Khan	12
11	Dr. Mohammad Abass	29
12	Dr. Hanief Mohammad	24
13	Dr. Sajjad Hussain	28
14	Dr. Mosin Mushtaq	03
15	Dr. Mohammad Riyaz Latoo	16
16	Dr. Aashaq Hussain	19
17	Dr. Mushtaq Ahmad Mir	21
18	Dr. Manzoor Ahmad Dhobi	31
19	Dr. Shabir Ahmad Mir	23
20	Dr. Rayees Ahmad Dar	15
21	Dr. Khurshid Ahmad Ganai	22
22	Dr. Arshid Rashid	04
23	Dr. Mudasir Nisar	02
24	Dr. Nawab Ahmad Khan	13
25	Dr. Afaq Ahmad Sherwani	08

**AND WHEREAS,** after the posting of aforesaid doctors vide Government Order No. 115-HME of 2016 dated 01.03.2016, following doctors failed to join at their place of postings:-

S. No.	Name of Doctor	Place of posting
1	Dr. Mosin Mushtaq	SDH Yaripora
2	Dr. Rajandeep Singh	CHC Pakherpora
3	Dr. Mohd Riyaz Latoo	D.H. Handwara
4	Dr. Mukhtar Ahmad Thoker	SDH Kangan
5	Dr. Aashaq Hussain	SDH Seer
6	Dr. Mushtaq Ahmad Mir	DH Kargil
7	Dr. Shabir Ahmad Mir	SDH Tangdhar
8	Dr. Hanief Mohd Dar	SDH Gurez

**AND WHEREAS,** later on, out of aforesaid 08 doctors, the six (06) doctors figuring at S. No. 01, 03, 04, 05, 06 & 08 were allowed to rejoin and final notice was issued in favour of doctor at S. No. 07;

**AND WHEREAS,** the petitioner namely Dr. Ishfaq Ahmed Ganie, Medical Officer is seeking revalidation of the selection/waiting list issued by the PSC vide communication No. 17-PSC (DR-S) of 2015 dated 21.10.2015;

**AND WHEREAS,** rule position regarding the re-validation of selection list, envisages as under:-



Rule-12 of J&K Civil Services Decentralization & Recruitment Rules, 2010 provides as:

*Rule-12: Procedure of selection to the Gazetted posts: The procedure of selections to the gazette posts shall be same as prescribed by the commission from time to time.*

The Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 deals with the procedures for selection of candidates against Gazetted posts.

*"Entry -57 in the Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 envisages as under:-*

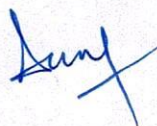
*" The decisions of the Commission for making appointment by direct recruitment shall, subject to the provisions of Rule 9 and 10, be signed by all the members. The recommendations of the Commission shall be communicated to the Government by the Secretary. \*\*\* The recommendations shall be valid for a period of one year from the date they are communicated to the Government. The validity period of one year can, however, be extended for a further period of six months on specific request of the Government if the request for such extension is made before the expiry of the validity of the panel."*

**AND WHEREAS,** the J&K PSC in its recommendation letter expressly mentions that the recommendation will remain valid for a period of one year from the date of communication sent to the Government. However, the period can be extended for a further period of 06 months on specific request of the Government, if the request for such extension is made before the expiry of the validity of the panel as provided for in the J&K PSC (Business & Procedure) Rules, 1980 as amended from time to time;

**AND WHEREAS,** the matter was examined in Legal Section of the department and thereafter, the case file was referred to Department of Law, Justice & Parliamentary Affairs for their advice, who vide their U. O No. Law-LIT3/890/2022-10 dated 12.09.2022 returned the case with the following advice:

*"Returned. Department is advised to examine the issue in light of the Circular no. 38-JK(GAD) of 2020 dated 24.12.2020, 23-JK(GAD) of 2021 dated 16.07.2021 and Circular No. 27-JK(GAD) of 2021 dated 10.08.2021 issued by the General Administration Department in the first instance and clinch the issue accordingly. "*

**AND WHEREAS,** the matter was re-examined in the department in consistence with the advice of Department of Law, Justice and Parliamentary Affairs;





**AND WHEREAS,** the General Administration Department issued Circular instructions vide Circular No. 38-JK(GAD) of 2020 dated 24.12.2020 which reads as under:-

*"Attention of Administrative Departments/Heads of Departments is brought to Rule 14 (5) & (7) of the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, read with SRO 533 of 2018 dated 29.11.2018, which prescribe the validity of select list/wait list issued by the Recruiting Agencies as under:*

*"(5) The select list shall remain in force for a period of one year from the date the select list is sent to the requisitioning authority.*

*(7) The concerned Selection Committees of the Board shall also draw up a waiting list of 50% of the total number of posts advertised, which shall extend to 100% where the number of vacancies is 10 (ten) or less. The Selection Committees shall forward the waiting list, through the Board, to the requisitioning authority for consideration against drop-out vacancies. The waiting list shall remain in force for a period of one year from the date the original selection list is sent to the requisitioning authority..."*


*In spite of these statutory requirements to conclude the selection process in a time bound manner, it has been noticed that inordinate delay is taking place in the departments in operating the selection list/waiting list and in the process, the selection/wait list expires/loses its validity.*

*As per the service jurisprudence, the relaxation in the Rules has to be done very judiciously and under extremely exceptional circumstances so as to withstand the scrutiny of law. Relaxation in the rules cannot be claimed as an unflagging right.*

*Accordingly, it is impressed upon all the Administrative Departments/Heads of the Departments to ensure timely processing of the Select/Wait list to their logical conclusion within the validity period prescribed under rules and refrain from recommending such cases laden with procedural delays caused by respective departments for relaxation to the General Administration Department."*

**AND WHEREAS,** the General Administration Department issued Circular instructions vide Circular No. 23-JK(GAD) of 2021 dated 16.07.2021 which reads as under:-

*Attention of Recruiting Agencies and indenting Departments/appointing authorities is invited towards the Circular No. 38-JK(GAD) of 2020 dated 24.12.2020, wherein instructions were issued for ensuring timely processing of the Selection/Waiting lists as per the timelines prescribed in the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, to avoid delay and seeking unwarranted relaxation in rules.*





*Rule 14 (5) & (7) of the Jammu and Kashmir Civil Services(Decentralization & Recruitment) Rules, 2010, read with SRO 533 of 2018 dated 29.11.2018, prescribe the validity of period of select list/wait list as under:*

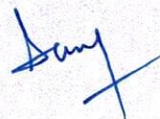
*"(5) The select list shall remain in force for a period of one year from the date the select list is sent to the requisitioning authority.*

*(7) The concerned Selection Committees of the Board shall also draw up a waiting list of 50% of the total number of posts advertised, which shall extend to 100% where the number of vacancies is 10 (ten) or less. The Selection Committees shall forward the waiting list, through the Board, to the requisitioning authority for consideration against drop out vacancies. The waiting list shall remain in force for a period of one year from the date the original selection list is sent to the requisitioning authority..."*

*However, despite fixed timelines notified in the extant rules and various instructions issued from time to time for concluding the selection process and operating the Selection/Waiting list, it has been observed that either the recruiting agencies do not forward the waiting list along with the selection list thereby violating the statutory provisions or the appointing authorities consume considerable time in operating upon there commendations out of the select or wait list which often results in expiry in their period of validity. Further, enormous time is consumed by the recruiting agencies to decide on the withheld recommendations which often denies the candidates figuring in the waiting list opportunity from being considered for appointment against such candidature. Timely conclusion of the withheld recommendations assumes more significance in light of the provisions contained in SRO 60 of 2018 dated 02.02.2018 by virtue of which such cases remain alive perpetually unless decided in a time bound manner. The appointing authorities, on their part, are required to operate the recommendations out of the waiting list immediately upon the end of 21 days allotted as joining period for the appointees.*

*Accordingly, it is impressed upon all the Recruiting Agencies/Appointing Authorities to adhere to the statutory provisions and bring the selection processes to their logical conclusion within the fixed timelines and refrain from recommending the cases laden with procedural delays for relaxation in the Rules which has to be done very judiciously and under extremely exceptional circumstances so as to withstand the scrutiny of law. So, in future, the administrative Departments shall recommend such cases of relaxation only after fixing the responsibility on erring officials/officers/Offices/Departments or cause of delay is due to any extra-ordinary reasons beyond the control of any authority or under extremely exceptional circumstances with detailed reasons to be brought out in the recommendation.*

**AND WHEREAS,** the General Administration Department issued Circular instructions vide Circular No. 27-JK(GAD) of 2021 dated 10.08.2021 which reads as under:





*Attention of Administrative Departments is invited towards Rule 14 (5) & (7) of the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, amended from time to time, which prescribes the validity of select list/wait list issued by the Recruiting Agencies.*

*However, it has been observed that the Selection/Wait lists are being received in the General Administration Department for re-validation in relaxation of Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, among which most of the cases have lost their validity prior to reorganization of the erstwhile State of Jammu and Kashmir. It has been further observed that the departments justify the cases on the basis of procedural delays in processing of such cases at various levels.*

*The General Administration Department has already issued detailed circular instructions with regard to reference of select/ wait list cases for re validation in relaxation of the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, vide Circular No. 38-JK(GAD) of 2020 dated 24.12.2020 and 23-JK(GAD) of 2021 dated 16.07.2021.*

*Accordingly, it is impressed upon all the Administrative Departments to adhere to the statutory provisions with circular instructions/ advisories issued on the subject with the advice to refrain from recommending the cases for re-validation of select list/wait list in relaxation of the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, particularly those which have lost their validity prior to 31st of October, 2019 considering the change in legal framework and re-organization of erstwhile State.*

**AND WHEREAS,** after considering the directions of Hon'ble High Court in SWP No. 1512/2016, M.P.No. 01/2016 & 02/2016 dated 20.04.2017 titled Dr. Ishfaq Ahmad Ganai Vs State of J&K and Ors. and examining the issue in consonance with the J&K PSC (Business & Procedure) Rules, 1980 as amended from time to time and Circular no's. 38-JK(GAD) of 2020 dated 24.12.2020, 23-JK(GAD) of 2021 dated 16.07.2021 and Circular No. 27-JK(GAD) of 2021 dated 10.08.2021 issued by the General Administration Department, it can be seen that the notification in question regarding waiting list/select list issued by the PSC J&K way back vide Notification No. 17-PSC (DR-S) of 2015 way back on 21.10.2015. The petitioner regarding revalidation of selection/waiting list after a gap of almost more than 8 years does not merit any consideration being devoid of merits/not failing in the guidelines/instructions issued by the Government from time to time as Circular No. 27-JK(GAD) of 2021 dated 10.08.2021 clearly instructs all the Administration Departments to adhere to the statutory provisions with circular instructions/advisories issued on the subject with the advice to refrain from recommending the cases for re-validation of select list/wait list in relaxation of the Jammu and Kashmir Civil Services (Decentralization & Recruitment) Rules, 2010, particularly those which have lost their validity prior to 31 of October, 2019 considering the change in legal framework and re-organization of erstwhile State;





**Now therefore,** after considering the directions of Hon'ble High Court in SWP No. 1512/2016, M.P.No. 01/2016 & 02/2016 dated 20.04.2017 titled Dr. Ishfaq Ahmad Ganai Vs State of J&K and Ors. and examining the issue in consonance with the J&K PSC (Business & Procedure) Rules, 1980 as amended from time to time as well as Circular no's. 38-JK(GAD) of 2020 dated 24.12.2020, 23-JK(GAD) of 2021 dated 16.07.2021 and Circular No. 27-JK(GAD) of 2021 dated 10.08.2021 issued by the General Administration Department, the case of the petitioner regarding revalidation of selection/waiting list after a gap of almost more than 8 years does not merit any consideration being devoid of merits/not falling in the guidelines/instructions issued by the Government from time to time. Hence the claim of the petitioner is rejected;

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

**Sd/-**

**(Bhupinder Kumar) IAS**

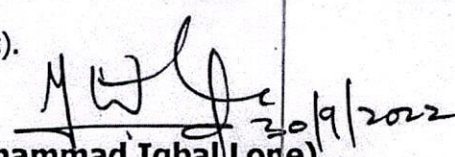
Secretary to the Government  
Health & Medical Education Department

**Dated: 30.09.2022**

**No.HD-Lgal/170/2021-02**

Copy to the:-

1. Joint Secretary (Jammu, Kashmir & Ladakh), Ministry of Home Affairs, Government of India, New Delhi.
2. Director, Archives, Archaeology & Museums, J&K.
3. Director, Health Services, Kashmir/Jammu.
4. Additional Secretary (Law), H&ME Department.
5. Pvt. Secretary to the Secretary to the Government, Health & Medical Education Department.
6. Concerned Doctor.
7. I/c Website, Health and Medical Education Department.
8. Government Order file/Stock file/Monday Return (w.2.s.c).

  
**(Mohammad Iqbal Lone)**

Under Secretary to the Government  
Health and Medical Education Department