

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

**Subject:-** OA No 62/1145/2022 titled Dr Syed Irfan latief Vs The UT of J&K & Ors

**Government Order No:** 210 -JK(HME) of 2023  
**Dated:** 10 -03.2023

**Whereas,** the petitioners namely Dr Syed Irfan , Dr Shiraz Ahmad Lone and Dr Iqbal Ahmad Kar were initially appointed as Medical officers (Unani) alongiwth others in the ISM Department on adhoc basis as Migrant substitutes vide Government order No 179-HME of 1997 dated 24.02.1997

**Whereas,** the petitioners were selected as Medical officers (unani) alongwith other Medical Officers by the J&K Public Service Commission vide No PSC/DR/MOU/04 dated 27.12.2006 and PSC/DR/MOU/04 dated 10.04.2007

**Whereas,** the Administrative department vide Govt order No 03-HME of 2007 dated 17.01.2007 and Govt order No 306-HME of 2007 dated 26.04.2007 among others issued appointment orders in favour of the following candidates alongwith their date of appointment:-

S.No	Name	Date of appointment
1	Dr Syed Irfan	17.01.2007
2	Dr. Shiraz Ahmad Lone	26.04.2007
3	Dr. Iqbal Ahmad Kar.	17.01.2007

**Whereas,** the Medical Officers (migrant substitutes) who were appointed with the applicants on adhoc basis were regularized/confirmed by the Health and Medical Education Department w.e.f 16.05.2006 vide Government order No 534-HME of 2009 dated 15.12.2009 on the recommendations of empowered Committee constituted vide Government order No 610-GAD of 2006 dated 16.05.2006 and with the concurrence of the

Finance department conveyed vide O.M No FD/Edu-01/2006 dated 26.10.2009.

**Whereas,,** vide Government order No 338- HME of 2012 dated 27.04.2012, the Administrative Department issued final seniority list of Medical officers ( Unani/Ayurvedic & Homeopathy) of ISM (now Ayush) J&K wherein the name of petitioner's viz Dr Irfan Latief, Dr, Iqbal Ahmad Kar and Dr Shiraz Ahmad Lone were figuring at serial No 111,123 and 141 respectively in the final seniority list.

**ANDWHEREAS,** the aforesaid officers approached before the Hon'ble Court in SWP No 2087/2009 with the prayer to give the seniority benefit w.e.f the date they were appointed on adhoc basis, with all consequential benefits. The Hon'ble High court finally disposed of the writ petition on 03.09.2014, with the following directions:-

***Learned Counsel for the respondents 4-20 to support the decision taken by the respondent 1-3 to regularize respondents 4-20 with effect from 16<sup>th</sup> May 2006. Place reliance on the judgment titled Dr. Satish kumar Rainan versus State of J&K and others decided on 11<sup>th</sup> July 2008. The Judgment is wide of the mark and not relevant to the present controversy. It merely affirms authority of the State Government to regularize an employee working against a post on Adhoc basis from an interior dated. The controversy here is whether petitioners would be devoid a benefit, and visited with discriminatory treatment only because they proved to be more meritorious than the colleagues granted with such benefit.***

***Petitioners seniority therefore deserves to be reckoned from the date respondent 4-20 have been regularized, and having regard to their place in the initial list w.e.f the date of their appointment against migrant vacancies as ISM doctors.***

***So viewed writ petition is disposed of with a direction respondent 1 &2 to reckon petitioners seniority from***



***the date it would have been counted, had they not been appointed after going through selection process and continued to work like respondents 4-20 against migrant vacancies. Let needful be done in terms of judgment within eight weeks from the date o receipt of copy of this order.***

**Whereas,** the petitioners filed a contempt petition No 794/2015 titled Dr Syed Irfan and Others V/s M.K Bhandari before Hon'ble High Court seeking therein the implementation of the judgment passed on 03.09.2014. The case was examined in the Health and Medical Education Department supported with the inference from the Department of law Justice and Parliamentary Affairs conveyed vide U.O No LD/(LIT)2015/150-HME dated 01.02.2016 and accordingly re-fixed the seniority of the petitioners vide Govt order No 534-HME of 2016 dated 04.10.2016: \_

- 1. Dr. Syed Irfan Latief shall figure in the seniority position immediately below Dr Asia Sultan who was figuring at S.No 97 of the seniority list.**
- 2. Dr Shiraz Ahmad Lone shall figure in the seniority position immediately after Dr Syed Irfan latief.**
- 3. Dr Iqbal Ahmad Kar shall figure in the seniority position immediately below Dr. Tariq, Ahmad Kuloo who was figuring at S.No 98 of the seniority list and immediately above Dr. Farooq Ahmad Rather.**

**Whereas,** in the meantime, the petitioners approached the Hon'ble Central Administrative Tribunal in OA No 62/1145/2021 seeking consequential monetary benefits w.e.f 16.05.2006 from the date their seniority has been re-fixed. The Hon'ble Central Administrative Tribunal, Jammu, disposed of the petition on 05.09.2021 with the following direction:-

***“ Looking to the submissions made by the learned counsel for the applicants, the O.A, is disposed of with direction to the respondents to decide the issue of payment of consequential benefits to the applicants by passing a reasoned and speaking order in accordance with rules within a period of two months from the date of receipt of a certified copy of this order”***



**Whereas**, the matter was examined in the Health and Medical Education Department and the Director Finance of the Department opined:

The petitioners claim for step up in terms of Art 77-B of JKCSRs merits rejection on the premise that the stepping up of pay of a senior to bring him at par with a junior officer is contingent upon the conditions laid down in Government instruction No 1 .....it is expressly clear that the juniors in the instant case have been drawing the pay more than the senior as per the normal rules because the petitioners were placed ahead in the seniority by virtue of Hon'ble High court order, therefore, the question of invoking the provisions of Art 77-B of JKCSRs does not arise in the instant case.

**Whereas**, as per the Rule 77 of the Jammu and Kashmir Civil Services Regulations- Volume I it has been provided:-

The initial substantive pay of Government servant who is appointed substantively to a post on time scale of pay is regulated as follows ;

- (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended;
- (i) When appointment to the new post involves the assumption of duties and responsibilities of greater importance (as interpreted for the purposes of Article 66) than those attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post;
- (ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time scale which is equal to his substantive pay in respect ( if the old post, or, if there is no such stage, the stage next below that pay plus personal allowance equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever, is less. But if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;
- (iii) When appointment to the new post is made on his, own request and the maximum pay in the time scale of that post is less than



his sustentative pay in respect of the old post, he will draw that maximum as initial pay.

- (b) If the conditions prescribed in Clause (a) are not fulfilled, he will draw as initial pay minimum of the time scale;

Provided, both in cases covered by Clause(a) and in cases, other than cases of re-employment after resignation or removal of dismissal from the public service covered by Clause (b), that if he either;

- (i) Has previously held substantively or officiated in the same post, or  
(ii) A permanent post other than a tenure post or temporary post, on an identical time scale, or

(2) is appointed substantively to a tenure post on a time scale, identical with that of another tenure post which he has previously held substantively in which he has previously officiated, then the initial pay shall not be less than the pay or salary, which he drew on the last such occasion, and he shall count the period during which he drew, that pay or salary on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay or salary.

77(b) To set right past cases of a junior having drawn more pay than his senior, as a result of deferring promotion, the junior shall be treated to have joined the higher post on the date on which the person senior to him and promoted along with him under one and the same order, joined the higher post, juniors pay be fixed in the higher post accordingly from that date. The effect of increase in pay as a result of promotion should be allowed to him from the date he actually took over.

**Whereas**, in the instant case, the juniors (Petitioners) have been drawing the pay more than the seniors as per the normal rules as the petitioners were placed ahead in the seniority by virtue of Hon'ble High Court order, hence the question of invoking the provisions of Article 77-B of J&K Civil Service Regulations does not arise.



**Now, therefore,** in view of above the case of the petitioners for paying the consequential benefits has been examined in the Department and found devoid of merit, hence rejected.

**BY ORDER OF GOVERNMENT OF JAMMU AND KASHMIR**


**Sd/-**  
**(Bhupinder Kumar) IAS,**  
Secretary to the Government  
Health and Medical Education Department

Dated: 10.03.2023

No.HD/Legal/144/2021-02

Copy to the:-

1. Principal Secretary to Hon'ble Lieutenant Governor J&K.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
3. Director Ayush J&K, Jammu.
4. Director, Archives, Archeology and Museums, J&K, Srinagar.
5. OSD to Advisor (B) to the Lieutenant Governor, ( In charge health & Medical Education).
6. Additional Secretary (legal) Health & Medical Education Department.
7. Private Secretary to Secretary to the Government, Health & Medical Education Department.
8. Monday retrun (w.2.c.s).
9. In charge website.

  
10/3/23  
**(Mohammad Abdullah)**

Under Secretary to the Government  
Health and Medical Education Department

  
10/3/23