

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

Subject: TA No. 5272/2020 in SWP No. 99/2017 titled Dr. Misbah Afsheen Vs State of J&K & Others.

Government Order No. 328 – JK (HME) of 2023
Dated: 19 -04-2023

WHEREAS, Dr. Misbah Afsheen was appointed as Assistant Surgeon/Medical Officer vide Government Order No. 464-HME of 2005 dated 01.08.2005;

AND WHEREAS, while working as Registrar in Government Medical College, Srinagar, Dr. Misban Afsheen, Medical Officer had submitted an application in the Directorate of Health Services, Jammu on 22.06.2012 and requested for sanctioning of study leave for pursuing higher studies abroad for atleast three years;

AND WHEREAS, on her own request, the doctor was relieved by the Registrar Academics GMC, Srinagar, vide order No. Acad/3499-3502/MC, dated 24.07.2012;

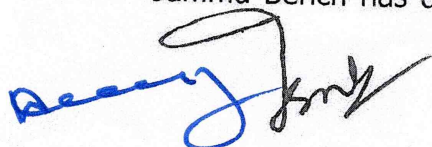
AND WHEREAS, in pursuant to above order, Dr. Misbah Afsheen joined in the Directorate of Health Services, Jammu on 26.07.2012 and thereafter she resorted to unauthorized absence w.e.f. 27.07.2012;

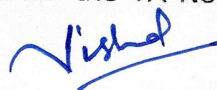
AND WHEREAS, vide No. ES-3/5224/3114-16 dated 05.01.2013, Director, Health Services, Jammu served a notice to the doctor, wherein, she was directed to report in the Directorate within seven days positively failing which action as warranted under rules will be initiated against her;

AND WHEREAS, in pursuance to aforesaid notice, Dr. Misbah Afsheen, Medical Officer did not join in Directorate and remained on unauthorized absence;

AND WHEREAS, Dr. Mishab Afsheen, Medical Officer filed a writ petition before the Hon'ble High Court in SWP No. 99/2017 titled Dr. Misbah Afsheen Vs State of J&K and others, which was later on transferred to the Hon'ble Central Administrative Tribunal vide TA No. 5272/2020;

AND WHEREAS, the Hon'ble Central Administrative Tribunal, Jammu Bench has disposed off the TA No. 5272/2020 (SWP NO. 99/2017)





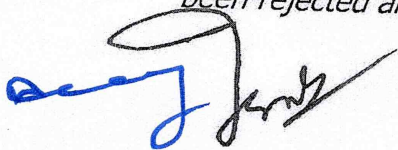
titled Dr. Misbah Afsheen vs State of & ors vide its order dated 22.02.2021, the operative part of which is reads as under:-

"We, therefore, dispose of the TA, directing the 3rd respondent to pass orders on the application/representation made by the applicant, seeking permitting her to re-join the duties, within four weeks from the date of receipt of copy of this order."

AND WHEREAS, Dr. Mishab Afsheen filed a contempt Petition CP/21/2022 (Srinagar) in TA/5272/2020 titled Dr. Misbah Afsheen Vs Manoj Kumar Dwivedi against the respondents for non-compliance of order dated 22.02.2021 passed by the Hon'ble CAT;

AND WHEREAS, in pursuance to order dated 22.02.2021 passed by the Hon'ble CAT, the representation submitted by the petitioner has been examined, wherein, she has represented as under:-

- i. In the year 2012, she approached before the Principal, GMC Srinagar for grant of Child Care Leave initially for a period of 10 months, but the Principal instead of sanctioning leave, relieved her on 24.07.2012 and directed to report back to the Director, Health Services, Jammu to apply for such leave;*
- ii. She joined in the Directorate of Health Services, Jammu on 28.07.2012 and applied for Child Care leave on 06.08.2012 for a period of 10 months and after availing such leave, she joined her services on 03.06.2013.*
- iii. On 01.07.2013, she applied for maternity leave for a period of six months in the Directorate of Health Services, Jammu on account of birth of her 2nd child which was sanctioned and she proceeded on maternity leave w.e.f. 02.07.2013.*
- iv. Due to complicity on account of birth of her child, she again applied for Child Care Leave for the remaining period of 14 months in continuation to maternity leave commencing from 01.01.2014.*
- v. Since the condition of her newly born child was very critical and there was no body except her ailing mother-in-law to look after the infant, as such, after expiry of Child Care leave, the petitioner applied for extension of further leave of two years whatever kind due to her w.e.f. 01.03.2015.*
- vi. She has also stated that at no point of time the Director, Health Services, Jammu intimated or informed that her leave application has been rejected and resume her duties;*



AND WHEREAS, the representation of the petitioner has been examined in light of the available record as under:-

- i. *Vide Order No. Acad/3499-3502/MC dated 24.07.2012, it has been clearly mentioned that Registrar Academics, GMC Srinagar relieved Dr. Misbah Afsheen, Assistant Surgeon on her own request and directed her to report to Director, Health Services, Jammu for further duties, however, the petitioner in her joining report has also mentioned that she had applied for relieving order on her own request;*
- ii. *She has submitted an application for study leave in the Directorate of Health Services, Jammu on 22.06.2012, wherein, she requested for sanctioning of study leave for pursuing higher studies in abroad for atleast three years;*
- iii. *After joined in the Directorate of Health Services, Jammu on 26.07.2012, the petitioner went on unauthorized absence w.e.f. 27.07.2012 and did not attend her duties, however, her whereabouts were not known;*
- iv. *Vide No. ES-3/5224/3114-16 dated 05.01.2013, Director, Health Services, Jammu served a notice to the doctor, wherein, she was directed to report in the Directorate within seven days positively failing which action as warranted under rules will be initiated against her, but she did not resume her duties;*

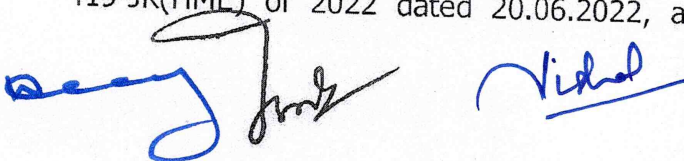
AND WHEREAS, Article 113 of J&K Civil Services, Regulations, 1956 reads as under:-

"A Government servant after five years of continuous absence on leave is considered to be out of State employment."

AND WHEREAS, Article 128 of J&K Civil Services Regulations, 1956 envisages as under:

"Absence without leave or after the end of leave involves loss of appointment, except as provided in Article 203(b) or when due to ill health in which case the absentee just produce the certificate of Medical Officer."

AND WHEREAS, among others, the case of Dr. Misbah Afsheen, Medical Officer was examined in the Department and it was observed that the doctor was on unauthorized absence from duties for more than five years and she did not reply to the Notice served to her by the Directorate, Health Services, Jammu, therefore, vide Government Order No. 419-JK(HME) of 2022 dated 20.06.2022, among others, the services of



Dr. Mishah Afsheen Malah, Medical Officer R/o H. No. 178, Malla Munsion, Talab Khatikan, Jammu (S.No. 12) were terminated in terms of Article 113 & Article 128 of J&K Civil Services, Regulation, 1956 w.e.f. 27.07.2012;

AND WHEREAS, after examining the representation of the petitioner, it has been observed that the content of the petitioner made in her representation is contrary to the available records.

NOW THEREFORE, in compliance to the order dated 22.02.2021, passed by the Hon'ble Central Administrative Tribunal at Srinagar in C.P. No. 21/2022 in T.A. No. 4272/2020 titled Misbah Afsheen Vs. Manoj Kumar Dwivedi, the claim of the applicant has been considered and found devoid of any merits and, hence, rejected.

By Order of the Government of Jammu and Kashmir.

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

No. HD-Lgal/64/2021-02
Copy to the:-

Dated: 19 .04.2023

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

(Waqar Talib) JKAS
Under Secretary to the Government
Health and Medical Education Department

