



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

Subject: Implementation of Judgment dated 18.05.2011 passed in SWP No. 1358/2003 titled Dr. Wachaspati Vs State of J&K and Ors read with order dated 14.02.2023 passed in CPSW No. 152/2014 titled Dr. Wachaspati Vs Dr. Arun Kumar Mehta and others.

Government Order No. 454-JK (HME) of 2023
Dated: 02-06-2023

WHEREAS, the Health and Medical Education Department vide Government Order No. 186-HFW of 1998 dated 23.12.1998, among others, promoted Dr. Wachaspati (petitioner) against the post of Deputy Director w.e.f. 16.11.1992.

AND WHEREAS, the Health and Medical Education Department in compliance to the Judgment dated 23.04.1992 passed in the case WP No. 1079/1985 titled Dr. Mohinder Kumar Bhutiyal and Anr Vs State of Jammu and Kashmir and Ors, vide Government Order No. 618-HME of 2001 dated 10.09.2001 ordered as under:-

- (i) Re-fixation of seniority of Dr. Wachaspati and Dr. M. K. Bhutyal Ex-Deputy Directors in the seniority list of CMOs as it stood on 16.07.1985 at the places shown against each below:
 - (a) Dr. Wachaspati (S. No. 7-A)
 - (b) Dr. M.K Bhutyal (S. No. 7-B)
- (ii) Grant of Notional Promotion as Deputy Directors in favour of the aforementioned two doctors w.e.f. the date their junior namely Dr. M. L. Gupta had been promoted as such without payment of any arrears on this count to enable them to the pensionary benefits only.

AND WHEREAS, Dr. Wachaspati filed present writ petition bearing No. 1358/2003 with the grievance that after putting in 5 years service as Deputy Director he was entitled to time bound promotion but was deprived of the said benefit.

AND WHEREAS, the Hon'ble Court disposed of the Writ Petition vide judgment dated 18.05.2011 as under:-

***In these, circumstances, I allow this writ petition. I direct the respondents to pay monetary benefit to the petitioner from the date he was promoted to the post of Deputy Director and consider his time bound promotion after completing five years' service in the Grade of Deputy Director if cover under rules and give him the consequential benefits. Let the exercise be completed within a period of three months from the date copy of this order is served on the respondents.
Petition allowed.***

AND WHEREAS, the petitioner filed CPSW No. 152/2014 titled Dr. Wachaspati Vs Dr. Arun Kumar Mehta and others alleging non-implementation of Judgment dated 18.05.2011.

AND WHEREAS, the Hon'ble Court vide order dated 14.02.2023 passed in the aforesaid contempt petition directed as under:-

This Court sees it an injustice to apprise the petitioner who came to join service in July 1962 as an Assistant Surgeon in SMGS Hospital, Jammu and from thereon to be promoted as Tuberculosis Officer in Health and Medical Education Department that the legal battle raised by him in the year 1985 was only for one step promotion to the post of Deputy Director and for the purpose of earning some monetary benefits and nothing beyond that. This is not what is the end intendment of the judgment dated 18.05.2011 of the writ court passed in writ petition SWP no. 1358/2003, as such, the compliance report so filed in the case is rejected and the respondents are called upon to come forward with letter and spirit compliance of the direction of the writ court in its entirety by granting the consequent promotions in favour of the petitioner on account of his having served minimum 5 years of service though on notional basis as Deputy Director. Let needful compliance report be filed by or before the next date of hearing.

AND WHEREAS, after re-examining the case of the petitioner in pursuance of the aforesaid judgment/order passed by the Hon'ble Court in the instant case it has been found as under:-

- (i) The petitioner has attained the age of superannuation on 31.08.1995. The Health and Medical Education Department vide Government Order No. 186-HFW of 1998 dated 23.12.1998, among others, promoted Dr. Wachaspati (petitioner) against the post of Deputy Director w.e.f. 16.11.1992.
- (ii) The Health and Medical Education Department in compliance to the Judgment dated 23.04.1992 passed in the case WP No.

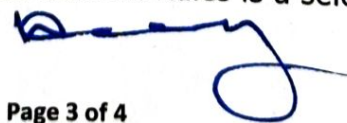
1079/1985 titled Dr. Mohinder Kumar Bhutiyal and Anr Vs State of Jammu and Kashmir and Ors, vide Government Order No. 618-HME of 2001 dated 10.09.2001 ordered as under:-

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Dr. Wachaspati (S. No. 7-A)
Dr. M. K. Bhutyal (S. No. 7-B)

- (b) Grant of Notional Promotion as Deputy Directors in favour of the aforementioned two doctors w.e.f. the date their Junior namely Dr. M. L. Gupta had been promoted as such without payment of any arrears on this count to enable them to the pensionary benefits only.

- (iii) Payment of monetary benefits amounting to ₹ 19275/- accrued to the petitioner, from the date he was promoted to the post of Deputy Director and time bound promotion, has been released in his favour vide Cheque No. 246616 dated 25.09.2012 as intimated by the Director Health Services, Jammu vide communication dated 10.12.2012.
- (iv) That all the benefits (promotion/monetary benefits/time bound etc.) stand already conferred to the petitioner in due deference and compliance to the Judgment dated 18.05.2011, as such, the Judgment stands implemented in letter and spirit. The petitioner is trying to over reach the process of the present proceedings before the Hon'ble Court by enlarging the relief not sought by him or granted by the Hon'ble Court in the writ court Judgment as such the same is devoid of any merit.
- (v) With regard to the subsequent promotion to the petitioner, no junior to the petitioner has been promoted to the next higher post on substantive basis prior to his retirement. The petitioner seeking parity with his immediate senior namely Dr. J. K. Gupta is legally flawed and misconceived. Furthermore, Dr. M. K. Bhutyal was not promoted substantively on the post of Director Health Services, Jammu.
- (vi) Since petitioner retired on superannuation on 31.08.1995, therefore, his claim seeking functional promotion on the post of Director is legally impermissible because holding a position/post is a sine-qua-non for effecting functional promotion in view of the guidelines laid down vide Government Order No. 743-GAD of 2007 dated 28.06.2007 in compliance to Apex Court Judgment in case Suraj Parkash Gupta and Ors Vs State of J&K and Ors. (eligibility/vacancy/placement, whichever is later).
- (vii) Even otherwise also the post of Director in terms of Health Gazetted Services Recruitment Rules is a selection post and the



officers are not automatically promoted on the basis of seniority alone. The merit, suitability and seniority position are inter-alia assessed before embarking upon the exercise of posting an officer on any selection post. Since the petitioner had already retired on superannuation, there was no scope or occasion to consider his candidature for the post of Director.

NOW THEREFORE, in compliance to Judgment dated 18.05.2011 passed in SWP No. 1358/2003 titled Dr. Wachaspati vs State of J & K and Ors read with order dated 14.02.2023 passed in CPSW No. 152/2014 titled Dr. Wachaspati Vs Dr. Arun Kumar Mehta and others, the claim of the petitioner has been considered and found devoid of any merit.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar) IAS

Secretary to the Government
Health & Medical Education Department

No. HD-Lgal/181/2021-02 (CC: 67065)

Dated: 02.06.2023

Copy to the:-

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

(Waqar Talib) JKAS

Under Secretary to the Government
Health & Medical Education Department