

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

Subject: Implementation of judgment dated 02.03.2021 passed by the Hon'ble Central Administrative Tribunal Jammu in OA No. 61/33/2021 titled Shwiti Gupta Vs UT of J&K read with Hon'ble High Court judgment dated 15.12.2021 passed in WP(C) No. 2254/2021 titled UT of J&K Vs Switi Gupta and read with order dated 11.07.2023 passed in CP No. 263/2022 titled Dr Shwiti Gupta Vs Sh Bhupinder Kumar.

REF: J&K Public Service Commission letter No. PSC/Leg/36/2021 dated 19.07.2023

Government Order No: *S70*-JK (HME) of 2023
D a t e d : - 20 .07.2023

WHEREAS, the Jammu and Kashmir Public Service Commission vide letter No. PSC/DR/Dental surgeon/2004 dated 22.08.2005 interalia recommended the selection list of 32 Dental Surgeons under OM category for their appointment against the post of Dental Surgeon. The applicant was not selected in the said list. Aggrieved with the selection process, the applicant Dr. Shwiti Gupta along with other candidates filed a writ petition under SWP No. 1232/2005 in the Hon'ble High Court challenging therein Rule 51 of J&K PSC (B&P) Rules, 1980 which was dismissed by the Hon'ble High Court on 07-05-2013.

WHEREAS, the applicant filed LPASW No. 130 of 2013 and that too came to be dismissed by the Hon'ble High Court. However, the applicant filed a review petition under RPLPA No. 40/2013, which was disposed off by the Hon'ble Court on 09-04-2018 with the following directions:

"Though the Judgment and order under review cannot be interfered with and no different view can be taken, at this stage, on the source of review petition on hand, yet given the submission made by the learned counsel for the review petitioner/appellant, the matter needs no verbosity. The review petition is, accordingly,

disposed of by providing that respondents shall accord consideration to the selection/appointment of review petitioner/appellant, Dr. Shwiti Gupta, as Dental Surgeon on her own merit. This exercise be completed within a period of eight weeks from the date the copy of this judgment is provided to the respondents".

WHEREAS, after the aforesaid judgment, the Commission in its 5th Meeting held on 17-06-2019 decided as under:

"Case of Dr. Shwiti Gupta for consideration of her experience and sports certificates for the post of Dental Surgeon in Health and Family Welfare.

The Commission discussed the matter in the backdrop of the decision of the Grievances Redressal Committee and approved to award 6 more points i.e. 03 for experience and 03 points for sports and recommend Dr. Shwiti Gupta to the Government for appointment against any available cadre post of Dental Surgeon."

AND WHEREAS, accordingly the Commission vide communication No. PSC/Lit/69/2018/Dental Surgeon/2003/DR dated 01-07-2019 recommended the name of applicant Dr. Shwiti Gupta W/o Rohin Gupta, R/o Q.No. 21, Rehari Colony, Jammu having merit of 64.66 points for her appointment to the post of Dental Surgeon under Open Merit Category against any available vacancy in Health & Family Welfare Department.

AND WHEREAS, the recommendation of the Jammu and Kashmir Public Service Commission was examined in the Department and the matter was taken up with the General Administration Department for considering appointment of the applicant against any available vacancy of Dental Surgeon in Health & Family Welfare Department, over and above the requisitioned/Selected posts under Open Merit Category. In turn, the General Administration Department vide its U.O. dated 10-10-2019, observed as under:

"The case has been examined in the General Administration and it has been found that the petitioner

has lost her case in the writ court as well as in LPA. In the Review Petition, the Hon'ble High Court has directed to accord consideration to the selection/appointment of petitioner/appellant as Dental Surgeon on her own merit. The selection process of Dental Surgeon has been completed in the year 2005. J&K PSC has re-opened the case after 14 years seemingly without ascertaining the validity of the sports certificate from the Youth Services & Sports Department and without any prior consultation with the Department of Law, Justice and Parliamentary Affairs or the Health & Medical Education Department. It is also a matter of examination as to whether the regulations of PSC provide for revisiting a selection process which stands concluded way back in 2005 and reworking the merit of a candidate when such selection Committee/Board of PSC has ceased to exist. There has also been a subsequent recruitment for the post of Dental Surgeons in the Health & Medical Education Department in 2012.

Further, the PSC has the mandate to recommend the candidates against the advertised posts. However, in the instant case the petitioner has been recommended for appointment over and above the advertised posts. Accordingly, the Health & Medical Education Department is advised to carefully examine the recommendations of Public Service Commission afresh in consultation with the Department of Law, Justice and Parliamentary Affairs".

AND WHEREAS, based on observations of the General Administration Department, the matter was taken up the Department of Law, Justice and Parliamentary Affairs for legal advice, who vide their U.O. dated 09-01-2020, opined as under:

"Department is advised to examine the case in light of the advice of General Administration Department and if need be seek further clarification from Public Service Commission. In case Public Service Commission reviews its recommendations made in the year 2005 and hold the present petitioner more meritorious than the last selected candidate (Sr. No. 36) and reframe the merit

list/recommendations accordingly, then a policy decision is required to be taken to appointment the petitioner over and above the post notified as ousting the last selected candidate after almost 15 years would lead to unending litigation, which shall not befit the State's interest."

AND WHEREAS, in light of the opinion of the Department of Law, Justice and Parliamentary Affairs, the issue was examined in the Department and it was decided to apprise the J&K Public Service Commission about the opinions of General Administration Department as well as Department of Law, Justice and Parliamentary Affairs with the request to re-examine the case and furnish afresh recommendations with convincing justification for considering such recommendations by the Department vide letter No. HD/GAZ/Gen/128/2019/SL dated 27-01-2020.

AND WHEREAS, in response to this Department's aforesaid communication, the J&K Public Service Commission vide their letter No. PSC/Lit/69/2018/Dental Surgeon/2003/DR dated 25-02-2020 clarified as under:

"...the Hon'ble High Court had upheld the claim of the Dr. Shwiti Gupta, therefore, the Commission was constrained to consider the grievance/representation of the Doctor. The selection for 36 referred posts was completed in the year 2005, as such the exclusion of the last selected candidate from the select list is neither feasible nor justified, as the same could lead the Commission into further litigation. Besides, at that time there was no provision in the Business and Procedure Rules to get the certificates verified from the Youth Services and Sports Department. The certificates of other selected candidates were also not verified. Further, there is no provision in the Jammu and Kashmir Public Service Commission (Business and Procedure) Rule, 1980 as amended from time to time to review the selection once made through proper procedure, as such the matter may kindly be dealt with administratively as thought fit."

AND WHEREAS, on clarification of the J&K Public Service

Commission, the matter was taken up with General Administration Department for placing the same before the Competent Authority for accord of approval to consider the appointment of the applicant Dr. Shwiti Gupta as Dental Surgeon against the available post of Dental Surgeon under Open Merit Category in Health & Family Welfare Department, over and above the requisitioned/selected posts under open merit Category in relaxation of rules subject to the certain conditions. However, the General Administration Department returned the proposal with the following observations:

"Returned. The proposal has been placed before the competent Authority (Hon'ble Lieutenant Governor) who has observed that the proposal of the Health and Medical Education Department with regard to appointment of Dr. Shwiti Gupta against an identified vacancy is in violation of statutory rules and the reopening of case by J&K PSC after 15 years and recommending the candidate's appointment against any available vacancy is beyond the mandate of recommending agency.

Further, the petitioner shall be informed by issuing a speaking order in the matter as per the directions of the Hon'ble Court.

The department is accordingly advised to take further appropriate action in the matter."

AND WHEREAS, accordingly, the case of the applicant for appointment against the post of Dental Surgeon, as per the recommendations of J&K Public Service Commission was considered and rejected vide G.O. No. 872-JK(HME) of 2020 dated 25-11-2020.

AND WHEREAS, the applicant feeling aggrieved of G.O. No. 872-JK(HME) of 2020 dated 25-11-2020, challenged the same before the Hon'ble Tribunal by filing an application bearing OA No. 33/2021-titled Dr. Shwiti Gupta Vs UT of J&K before the Hon'ble Central Administrative Tribunal, Jammu which was disposed of vide judgment dated 02.03.2021 with the following directions:-

“Looking to the facts and circumstances of the case, we are of view that the denial of appointment to the applicant to the post of Dental Surgeon has violated her right under Articles 14 and 16 of the Constitution of India and therefore, the impugned order No. 872-JK(HME) of 2020 dated 25.11.2020 being illegal and arbitrary is quashed and set aside and respondent is directed to appoint the applicant to the post of Dental Surgeon as was initially done. Direction is issued to the respondent – department to fix the notional seniority of the applicant and fix her pay scale and all the benefits attached thereto, as per, Rules on the basis that the applicant was entitled to being appointed was rejected due to fault of J&KPSC. But the applicant will not be entitled to back wages of any other financial benefit, save and except the notional seniority. The appointment of the applicant would also not entitle her to an experience certificate from the year 2005 when she ought to have been selected to the post of Dental Surgeon till date of appointment order on the principle of ‘No Work, No Experience’. The directions must be complied within one month from date of receipt of certified copy of order OA is accordingly disposed of. No costs.”

AND WHEREAS, the case was again referred to General Administration Department for views/comments and the General Administration Department vide U.O No. GAD-Mtg0RBIV/82/2021-09 dated 12.07.2021 returned the case file with the following observations:-

- i. The selection process for the post of post of Dental Surgeon in the Health and Family Welfare Department in the instant case has concluded in 2005 and J&K PSC has reopened the case after 15 years, seemingly without ascertaining the validity of the Sports Certificate from the Youth Services and Sports Department and without any prior consultation with the Department of Law, Justice & Parliamentary Affairs or Health & Medical Education Department.*



- ii. *The extant rules provide that the appointing authority shall restrict the appointments to the extent of referred vacancies only and any violation thereof shall subject the officer concerned to disciplinary proceedings and any appointment in excess of the referred vacancies shall not confer any right on such appointee to hold such post. The recommendation in favour of Dr. Shwiti Gupta for such post. The recommendation in favour of Dr. Shwiti Gupta for appointment is over and above the referred posts.*
- iii. *The appointment has been made by the PSC after a period of 15 years against a future vacancy which is beyond its mandate.*
- iv. *There have been subsequent recruitments for the post of Dental Surgeons in the Health Medical Education Department.*
- iv. *The extant rules clearly provide that the Selection Committees shall not maintain or recommend any select or waiting list for any future vacancy or any vacancy caused on account of resignation by any selectee after appointment. Thus, the recommendation in favour of the candidate has been issued by the JKPSC beyond its mandate. In case the order of the Hon'ble Court is not assailed, it would set a bad precedent for future as selection processes concluded years earlier would be challenged in the Courts on similar lines. The appointment, if agreed to, would also put the already appointed candidates to a disadvantage as the seniority of the petitioner would need to fixed from the date other candidates have been appointed in 2005. Accordingly, the H&ME Department is advised to approach the department of Law, Justice and Parliamentary Affairs Department for challenging the order dated 02.03.2021 passed by the Central Administrative Tribunal (CAT).*

AND WHEREAS, after returning the file by the General Administration Department with aforesaid advise, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs, who vide U.O dated 26.08.2021 conveyed their advice as under:-

"Returned: Department is advised to file writ against order dated 02.03.2021 passed by the Central Administrative Tribunal, Jammu Bench Jammu in O.A No 61/33/2021 title DrShwiti Gupta Vs State of J&K and others before the Division Bench of the Hon'ble High Court at Jammu through Mr. S.A SiddiquiSr Additional Advocate General, Jammu who has been engaged by the Department to file and conduct the writ petition before the Hon'ble Court. Copy of engagement letter is placed alongside"

AND WHEREAS, accordingly writ petition came to be filed before the Hon'ble High Court at Jammu which came to be numbered as WP(C) No. 2254/2021 titled Union Territory of Jammu & Kashmir Vs Shwiti Gupta, and the Hon'ble High Court of Jammu & Kashmir & Ladakh on 15-12-2021 dismissed the same as under:

"In view of the aforesaid facts and circumstances, we do not find any merit in this writ petition, so as to exercise our discretionary jurisdiction and the writ petition is dismissed with no order as to costs".

AND WHEREAS, in the meantime the petitioner filed a contempt petition bearing CP No. 263/2022 before the Hon'ble Central Administrative Tribunal Jammu.

AND WHEREAS, after the dismissal of the writ petition filed by the Department against order dated 02.03.2021 passed by the Hon'ble Central Administrative Tribunal, Jammu Bench Jammu in O.A No 61/33/2021 title Dr Shwiti Gupta Vs State of J&K and others, the case of the applicant was again taken up with General Administration Department for consideration/approval.

AND WHEREAS, the General Administration Department also sought opinion of the Department Law, Justice & PA on the above proposal of the Health and Medical Education Department;

AND WHEREAS, the Department of Law, Justice & PA conveyed following advice to the General Administration Department in

the matter:

Returned: There are concurrent findings of CAT Bench Jammu and Division Bench of Hon'ble High Court at Jammu negating the stand of the Government in rejecting the case of the petitioner on the sole ground that JKPSK couldn't have modified its recommendations after 15 long years. The decision in both these concurrent findings is based on the decision taken by JKPSK in reviewing its own recommendations and accepting its fault in not calculating the marks in favour of the petitioner to which she was entitled. JKPSK recommendations have now been proposed to be acted upon by the Health and Medical Education Department and the same is in deference to the directions passed by CAT bench Jammu and the decision dated 15-12-2021 of the Division Bench of Hon'ble High Court, at Jammu passed in WPC No. 2254 of 2021 which has attained finality. Therefore, Department is advised to consider the proposed course taken by the H&ME Department in implementing the order 15-12-2021 and take action accordingly".

AND WHEREAS, after obtaining the advice of the Department of Law, Justice & PA, the General Administration Department returned the file with the following observations:

"The matter was referred to the Department of Law, Justice and Parliamentary Affairs for examination, the letter vide U.O. No. LAW-Ser/43/2022-10 dated 03.03.2022 (Copy enclosed) has advised that the matter be again taken up by the concerned Department with the Public Service Commission with the request to reconsider its decision."

AND WHEREAS, the matter was accordingly referred to the J&K Public Service Commission vide Health Department communication dated 17.04.2023 for reconsideration of its decision, and status report was accordingly filed in the contempt petition before the Hon'ble Tribunal.

AND WHEREAS, the applicant filed a writ petition bearing WP(C) No. 1525/2023 titled Shwiti Gupta Vs Central Administrative Tribunal seeking direction to CAT Jammu to adjudicate and decide the contempt petition CP No. 263/2022 at an earliest.

AND WHEREAS, the aforementioned petition was disposed by the Hon'ble High Court vide judgment dated 09.06.2023 with following directions:

"Be that as it may, this petition is disposed of with a direction to the Tribunal to consider the request of the petitioner and make an endeavour to dispose of the contempt petition at the earliest, preferably within two months."

AND WHEREAS, the Hon'ble Tribunal on 11.07.2023 on consideration of the contempt petition passed the following orders;

"In view of the above, the respondent is directed to remain present before this Tribunal to explain the reason(s), if any, for not complying the order dated 02.03.2021 passed by this Tribunal, failing which the process shall be issued against the respondent to ensure his presence before this Tribunal."

List the matter on 17.07.2023.

It is pertinent to mention here that the Hon'ble High Court of J&K vide order dated 09.06.2023 has directed for the disposal of C.P. at earliest preferably within two months. Therefore, in view of the direction passed by the Hon'ble High Court, no further time shall be granted to the respondents".

AND WHEREAS, the Department is facing the contempt proceedings before the Hon'ble Tribunal, the attention of J&K Public Service Commission was invited vide communication dated 19.07.2023 towards earlier communication dated 17.04.2023 and were requested to furnish the response in order to avoid any further adverse order in the matter by the Hon'ble Tribunal.

AND WHEREAS, J&K Public Service Commission vide its letter dated 19.07.2023 has given their clarification with the following recommendations:

"Based on the decision of the Commission in its 17th meeting on 16/19-06-2023, the recommendation in favor of last selected/recommended candidate namely Ms. Arina Alim Mughal D/o Abdul Alim Mughal, having been recommended vide J&K PSC

recommendation letter No PSC/DR/Dental Surgeon/2004 dated 22.08.2005 (copy enclosed) for the post of Dental Surgeon and having secured 62.95 under OM category is hereby withdrawn and Miss Shwiti Gupta W/o Rohin Gupta, having secured 64.66, is recommended against the said post.

The other terms and conditions shall remain same as contained in initial recommendation dated 22.08.2005.”

AND WHEREAS, the aforesaid recommendation of the J&K Public Service Commission, has been examined in the Department and decided to accept the same in view of the contempt proceedings being faced by the Department.

AND WHEREAS, Ms. Arina Alim Mughal D/o Abdul Alim Mughal, was recommended by J&K Public Service Commission vide recommendation letter No. PSC/DR/Dental Surgeon/2004 dated 22.08.2005 and was appointed as Dental Surgeon in pursuance to the said recommendation vide Government Order No. 496-HME of 2005 dated 29.08.2005, however, the said recommendation in her favour stands withdrawn by the Commission vide their aforementioned letter No. PSC/Leg/36/2021 dated 19.07.2023.

NOW THEREFORE, in view of above, it is hereby ordered as under:

1. The appointment of Ms. Arina Alim Mughal D/o Abdul Alim Mughal as Dental Surgeon made vide Government Order No. 496-HME of 2005 dated 29.08.2005 in Health and Family Welfare Department is hereby cancelled with immediate effect as her selection/ recommendation has been withdrawn by the Public Service Commission.
2. In consequence to above and in compliance to judgment dated 02.03.2021 passed by the Hon'ble Central Administrative Tribunal Jammu in OA No. 61/33/2021 titled Shwiti Gupta Vs UT of J&K read with Hon'ble High Court judgment dated 15.12.2021 passed in WP(C) No. 2254/2021 titled UT of J&K Vs Switi Gupta and orders passed in CP 263/2022 titled Dr Shwiti Gupta Vs Sh Bhupinder Kumar, the applicant namely Miss Shwiti Gupta W/o Rohin Gupta, R/o. Qtr No. 21, Main Road Rehari Colony, Jammu

is directed to submit her credentials including email id and contact number details in the Health and Medical Education Department, Civil Secretariat Jammu/Srinagar as envisaged under J&K Civil Services (Verification of Character and Antecedents) Instructions 1997 amended from time to time, in person within a period of 07 days positively so that same can be uploaded on the Employee Verification System (EVS) for purpose of verification of Character and Antecedents of the applicant thereby enabling the Department to process the case for considering her appointment against the post of Dental Surgeon, failing which it shall be presumed that she is not willing to take up her appointment as Dental Surgeon in the Department and shall forfeit her right of appointment without any further notice.

By order of the Government of Jammu and Kashmir.

-Sd/-

(Bhupinder Kumar)IAS
Secretary to Government,
Health & Medical Education Department

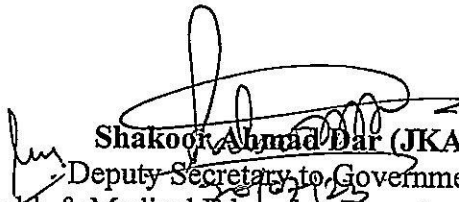
No. HD-Gaz0Gen/272/2021-02

Dated: 20.07.2023

Copy to the:-

1. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
2. Joint Secretary, Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Commissioner/Secretary to Government, General Administration Department.
4. Secretary to Government, Department of Law, Justice & Parliamentary Affairs.
5. Secretary, J&K Public Service Commission. This is with reference to Commission letter No. PSC/Leg/36/2021 dated 19.07.2023.
6. Director, Health Services, Kashmir/Jammu.
7. Director Archives, Archaeology and Museums, J&K, Srinagar.
8. OSD with the Advisor (B).
9. Private Secretary to Secretary to Govt., Health & Medical Education Department.
10. I/C, Website, Health and Medical Education Department for N/A.
11. Concerned.
12. Government Order file/Stock file (w.2 s. c)

Copy also to Mr. Sudesh Magotra, Addl. Adv. General, Jammu for information and necessary action.


Shakoor Ahmad Dar (JKAS)
Deputy Secretary to Government
Health & Medical Education Department