

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

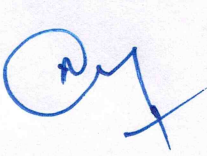
Subject: Implementation of judgment dated 02.03.2021 passed by the Hon'ble Central Administrative Tribunal Jammu in OA No. 61/33/2021 titled Shwiti Gupta Vs UT of J&K read with Hon'ble High Court judgment dated 15.12.2021 passed in WP(C) No. 2254/2021 titled UT of J&K Vs Shwiti Gupta and read with order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

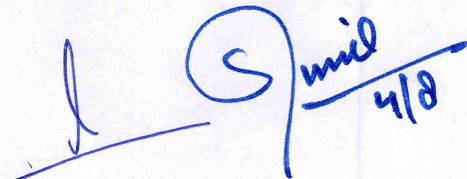
- REF: (i) J&K Public Service Commission letter No. PSC/Leg/36/2021 dated 19.07.2023.
(ii) Government Order No. 570 –JK(HME) of 2023 dated 20.07.2023 issued by Health and Medical Education Department.

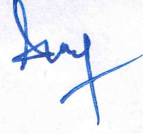
Government Order No:-622-JK(HME) of 2023
Dated:- 04-08-2023


WHEREAS, the Health and Medical Education Department vide communication No. HD(GAZ)28/81 dated 23-04-2003, No. HD/GAZ/208/81 dated 07-12-1998 and No. HD/GAZ/131/95 dated 05-06-2004 had referred 59 posts of Dental Surgeons to J&K Public Service Commission for making selection. These posts were notified by the Commission vide Notification Nos. 05-PSC of 2003 dated 23-06-2003, 11-PS of 2003 dated 01-10-2003 and 07-PSC of 2004 dated 17-08-2004;

AND WHEREAS, Subsequently, all the three notifications were clubbed together by the Commission in response to which 469 Applications Forms were received and a screening test was held on 20-03-2005 for the post of Dental Surgeon by the Commission. The result of candidates who appeared in the screening test was declared vide Notification No. 02-PSC of 2005 dated 02-04-2005 wherein among









been awarded only 02 points for experience, while as she was entitled for 05 points. She further claimed that being a sports person and having in possession certificate of Taekwondo issued by 1st All India Millennium Martial Art Championship-2000 but the same was not taken into account at the time of interview which hampered her selection;

AND WHEREAS, the case was examined/processed and placed before the Commission in its 5th Meeting held on 17-06-2019 and the Commission on Agenda Item No. 5.8 decided as under:-

"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, as per records, the Commission had already recommended 36 candidates under OM Category against 36 posts referred by the Department and the Commission has decided to recommend Dr. Shwiti Gupta being eligible for her appointment as Dental Surgeon under OM Category against any available vacancy in Health & Family Welfare Department;

AND WHEREAS, accordingly, the J&K PSC vide communication No. PSC/Lit/ 69/2018/Dental Surgeon/2003/DR dated 01-07-2019 recommended name of 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 recommendations of the Jammu and Kashmir Public Service Commission were examined in the Department and the matter was taken up with the General Administration Department for their opinion for considering appointment of Dr. Shwiti Gupta W/o Rohin Gupta, R/o Q.NO. 21 Rehari Colony, Jammu under Open Merit Category 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:-

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" The case has been examined in the General Administration Department 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 have 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 the opinion of the GAD, 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.

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AND WHEREAS, before submitting the case to the competent authority, it was deemed appropriate to seek details of vacant posts from Director, Health Services, Jammu. Accordingly, vide this Department's letter dated 9-06-2020, Director, Health Services, Jammu was requested to furnish the details of vacant posts of Dental Surgeons in open merit category under which the temporary appointment of Dr. Shwiti Gupta W/o Dr. Rohin Gupta Gupta will be considered against one of the posts in the Health and Family Welfare Department, over and above the requisitioned/selected posts under open merit category in relaxation of rules;

AND WHEREAS, the Director, Health Services, Jammu vide letter No. DHS/J/ES-3/Vacancy/810 dated 09-06-2020 intimated that seventeen (17) posts of Dental Surgeons were vacant at that point of time and have not been referred to the J&K Public Service Commission for making selection;

AND WHEREAS, the then Financial Commissioner, Health and Medical Education Department with the prior approval of the Advisor (B) Incharge Health submitted the draft resolution to Hon'ble Lieutenant Governor through Chief Secretary in coordination for consideration and approval;

AND WHEREAS, the General Administration Department returned the proposal with the following observations:-

"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 for 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."

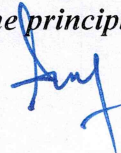
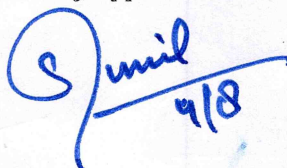
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AND WHEREAS, the instant case was considered in compliance to the judgment dated 09.04.2018 in RPLPA No. 40/2013, MP No. 17/2013 titled Dr. Shwiti Gupta Vs State of J&K and Ors and decision conveyed by the General Administration Department and it was found that 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 for appointment against any available vacancy is beyond the mandate of recommending agency, as such, the claim of the petitioner was rejected vide Government Order 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-MtgORBIV/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*

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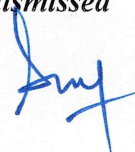
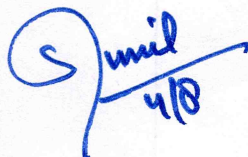
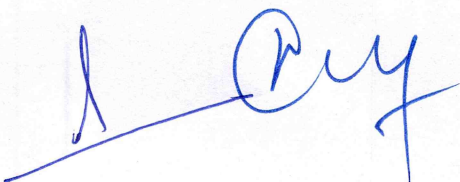
order of the Hon'ble Court is not assailed, it would set a bad precedent for future as selection processes concluded years earlier would be challenged in the Courts on similar lines. The appointment, if agreed to, would also put the already appointed candidates to a disadvantage as the seniority of the 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 Siddiqui Sr 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".



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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 JKPSC couldn't have modified its recommendations after 15 long years. The decision in both these concurrent findings is based on the decision taken by JKPSC in reviewing its own recommendations and accepting its fault in not calculating the marks in favour of the petitioner to which she was entitled. JKPSC 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".

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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-Serl/43/2022-10 dated 03.03.2022 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 taken up with the J&K Public Service Commission by the Health Department vide 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.”

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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

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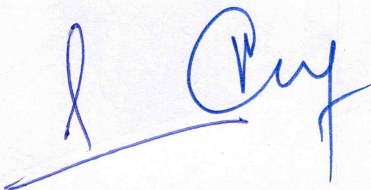
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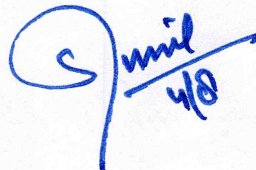
recommended against the said post.

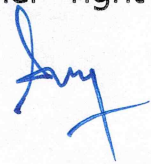
The other terms and conditions shall remain same as contained in initial recommendation dated 22.08.2005.”

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 accordingly vide Government Order No. 570- JK(HME) of 2023 dated 20.07.2023, 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 J&K Health and Family Welfare (Gazetted) Service has been cancelled with immediate effect as her selection/recommendation has been withdrawn by the Public Service Commission.

AND WHEREAS, simultaneously in the aforesaid Government Order, the petitioner namely Miss Shwiti Gupta W/o Rohin Gupta, R/o. Qtr No. 21, Main Road Rehari Colony, Jammu was 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.







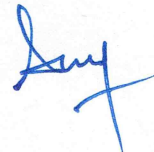
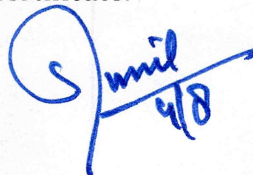
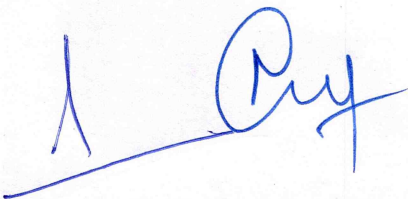
AND WHEREAS, in pursuance of aforesaid Government Order, the petitioner namely Dr. Shwiti Gupta submitted her credentials in the Health and Medical Education Department on 21.07.2023 for generating user ID and Password in her favour which was generated by the Department in her favour for uploading her credentials/data on Employee Verification System (EVS) for purpose of verification of Character and Antecedents which is pre-requisite for issuance of formal appointment order.

AND WHEREAS, the Health and Medical Education Department has received Verification of Characters and Antecedents in favour of Dr. Shwiti Gupta from Criminal Investigation Department, Jammu and Kashmir vide Form No. 69102 dated 27.07.2023 whereunder, it has been clearly mentioned that there is nothing adverse against the said doctor.

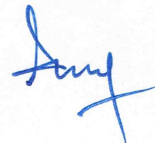
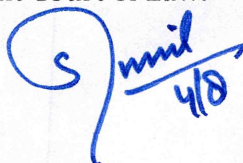
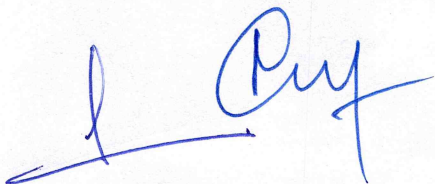
NOW THEREFORE, on the recommendations of the Public Service Commission/CID verification and in continuation of Government Order No. 570 –JK(HME) of 2023 dated 20.07.2023, sanction is hereby accorded to the temporary appointment of Dr. Shwiti Gupta, W/o Dr. Rohin Gupta, R/O Q. No. 21 Rehari Colony, Jammu as Dental Surgeon in the Pay Level-9 (52700-166700) in the Jammu & Kashmir Health and Family Welfare (Gazetted) Service under open merit category with immediate effect.

However, this (her appointment) shall be subject to the following conditions:-

- A. The appointee shall submit her joining report physically to the Director, Health Services, Jammu within a period of 21 days from the date of issuance of this order and in case of her failure to join within the stipulated period her appointment shall be deemed to have been cancelled ab-initio without any further notice.
- B) The appointee shall be allowed to join by the Director, Health Services, Jammu only on production of the following certificates in original:-
 - i. (all) Academic/Technical Qualification Certificates.
 - ii. Matriculation/Date of Birth Certificate.



- iii. Experience Certificates (submitted in J&K Public Service Commission during the selection process).
 - iv. Sports certificate of Taekwondo (submitted in J&K Public Service Commission during the selection process-to be verified from Youth Services and Sports Department).
 - v. Health Certificate issued by the Standing Medical Board of the concerned District.
 - vi. Domicile Certificate issued by the Competent Authority.
 - vii. That if the candidate has taken loan for self-employment from DIC/Employment Department, to be ascertained from the District Industries Centre (DIC) and District Employment & Counseling Centre of the domicile District, she shall relinquish the proprietorship of unit/enterprise and also stakes, if any, in such self-employment unit/enterprise before joining the Government service. She shall be required to repay the entire loan liability in suitable EMIs to be worked out by the DDO concerned from her salary. DDO concerned shall obtain an affidavit from the concerned appointee regarding both relinquishment of proprietorship and stakes, if any, in such a self-employment unit/enterprise and recovery to be made and also personally monitor its recovery."
 - viii. Relevant category certificate(s), (in case of candidate belonging to reserved categories).
 - ix. Any other certificates/documents as required under rules/norms.
- C). The appointee shall give an undertaking duly attested by the First Class Judicial Magistrate in the shape of an affidavit to the effect that, if on verification of her Documents like qualification(academic as well technical) /Date of Birth/Experience/Sports/Domicile certificate etc. from the concerned issuing authorities are found/proved to be fake or forged, the appointment shall be deemed to have been cancelled ab-initio without further notice and the legal action as warranted under rules shall be initiated against the candidate.
- D) The salary of the appointee shall not be drawn and disbursed to her unless the satisfactory reports in respect of all the documents mentioned at (B) above are received in her favour.
- E) The appointee shall be on probation for a period of two years.
- F) The appointment of the candidate shall be governed by the "New Pension Scheme" as notified vide SRO-400 of 2009 dated 24.12.2009.
- G) The appointee shall not be allowed to continue with PG/ tenures of Senior Residency/ Jr. Residency/ Registrarship/ Demonstratorship/ Tutorship/ Fellowship etc. and she will has only one choice either to opt for appointment or opt out and go for such higher study/training course.
- H) The appointment of the candidate shall be subject to outcome of the writ petition(s), if any, pending before any Competent Court of Law.



1) The appointee shall give an undertaking duly attested by the First Class Judicial Magistrate in the shape of an affidavit to the effect that:-

- i. She shall abide by all the terms & conditions as laid down in this appointment order.
- ii. She is not undergoing any higher study/training course viz. PG/tenures of Senior Residency/Jr. Residency/ Registrarship/ Demonstratorship/ Tutorship/ Fellowship etc and in case after joining as Dental Surgeon, it comes to the notice of the department that appointee is on the rolls of any Medical College (Government/Private) within or outside the UT of J&K, she shall be liable for criminal proceedings under relevant provisions of law and her appointment shall be deemed to have been cancelled ab-initio.
- iii. She shall not claim for any kind of leave, permission or exception to continue with her higher study/training course viz. PG/tenures of Senior Residency/ Jr. Residency/ Registrarship/ Demonstratorship/ Tutorship/Fellowship etc.
- iv. She shall be liable for action as warranted under rules for violating any of the laid down conditions in this appointment order.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar) IAS

Secretary to the Government

Health & Medical Education Department

No. HD-Lgal/313/2022-02 (E-240247)

Dated:04-08-2023

Copy to the:-

1. Principal Secretary to the Lieutenant Governor, J&K.
2. Joint Secretary (Jammu, Kashmir & Ladakh), Ministry of Home Affairs, Government of India.
3. Commissioner/Secretary to the Government, General Administration Department.
4. Secretary to the Government, Department of Law Justice & Parliamentary Affairs.
5. Director Information, J&K. He is requested to give wide publicity to the aforesaid Government Order.
6. Director Finance, Health and Medical Education Department.
7. Secretary, J&K Public Service Commission.
8. Director, Archives, Archaeology & Museums, J&K.
9. Director, Health Services, Kashmir.
10. Director, Health Services, Jammu.
11. OSD with Advisor (B) to the Lieutenant Governor, J&K.
12. Additional Secretary (Law), H&ME Department.
13. Concerned doctor.
14. Private Secretary to the Secretary to the Government, Health and Medical Education Department.
15. I/C Website, Health and Medical Education Department.
16. Government Order file/Stock file.

(Sanjeev Sharma)JKAS

Deputy Secretary to the Government
Health & Medical Education Department

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