



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

Subject: Termination of probation and discharge from Government service thereof.

Government Order No. 654 – JK (HME) of 2023
Dated: 11 .08.2023

WHEREAS, Director, Health Services, Kashmir vide letter No. Est/3/1-133/1526 dated 12.04.2023, has submitted that Dr. Aijaz Ahmad Rather was appointed as Medical Officer vide Government order No. 333 HME of 2018 dated 29.05.2018 and joined in the Directorate on 04.06.2018 and subsequently, posted at PHC Sonamarg, Ganderbal;

AND WHEREAS, during his probation period, Dr. Aijaz Ahmad Rather, Medical Officer left for pursuing PG course at Government Medical College, Srinagar without prior permission from the competent authority;


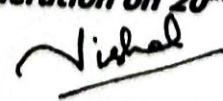
AND WHEREAS, in the meanwhile, the doctor concerned filed a writ petition before the Hon'ble High Court in WP(C) No. 1569/2019, CM No. 2809/2019 titled Aijaz Ahmad Rather Vs State of J&K and others;

AND WHEREAS, the doctor concerned approached the Directorate of Health Services, Kashmir with an application dated 05.05.2022 alongwith copy of the relieving order issued by Principal/Dean Government Medical College, Srinagar vide order No. 421-RA (SSO) of 2022 dated 05.05.2022 and order dated 08.05.2019 passed by Hon'ble High Court of Jammu and Kashmir and requested to accept his joining report as he has completed three years PG Course at Government Medical College, Srinagar from May, 2019 to May, 2022;

AND WHEREAS, the Hon'ble High Court vide its order dated 08.05.2019 in WP(C) No. 1569/2019, CM No. 2809/2019 titled Aijaz Ahmad Rather Vs State of J&K and others, has passed the following directions to the respondents:-

"Notice is waived by Mr. Shah Aamir, the learned Additional Advocate General, on behalf of the respondents. He shall file a detailed response with regard to the contentions made by the petitioner on or before the next date of hearing with an advance copy to the learned counsel for the other side. Meanwhile, the respondents are directed to consider the representation of the petitioner on the touchstone of the policy of the Government/ Rules in vogue as also having regard to the Minutes of the Meeting dated 30th of May, 2017.

List again for consideration on 20th May, 2019".

AND WHEREAS, the above said writ petition has been transferred in the Hon'ble Central Administrative Tribunal in T.A./2421/2021 titled Dr. Aijaz Ahmad Rather Vs D/o Health & Medical Education and others and the Hon'ble Central Administrative Tribunal passed an order dated 15.11.2022 in the said application, the operative part of which is given as under:-

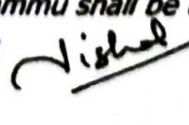
"In view of the limited prayer made by the learned counsel for the applicant, the respondents are directed to consider the joining of the applicant back to his parent department in view of the averments made in the MA and in the light of the Govt. Order dated 3.3.2014 and Hon'ble High Court's order dated 8.5.2019 passed in WP(C) No. 1569/2019. This exercise be completed by the respondents within six weeks from today as per law.

With this observation, MA & TA are disposed of. It is made clear that no opinion is expressed on the merit of the case. There will be no order as to costs".

AND WHEREAS, in his M.A./1058/2022, the applicant namely Dr. Aijaz Ahmad Rather has requested to allow him to work as Medical Officer and to settle the period of Post-graduation/MD Surgery pursued by him from May 2019 to May 2022 in light of the Government Order dated 03.03.2014 read with judgment of Hon'ble High Court in Dr. Rayees Ahmad Sofi's case;

AND WHEREAS, the order issued by the Administrative Department vide communication No. HD/Legal/Gaz/29/MR-845/2011-13/K dated 03.03.2014 has been examined and it has been observed as under:-

- i. *That earlier, the Assistant Surgeon, who served in the rural areas of the state for more than six years, were relieved by providing a formal relieving order for pursuing higher studies containing stipulation that course period shall be treated as study leave in terms of SRO-122 of 2000 dated 25.04.2000 (without pay and allowances) vide communication No. HD(Gaz)Gen-73/2011 dated 29.03.2011.*
- ii. *That, aggrieved from the above communication, they filed writ petition before the Hon'ble High Court with the plea to set aside the above communication as they were undergoing PG Degree/ Diploma course within the state and requested for providing of full pay and allowances to them.*
- iii. *That, vide this Department communication No. HD/Legal/Gaz/29/MR-845/2011-13/K dated 03.03.2014, all the HODs were advised to implement the judgments of the Hon'ble High Court dated 05.03.2013 in favour of all the petitioners in view of the opinion of the Finance Department. Besides, the Assistant Surgeons (Medical Officers) selected by the BOPEE undergoing PG Courses in GMC Srinagar/Jammu, Govt. Dental Colleges, Srinagar/ Jammu shall be treated on deputation.*

AND WHEREAS, vide communication No. HD/Legal/Gaz/29/MR-845/2011-13/K dated 15.04.2014, all the HODs were also advised to treat the period of PG/Super Specialist Medical Courses as spent on deputation in favour of in-service doctors on the basis of their selection by the concerned selection agency prior to 29.05.2013, whereafter the period of study of such doctors shall be governed by SRO-274 dated 30.05.2013 issued by the Finance Department;

AND WHEREAS, after examining the MA of the applicant, it has been observed that the order of the Administrative Department conveyed vide communication No. HD/Legal/Gaz/29/MR- 845/2011-13/K dated 03.03.2014 read with No. HD/Legal/Gaz/29/MR- 845/2011-13/K dated 15.04.2014 is applicable only for the petitioners or Medical Officers who were selected by the selection agency prior to 29.05.2013;

AND WHEREAS, the terms and conditions stipulated in the initial appointment order of Dr. Aijaz Ahmad Rather, Medical officer issued vide Government Order No.333-HME of 2018 dated 29.05.2018, clearly envisages that:-

"h. Further, the selectees/appointees who are presently doing PG Courses/Registrarship/ Demonstratorship in the GMC Jammu/ Srinagar, SKIMS Soura, Srinagar/Bemina shall exercise an option as per proforma annexed to this Government Order:-

i) either to join the Government Service without completing their PG Courses/tenures of Registrarship/ Demonstratorship; and in that case, they would not be allowed, under any circumstances, to proceed on leave to complete their remaining PG courses/ tenures as Registrars/Demonstrators and if they do so by absents themselves from the place of posting, their service shall be terminated under the provisions of the J&K Civil Services Regulations (CSR) Volume-I and the J&K Civil Services (Classification, Control & Appeal) Rules, 1956 as no such leave would accrue them at the time of joining the service;

OR

ii) they may seek extension in the joining period from the Administrative Department for the completion of their PG Courses/minimum tenures as Registrars/ Demonstrators".

AND WHEREAS, Rule 21(1) of the J&K Civil Services (Classification, Control & Appeal) Rules, 1956 provides as under:-

"At any time before the expiry of the prescribed period of probation, the appointing authority may:-

a) *Suspend the probation of a probationer and discharge him from the service for want of vacancy; and*

b) *At its discretion terminate the probation of a probationer and discharge him from the service".*

AND WHEREAS, despite knowing the terms and conditions of his appointment and owing to the fact that Dr. Aijaz Ahmad Rather, Medical Officer has not successfully completed the mandatory period of probation and deliberately underwent for PG Course in GMC, Srinagar without approval of the competent authority and now requested for rejoining the department in light of the order issued by the Administrative Department vide communication No. HD/Legal/Gaz/29/MR-845/2011-13/K dated 03.03.2014, which was applicable only for the candidates who were selected by the concerned Selection Agency prior to 29.05.2013.

NOW, THEREFORE, in compliance to the order dated 15.11.2022, passed by the Hon'ble Central Administrative Tribunal at Srinagar in M.A./1058/2022, T.A./2421/2021 titled Dr. Aijaz Ahmad Rather Vs D/o Health & Medical Education and others and in terms of the rules governing the subject, sanction is hereby accorded:-

- a) to reject the claim of the applicant as it has been considered and found devoid of any merits.
- b) to terminate the probation of Dr. Aijaz Ahmad Rather, Medical Officer in terms of Rule 21(1) of the J&K Civil Services (Classification, Control & Appeal) Rules, 1956 and discharge him from the Government Service w.e.f. 05/2019 i.e. from the date when he resorted to unauthorized absence from duties.

By order of the Government of Jammu and Kashmir.

Sd/-

(Bhupinder Kumar) IAS
Secretary to the Government

Dated: // .08.2023

No. HD-Lgal/478/2022-02

Copy to the:-

1. Principal Secretary to Hon'ble Lieutenant Governor, J&K.
2. Joint Secretary (JK&L), Ministry of Home Affairs, Government of India.
3. Director, Archives, Archaeology & Museums, J&K, Jammu.
4. Director, Health Services, Jammu/Kashmir.
5. OSD to the Advisor (B) to Hon'ble Lieutenant Governor, J&K.
6. PS 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 file.

(Waqar Talib) JKAS

Under Secretary to the Government

