

Government of Jammu and Kashmir  
**Health & Medical Education Department**  
Civil Secretariat, J&K

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Subject: Implementation of judgment dated 31.12.2015 passed by the Hon'ble High Court at Jammu in SWP No. 3394/2015 titled Zamarud Hussain Zargar & Ors Vs State of J&K & ors.

**Government Order No: 67 -JK (HME) of 2024**  
**Dated :- 30 .01.2024**

**Whereas,** Community Health Officers were appointed in the new Primary Health Centres and Subsidiary Health Centers established during the 6th Five Year Plan period, which was 100% centrally sponsored scheme. The new Primary Health Centres, to be established and the existing dispensaries, were to be converted into Subsidiary Health Centers each covering 30,000 rural population;

**And whereas,** the posts of Community Health Officers were created in the State from time to time. Initially, the posts were created in the pay scale of Rs. 1000-2000 (pre-revised) from 1984 to 1986. However, from 1987 onwards, these posts were created in the pay scale of Rs. 1650-2800 (pre-revised). These pay scales were revised from time to time as under (in Rs.):-

Prior to 01.04.1987	Revised in 1987	Revised in 1992	Revised in 1998	Revised in 2006	Revised in 2016
1000-2000	1900-4000	2200- 4000	8000- 13500	9300-34800 + 5400 (GP)	Level-9 (52700- 166700)
-	1650-2800	2000- 3400	6700- 10700	9300-34800 +4300 (G.P)	Level-6F (40800- 129200)

**And whereas,** the petitioners were promoted in the pay scale of 1650-2800 (pre-revised).

**And whereas,** earlier vide Government Order No. 718-HME of 2015 dated 28.10.2015, the Health & Medical Education Department granted higher scale of 2200-4000 (pre-revised) in favour of some Community Health Officers on the basis of the Court direction dated 12.11.1999 read with order dated 07.07.2000 passed in SWP No. 782/1998- titled *Subash Chander and Ors Vs State of J&K* wherein the Hon'ble Court had directed as under:

*Subash*

*[Signature]*  
30/01/24

**"Petition succeeds being unrebutted. The respondents are directed to grant the pay scale to the petitioner of Rs. 2200-3400 (unrevised and of Rs. 8000-13500 in terms of the 5<sup>th</sup> pay commission report."**

However the above judgment was modified vide order dated 07.07.2000 insofar as the words and figures in the last paragraph 2200-3400 to be read as 2200-4000"

**And whereas,** the Finance Department vide U.O. No. A/47 (2003)-614 dated 31/08/2010 had observed as under in the supra case:-

**"The case has been examined in the Finance Department. It has been found that the case has been dealt in a very casual manner; no effort has been made to contest the case even though it involved huge finances of the State. Health and Medical Education Department has not made recruitment rules even after more than two decades. Nowhere it is clear, if selection committee was appointed and selections of CHO were made as per a well thought out plan. It is also not clear if they met the basic eligibility criteria and what ratio was given to different feeding cadres. Most importantly in order acquire skills of CHO, CHOS were supposed to undergo a training of 6-9 months as Centrally Sponsored Scheme. Then after training were supposed to discharge functions as per given job chart. This has also not happened..."**

**And whereas,** the Health and Medical Education Department notified the Jammu and Kashmir Health and Family Welfare (Subordinate) Service Recruitment Rules, 2022 in terms of S.O. 334 dated 13<sup>th</sup> July, 2022 in which the pay scale of the post of Community Health Officer has been notified as **Level 6F (40800-129200)** and the method of recruitment to the post of Community Health Officer as per said rules is as under:-

**"100% by promotion from Health Educator/Para Medical Supervisor/ District Mass Education Information Officer/ Treatment Organizer/ Public Health Nurse/ Extension Educator/ Lady Health Visitor/ Malaria Inspector/ Senior Health Inspector/ TBV/ BCG Team Leader/ Senior PMA/ Senior Sanitary Inspector/ Sanitary Inspector/ Non-Medical Supervisor/ District Para Medical Supervisor.**

**Provided, that the percentage of share shall be allotted to each category as per the sanctioned strength of the posts".**

  
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**And whereas,** the petitioners filed SWP No. 3394/2015 titled Zamarud Hussain Zargar & Ors Vs State of J&K & ors before the Hon'ble Court at Jammu, which was disposed of by the Hon'ble High Court vide judgment dated 31.12.2015 as under:

***"Accordingly, this writ petition is disposed of with a direction to the respondents to consider the claim of the petitioners in tune with judgment passed by this Court in LPASW No 438/2001 dated 24.02.2010 titled State of J&K and others V Subash Chand and others as well judgment passed in LPASW 35/2011 dated 21.04.2015 titled State of J&K and others v Krishan Lal Anand and others provided the same are applicable to the case of the petitioners Let consideration be accorded strictly under rules, within a period of two months from the date a certified copy of this order and judgments aforementioned along with copy of writ petition and its annexures are made available to the respondents by the petitioners."***

**And whereas,** there can be no parity in illegality and that one wrong cannot justify another wrong. The Hon'ble Supreme Court in case titled Tarun Kumar Vs Assistant Director, Directorate of Enforcement vide its judgment dated 20.10.2023 passed in SLP (Crl.) No. 9431 of 2023 has held as Under:-

**It is axiomatic that principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.**

  
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**And whereas,** the Hon'ble Supreme Court in another case titled Sunil Kumar Soni Vs State of Rajasthan vide its judgement dated 28.03.2023 passed in SLP No. 27633/2017 held as under:

**"...But unfortunately for the petitioner, the question of law on the issue of eligibility of persons holding Bachelor degree in Education through the distance education mode is already settled by this Court. Therefore, if other people have secured the benefit of an order, those orders are not in accordance with the law laid down by this Court. It is well settled that there cannot be equality in the matter of illegality. Therefore, the petition deserves to be dismissed."**

The matter has been considered in the Department and it has been found that:-

- i. No recruitment rules were framed earlier at the time of granting higher grades in favour of some CHOs vide Govt. Order No. 718-HME of 2015 dated 28.10.2015. However, at present, the post of CHO is borne on establishment of Jammu and Kashmir Health and Family Welfare (Subordinate) services, Rules notified vide S.O. 334 dated 13.07.2022 and the grade attached to the post is Level-6F (40800-129200)(revised).
- ii. The petitioners have been appointed under 1650-2800 (pre-revised).
- iii. The petitioners have never undertaken any training as envisaged in the scheme;
- iv. There is no central sponsorship at present for Community Health Officers which otherwise was 100% centrally sponsored scheme;
- v. No post in the entire UT of J&K in Non-Gazetted Cadre is carrying a pay level of Level-9, as has been sought by the petitioners;
- vi. The pay level of Medical Officers (Gazetted cadre) and Lecturers of Government Medical Colleges in Health and Medical Education Department carry a Pay level of level-9 only. Even the Gazetted cadre of J&K Administrative Service, Accounts and Police Service, Assistant Legal Remembrancer, Assistant Floriculture Officer and all other entry-level gazetted posts in the Union Territory carry a pay scale of level-8. Therefore, in such a situation, grant of level 9 in favour of the petitioners, who are non-gazetted officials, cannot be justified and apart from huge financial implications may also result in avoidable discrepancies.

  
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- vii. If the petitioners are granted pay level 9 as prayed for then the same may have a cascading effect leading to pay anomaly across various cadres of Health and Medical Education Department.
- viii. Granting the benefit is not financially sustainable for the department due to the limited resource capacity of the Union Territory.
- ix. Grant of a particular scale is related to qualifications and responsibilities of a job. If qualification has remained less than that prescribed, operation of the scale is not necessary and justified.
- x. Grant of Level-9 to the petitioners is impracticable in view of notified Recruitment Rules and would also be in utter violation of the existing Rules governing the cadre.

**Now, therefore,** in compliance of judgment dated 31.12.2015 passed by the Hon'ble High Court at Jammu in SWP No. 3394/2015 titled Zamarud Hussain Zargar & Ors Vs State of J&K & Ors, and in view of legal and financial impediments stated above, the claim of the petitioners have been considered and found devoid of merit on the aforesaid facts.

**By order of the Government of Jammu and Kashmir.**

**Sd/-**

**(Dr. Syed Abid Rasheed Shah) IAS,**  
Secretary to the Government,

**No. HD-Lgal/432/2023-02**

**Dated:-30.01.2024**

**Copy to the:-**

1. Principal Secretary to Hon'ble Lieutenant Governor.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Principal Secretary to Government, Finance Department.
4. Director, Health Services, Kashmir/Jammu.
5. Director Archives, Archaeology and Museums, J&K, Srinagar.
6. OSD with the Advisor (B).
7. Private Secretary to the Secretary to Govt., Health & Medical Education Department.
8. Concerned officials.
9. Government Order file/Stock file (w.2 s.c)
10. Website I/C, H&ME Department for NA.

**(Shakoor Ahmad) IAS,**  
Deputy Secretary to Government.

30/01/2024  
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