

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

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**Subject: SWP No. 276/2011, titled Mohammad Ashraf Bhat Vs. State & ors.**

**Government Order No.705-JK (HME) of 2023  
Dated: 31-08-2023**

WHEREAS, Dr. Mohammad Ashraf Bhat was appointed as Assistant Surgeon/Medical Officer vide Government Order No. 667-HME of 1989 dated 29-08-1989 and after completion of DCH, he joined in the department on 25-09-1990 and subsequently was posted at SDH Yaripora;

AND WHEREAS, as reported by Block Medical Officer, Yaripora/ Chief Medical Officer, Anantnag, the doctor had applied for six months earned leave w.e.f 01-04-1997, which was not sanctioned in his favour and pending sanction of the leave in his favour, the doctor left the office without prior permission w.e.f 01-04-1997;

AND WHEREAS, on 01.03.1999, Dr. Mohammad Ashraf requested the BMO concerned for rejoining, but the BMO concerned did not allowed him to rejoin his duties and recommended his case to the higher authority for instruction/consideration;

AND WHEREAS, the case was examined in the Administrative Department and for ascertaining the whereabouts of the doctor during his un-authorized absence, the case was referred to the CID on 23.08.1999;

AND WHEREAS, Additional Director General of Police, Criminal Investigation Department on 23.08.1999 stated that in April, 1997 the Dr. Mohammad Ashraf Bhat, Assistant Surgeon/Medical Officer left for Saudi Arabia of his own and in April 1999, the doctor returned back to valley. Besides,



during the period, he remained in Saudi Arabia, his activities could not be ascertained, however, in valley he had not come to any adverse notice so far;

**AND WHEREAS,** the Article 128 of J&K Civil Service Regulations, 1956 provides as under;

***“Absence without leave or after the end of leave involves loss of appointment, except as provided in Article 203(b) or when due to ill health in which case the absentee must produce the certificate of Medical Officer.”***

**AND WHEREAS,** in terms of the aforesaid provision of Law continuous unauthorized absence from the duties entitles loss of appointment;

**AND WHEREAS,** the case was re-examined in the department and as per provisions of the Government Order No. 183-H&ME of 2000 dated 04.07.2000, Dr. Mohd Ashraf, Assistant Surgeon/Medical Officer was allowed to rejoin the Department as afresh appointee vide Government Order No. 502-HME of 2000 dated 08.08.2000;

**AND WHEREAS,** in pursuance to the above order, the doctor joined the services on 08.08.2000 and also applied for settlement of period of absence w.e.f. 01.04.1997 to 01.03.1999, but the representation of the doctor was rejected by the Administrative Department vide communication No. HD(Gaz)H-105/2002 dated 27.11.2003;

**AND WHEREAS,** after aggrieved by the communication No. HD(Gaz)H-105/2002 dated 27-11-2003, the doctor filed a writ petition bearing SWP No. 276/2011, titled ‘Mohammad Ashraf Bhat Vs State and others’ before the Hon’ble High Court at Srinagar.

**AND WHEREAS,** the Hon’ble High Court vide its order dated 01.10.2015, disposed of the said writ petition with the following directions:-



***“Learned Counsel for the petitioner stated that there are similarly circumstanced persons whose cases have already been settled by the respondents, copies whereof have been enclosed annexures G, J, K and L with the writ petition. Learned Counsel for the petitioner stated at the Bar that petitioner would be satisfied in case the writ petition is disposed of with a direction to the respondents to decide and settle the period of absence as mentioned here-in-above in light of averments made in the writ petition and at par with similarly circumstanced persons. Let consideration order be passed with a period of eight weeks from the date a certified copy of this Order is made available to them.*”**

***Disposed of alongwith connected MP(s) as above.”***

**AND WHEREAS,** the claim of the petitioner has been examined in the Department and it reveals that vide Government order No. 183-HME of 2000 dated 07.04.2000, the Department issued guidelines for settling the cases of Doctors who had gone abroad without permission of Competent Authority and have come back and requested for joining again, which is reproduced as under:-

***“(a) Super specialists/Specialists working abroad who are inclined to serve again in the State, their cases shall be decided as per Government Order No. 102-GAD of 1986 dated 22.01.1986 and those doctors be treated as fresh appointees. Alternatively, the Department may also consider their appointment on consolidate basis, wherever, thought desirable.*”**

***(b) Doctors who have gone abroad with the permission of Government but without getting extension and have now returned suo motto in response to show cause notice be allowed to join on available posts. Their period of un- authorized absence be treated as “Dues-Non” provided the period of absence does not exceed the period of leave due to them, otherwise they will be*”**

allowed to join as fresh appointees.

(c) Doctors who have gone abroad without the permission of the Government and have returned suo motto/in response of the show cause notice be allowed to rejoin after furnishing an undertaking that they will serve in rural areas (Srinagar/Jammu cities and District Budgam excluding) for a period not less than three years. The period of their unauthorized absence be treated as "Dies-Non" provided the period of absence does not exceed the period of leave due to them, otherwise, they will be allowed to join as fresh appointees".

**AND WHEREAS,** in terms of above guidelines provided at (a) to the Government order No. 183-HME of 2000 dated 07.04.2000, the Department after taking a lenient view, allowed Dr. Mohammad Ashraf Bhat, Assistant Surgeon/Medical officer to rejoin the duties as a fresh appointee vide Government Order No. 502-HME of 2000 dated 08.08.2000, as such, all service benefits shall follow accordingly.

**NOW, THEREFORE,** in compliance to order dated 01.10.2015 passed by the Hon'ble High Court in SWP No.276/2011, the claim of the petitioner for settlement of period of un-authorized absence w.e.f. 01.04.1997 to 01.03.1999 has been considered and it has been found that the said period can neither be considered as leave nor even dies-non, as such, the claim of the petitioner has been found devoid of any merit and hence, rejected.

By Order of the Government of Jammu and Kashmir.

Sd/-  
**(Bhupinder Kumar) IAS**  
Secretary to the Government,  
Health and Medical Education Department

No. HD-Lgal/280/2022-02


Dated: 31.08.2023

Copy to the:-

1. Principal Secretary to the 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. Concerned.
7. PS to the Secretary to the Government, Health & Medical Education Department.
8. I/C Website H&ME.
9. Government Order file/Stock file/Monday Return file.

  
(Shakoor Ahmad Dar) JKAS  
Deputy Secretary to the Government  
Health & Medical Education Department  
*31/08/2023*

