

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

Subject: WP(C) No. 2526/2023 titled Dr. Misbah Yousuf and Anr Vs UT of J&K
and Ors- consideration order thereof.

Government Order No. 819-JK(HME) of 2023
Dated: 04.10.2023

WHEREAS, Dr. Misbah Yousuf and Dr. Syeeda Saima Rashid Bukhari (petitioners) have been engaged in the Government Medical College & AH, Srinagar on academic arrangement basis as medical officers in terms of the J&K Medical & Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020 notified vide S.O. 364 dated 27th November, 2020;

AND WHEREAS, the petitioners applied for the National Eligibility cum Entrance Test (NEET) at their own level and in this vein, the Board of Professional Entrance Examinations (BOPEE) vide Notification No. 053-BOPEE of 2023 dated 10.08.2023 invited applications from eligible NEET PG-qualified in-service candidates/ doctors from the Union Territory of Jammu and Kashmir/ Ladakh for admission to post-MBBS Diplomate of National Board (DNB) seats with a condition, among others, that the candidates must have NOC issued by the Health and Medical Education Department;

AND WHEREAS, the petitioners were selected by the BOPEE for PG courses and as per the terms and conditions of the advertisement notification, they were required to submit the NOC granted by the Health and Medical Education Department;

AND WHEREAS, the petitioners submitted a representation before the Administrative Department seeking NOC in their favour which were forwarded to the Directorate of Health Services, Kashmir. The Directorate vide communication dated 30.08.2023 recommended grant of NOC in favour of the petitioners [the same was, however, withdrawn by the Directorate of Health Services, Kashmir on 31.08.2023];

AND WHEREAS, the matter was examined in the Health and Medical Education Department and vide communication dated 19.09.2023, the Department conveyed regrets to the Directorate of Health Services, Kashmir for not acquiescing to the proposal for grant of NOC in favour of the petitioners as the same was found to be in contravention with the established policy and guidelines/mechanism related to the subject;

AND WHEREAS, aggrieved of non-issuance of No Objection Certificate (NOC) in their favour by the Department, the petitioners approached the Hon'ble High Court seeking the following relief:

1. *A writ of mandamus, thereby directing the respondents especially respondents No. 2 to issue No objection Certificate (NOC) in favour of petitioners so that the petitioner can join PG courses.*
2. *A writ of mandamus thereby directing the respondents especially Respondents - BOPEE to allow the petitioners to join the PG Course till the respondents No.2 issues NOC in favour of petitioners, so that their academic career may not be jeopardized / spoiled.*
3. *Any other appropriate writ, direction or order as the Hon'ble Court be may deem fit in the facts and circumstances of the case be also passed in favour of the Petitioner and against the respondents.*

AND WHEREAS, the Hon'ble High Court disposed of the aforesaid writ petition on 25.09.2023 with the following direction:

1. *The present petition has been filed by petitioners for directing respondent No. 2 to issue No Objection Certificate in favour of them so that they can join PG courses. It is further stated that Directorate of Health Services Kashmir/respondent No. 4 vide communications (two in number) dated 30.08.2023 each (Annexure VI to the writ petition) has already communicated respondent No. 2 in respect of No Objection of the Directorate.*
2. *In view of the above, no fruitful purpose shall be served by retaining the present writ petition. Accordingly, the petition is disposed of with a direction to respondent No. 2 to consider the communications (two in numbers) dated 30.08.2023 each addressed by respondent No. 4 to respondent No. 2 and issue No Objection Certificate in favour of the petitioners, so as to enable them to join the PG Course provided there is no other legal impediment. "*

AND WHEREAS, the petitioners - Dr. Misbah Yousuf and Dr. Syeeda Saima Rashid Bukhari- were engaged on academic arrangement basis in June, 2021 in the Government Medical College, Srinagar in terms of J&K Medical & Dental Education (Appointment on Academic Arrangement Basis) Rules, 2020. The Rules interalia provides:

".....Appointment under these rules:-

- (1) ... the appointing authority may appoint persons to the posts mentioned under Rule 3 on academic arrangement basis initially for a period of one year

extendable upto maximum of six years (one year at a time and subject to good performance and conduct) or till selection/ promotion is made in accordance with the rules of recruitment governing the respective posts, whichever is earlier. The extension so granted under these rules shall not be beyond a period of six years under any circumstances and this shall be clearly indicated in the engagement order;

Provided that extension upto 3 years shall be made on year to year basis by the Principal of the College concerned. For engagement beyond 3 years, the case will be considered by the Government and once approved, Principal concerned shall be authorized to grant further extensions for another three years;...

*Provided also that **recruitment against the posts** as may be made on academic arrangement basis in any of the Health and Medical Institutions, **shall and shall always be on academic arrangement only** without conferment of any preferential right on the engagees for regular appointment against these posts, which shall be made strictly in accordance with the relevant recruitment rules; ...*


(2) The services of an appointee under these rules shall be terminable before the expiry of the tenure of appointment with one month's notice, from either side, or on payment of one month's salary in lieu of notice by the appointing authority.

(3) The appointee under these rules shall have to execute an agreement with the Government on the prescribed form appended as (Form "A") to these rules.

Section 9 of the S.O provides for:

In the matter of discipline and conduct, an appointee shall be governed by the rules, regulations and others in vogue in the UT Civil Services on the subject.

AND WHEREAS, the primary and sole purpose of engagement under academic arrangement basis is to address the shortage of faculty members/technical staff/casualty medical officers in the Government Medical Colleges in the interest of academic activities and patient care on short term basis till such time the appointment of permanent/substantive faculty posts/technical staff/casualty medical officers takes place through the recruitment agencies;



AND WHEREAS, employment on an academic arrangement basis is a **contractual engagement** for a specified period of time (maximum to 6 years subject to satisfactory work and conduct) and the incumbents do not hold any substantive/permanent post. As such, they have the option to pursue higher studies by resigning from their contractual assignment after giving one month's advance notice to the Department in accordance with the rules. This provision allows them to prioritize their academic pursuits and choose career options at their will;

AND WHEREAS, in terms of Section 9 of the S.O 364 of 2020, the faculty/staff/medical officers engaged on academic arrangement basis are, for purposes of conduct and discipline, bound by the rules, regulations and others in vogue in the UT;

AND WHEREAS, the engagement of medical officers on academic arrangement basis is being made exclusively to address the patient-care requirements; allowing them to pursue higher studies shall compromise the sole intent and purpose for which they have been engaged. They cannot claim to be 'in-service' candidates as their services are temporary in nature and they do not hold any substantive post/lien. In addition, the services of the in- service medical officers are spared against the 'leave reserve' quota which is intrinsic to the Health and Family Welfare Gazetted Service Recruitment Rules, 1997;

AND WHEREAS, in compliance of judgment dated 30-07-2019 passed by the Hon'ble High Court in WP(C) No.2553/2019, CM No.4967/2019 titled Dr. Abdul Roof & Ors. Vs State & Ors, the Health and Medical Education Department has framed a policy vide Circular No. 03-HME of 2019 dated 27.05.2019 for granting NOC for undergoing higher study courses/ Registrarship, Demonstratorship, Senior Residency, PG, Diploma, Tutor, etc., by in-service doctors, whereunder NOC is granted to eligible candidates once in a calendar year i.e., in the month January every year;

AND WHEREAS, the petitioners are neither 'in- service' candidates nor did they apply for prior NOC in the month of January, and appeared for NEET examination at their own level when the other 'in-service' medical officers applied for grant of NOC in the first week of January and the same has been granted in their favour. Besides, allowing the petitioners to undergo intended course shall have an adverse impact on the healthcare services in the concerned Government Medical College;

NOW, THEREFORE, in compliance of the order dated 25.09.2023 assed in WP(C) No. 2526/2023 titled Dr. Misbah Yousuf and Anr Vs UT of J&K and Ors, the case was considered in light of the existing rules of the service and policy guidelines/mechanism notified vide Circular No. 03-HME of 2019 dated 27.05.2019 as well as in terms of the J&K Medical & Dental Education (Appointment on Academic

Arrangement Basis) Rules, 2020, the claim of the petitioners has been considered and 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. ME-leg/191/2023-01 (CC No. 7300616)

Dated: 04.10.2023

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Director, Archives, Archaeology & Museums, J&K.
3. Principal, Government Medical College, Srinagar
4. Director, Health Services, Kashmir.
5. Director, Finance, H&ME Department.
6. Additional Secretary to the Government, (HRM), H&ME Department.
7. Additional Secretary (Law), Health & Medical Education Department.
8. Pvt. Secretary to Secretary to the Government, Health & Medical Education Department.
9. Concerned.
10. I/c Website, Health and Medical Education Department.
11. Government Order file/Stock file/Monday Return (w.2.s.c).


(Shakoor Ahmad Dar) JKAS
Deputy Secretary to the Government
04/10/2023
Shakoor