



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

Subject: Implementation of order dated 09.12.2016 passed in SWP No. 03/2015 titled Dr. C. N. Malla Vs State and others.

Government Order No.907-JK (HME) of 2023
Dated: 07-11-2023

WHEREAS, the petitioner, Dr. C. N. Malla was promoted as Assistant Professor on 13.03.1981. On 24.06.1986, he proceeded on earned leave for 30 days and didn't report back to his duties and resorted to unauthorized absence; and

WHEREAS, after issuing notices, the services of the doctor were terminated vide Government Order No. 400-HME of 1987 dated 18.09.1987; and

WHEREAS, Dr. C. N. Malla filed a writ petition before the Hon'ble High Court in which he challenged the termination order by filing SWP No. 621/94 dated 16.05.1994. By virtue of the Single Bench judgment dated 16.12.1998, the termination order was quashed on the grounds that due procedure was not followed before issuing termination order, besides entitling him the back wages from the date he filed the writ petition. The Department contested the case before Division Bench of Hon'ble High Court which set aside the order with regard to payment of back wages in favour of the petitioner; and

WHEREAS, Dr. C. N. Malla approached the Hon'ble Supreme Court and challenged the Division Bench judgment and Hon'ble Supreme Court in SLP No. 24551/2008 dated 24.08.2008 directed as under:

"Regard being had to all relevant facts and circumstances, particularly the fact that the appellant is a doctor by profession and must not have remained idle even after filing

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writ petition, full back wages from the date of filing writ petition until date of superannuation may not be justified. In our considered view, the demand of justice would be met if the appellant is awarded 50% back wages from the date of filing writ petition until he attained the age of superannuation.

Consequently, appeal is allowed to the aforesaid extent. The payment of due amount shall be made by the respondents to the appellant within one month from today failing which it will carry simple interest at the rate of 9% per annum from May 16, 1994 till the date of actual payment. Parties will bear their own costs".

WHEREAS, the judgment of the Hon'ble Supreme Court was complied with in letter and spirit by the Department and the payment was made in favour of the petitioner; and

WHEREAS, Dr. C. N. Malla filed another writ petition long after his retirement bearing SWP No. 03/2015 seeking promotion as Professor. The Hon'ble High Court vide judgment dated 09.12.2016 directed as under:

"In view of the submission made by the learned counsel for the parties, no useful purpose would be served by admitting the writ petition. Accordingly, I deem it appropriate to dispose of the same with a direction to the respondents to consider the case of the petitioner for promotion to the post of Professor by convening the meeting of review DPC within a period of two months from the date of receipt of certified copy of the order passed today.

Needless to state that the case of the petitioner for promotion shall be considered in accordance with law and subject to the eligibility of the petitioner. In case, the petitioner is found entitled for promotion to the post of Professor, all consequential benefits including retiral benefits as well as the benefits of pension shall be awarded to him. The petitioner shall be promoted notionally to the post of Professor with effect from the date, his immediate juniors were promoted. Let aforesaid exercise be carried out within

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a period of two months from today. It is further directed that in case the amount due to the petitioner is not paid within a further period of two months, subject to the petitioner being found eligible for promotion, the amount due to the petitioner shall carry interest @ 8% per annum.

With the aforesaid directions, the Writ Petition is disposed of".

WHEREAS, while examining the claim of the petitioner, it has been observed that the petitioner was appointed as Lecturer in 1974 and promoted as Assistant Professor on 13.03.1981. However, from November 1987 to 1994, the petitioner has been out of service (terminated) and was only allowed to rejoin on court orders. The petitioner has already superannuated on 30.04.1999. During the period the petitioner was out of service, the departmental business continued and the colleagues of the petitioner were promoted on their own turn; and

WHEREAS, under J&K Medical Education (Gazetted) Service Recruitment Rules 1979, the post of Professor and Associate Professor is to be filed as under:

S. No.	Subject	Designation of the posts	Minimum qualification	Minimum teaching/research experience
1.	Surgery	(a) Professor	M.S. (General Surgery/Surgery) F.R.C.S., Specialty Board of Surgery (USA) or an equivalent qualification in the subject.	As Associate Professor in Surgery for five years in a Medical College or a recognized teaching medical institution such as AIIMS New Delhi, PGI Chandigarh, JIMER Pondicherry and such other institutions, as are recognized by the Medical Council of India.
		(b) Associate Professor	do.	As Associate Professor in Surgery for five years in a Medical College or a recognized teaching medical institution such as AIIMS New Delhi, PGI Chandigarh, JIMER Pondicherry and such other institutions, as are recognized by the Medical Council of India.

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		(c) Assistant Professor	do.	As Lecturer in Surgery for three years in a Medical College or a recognised teaching medical institution such as AIIMS New Delhi, PGI Chandigarh, JIMER Pondicherry and such other institutions, as are recognised by the Medical Council of India.
		(d) Lecture	do.	[As Registrar/Tutor, Demonstrator/Tutor or a Senior Resident for a period of two years in a recognised Teaching Medical Institution recognised by the Medical Council of India or the University of Kashmir/Jammu.] [Provided that the teaching experience, if any, gained before or during the post-graduation studentship shall not considered while determining the eligibility for the post of Lecturer.]

WHEREAS, the petitioner claims that he be promoted as Professor and his pension be re-fixed accordingly, however, he has not been promoted on the post of Associate Professor which is a feeding cadre for the post of Professor. Besides, neither the post of Associate Professor nor the post of Professor was available at the relevant time. The petitioner seeking parity with his colleagues or for that matter his immediate junior who were promoted while the petitioner was out of service is not justified because unlike the petitioner they did not leave the service and were promoted on their own turn and on their own merit. Furthermore, promoting the petitioner on the post on which his colleagues or his immediate junior Dr. Ghulam Jeelani (now retired) was promoted would mean to dislodge them which is not possible at this stage; and

WHEREAS, the guidelines laid down by the Supreme Court of India in case Suraj Parkash Gupta And Others vs State Of J&K And Others read:

"Promotion of a Government employee shall take effect from the date, he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/ regularization shall take effect from the date of his placement against the higher post or availability of

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vacancy or the date of his eligibility, whichever is later. In all other cases, the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order".

Furthermore, the promotion is to be made after considering merit cum seniority which includes actual teaching/research experience, APRs, Integrity Certificates, Vigilance Clearance etc. All these documents of the petitioner are not available at this stage especially the mandatory teaching experience as Assistant Professor/ Associate Professor by virtue of him being out of the service. Therefore, promoting the petitioner against the post of Associate Professor and Professor is not possible under rules. Obviously, the question of re-fixing the pension does not arise.

NOW, THEREFORE, the claim of Dr. C. N. Malla seeking promotion as Professor has been considered in light of order dated 09.12.2016 passed in SWP No. 03/2015 titled Dr. C. N. Malla Vs State and others, and is found devoid of any merit and, hence, rejected.

By Order of Government of Jammu & Kashmir.

Sd/-

(Bhupinder Kumar) IAS

Secretary to the Government
Health & Medical Education Department

No. ME-leg0Gaz/7/2021-02 (CC: 31506)

Dated: 07.11.2023

Copy to the:

1. Principal Secretary to the Hon'ble Lieutenant Governor.
2. Joint Secretary (JK&L), Ministry of Home Affairs, Government of India.
3. Director, Archives, Archaeology and Museums, J&K.
4. Principal, Government Medical College, Srinagar.
5. OSD with Advisor (B) to the Hon'ble Lieutenant Governor.
6. PS to Secretary to the Government, Health & Medical Education Department.
7. Concerned.
8. Incharge Website, H&ME Department.
9. Government Order File/Stock File.

(Waqar Talib) JKAS

Under Secretary to the Government
Health & Medical Education Department

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8/Nov/23