



GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/KASHMIR

(Legal Section)

Subject: SWP No. 479/2015 titled Umatul Hafiz V/S State and others.

Government Order No: 968 - Edu of 2017

D a t e d: 29 - 11 - 2017

Whereas, Mtr. Umatul Hafiz Teacher posted in UPS Bhara Zone Bhalla was transferred to HSS (G) Bhaderwah vide No. CEO/D/21300-303 Dated 14.07.2017, against the post of Teacher under orders of promotion as Master. Accordingly, the teacher joined in the school, but due to non adjustment of above said Master (DPC 2014), she became surplus in HSS (G) Bhaderwah and as such was being paid salary from her original place of posting i.e. UPS Bhara Zone Bhalla; and.

Whereas, in the meantime, the Government Order No. 08-Edu of 2015 dated 15.01.2015, was issued whereby, all the attachments/deployments of teaching staff viz. Lecturers/Masters/Teachers at any level were revoked and Director School Education, Jammu/Kashmir was directed to relieve the attached staff immediately to their original places of postings, as such the Principal HSS (G) Bhaderwah vide order No. GHSS/B/680-685 dated 27.01.2015, relieved the Teacher to her original place of posting in Zone Bhalla; and

Whereas, the said teacher challenged the relieving order before the Hon'ble High Court through the above titled writ petition; and

Whereas, the said writ petition came to be disposed of on 24.02.2015, with the following directions:-

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[Signature]

"Commissioner/Secretary to Government School Education Department shall give a fresh look to order

No. GHSS/B/680-685 dated 27.01.2015 while taking into consideration the Government instructions and the transfer policy. The order of consideration shall be passed within a period of two weeks from today. Till then, the order impugned in the present petition in so far as it pertains to the petitioner shall not be acted upon the petitioner shall be allowed to serve at his present place of posting, i.e. Govt. Higher Secondary School (Girls), Bhaderwah".

Whereas, the matter has been examined by the Department in light of Principal HSS, Girls, Bhaderwah communication No. GHSS/B/382 dated 11.11.2017, which reveals that the petitioner is still continuing in the said school for the last more than 03 years on the basis of the order passed by the Hon'ble High Court on 24.02.2015; and

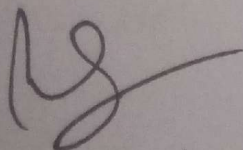
Whereas, the Government with a view to ensure universal education has been opening and upgrading schools in remote areas, as well as in the cities and towns etc; and

Whereas, in a bid to provide quality education, the Government has the responsibility of providing the required infrastructure and manpower to the newly opened/upgraded schools and its necessitates occasional transfer and posting of adequate staff to these schools; and

Whereas, an employee holding transferable post has no right to serve at a particular place for a particular period. Transfer is generally a condition of service and employee has no right to choose posting of his/her choice; and

Whereas, in terms of Rule 27 of Classification Control and Appeal Rules, 1956, a member of a service or class of a service may be required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre of such service or class; and

Whereas, Hon'ble Full Bench of the J&K High Court on 31.8.2015 in SWP No. 1476/2014 c/w SWP No. 1481/2014 titled Syed Hilal Ahmed and



Others V/S State of Jammu and Kashmir and others, has held that the government servant has no enforceable right to insist that he/she shall be permitted to serve for a minimum of two years in a station or post; and

Whereas, transfer of a Government servant from one place to another place is an incidence of service and does not effect or alter the terms and conditions of service; and

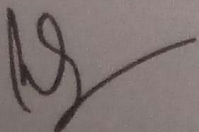
Whereas, the issue of transfer and postings has been considered time and again by the Hon'ble High Court and the Apex Court, and the entire law is settled by catena of decision of the Apex Court. It is settled law that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant, therefore, has any legal right for being posted at any particular place; and

Whereas, vide Government Order No. 622-Edu of 2015 dated 22.12.2015, transfer policy of the Department was issued. In the given transfer *policy categories have been identified for special provision and general principles have been laid down; and*

Whereas, vide Government Order No. 26-Edu of 2016 dated 02.02.2016, upon review of attachments/deployment of staff in the school education department, series of measures have been taken to make the schools functional; and

Whereas, matter has been examined by the Department and it has been found that Government order No. 08-Edu of 2015 dated 15.01.2015 has been purely issued in the larger public interest as the said order does not contain any malafides or is in violation of rules of service; and

Whereas, the Department has further issued Government Order No. 26-Edu of 2016 dated 02.02.2016 whereby general directions have been issued to the Directors and other field functionaries for detachment of attached officials to rationalize the human resources and provide the teaching faculty in the schools; and



Whereas, the teacher Umatul Hafiz, has already served in the school for more than 3 years, and now needs to be shifted to some other school.

Now, therefore, in compliance with the directions of the Hon'ble High Court on 24.02.2015, with reference to the Transfer policy issued vide Government Order No. 622-Edu of 2015 dated 22.12.2015, and Government Order No. 26-Edu of 2016 dated 02.02.2016, with due consideration of the facts germane to the individual and the claim of the teacher/petitioner for continuance in the same school is considered and found without any merit and hence rejected.

By Order of the Government of Jammu and Kashmir.

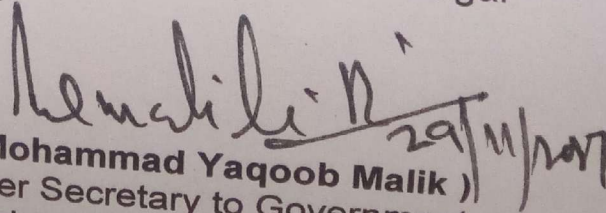
Sd/-
(Farooq Ahmad Shah) IAS
Secretary to Government
School Education Department

No: Edu/Legal/J/Misc/306/2017

Dated: 29-11-2017

Copy to the:-

1. Director School Education, Jammu for information and necessary action.
2. Chief Education Officer, Doda for information and necessary action.
3. Pvt. Secretary to Secretary to Government, School Education Department.
4. I/C Website
5. Umatul Hafiz D/O Lt. Abdul Rehman Malik R/O Mohalla Haveli Nagar Bharderwah, Tehsil Bharderwah District Doda.
6. Government Order file
7. Stock file


(**Mohammad Yaqoob Malik**)
Under Secretary to Government
School Education Department

