

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL AT  
SRINAGAR.

OA No. / 2023

**GOVERNMENT OF JAMMU & KASHMIR**  
**SCHOOL EDUCATION DEPARTMENT**  
CIVIL SECRETARIAT, J&K  
\*\*\*\*\*

Subject: CCP No. 138/2022 in O.A No. 517/2022 titled Mohammad Akram Bhat & Others Vs UT of J&K and Ors.

GOVERNMENT ORDER NO: 106 - JK (Edu) of 2023  
DATED: 25.04.2023.

Whereas, the petitioners have filed above titled writ petition before the Hon'ble Central Administrative Tribunal at Srinagar seeking following relief s:-

- I. The respondents/non-applicants be directed to post the applicants as lecturers in the discipline of Physics, Chemistry, Zoology and Bio-Technology, as issued to other juniors in terms of Govt. orders of 2019 who are figuring in authenticated list of 27.04.2022 and are similarly figuring in the Govt. orders of 2019 and were posted as Incharge lecturers in pursuance to Govt. order dated 12.05.2022 read with order dated 25.05.2022 issued by the respondents ignoring seniors including applicants and be given same treatment as has been given to those figuring in orders of 2019 as mentioned above.
- II. The respondents/non-applicants be further directed to give due consideration to the seniority and placement orders issued by the department and issue posting orders to the applicants and others for post of lecturers in the respective subjects as per seniority and release the grade from the date of elevation and no other person may be posted out of the lists already issued and applicants be also paid their salary from the date they are elevated.

*And*  
Whereas, the Hon'ble CAT disposed of the above writ petition vide its order dated 08.06.2022 at its threshold with the following orders/ directions:-

*LS*  
*LPB*

"In view of the limited prayer made by the learned counsel for the applicants, OA is disposed of at the admission stage with direction to the respondents / competent authority to consider the case of the applicants treating the averments made in the present OA as representation of the applicants and dispose of the same by passing a reasoned and speaking order within a span of four weeks from today and decision so taken shall be communicated to the applicants forthwith."

**Whereas**, in compliance with the above directions of the Hon'ble Court, the cases of the petitioners were considered and examined in the Department meticulously having regard to Government Order No. 252-HE of 2021 dated 30.05.2012, Government Order No. 940-Edu of 2017 dated 17.11.2017 and SRO 339 of 2005 dated 20.12.2005 and other rules governing the field.

**Whereas**, during the examination it has been found that the petitioners do not meet out the requirements as per the conditions laid down in relevant Government Orders viz., Government Order No. 252-HE of 2021 dated 30.05.2012, Government Order No. 940-Edu of 2017 dated 17.11.2017 and SRO 339 of 2005 dated 20.12.2005 and other rules governing the field.

**Whereas**, it has been also observed that the petitioners have obtained their degrees unauthorizedly without obtaining the proper permission from the competent authority, during the academic session at the cost of imparting education to the students in their respective schools, which is the matter of separate enquiry. The petitioners have also pursued their higher qualification degrees in contravention to J&K Leave Rules of 1979, Government Order No. 252-HE of 2021 dated 30.05.2012 and Government Order No. 940-Edu of 2017 dated 17.11.2017, as such the higher qualification acquired by the incumbents in contravention to the rules and regulations cannot be considered for the purposes of seniority and promotion or otherwise.

**Whereas**, based upon the observations and on further examination of the cases of the petitioners in the Department, having regard to Government Order No. 252-HE of 2021 dated 30.05.2012, Government order No. 940-Edu of 2017 dated 17.11.2017 and SRO 339 of 2005 dated 20.12.2005 and other rules governing the field and based upon such examination following



moot questions emerge for consideration in case of petitioners:-

- I. Whether degree obtained through Distance Mode in contravention to the provisions/ conditions laid down in Government Order No. 252-HE of 2021 dated 30.05.2012, Government Order No. 940-Edu of 2017 dated 17.11.2017 can be considered valid for the purposes of seniority and promotion.
- II. Whether the degree obtained without obtaining proper permission from the competent authority and in contravention to J&K Leave Rules of 1979 and Government Order No. 940-Edu of 2017 dated 17.11.2017 can be considered valid for the purposes of seniority and promotion.

1. Issue No. (I):-Whether degree obtained through Distance Mode in contravention to the provisions/ conditions laid down in Government Order No. 252-HE of 2021 dated 30.05.2012, Government Order No. 940-Edu of 2017 dated 17.11.2017 can be considered valid for the purposes of seniority and promotion.

Whereas, Degree (viz., PG, MPhil and Ph.D) obtained in Science Stream where practical are the part of curriculum are required to be obtained through regular mode only, unless such courses are allowed specifically through Distance Mode by Distance Education Council (DEC) or All India Council for Technical Education (AICTE).

Whereas, the issue regarding validity of degree acquired through distance mode was taken up with the University of Kashmir and in reference to said referral, the Department was conveyed as under:-

*"... The University in this regard has categorically communicated the decision regarding the distance mode degree from time to time and in the latest communiqué No. FSPA/DAA/KU/2010 Dated March 10 2013 from Dean Academics Affairs office, wherein it has been resolved by the high level committee that candidates holding masters degree in science subjects awarded through the distance mode from other universities are neither eligible for*

*[Handwritten signature]*

*[Handwritten signature]*

*appointment as lecturers in the Higher Education Department/ +2 level nor for admissions to the M.Phil / Ph.D programme as the laboratory component which forms an indispensable part of the curriculum and requires a continuous guidance for the whole period of 4 semesters, is not given its due importance in the distance mode learning."*

Whereas, the equivalence Committee of University of Kashmir constituted for the purposes of considering grant of recognition of such degrees through distance mode and resolved as under on 10.04.2008:

*"That recognition be granted to the Masters/Bachelors degree in Arts, Social Science/Commerce obtained by the candidates through Distance mode from the Universities/Institutions recognized by the University Grants Commission and approved by the Distance Education Council, except the courses where practicals are involved.*

*However, recognition of Research degrees viz M. Phil, Ph. D degrees awarded by the Universities through Distance Mode be not agreed to."*

Whereas, Ministry of Human Resource Development Department of Higher Education, New Delhi, have clarified the position regarding the recognition of academic qualifications acquired through distance mode and their acceptance for the purpose of employment in Central/State Government services, the relevant paragraph whereof is reproduced as under:

*It is upto the concerned academic Institution/University to recognize the qualification including certificate, diploma, degree etc. for the purpose of academic pursuit i.e. continuing education for acquiring another academic qualification, with it. As regards, recognition of academic qualifications for the purpose of employment, it is the prerogative of concerned employer to take a view on the recognition of the degree, diploma etc."*

Whereas, in *Bilal Ahmad Najar Vs State of J&K and Ors*



**2010 (2) JKJ 218 : 2009 (2) SriLJ 798** the Hon'ble High Court of J&K has held that degree obtained through distance mode and not recognized by University of Kashmir or by State Government being a degree not recognized by University of Kashmir cannot be treated a valid degree and does not confer any benefit upon the petitioner.

Whereas, in **Muzaffar Zaman Shah Vs State of J&K and Ors 2012 (3) JKJ 267 : 2012 (18) SCT 357** the Hon'ble High Court of J&K observed as:- Degrees obtained through Distance Mode - Petitions challenging non-consideration of petitioners for various posts under the State or giving weightage to their degrees issued by various universities by distance mode-List of universities recognized with DEC placed on record - None of the universities which have conferred degrees on petitioners figured in the list - Held, these universities have acted beyond the limits provided by guidelines and Acts established for the purpose - Taking serious note of affairs of PRIST and other universities - Directions issued to State Chief Secretary to examine matter by conducting a thorough probe - Petitions held meritless and hence, dismissed.

Whereas, in **Imtiyaz Ahmad Bhat & Ors. Versus State & Ors 2012 (3) JKJ 258** the Hon'ble High Court of J&K held that and observed as:- Writ of mandamus-To accept and entertain degrees obtained through Distance Mode-Sought by the petitioner commanding respondents to accept and entertain Degrees of Master of Science/ M. Phil obtained through Distance Mode from unrecognized Universities for purposes of employment - Decision of State Higher Education Department pursuant to reference made by Public Service Commission that decision of the University in case of any disputed degrees shall be final -Decision not challenged in writ petition - Petitioners did not produce any document to show that their degrees are recognized in terms of University Grants Commission Act or any decision of J&K Higher Education Department - Writ petition dismissed in limine.

Whereas, the above judgment dated 12.06.2012 was assailed by the petitioner in Letter Patents Appeal (LPA No. 128/ 2012) before the Hon'ble Division Bench and the Hon'ble Court was pleased to dismiss the said Appeal being meritless vide order dated 24.8.2012.

Therefore based upon the above observations, degree obtained through Distance Mode in contravention to the provisions/ conditions laid down in Government Order No.

LS

252-HE of 2021 dated 30.05.2012, Government Order No. 940-Edu of 2017 dated 17.11.2017 and other rules governing the field cannot be considered valid for the purposes of seniority and promotion.

Issue No. (II):-Whether the degree obtained without obtaining proper permission from the competent authority and in contravention to J&K Leave Rules of 1979 and Government Order No. 940-Edu of 2017 dated 17.11.2017 can be considered valid for the purposes of seniority and promotion:-

Whereas, Rule 73 of J&K Civil Service (Leave) Rules 1972 reads as under:

“The concerned Administrative Department shall be competent to sanction study leave without pay and allowances under these rules within/outside the State or outside the country.”

Whereas, Rule 73 of J&K Civil Service (Leave) Rules, 1979 was re-cast vide SRO-274 dated 30.05.2019 which reads as under:-

1. The concerned Administrative Department shall be competent to sanction the study leave under these rules within the State.
2. The General Administration Department on the recommendations of the Administrative Department concerned and with the consent of the Finance Department may grant study leave under these rules for purpose of study outside the state within India”.

Whereas, in terms of Government Order No. 940-Edu of 2017 dated 17.11.2017, it is imperative upon the in-service candidate to pursue higher qualification after seeking proper permission from the competent authority at the relevant point of time.

Whereas, in *Rabindra Nath Barman Vs Gauhati High Court, 2012 (2) GLT 111*, it was held that the petitioner who has obtained degree in Law while serving in Gauhati High Court without proper authorization was held to be the misconduct because of which he was proceeded in departmental enquiry and the Gauhati High Court up-held it as a misconduct to undertake LL.B course



without permission.

Whereas, in *Nongmaithem Rejan Singh Vs State of Manipur, 2013 (1) GLT 7* it was held that if a person obtains graduation certificate without authorization, it amounts to misconduct and person who commits misconduct cannot be rewarded by promotion to the next higher post.

Whereas, in the case of *K.N. Pushpavalli Vs The Bar Council of Tamil Nadu WP (C) No. 46022/ 2002 (DOD Feb 26, 1013) reported in (2013) 3 MLJ 237*, a full-time High Court employee, who, *without* getting prior *permission* from the High Court Registry and *without* intimating the Registry, joined three year Law Degree Course in SLSRC, Havanur College of Law, during academic year 1984-1987. According to her, she attended the Evening College by securing attendance during weekends and public holidays. On completion of the course, she was awarded Law Degree and the High Court, also, surprisingly, ratified the action of the petitioner in having joined the Law College at Bangalore, *without* intimating and *without* getting prior *permission* from the Registry. After superannuation, the said K.N. Pushpavalli, got enrolled before the Bar Council of Tamil Nadu on 02.05.2002 and subsequently, her enrolment was cancelled on 17.12.2002. Challenging the same, WP (C) No. 46022 of 2002 was filed and the same was dismissed on 26.02.2013 holding that the petitioner's enrolment was rightly cancelled as she was working in High Court of Madras during the period, during which she had alleged to have undergone the Law Course.

*Therefore in view of the above settled legal position, the degree obtained by the in-service candidate without obtaining permission from the competent authority in contravention to the Rules cannot be reckoned valid particularly for the purposes of seniority and promotion.*

\*\*\*\*\*

Now, therefore, after having considered the cases of petitioner in compliance with the judgment/order dated 08.06.2022, having regard to the Government Order No. 252-HE of 2021 dated 30. 05. 2012, Government Order No.940-Edu of 2017 dated 17.11.2017 and SRO 339 dated 20.12.2005 and other rules and regulations governing the field, it has been found that the claim of the petitioners does not merit consideration based upon the observations and findings made in the preceding paras and as such the claim of the petitioners is hereby rejected.

LS  
GZ

By order of the Government of Jammu & Kashmir.


Alok Kumar (IRS),  
Principal Secretary to the Government,  
School Education Department.

No: Edu/LGLOKmr/267/2022 (220281)

Dated: 25.04.2023.

Copy to the:-

1. Joint Secretary (JK&L) Ministry of Home Affairs, Government of India.
2. Commissioner/Secretary to the Government, General Administration Department.
3. Director School Education Jammu/Kashmir for information and necessary action.
4. Director, Archives, Archeology and Museums, J&K.
5. OSD with Advisor (B) to the Lieutenant Governor, UT of J&K for information.
6. Chief Education Officer \_\_\_\_\_ (All) for information and necessary action.
7. Private Secretary to Principal Secretary to Government, School Education Department for information.
8. Sh. \_\_\_\_\_ (All Petitioners) for information.
9. I/c Website, School Education Department.
10. Government Order File(w.3.s.c).

  
(Masood Ahmad Wani)  
Deputy Secretary to the Government,  
School Education Department.

