



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

Subject:- CPSW No.135/ 2008 in SWP No. 577/2003 titled Anita Sharma Vs G A Peer and other.

GOVERNMENT ORDER NO:- 155 -JK (Edu) of 2023

DATED:- 08 .06.2023

Whereas, the petitioner Anita Sharma had filed writ petition bearing No. 577/2003 before the Hon'ble High Court of J&K, wherein following reliefs had been prayed for:-

- i) To issue of certiorari quashing the entry of extra ordinary leave sanctioned in favour of the petitioner, the service book of the petitioner.
- ii) To issue a writ of mandamus commanding the respondents to grant study leave for the period extraordinary leave stands sanctioned in favour of the petitioner by the respondents and to record the same in the service book of the petitioner with a further direction to accord permission to the petitioner for completing M.Sc course in Chemistry from Mugadh University for the session 1998-2000 w.e.f the year 2000 when the petitioner had applied for the same with a further writ of mandamus commanding the respondents to grant her promotion for the post of Lecturer on the basis of seniority and higher qualification in accordance with the J&K Education (Gazetted) Service Recruitment Rules of 1992.

Whereas, the Hon'ble High Court vide order dated 22.04.2008 disposed of the writ petition with the following directions:-

"...Mrs. Neeru Goswami, Dy.AG further submitted that in case the petitioner again applies for the sanction of extraordinary leave for study, then her application will be considered by the respondent-1 according to the rules within a period of three months..."

'...In view of the statement of the learned deputy AG, this petition is disposed of.'

Whereas, the case of the petitioner has been examined in the Department and it has been found that the petitioner has proceeded

Whereas, it has also been observed that the petitioner has obtained her degrees unauthorizedly without obtaining the proper permission from the competent authority, during the academic session at the cost of imparting education to the students of her school, which is the matter of separate enquiry. The Petitioner has obtained such degrees without obtaining proper permission from the Competent Authority as required under J&K Leave Rules, as such the higher qualification acquired by the incumbent in contravention to the rules and regulations cannot be considered for the purposes of seniority and promotion or otherwise to the post of Lecturer in Chemistry.

Whereas, 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 cannot be considered valid.

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, 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 and there is no provision in the J&K Leave Rules to claim for the ex-post facto sanction/ regularization of the unauthorized leave.

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 upheld 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 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 petitioner as in-service candidate without obtaining proper permission from the competent authority in contravention to the rules, more particularly J&K Leave Rules was considered in the department and being not tenable under rules is hereby rejected.

By Order of the Government of Jammu and Kashmir.

Sd/

Alok Kumar (IRS)

Principal Secretary to the Government,
School Education Department.

No:-Edu-LGLOJmu(HC)/85/2023-01

Dated:- 08-06-2023

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India.
2. Director School Education Jammu for information.
3. OSD with the Advisor (B) to the Lieutenant Governor, UT of J&K for information.
4. Chief Education Officer concerned for information.
5. Private Secretary to the Principal Secretary to Government, School Education Department for information
6. Sh. Raman Sharma Ld. AAG, High Court of J&K & Ladakh for information.
7. Smt. Anita Sharma (Petitioner) for information.
8. I/C Website for uploading the same on Official website.
9. Government Order File/Concerned File(w.2.s.c



Masood Ahmad Wani

Deputy Secretary to the Government
School Education Department.

