



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

Subject: C.P No. 168/2022 in TA No.061/1938/2020 titled Sushma Bali & Ors V/s UT of J&K & Ors.

**GOVERNMENT ORDER NO. 337 - JK (Edu) of 2023
DATED: 19.10.2023.**

Whereas, the petitioners Smt. Sushma Bali & Ors have filed writ petition before the Hon'ble High Court wherein prayer for the following reliefs:-

- i. Allow this writ petition of the petitioner.
- ii. Issue writ in the nature of Mandamus commanding the respondent no. 1 to accord consideration to the claim of the petitioner for being placed as Lecturer in substantive on in charge capacity in the stream of Environmental Science compliance to Government Order 940-Edu of 2017 dated 17.11.2017 on the analogy of the Government Order No.252-Edu of 2019 dated 25.07.2019 issued by the respondent No. 1.

Whereas, the Hon'ble High Court vide order dated 20.07.2022 has transferred the writ petition to the Hon'ble Central Administrative Tribunal and the Hon'ble Central Administrative Tribunal vide order dated 15.10.2020 passed in TA/1938/2020 titled Sushma Bali & Ors Vs UT of J&K & Ors has issued following directions:

"...The OA is accordingly, disposed of by providing that the respondents shall accord consideration to the claim of the applicants and pass appropriate orders in the light of the aforementioned Government order and SRO strictly under rules, within a period of three months from the date of certified copy of this order is made available to the respondents. No costs."

Whereas, in compliance with the above directions of the Hon'ble Central Administrative Tribunal the cases of the applicants 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 and based upon such examination following picture having bearing upon the cases of the petitioners has emerged;

Whereas, during the examination it has been found that the applicants 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 for their promotion to the post of Lecturer in Environmental Sciences.

Whereas, it has been also observed that the applicants have obtained their degrees unauthorized without obtaining the proper permission from the competent authority, during the academic session at the cost of imparting education to the students of their respective schools, which is the matter of separate enquiry. The Petitioners have 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 incumbents 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 Environmental Sciences.

Whereas, the applicants have obtained their PG degrees through Distance Mode in contravention to the conditions laid down in SRO 940 of 2017 and other rules governing the field. The petitioners have also pursued their higher qualification degrees in contravention to J&K Leave Rules of 1979 and Government Order No. 940-Edu of 2017 dated 17.11.2017, i.e., without obtaining proper permission from the competent authority in this regard.

Whereas, based upon the observations and on further examination of the cases of the applicants 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 either in Environmental Sciences or Ecology and Environment 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.**




Issue No. (I): Whether degree obtained through Distance Mode either in Environmental Sciences or Ecology and Environment 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, 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.

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. 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 applicant in compliance with the judgment/ order dated 15.10.2020, 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 applicants does not merit consideration based upon the observations and findings made in the preceding paras and as such the claim of the applicants for their inclusion in the seniority list of Environmental Science discipline and consequent claim for promotion to the post of Lecturer Environmental Sciences is hereby rejected being not tenable under rules.

By order of the Government of Jammu & Kashmir.

Sd/-

Alok Kumar (IRS)

Principal Secretary to the Government,
School Education Department.

No: Edu-LGLOJmu/25/2022-01(138471)

Dated: 19.10.2023.

Copy to the:-

1. Joint Secretary (JK&L) Ministry of Home Affairs, Government of India.
2. Director School Education Jammu for information and necessary action.
3. OSD with Advisor (B) to the Lieutenant Governor, UT of J&K for information.
4. Private Secretary to Principal Secretary to Government, School Education Department for information.
5. Sh. Sudesh Magotra Deputy Advocate General, Hon'ble Central Administrative Tribunal UT of &K and Ladakh for information.
6. Smt. Sushma Bali & Ors (applicants) for information.
7. I/c Website for uploading the same on official website.
8. Government Order File/ Concerned File (w.2.s.c)

(Masood Ahmad Wani)

Deputy Secretary to the Government.