



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

Subject: Contempt No. 269/2020 in SWP No. 3427/2019 titled Bharat Bhushan & Ors Vs Sh. Asgar Samoon & Ors.

GOVERNMENT ORDER NO: 360 - JK (Edu) of 2023.

DATED: 13.11.2023.

Whereas, the petitioners Bharat Bhushan & Ors have filed writ petition before the Hon'ble High Court wherein prayer for Commanding upon the respondents to promote the petitioners as lecturers in the discipline of environmental science in terms of Government Order No. 940-Edu of 2017 dated 17.11.2017 read with SRO 339 dated 20.12.2015 by extending the benefits of the judgment passed by the Hon'ble High Court in SWP No. 1507/2014 dated 12.12.2017 in case titled Zahoor Ahmed Rather & others Vs State of J&K and ors from a date the petitioners were eligible along with all consequential benefits.

Whereas, the matter was listed before the Hon'ble Court on 20.09.2019 and the Hon'ble High Court disposed of the writ petition with the following direction:-

" ... Accordingly, this writ petition is disposed of by providing the respondents to accord consideration to the claim of the petitioners having regard the Govt. order No. 940-Edu of 2017 dated 17.11.2017 read with SRO 339 dated 20.12.2005, provided the same apply to the case of the petitioners and they are eligible. Let an appropriate consideration order be passed by the respondents within a period of six weeks from the date a certified copy of this order along with a complete set of paper book of this writ petition is made

available to the respondents. It is, however, made clear that this order does not decide any right of the petitioners and it would be for the respondents (competent authority) to consider the claim on merits.

Disposed of as above along with connected CM(s)."

Whereas, in compliance to the above directions of the Hon'ble High Court the case of the petitioners were considered and examined in the Department and found that there are three categories of Masters/ Teachers in School Education Department in the discipline of Environmental Science. One Category of incumbents are those who have perused Higher Education Qualification Viz., Post Graduation Degree in Environmental Science or in Ecology and Environment. The category of incumbents who have acquired higher qualification in Ecology and Environment are claiming that their degrees be treated at par with those incumbents who have obtained their degrees in Environmental Sciences for the purposes of seniority and promotion.

Whereas, the second category of incumbents are those who have obtained their degrees in Environmental Science or in Ecology and Environment through Distance Mode either in Environmental Science or in Ecology and Environment and this category is claiming to consider their higher degrees obtained through Distance Mode for their seniority and promotion to the next higher post.

Whereas, the third category of incumbents include those who have perused 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 above categorization, following moot questions emerge for consideration including the cases of petitioners:-

- I. **Whether the degree obtained in Ecology and Environment can be treated at par/ equivalent to the Degree obtained in Environmental Science.**
- II. **Whether degree obtained through Distance Mode in Environmental Sciences can be considered valid for the purposes of seniority and promotion.**
- III. **Whether the degree obtained without obtaining proper permission from the competent authority can be considered valid for the purposes of seniority and promotion.**

Issue No. (I):- Equivalence of Degree:-

Whereas, in terms of Cabinet Decision No. 104/14/2012 dated 16.05.2012 issued vide Government Order No. 252-HE of 2012 dated 30.05.2012, in case of any dispute with regard to the equivalence of degrees the issue has to be taken up with the State Universities for clarification and for drawing equivalence in this regard whose decision in that case shall be final.

Whereas, in terms of the above referred Government order the issue with regard to the equivalence of Degree obtained in Ecology and Environment and the Degree obtained in Environmental Science was taken up with University of Kashmir. In this regard, Dean Academics, University of Kashmir has examined the issue and according following decision was conveyed to this Department vide communication No. PB No. 9817/EnvSc Dated: 11-10-2013:-

“ ...that the PG in Ecology and Environment is a Distance mode degree through franchises and is not equivalent to the corresponding degrees of PG Environmental Science, University of Kashmir Srinagar and hence is not recognized by the University.

That the PG degree in Environmental Science falls in the science stream (Faculty of physical and material science) where lab oriented and field practical form the core part of the curriculum which is lacking in the distance mode degrees.

That neither the University of Kashmir nor University of Jammu recognizes / or gives equivalence to the distance mode degrees awarded outside J&K except through IGNOU, DOEACC and MANU.

.... Hence in light of the above mentioned facts, it is clearly evident from the records and rules that the distance mode degree of PG in Ecology and Environment is neither recognized by the University nor equivalent to the corresponding P.G. Degree of Environmental Science, University of Kashmir, Srinagar. ”

Whereas, the issue regarding equivalence of degree with regard to Ecology and Environment with the Environmental Sciences has also been settled by the Hon'ble High Court of J&K in SWP 854/2010 titled Imtiyaz Ahmad Bhat Vs State of J&K and Ors wherein the Hon'ble Court was

pleased to dismiss the said writ petition vide its judgment dated 12-06-2012 with the following observation/ direction:-

Articles 226 & 16 - Writ of mandamus - To accept and entertain degrees obtained through Distance Mode from unrecognized universities - 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, 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 in view of above clarification and settled legal position, degree obtained in Ecology and Environment cannot be treated equal and corresponding to Degree obtained in Environmental Sciences.

Issue No. (II):- Validity of degree obtained through Distance Mode in Science/ Environmental Science Stream:-

Whereas, the Degree (Viz., PG, Mp.Phil and Ph.D) obtained in Environmental Sciences falls within the Science Stream where practicals are the part of curriculum and therefore such degrees are necessary 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 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...

...Hence in light of the above mentioned facts, it is clearly evident from the records and rules that the distance mode degree of PG in Ecology and Environment is neither recognized by the University nor equivalent to the corresponding P.G. Degree of Environmental Science, University of Kashmir, Srinagar."

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 - Held such degree 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 from unrecognized universities - 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.



Therefore based upon the above observations, degree/s obtained through Distance Mode in Science Stream (Environmental Science) cannot be considered valid for the purposes of seniority and promotion.

Issue No. (III):- Validity of degree acquired without obtaining proper permission from the competent authority:-

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.”

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.

Similar 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 proper permission from the competent authority cannot be reckoned valid particularly for the purposes of seniority and promotion.

Whereas, during the course of examination it has been found that the petitioners have acquired their degrees in the field of Ecology and Environment which is not equivalent to and does not correspond to the degree obtained in the field of Environmental Sciences as has been deliberated upon herein above. As such the petitioners including similarly situated cases cannot be considered for the seniority and promotion or otherwise to the post of Lecturer in Environmental Sciences based upon such degrees.

Whereas, it has been further found from the records that the petitioners have obtained their degrees through distance mode which cannot be considered for the purposes of seniority and promotion or otherwise to the post of Lecturer in Environmental Sciences based upon the observations and deliberations made herein above.

Whereas, it has also been found that most of the petitioners have obtained such degrees without obtaining proper permission from the

competent Authority as such the higher qualification acquired by the petitioners 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 based upon the observations and deliberations made herein above.

Now, therefore, after having considered the cases of petitioners in compliance with the judgment/ order dated 20.09.2019 having regard to the 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 for their inclusion in the seniority list of Environmental Science discipline and consequent claim for promotion to the post of Lecturer Environmental Sciences deserves to be rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

Alok Kumar (IRS),

Principal Secretary to the Government,
School Education Department.

No: Edu-LGLOJmu(Cou)/5/2021-01

Dated: 13.11.2023.

Copy to the:-

1. Joint Secretary (J&K) 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. Raman Sharma Ld. AAG, High Court of J&K & Ladakh for information.
6. Bharat Bhushan & Ors (petitioners) 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.