

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

Subject: WP(c) No. 2019/2021 in TA No. 61/2360/2020 (WP(c) No. 2483/2019) titled Dev Raj Sharma Vs UT of J&K and others.

Government Order No. 428-JK (Edu) of 2023.

Dated: 13.12.2023

Whereas, in the year 2016-17, the Chairman, J&K Board of School Education vide communication No. F(PSS/CU)17 dated 14.08.2017, assigned duties as Superintendent / Deputy Superintendents / Assistant Superintendents in various Board examinations across the State comprising of 46 Lecturers / Masters / Teachers / Non-Teaching staff / Class-IV;

Whereas, in the said examinations, it was alleged by the J&K Bosc that they were found abetting in use of unfair means, thus violating the sanctity of the examinations;

Whereas, the said Lecturers / Masters / Teachers / Non-Teaching staff / Class-IV were being heard to explain their positions and thereafter their cases were referred to the Sub-Committee of JKBOSE on Unfair means which after deliberating upon the matter in de tail, found them guilty of resorting to unfair means. The Sub-Committee awarded punishment in their favour by debarring / disqualifying them from taking Board / invigilation assignments for violating the sanctity of the Board examinations;

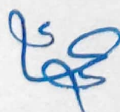
Whereas the matter was referred to the Administrative Department and after examining the contents of the case had found that these Lecturers / Masters / Teachers / Non-Teaching staff / Class-IV have breached the trust reposed in them and have indulged in acts which attract further punitive action in terms of J&K Civil Services (Classification, Control and Appeal) Rules 1956;

Whereas, the Administrative Department vide Government Order No. 138-Edu of 2018 dated 08.02.2018, Government Order No. 204-Edu of 2018 dated 21.02.2018 and Government Order No. 530-Edu of 2018 dated 10.04.2018, reinstated 33 officers/officials out of these 46 Lecturers / Masters / Teachers / Non-Teaching staff / Class-IV by treating their period of suspension as on leave whatever kind due to them including extraordinary leave and leave without pay;

Whereas, the 33 officers/officials represented the department to review their re-instatement order on case to case basis and accordingly the matter was examined and placed before the Review Committee for suspension and the Committee decided to treat the suspension period of these 33 officers/officials as on duty and imposition of minimum penalty as per rule. 30 of J&K Civil Services, CCA (Rule) 1956 i.e. withholding one increment with cumulative effect and fine of Rs. 25000/- each upon in-service officers/officials;

Whereas, in view the decision of the Review Committee, the Administrative Department issued Government Order No. 159-Edu of 2019 dated 16.04.2019. One Sh. Dev Raj, Lecturer filed SWP No. 2483/2019 titled Dev Raj Vs State and others challenging the Government Order No. 159-Edu of 2019 dated 16.04.2019 and has sought following relief:-

i. Direction unto the respondents in general and the respondents 1, 2, 4 and 5 in particular to produce for examination the entire record of decision making at their respective and concerning the cases of unfair means and



violation of sanctity of examination 2014 in so far as it pertains to the petitioner leading upto the passing of the impugned Government Order No. 159- Edu of 2019 dated 16.04.2019.

ii. Declaring and holding and consequently quashing the entire decision making exercise at the end of the respondents read with the corresponding decisions/orders including Government Order No. 159- Edu of 2019 dated 16.04.2019.

Whereas, the Hon'ble High Court stayed the Government Order No. 159- Edu of 2019 dated 16.04.2019 vide its order dated 09-08-2019;

Whereas, the SWP was transferred to the CAT and Hon'ble CAT has disposed of the TA on 19-11-2020 with the following order:-

"We, therefore, allow the T.A to the extent it concerns the applicant and set aside the penalty imposed. However, the direction as to the manner in which the period of suspension must be treated as the one, on duty, shall remain. There shall be no order as to the costs."

Whereas, the matter was examined in the Department and an appeal / Writ petition bearing No WP(C) 2019/2021 was filed in the matter before the Hon'ble High Court challenging the order of Hon'ble CAT. The said Writ petition was disposed of by the Hon'ble High Court on 21-11-2022. The operative part of the judgment is reproduced as under:-

".....9. Rule 35 of 1956 clearly provides for giving an adequate opportunity to the delinquent employee to make any representation. The CAT Jammu has, thus committed no illegality in accepting the petition of Respondent No. 1 and quashing the impugned order of penalty.

10. We find no reason to differ with the view taken by the CAT Jammu. We however, make it clear that the impugned order of penalty shall be deemed to have been quashed only quo Respondent No. 1.

11. This petition is found to be without any merit and the same, is accordingly, dismissed along with connected application(s), if any."

Whereas, the service Law on the subject is that, no punishment can be inflicted upon a Government servant without issuing a charge sheet and a full-fledge departmental enquiry. The said rule has been violated in the case in hand by inflicting initially two punishments:-

- 1) "Stoppage of increment."
- 2) "Imposition of fine."

Whereas, Hon'ble High Court of J&K in case titled **Ghulam Qadir Bhat vs University of Kashmir, Srinagar LJ 1984, J&K 311** has held that where no charges are framed against the employee by the competent authority and no explanation is sought from him before appointing an enquiry officer and the statement of charges are sent to the employees by the enquiry officer, it was held that the competent authority didn't follow the procedure as envisaged by Rule 33;

Whereas, Hon'ble Supreme Court in case titled **Surath Chandra Chakravarty vs The State of West Bengal AIR 1971 SC 752** has held that it is essential that the statement of allegation accompanying the charge sheet must be given to

the delinquent official. Where the official was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegation containing the material facts and particulars not having supplied to him the enquiry is not proper;

Now, therefore, after having considered case of the applicant in light of the judgment dated 19.11.2020 passed by the Hon'ble Central Administrative Tribunal in TA No. 2360/2020 read with judgment passed by the Division Bench of the Hon'ble High Court in WP(C) 2019/2021, and keeping in view the facts and circumstances of the case, the penalty regarding withholding of one increment with cumulative effect and fine of Rs. 25000/- imposed on Dev Raj Sharma, Sr. Lecturer in the discipline of Mathematics is hereby withdrawn with immediate effect. He is censured/warned to remain careful in future.

By Order of the Government of Jammu and Kashmir.

Sd/-

Alok Kumar (IRS)

Principal Secretary to the Government,
School Education Department.

No: Edu-LGL0Cou/36/2021-04 (19758)

Dated: 13-12-2023.

Copy to the: -

1. Joint Secretary (JK&L) 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. Private Secretary to the Principal Secretary to Government, School Education Department for information
5. Sh. Raman Sharma Ld. AAG, High Court of J&K & Ladakh for information.
6. Dev Raj Sharma (Petitioner) for information.
7. I/c Website for uploading the same on official website.
8. Government Order File/Stock File (w.2.s.c).


(Masood Ahmad Wani)

Deputy Secretary to the Government.

