

Government of Jammu and Kashmir
School Education Department
Civil Secretariat, J&K

Subject: O.A No.732/2023 titled Farooq Ahmad Rawanda & Ors Vs UT of J&K & Ors.

Government Order No. 125 - JK (Edu) of 2024

Dated, 22.02.2024

Whereas, the applicants have filed O.A. No. 732/ 2023 titled Farooq Ahmad Rawanda Vs UT of J&K and Ors before the Hon'ble Central Administrative Tribunal wherein the applicants have submitted that they were initially appointed as Teachers way back in the year 1996-97. Subsequently, the applicants were promoted as Masters in the year 2010. Being Post-Graduates in various disciplines, the applicants, based on their seniority, were entitled for promotion to the position of Lecturers.

Whereas, the applicants in the OA have contended that purportedly, they have been regularized as Lecturers based on the recommendation of the Departmental Promotion Committee, however, till date, neither posting orders of the applicants have been issued, nor has the grade/ salary attached to the post been released in favour of the applicants. The applicants accordingly prayed for the following reliefs before the Hon'ble Tribunal:

1. Directing the respondents to issue formal posting orders for the applicants as Lecturers in their respective disciplines without any further delay.
2. Releasing all consequential benefits, including arrears of salary, retrospectively from the date they were confirmed/regularized as Lecturers.
3. Directing the respondents to release the pay scale attached to the post of Lecturer in favor of the applicants.
4. Considering the representation of the applicants by passing a reasoned and comprehensive order without any further delay.
5. Maintaining the seniority of the applicants as Lecturers from the date they were formally confirmed/ regularized as Lecturers in their respective disciplines/subjects.

Whereas, the Hon'ble CAT disposed of the instant case on 14.09.2023 with following order:-

"In view of the limited prayer made by the Learned counsel for the applicants, the respondents are directed to treat the instant OA No.

732/2023 as representation of the applicants and consider the claim of the applicants for their posting in accordance with rules, within a period of six weeks from today, by passing a speaking and reasoned order."

Whereas, in compliance with the above directions of the Hon'ble Court, 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 applicants 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.

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 Applicants 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.

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 applicants 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, 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 and proper 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 applicants in compliance with the order passed by the Hon'ble Tribunal and 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 being devoid of merit is hereby rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Dr.Piyush Singla) IAS,
Administrative Secretary,
School Education Department.

No. Edu-LGL0Kmr/318/2023-(7293635)

Dated: 22 -02-2024

Copy of the :-

1. Joint Secretary (J, K & 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 to Advisor (B) to the Lieutenant Governor, UT of J&K for information.
6. Chief Education Officer concerned for information and necessary action.
7. PA to Administrative Secretary to Government, School Education Department for information.
8. All Applicants for information.
9. I/c Website for uploading the same on official website.
10. Government Order File/Monday return (w.3.s.c).



(Masood Ahmad Wani)
Deputy Secretary to the Government.

