



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

Subject: O.A NO.61/1182/2023 titled Majid Mushtaq Kichloo V/s UT of J&K & Ors.

Government Order No. 49-JK (Edu) of 2024

Dated: 05-01-2024

Whereas, vide Notification No. 01-JK (Edu) of 2023 Dated 26.04.2023, online representations were invited from various Teaching Cadres of Education Department including the Lecturer Cadre for consideration of transfer during the year 2023 and in response to the representation of Sh. Majid Mushtaq Kichloo was received by the Department through Online Transfer Portal;

Whereas, the representation of Sh. Majid Mushtaq Kichloo was considered under the provisions of the Transfer Policy invited by the department vide Government Order No. 103-JK(Edu) of 2023 dated 24.0.2023 and subsequently, the applicant, Sh. Majid Mushtaq Kichloo, Lecturer, Botany was transferred from Government Higher Secondary School (Boys) Kishtwar to Government Higher Secondary School Sarthal;

Whereas, Sh. Majid Mushtaq Kichloo pursuant to his transfer filed O.A No. 1182/2023 titled Majid Mushtaq Kichloo V/s UT of J&K & Ors before the Hon'ble Central Administrative Tribunal, Jammu praying for following reliefs:-

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- i. Prayer seeking quashing Of the Government Order no. 261-JK (Edu) of 2023 dated qua the applicant, passed by respondent no. 1 vide which the applicant, figuring at S.No. 177, has been transferred from Government Higher Secondary School (Boys) Kishtwar to Government Higher Secondary School Sarthal and relieving order No. HSS/B/K/23/411-13 dated by the respondent no. 3 and the same is grossly arbitrary, passed with non-application of mind, in violation of the Transfer Policy in vogue and in the given facts and circumstances of the case.

- ii. Prayer seeking direction for the respondents to allow the applicant to continue at, Government Higher Secondary School (Boys) Kishtwar, where he was working before the passing of impugned orders or any convenient posting be ordered , in the given facts and circumstances of the case.

Whereas, the Hon'ble CAT after hearing the applicant disposed of OA by passing order dated 11.09.2023, the operative part of which is reproduced is as under:

"... Accordingly, the Original Application is disposed of with a direction to the Principal Secretary to Government, Department of School Education, Union Territory of Jammu & Kashmir to decide the applicant's representation dated 02.09.2023 while keeping in view the provisions of Clause C-20 of the policy guidelines dated 24.04.2023 and provisions of Rights of Persons with Disabilities Act, 2016. Before taking such a decision, the applicant shall also be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of ten days from the date of receipt of a certified copy of this order. So long as the applicant's representation remains pending with the Principal Secretary to Government, Department of School Education, Union Territory of Jammu & Kashmir, the applicant shall be permitted to work at Government Higher Secondary School (Boys), Kishtwar.

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 22.09.2023, the applicant was requested to appear in the Administrative Department for hearing on 22.09.2023. The applicant appeared on the scheduled date and time and the applicant was heard in person and was also allowed to submit his written statement as well;

Whereas, in his written statements, the applicant has stated that he is facing 50% disability due to post polio residual paralysis of right lower limb with weakness around Hip, Knee & Ankle with various deformity of left foot. Transfer Policy-2023 provides for posting of Physically Challenged Employee(s) conveniently subject to availability of post, however he has been posted to Government Higher Secondary School, Sarthal which is at a distant place from his residence. He has further asserted that in terms of ***Rights of Persons with Disabilities Act, 2016***, he may kindly be retained at HSS Gowari Doda or transfer him in 5th Zone of District Doda.

Whereas, the case of the applicant has been thoroughly examined in the Department in light of the written submission adduced by the applicant as well as the standing rule position and the directions of the Hon'ble Central Administrative Tribunal and it has been found that the applicant is suffering 50 % disability and as such it would be practically difficult for him to travel to a high terrain to discharge his duties.

Whereas, the Hon'ble High Court of J&K in SWP No. 2166/ 2013 titled Naresh Kumar Jain Vs State of J&K and Ors has held that:-

"...In the light of the above statutory provisions which give protection to the physically challenged persons i.e., statutory right to work at healthy and safe places, which can be insisted by the physically challenged persons as a matter of right under section 27 of the Jammu and Kashmir Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 and also on the ground of violation of human rights, the transfer order issued so far as transferring the petitioner from Government SRML Higher Secondary School Jammu to Government Girls Higher Secondary School Pallanwala is bad.

Now, therefore, in light of the above stated facts and circumstances, the claim of the applicant has been considered in light of the directions passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu on qq.09.2023 passed in O.A NO. 1182/2023 titled Majid Mushtaq Kichloo Vs UT of J&K & Ors and the same has been found merit consideration and accordingly the applicant is allowed to continue in Government Higher Secondary School, Kishtwar till further orders.

By order of the Government of Jammu and Kashmir.

Sd/-

(Alok Kumar), IRS

Principal Secretary to the Government


No: Edu-LGL0Jmu(CAT)/378/2023-01

Dated:- 05.01.2024

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. Director, SCERT, J&K.

3. Secretary, JKBOSE.
4. Director, School Education, Jammu/Kashmir.
5. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
6. Project Director, Samagra Shiksha J&K.
7. Chief Education Officer, Kishtwar.
8. Principal Concerned for necessary compliance in the matter.
9. Concerned.
10. Private Secretary to Principal Secretary to Government, School Education Department.
11. I/c website.
12. Government Order file (w.2.s.c).


(Abhishake Abrol) JKAS,
Deputy Secretary to the Government,
School Education Department. 