

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.2399/2025

Reserved on: 01.09.2025
Pronounced on: 11.09.2025

1. UT of Jammu & Kashmir through Commissioner/Secretary to Govt., Health and Medical Education Department, Civil Secretariat, Jammu.
2. Director, Health Services, Jammu.
3. Principal, Gov. Medical College, Jammu.

...Petitioners(s)

Through:- Mr. Raman Sharma, AAG

Versus

1. Dr. Anju Kumari, Age 39 years W/o Vinod Dogra R/o 124/4, Pamposh Colony, Janipur, Jammu
2. Dr. Nishu Bushan, Age 36 years W/o Dr. Rashpal Bangotra R/o 135 Resham Ghar Colony, Jammu.

...Respondent(s)

Through:- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhirash Sharma, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar J

1. The Union Territory of Jammu & Kashmir and its functionaries invoke the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to throw challenge to an order and judgment dated 18th February, 2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [‘the Tribunal’] in OA No.1330/2021 titled Dr. Anju Kumari and

another v. UT of J&K and others [“impugned judgment”], whereby the Tribunal has allowed the OA filed by the respondents and directed the petitioners herein to pay the salary along with allowances attached to the post of Assistant Surgeon/Medical Officer to the respondents for the period they were undergoing postgraduate medical courses in the Government Medical College, Jammu.

2. Before we advert to the grounds of challenge, a brief look at the factual antecedents leading to the filing of this petition would be necessary. The respondents herein were appointed as Assistant Surgeons/Medical Officers in the Department of Health vide Government Order No.592-HME of 2011 dated 28.10.2011. Since both the respondents, at the time of their appointment, were pursuing their postgraduate courses in the Government Medical College, Jammu, as such, respondent No.1 forwarded her joining report through Principal, Government Medical College, Jammu to the Director, Health Services, Jammu.
3. So far as respondent No.2 –Dr. Nishu Bhushan is concerned, on her appointment, she joined in the office of Deputy Commissioner, Leh on 15.11.2011 and continued to pursue her PG Course in Government Medical College, Jammu. Extension to her joining in the Directorate of health Services, Jammu or Kashmir for further posting was granted vide Government No.35-HME of 2014 dated 15.01.2014. There was absolutely no

such order passed in respect of respondent No.1, who, upon her relieving from the Government Medical College, Jammu, was permitted to join in the Directorate of Health Services, Jammu. The respondents neither joined as Assistant Surgeons/Medical Officers in the Directorate of Health Services physically nor did they perform the duties of Assistant Surgeon/Medical Officers even for a day. They continued to pursue their post-graduation courses from Government Medical College, Jammu and were ultimately relieved, on completion of the postgraduate courses, by the Principal Government Medical College, Jammu vide No.JMC/PG/519 dated 08.06.2013.

4. Pursuant to their relieving from the Government Medical College, Jammu, the respondents submitted their joining reports in the Directorate of Health Services and were, accordingly, posted as Assistant Surgeons/Medical Officers to which post they stood appointed by the Government in the year 2011. Since the respondents were not paid any salary for the period during which they were undergoing postgraduate medical courses in the Medical College, Jammu i.e. for the period w.e.f. 28.10.2011 to 08.06.2013 in respect of respondent No.1 and w.e.f. 28.10.2011 to 14.10.2013 in respect of respondent No.2, as such, both the respondents joined together and filed OA No.1330/2021 seeking a mandamus to the petitioners herein to pay them salary and allowances for the aforesaid period.

5. Relief claimed in the OA was sought *inter alia* on the ground that the case of the respondents was governed and covered by Article 44-A of the J&K Civil Service Regulations, 1956 [“Regulations of 1956”] and, therefore, they were entitled to pay and allowances attached to the post of Assistant Surgeon/Medical Officer even for the period they had not performed their duties as such and instead were undergoing postgraduate courses in their respective disciplines in the Government Medical College, Jammu. Relief was also claimed on the parity of some similarly situated persons, who had been previously granted the benefit of salary and allowances for the period they had undergone postgraduate courses in Government Medical College, Jammu.
6. The OA was resisted by the petitioners by filing formal counter affidavit. It was submitted that at the time of their appointment, respondents were already pursuing their postgraduate courses and, therefore, chose not to join their services as Assistant Surgeons/Medical Officers physically. Both the respondents, however, physically joined the Directorate of Health Services, after they were relieved by the Principal, Government Medical College, Jammu, after completing their postgraduate courses successfully. It was, thus, the stand taken by the petitioners herein that the respondents became members of the service only

after they physically joined in the department and started performing the services of Assistant Surgeon/Medical Officer.

7. Having considered the rival contentions and the material on record, the Tribunal came to the conclusion that the case of the respondents squarely fell under Article 44-A of the Regulations of 1956 and, therefore, they were entitled to salary and allowances attached to the post of Assistant Surgeon/Medical Officer even for the period they were undergoing their postgraduate courses in the Government Medical College, Jammu. Relying solely on Article 44-A of the Regulations of 1956, the OA filed by the respondents and the relief claimed therein was allowed.

8. The petitioners are aggrieved of the impugned judgment and have assailed the same *inter alia* on the ground that the Tribunal did not appreciate that the respondents, after having performed the ritual of submitting joining reports, had abandoned their services without permission of the employer and pursued their postgraduate courses in Government Medical College, Jammu and therefore, they were not entitled to the benefit of pay and allowances attached to the post of Assistant Surgeon/Medical Officer for the period of their unauthorized absence and that the provisions of Article 44-A of the Regulations of 1956 were not attracted in the case.

9. *Per contra*, Mr. Abhinav Sharma, learned senior counsel assisted by Mr. Abhirash Sharma, appearing for the respondents, would support the judgment passed by the Tribunal and argue that in view of the clear provisions of Article 44-A of the Regulations of 1956, Government servants deputed in Training Schools, Colleges, Institutions within the State shall, during the period of such training/instructive courses, be entitled to receive their pay and allowances which they would have drawn but for their deputation to such training. He would, therefore, urge us to concur with the view taken by the Tribunal on the import of Article 44-A of the Regulations of 1956.
10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the issue raised in this petition is no longer *res integra*. The true meaning and import of Article 44-A and 44-F of the Regulations of 1956 has been elaborately discussed in a Division Bench judgment of this Court in **Union Territory of J&K and another v. Javed Iqbal, 2024 (3) JKJ 301**. Para 18 of the judgment is set out below with advantage:

“18. From the plain reading of the Regulation 44-A, it transpires that the Government servants deputed to receive training/ Instructional courses in the Training Schools/ Colleges/Institutions within the State shall be entitled to receive pay/ presumptive pay which they would have drawn but for their deputation to such training, provided such trainings/ courses are connected with their immediate and current job profile only and do not form an essential

qualification either for holding the post to which they are appointed or for promotion to the next higher post under rules. The proviso appended to Rule 44 A, however, provides that the above Rule shall not be applicable to the courses of study in a specialty/ subject consisting of higher studies or specialized training in professional or technical subject, lasting beyond 8 weeks. Rule 44-F is evidently not applicable to the Doctors seeking to undergo higher studies or specialized training in professional/technical subjects beyond the period of 8 weeks.”

11. It is, thus, trite that Article 44-A would be attracted only where a Government servant is deputed to receive trainings/instructive courses in the Training Schools, Colleges, Institutions within the State provided such training/instructive courses are connected with their immediate and current job profile only and do not form an essential qualification either for holding a post to which the Government servant stands appointed or for promotion to the next higher post. The proviso appended to Article 44-A clearly exclude from the applicability of the Article to the courses of study in a specialty/subject consisting of higher studies or specialized training in professional or technical subject lasting beyond eight weeks. Such courses, which require regular attendance, shall be governed by Rule 61, 62 and 67 of the Jammu and Kashmir Civil Service (Leave) Rules 1979.
12. Unfortunately, the Tribunal has not reproduced Article 44-A in its entirety and has picked up only a part of it for the reasons, which are not discernible from the judgment impugned. To allay

any doubt and to put the things straight, we set out Article 44-A herein below:

“44-A. Pay of officers undergoing training or instructions

[Unless otherwise provided for in these rules, Government servant deputed to receive trainings/instructive courses in the Trainings Schools, Colleges, Institutions within the State, if such, trainings/instructive courses are connected with their immediate and current job profile only and do not form an essential qualification either for holding the post to which the Government servant stands appointed or for promotion to the next higher post under rules, shall, during the period of such trainings/instructive courses, be entitled to receive their pay/presumptive pay which they would have drawn but for their deputation to such training. No substantive appointments/promotions shall be made in place of the Officer/Officials deputed for such trainings;

Provided that the above regulation shall not be applicable to the courses of study in a specialty/subject consisting of higher studies or specialized training in profession or technical subject, such as M.Sc/M.Phil/Ph.d/ Diploma etc. lasting beyond 8 weeks and during which the Government servant may even attend a regular academic or semi-academic course and also take necessary examination for qualifying the said course of study and the same shall be governed by rules 61, 62 and 67 of Jammu and Kashmir Civil Services (Leave) Rules, 1979.”

13. From a perusal of Article 44-A in its entirety, one would clearly find that the same is not attracted in the case on hand. The respondents were never deputed to receive any training/instructive courses in the Government Medical College, Jammu. The respondents were already pursuing their PG courses in Government Medical College, Jammu when they were appointed as Assistant Surgeons/Medical Officers. They were

not even permitted by their employer i.e. department of health to continue to pursue their PG courses, much less were ever deputed for the courses they were undergoing. It is a clear case where the respondents have chosen not to join their appointment physically and pursued their postgraduate courses without permission from their employer.

14. The case of the respondents was one of the abandonment of service/unauthorized absence from duty. We appreciate the courage of the respondents having approached the Court of law to seek salary for the period of their unauthorized absence.
15. Argument of Mr. Abhinav Sharma, learned senior counsel appearing for the respondents that going by the previous practice the respondents were also entitled to be treated on a par and given the benefit of pay and allowance for the period they were undergoing their postgraduate courses in the Government Medical College, Jammu is without any substance and is noticed for rejection only. Similar argument raised in Javed Iqbal (supra) was repelled by this Court by holding as under:

“We, however, cannot give imprimatur to the observations of the Tribunal that the petitioners should have gone by the past practice and treated the period on deputation as had been done in the similarly circumstances doctors. It is trite that two wrongs do not make one right and the past practice, if contrary to the Rules, cannot be perpetuated by judicial orders. The petitioners were and are well within their right to set right the wrong and put in place a better procedure which

is in consonance with law. Unfortunately the petitioners have not done so nor have they put in place a proper mechanism to deal with such case. The petitioners should do well to issue necessary Circular instructions for the benefit of all and in particular those who intend to pursue higher studies during the course of their service, which elaborately lays down step-by-step procedure to obtain permission of the employer along with study leave, as may be permissible under Rules.”

16. We are not sure whether these directions passed in Javed Iqbal (supra) have been carried out or not. Be that as it may, as is fairly conceded by Mr. Abhinav Sharma, learned senior counsel, the respondents, who did have even a single day service and were yet to complete their probation, could not have applied for study leave, as permissible under Rules 61 and 62 of the J&K Civil Service (Leave) Rules, 1979.
17. That being the position, the respondents must remain contented with the fact that the petitioners have not initiated any disciplinary proceedings against them for remaining unauthorizedly absent from service for more than two years and instead permitted them to join back as Assistant Surgeons/Medical Officers, a post to which they were appointed in the year 2011.
18. That apart, we would like to impress upon the Government to ensure compliance of the directions contained in paragraph No.21 of the judgment rendered in Javed Iqbal (supra) and put in place a proper mechanism to regulate such cases. They shall

also ensure that in the cases where an employee/doctor abandons his services and remains unauthorisedly absent even for pursuing higher courses of study beneficial to his/her job is treated as delinquent employee and proceeded in disciplinary proceedings. Such employees, who are undergoing higher courses at the time of their appointment or selected subsequently for such courses, may apply to the employer for permission to undergo these courses, which permission shall be governed by the mechanism to be put in place by the petitioners, as directed by this Court in Javed Iqbal's case. It would mitigate the difficulties of such employees and also foster discipline in service. This is an issue, on which an urgent call is required to be taken by the Government.

19. For the foregoing reasons, we find merit in this petition and the same is, accordingly, allowed. The impugned judgment passed by the Tribunal is set aside.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
11.09.2025
Vinod, PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes