

Government of Jammu and Kashmir
Skill Development Department
Civil Secretariat, Jammu

Subject: T.A./2468/2021 titled Shafaquat Ara (applicant/petitioner) vs State of Jammu & Kashmir and Anr.

Government Order No: 23-JK (DSD) of 2024
Dated: 18.04.2024

Whereas, the applicant/petitioner namely Shafquat Ara D/o Shri Mushtaq Ahmad Sheikh R/o Nagin-Hazratbal, Srinagar was appointed as Lecturer Grade-I in Food Technology vide Government Order No.180-Edu(Tech) of 2004 dated 10-08-2004 in the pay scale of Rs.8000-12950 after having applied as in-service candidate on the recommendation of the J&K PSC; and

Whereas, the applicant/petitioner was placed as l/c Head of Department, Food Technology in her own pay and grade with charge allowance as admissible under rules pending clearance by DPC/PSC vide Government Order No.108-Edu (Tech) of 2011 dated 22-07- 2011 and later regularized as HoD Food Technology vide Government Order No.141- Edu (Tech) of 2013 dated 07-08-2013 on the recommendation of J&KPSC w.e.f. 22.07.2011. The final seniority list of the Principals/HoDS (Engineering/Non-Engineering) of Polytechnic Sector, J&K as on 31-10-2014 was issued vide Government Order No.11-Edu (Tech) of 2015 dated 30-01-2015, reflecting the applicant appropriately in category of HoD, Food Technology (Non-Engineering); and

Whereas, this Department vide Government Order No.94-Edu (Tech) of 2012 dated 27-04-2012 transferred and posted the

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applicant/petitioner (I/C HoD Food Technology) from Government Polytechnic for Women, Bemina, Srinagar to Government Polytechnic College, Bandipora against available vacancy and was asked to look after the charge of Principal on the condition that the arrangement is purely on temporary basis and it shall not confer any right for their confirmation/regularization as Principals. Moreover this is also fact that the applicant/petitioner belongs to Non-Engineering streams as per rationalization/distribution of (Engineering/ Non-Engineering) posts in various disciplines/streams issued vide Government Order No.19-JK(DSD) of 2021 dated 22.03.2021 and Government Order No.13- JK(DSD) of 2021 dated 19.02.2021 having qualification of M.Sc, Food & Nut, PG Diploma in Food Technology; and

Whereas, the service of employees of Gazetted cadre of Department are governed by the Jammu & Kashmir Technical Education (Gazetted) Service Recruitment Rules, 2002 notified vide dated 29.08.2002 and method of recruitment for filling the post of Principal in Polytechnics is provided as under: -

"By selection from Class-III categories A&B possessing minimum qualification of degree in Engineering or equivalent with 5 years experience as such.

Candidates with Master Degree in Engineering/Technical Education or equivalent shall be given preference." and

Whereas, the applicant/petitioner moved to the Hon'ble High Court at Srinagar through the medium of a writ petition

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W.P.(C) No.2450/2019, CM No.4683/2019 titled Shafquat Ara Vs State of J&K & Others & subsequently the writ petition supra, came to be transferred to Hon'ble Central Administrative Tribunal, Srinagar Bench and was renumbered as T.A No. 2468/2021 and the Hon'ble Central Administrative Tribunal vide judgment dated 14.02.2023 disposed of the TA No. 2468/2021, the operative part of which is reproduced as under:-

"....To give a quietus to the issue, we deem it proper to partly allow the T.A. Accordingly, the respondents are directed to consider the case of the applicant in terms of the prayer (II) of the T.A. and pass necessary orders in this regard, within a period of three months from the date of receipt of a copy of this order"; and

Whereas, aggrieved of the Judgment dated 14.02.2023 passed by the Hon'ble Central Administrative Tribunal, Srinagar Bench in T.A No.2468/2021 titled Shafquat Ara Vs State of J&K & Anr, the Department has challenged the same before the Hon'ble High Court at Srinagar through the medium of writ petition bearing WP (C) No. 2775/2023 titled Union Territory of J&K and Anr. (Technical Education) Vs Shafaquat Ara which is still pending before the Hon'ble Court; and

Whereas, the Recruitment rules, also known as existing rules or established rules, are the official set of regulations or guidelines that have been enacted and notified by the

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Appropriate Authority. These rules are legally binding and have the force of law. Any action or decision taken under the purview of these Recruitment rules must adhere to their provisions. Draft rules, on the other hand, are preliminary proposals for new rules or amendments to existing rules and are in process of getting finalized and they do not possess any legal force as Recruitment Rules. It is pertinent to mention here that in the presence of Recruitment rules, draft rules do not automatically replace or override the existing regulations until and unless adopted by due procedure and notified by the Government; and

Whereas the applicant has now preferred the Contempt Petition bearing No. C.P./94/2023 titled Shafquat Ara Vs Mr. Rajeev Rajan and anr. before the Hon'ble Central Administrative Tribunal, Srinagar Bench against the Department for implementation of the order 14.02.2023 of Hon'ble Tribunal.

Now, therefore, in compliance to the judgment dated 14.02.2023, passed by the Hon'ble Central Administrative Tribunal in T.A./2468/2021 titled Shafquat Ara vs State of Jammu & Kashmir and Anr viz-a-viz the existing rules governing the subject matter, the claim of the petitioner/applicant for regularization/confirmation against the post of Principal, Government Polytechnic has been examined and considered in the light of extant Recruitment Rules of the Department and it was found that the applicant/petitioner is ineligible for consideration to the post of Principal as she does not possess degree in Engineering trade as she belongs to non-Engineering

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stream, hence, rejected, being devoid of any merit. However, this order shall be subject to the outcome of writ petition WP(C) No. 2775/2023 pending adjudication before the Hon'ble High Court at Srinagar.

By order of the Government of Jammu and Kashmir.

Sd/-

(Kumar Rajeev Ranjan) IAS
Secretary to the Government.

No. DSD/lgl/19/2023-02

Dated: 18.04.2024

Copy to:

1. Financial Commissioner, Finance Department.
2. Commissioner/Secretary to Government, General Administration Department.
3. Secretary to the Government, Department of Law Justice and Parliamentary Affairs.
4. Director, Skill Development, J&K for information.
5. Mr. Waseem Gul, Government Advocate, Central Administrative Tribunal (CAT), Srinagar Bench for information and necessary action.
6. OSD to Advisor (B) to the Hon'ble Lieutenant Governor.
7. Principal, Polytechnic, Budgam for information.
8. Senior Law officer, Skill Development Department.
9. Private Secretary to the Secretary to the Government for information of the Secretary.
10. Government order file


(Harjinder Singh)

Under Secretary to Government
Department of Skill Development