



Government of Jammu and Kashmir
Public Works (R&B) Department
Civil Secretariat, Jammu/Kashmir

Subject: O.A No. 145/2023 M A No. 162/2023 titled Manish Jandial & Others V/s UT of J&K and others.

Government Order No. 196 - **PW(R&B) of 2023**
Dated: 16 .05.2023

Whereas, the petitioner/s by virtue of OA No. 145/2023, M.A No. 162/2023 titled Manish Jandial V/s UT of J&K & others prayed for inclusion of their names in the seniority list of Degree holders JEs. The Hon'ble Central Administrative Tribunal Bench, Srinagar disposed of O.A vide order dated 13.03.2023 with the following directions:-

"Learned Senior counsel for the applicants submits that the applicants have challenged the order dated 31.01.2023 in the present OA and have prayed for a direction upon the respondents to include their names in the seniority list of degree holders in view of the fact that the applicants have completed their AMICE degree from institute of Civil Engineers, India (Ludhiana). He submits that in different academic years from 2012 to 2016, the applicants as in-service candidates completed their AMICE degree. He further submits that similarly placed persons have been included in the seniority list of degree holders who have also passed the same degree from the authorized institute and have been given the benefit of distance degree obtained by them. The same has been denied to the applicants.

Learned Senior counsel further submits that it will suffice if respondent No. 1 is directed to consider the claim of the applicants, who are degree holders from

the concerned institute as similarly placed persons, for inclusion of the names in the seniority list of degree holders as per rules within six weeks from the date of receipt of the copy of this order.

In view of the limited prayer made by the learned counsel for the applicants, the respondents are directed to consider the claim of the applicants for inclusion of their names in the seniority list of the degree holders as per rules as it has been done with regard to the similarly placed persons. This exercise be completed within two months from the date of receipt of the copy of this order as per rules and by passing a reasoned and speaking order and communicate the same to the applicants. With this OA and MA are disposed of. There will be no order as to costs."

Whereas, the claim of the petitioners is that some similarly situated employees who have also completed their AMICE degree through distance mode from the Institution of Civil Engineers (India) have already been granted benefit of the said degree in terms of various Govt. Orders wherein their degrees have been entertained and the said employees have been included in the list of degree holders and in some cases post facto sanction has been granted in view of the judgment titled Neemb Singh Vs State of Rajasthan, reported in 2015 legal Eagle (RAJ) Rajasthan, operative part of said judgment is reproduced as under:-

".....As a matter of fact, in the opinion of this Court, as the applications for permission to pursue further studies were received by the authority concerned and were not responded to, it has to be held that the petitioner was entitled to assume a deemed permission to pursue the course. It is more so because the course was a distance learning course and would not have in any manner affected the performance of duties being offered by the petitioner in the Department as a Teacher Gr. II. Had there been any possibility of any adverse effect on the petitioners' job requirements and expectations, the Principal of the school who forwarded the petitioners application to the Director would have indicated it while forwarding the application..."

Whereas, the applicants/ petitioners in the instant case have acquired degrees through distance mode from AMICE and by virtue of many litigation/ Court orders directions has been passed to accord consideration to the cases of the applicants for inclusion of their names in the seniority list of Degree Holders JEs and placing them at appropriate places in seniority list by giving them same analogy/ treatment as has been given to many candidates as pleaded by them while quoting above mentioned orders in the petitions.

Whereas, the department has received representations from some Junior Engineers/ Draftsman/ Work Supervisor (Civil/ Mechanical) for acceptance of their Degrees acquired during service without obtaining prior permission from competent Authority with the plea to include their names in the relevant seniority lists of Degree holders Junior Engineers/ Draftsman/ Work Supervisors (Civil / Mechanical) of PW(R&B) Department.

Whereas, the issue of equivalence/ validity of Degrees obtained by the Engineers from the Institutions other than AMIE Kolkatta, the matter was taken up with the AICTE for clarifications. In response, the AICTE vide their communication dated 17.03.2021 has furnished clarifications and relevant extract of clarifications are reproduced as under:-

Information sought	Reply/ clarifications of AICTE
Institute of Civil Engineering (India) (AMICE) Ludhiana	The Institute of Civil Engineering (India) Ludhiana are Professional Bodies conducting technical courses and awarding associate membership to the candidates who qualify the examination conducted by them. In this regard, AICTE has issued a circular F.No.13-56/ PC/ ODL-Mode/ AICTE/ 2020 recognition of certification awarded by Professional Bodies/ Institutions dated 23.11.2020, which is self explanatory. The professional societies recognized by MHRD upto 31.05.2013 were permitted to conduct section A&B exams and treated equivalent to degree upto 31.05.2013 only
IGNOU	IGNOU does not come under the purview of AICTE. However, AICTE has issued a circular AICTE / P&AP/ IGNOU/ misc/ 2020 dated 25.11.2020 which is enclosed herewith as



Annexure-I. This is as per the approval of EC/ Council in the basis of Supreme Court judgement.

The relevant extract of Circular No.F.No.13-56/ PC/ ODL-Mode/ AICTE/ 2020 dated 23.11.2020 issued by the AICTE is reproduced as under:-

".....Thus all those students who were enrolled with these Institutions as per the above MHRD OM with permanent recognition upto 31.05.2013 stand recognized and public notice was issued on 31.10.2017 accordingly. However, AICTE recognition is not course specific and this is only the endorsement of the decision of MHRD in this regard. Hon'ble Supreme Court in its judgement dated 13.08.2019 in the case MA No.2367 of 2018 in Civil Appeal No.17922 of 2017; Institution of Mechanical Engineers V/s State of Punjab & Ors has endorsed the decision of MHRD and AICTE Public Notice issued in 2017.

Further the extract of Public Notice issued by the AICTE on 31.10.2017 is reproduced as under:-

"..... Accordingly, the Council in its 52nd Emergent Meeting held on August 3, 2017 decided to recognize equivalence for all purposes including Higher Education & Employment to Technical Courses conducted by various Professional Bodies/ Institutions which were duly recognized by MHRD with permanent recognition upto 31st May 2013. Thus all those students who were enrolled with these institutions with permanent recognition upto 31.05.2013, stand recognized.

Whereas, the issue was thoroughly examined in the department and it has been found that the petitioners have acquired Degree courses through correspondence mode during service without obtaining prior permission from the Competent Authority as per norms and were claiming for acceptance of their degrees and inclusion of their names at appropriate place(s) in the relevant seniority lists of PW(R&B) Department. While scrutiny of documents on case to case basis, it has been found that proper permission has not been granted by the competent in favour of the petitioners and they have pursued higher studies/ appeared in examination

from the Institute/ University (located outside State) without prior/ proper permission from the competent authority.

Whereas, this department has issued Circular vide No.PW(R&B) HRM1/ 73/ 2021-05-PWD dated 13.09.2021, among others, issued therein clear-cut instructions that "no such case shall be considered by the department who has not taken prior permission from Administrative Department before proceeding for pursuing higher studies/ courses".

Whereas, Rule 64 of the Jammu and Kashmir Civil Services (Leave) Rules, 1979 provides as under:-

- (a) Every Government servant in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form 6 and Form 7 as the case may be before the study leave or extension of such leave granted to him concurrence.
- (b) Every Government servant not in permanent employ who has been granted study leave or extension of such study leave shall be required to execute a bond in Form 8 and Form 9 as the case may be before the study leave or extension of such leave granted to him concurrence.

Whereas, Rule 67 and Rule 73 of J&K CSR (Leave) Rules, 1979 re-casted vide SRO-274 dated 30.5.2016 notified by the Finance Department also provides as under:-

- 1. The concerned Administrative Department shall competent to sanction the study leave under these rules within State.**
- 2. The General Administration Department on the recommendation of the Administrative Department concerned and with the consent of the Finance Department may grant study leave under these rules for purpose of study leave outside the State within India.**

Whereas, the General Administration Department vide Circular No. 49-JK(GAD) of 2022 dated 07.12.2022 has stated that in terms of J&K Civil Services (Leave) Rules, 1979 (SRO-44 of 1979 dated 18.01.1979 issued by the Finance Department), as amended from time to time, grant of study leave in respect of an employee of the Government is governed by some conditions, which, inter-alia include the following and impressed upon

all Administrative Secretaries to strictly adhere to the rules/conditions prescribed for sanctioning study leaves and recommend only such cases to the GAD which are within the leave reserve adjusted for vacancies in the department. Any violation in this regard shall be dealt strictly under rules/norms:-

- i. certifying exigencies of public service, direct and close connection with sphere of his/her duty;
- ii. the study tour has to be of definite advantage to the Government from the point of view of public interest etc;
- iii. the grant of study leave does not affect regular work or cause cadre difficulties owing to his/her absence on leave;
- iv. that there is dearth of such technical qualified officers/officials in the department;
- v. that study leave shall not ordinarily be granted to a Government servant who has rendered less than five years service under the Government.

Whereas, the applicants/ petitioners have obtained their Degrees through correspondence mode from AMICE, Ludhiana which is situated outside the State and as per above rule position/ instructions, the petitioners were required to obtain proper/ prior permission from the Competent Authority which is pre-requisite before acquiring higher studies. The competent Authority to grant permission for pursuing higher studies outside State is "General Administration Department on the recommendation of the Administrative Department concerned and with the consent of the Finance Department".

Whereas, the issue was thoroughly examined in the department in light of above rule position/ instructions issued on the subject from time to time under relevant file bearing No.PWD-HRM1/ 148/ 2022-05-PWD and accordingly the case file was recommended/ referred to the General Department vide this department's U.O No.PWD-HRM1/ 148/ 2022-05-PWD dated 30.11.2022 (Computer No. 217731). In turn the General Administration Department has returned the case file to this department vide their U.O No.GAD-ADM0IV/ 255/ 2022-09-GAD dated 12.01.2023 with the following advisory/ directions:-

On consideration of the matter by the competent authority, it is advised that any qualification acquired by any in-service officer/ official without prior permission from the Competent Authority may not be entertained.

Further, the Competent Authority has also directed to advise the department to:

- i. Seek explanation from those who acquired degrees without permission as their conduct is unbecoming of public servants;**
- ii. Impose minimum penalty of dies-non with break in service on those employees who have acquired degrees as full time/ part time students without permission and continued to draw full salaries.**
- iii. Treat the cases of those employees differently who have acquired degrees as full time student without salary.**
- iv. List the cases of those employees who acquired degrees in distance mode without permission.**

Whereas, the above advisory of Competent Authority was conveyed to all the Heads of Departments under administrative Control of PW(R&B) Department vide this department's letter No.PWD-HRM1/ 148/ 2022-05-PWD R&B (Computer No. 217731) dated 31.01.2023 with the direction that the claim of all such candidates for entertaining/ acceptance of their Degree/ Diplomas acquired by them during service without obtaining prior permission from the Competent Authority has been rejected by the Competent Authority.

Whereas, the Competent Authority to grant permission for acquiring higher studies has vehemently rejected the claim of the applicants/ petitioners and advised that any qualification acquired by any in-service officer/ official without prior permission from the Competent Authority may not be entertained.

Now, therefore, in view of the factual position coupled with law and in compliance to directions/ orders of Hon'ble CAT, the claim of petitioners for acceptance of their Degrees obtained through correspondence mode during service without obtaining prior permission from the Competent Authority at the relevant point of time has been considered and found devoid of any merit and is hereby rejected.

By order of the Government of Jammu & Kashmir.

Sd/-

(Shailendra Kumar) IAS

Principal Secretary to the Government

Dated: 16.05.2023

PWD-LIT/113/2023-05-(C.No.7168605)



Copy to the:-

1. Principal Secretary to Hon'ble Lieutenant Governor.
2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
3. Director, Archives, Archaeology & Museum, J&K, Jammu.
4. Development Commissioner Works, PW(R&B) Department.
5. All Chief Engineers.
6. OSD to Hon'ble Advisor (B) for information of Hon'ble Advisor.
7. Senior Law Officer, PW(R&B) Department.
8. Mr.Waseem Gul, Government Advocate, J&K CAT Tribunal, Srinagar.
9. M/S Showkat Ahmad Makroo, Law Associates, (Advocates) J&K High Court Srinagar.
10. Private Secretary to the Principal Secretary to Government, PW(R&B) Department.
11. Government Order file/ Monday return file w.2.s.c
12. I/C Website, Public Works(R&B) Department.


(Rajnish Kumar) KAS

Additional Secretary to Government
Public Works (R&B) Department

