

**Central Administrative Tribunal
Jammu Bench, Jammu**

TA No.446/2021
(SWP No. 205/2015)

Wednesday, this the 5th day of May, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Imtiyaz Ahmad Khan (Age : 42 years)
S/o Sheer Ahmad Khan
R/o Surigam Dooniwari Lolab
Kupwara.

...Applicant

(Mr. Sheikh Mohammad Saleem, Advocate)

VERSUS

1. Director General
Indian Systems of Medicine
Jammu & Kashmir
Jammu/Srinagar.
2. Deputy Director
Indian System of Medicine
Jammu & Kashmir, Srinagar.
3. Assistant District Medical Officer (ADMO)
Kupwara.

...Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicant was engaged as Dawasaz (Pharmacist) in the District Medical Office, Kupwara in the year 2005, on a consolidated remuneration of Rs.3050/-. Complaining that he was abruptly discontinued, he filed SWP No. 227/2013 before the Hon'ble High Court of Jammu & Kashmir. The applicant pleaded that he was in service till that date and the Hon'ble High Court passed an order 18.07.2014, directing that the applicant shall be continued in service in terms of appointment order dated 03.02.2005. In compliance with the same, the respondents took him into service, through an order dated 28.08.2014.

2. The applicant filed SWP No.205/2015 before the Hon'ble High Court seeking a writ of *mandamus* directing the respondents to regularize his services and to direct them to pay him the salary for the entire period.

3. The respondents filed a detailed counter affidavit. It is stated that the applicant suppressed the fact to the Hon'ble High Court that he was discontinued in the year 2007 itself and the relief was granted on the premise that he was in service till the year 2014. It is also stated that the Department has since been

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reorganised and the post of Dawasaz is not part of the cadre. Regular selection is also said to have been made.

4. The SWP has since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as TA No. 446/2021.

5. Today, we heard Mr. Sheikh Mohammad Saleem, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

6. This is the second round of litigation. Earlier, the applicant filed SWP No.227/2013. He pleaded that by the time the SWP was filed, he was still in service ever since he was appointed in 2005. Accepting that contention, the Hon'ble High Court passed an order directing the following relief:

“The petition is disposed of with a direction to respondents to allow the petitioner to continue as Dawasaz in terms of his appointment order No.DSIM/HD/123/ISM/2004 dated 03.02.2005 without any interruption or hindrance.”

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This was on the premise that the applicant was still in service on that date. The fact of the matter, however, is that he was discontinued from service w.e.f. 26.05.2007.

7. Be that as it may, the respondents issued an order dated 28.08.2014, which reads as under:

“With reference to Hon’ble High Court directives subjected above and in compliance to letter No.DISM/2635-38, dated 18-07-2014 received from Directorate of Indian Systems of Medicine & H., J&K, Mr. Imtiyaz Ahmad Khan is hereby allowed to continue as Pharmacist/Dawasaz at Govt. Unani Dispensary Maidanpora against the available vacancy in to the terms & Condition laid down in order No.-DISM/1438-42 Dated 19.02.2005.”

8. In case the applicant is of the view that the said order is not inconformity with the directions issued by the Hon’ble High Court in SWP No.2271/2013, a totally different procedure has to be adopted. Filing of a separate SWP is totally impermissible. Further, the question of regularisation of service of the applicant does not arise, once the post itself does not exist.

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9. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 5, 2021
/sunil/jyoti/