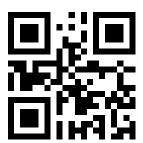


HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No. 1577/2018

Reserved on: 20.04.2026
Pronounced on: 06.05.2026
Uploaded on:06 .05.2026

Whether the operative part or full judgment is pronounced: Full

1.Tabassum Qadir Parray D/O Sh. Abdul Qadir Parray
2. Meyank Gupta son of Sh. Lalit Gupta
3.Sajad ur Rehman son of Abdul Rahim Dar
4. Altaf Hussain Khan son of Nazir Mohd Khan

Petitioners

Through: - Mr. Salih Pirzada Advocate

vs

High Court of Jammu and Kashmir and another

…Respondent(s)

Through: -Mr. M.I.Qadiri Advocate for R-1
Mr. Waseem Gul G.A. for R-2
Mr. Showkat Ali Khan Advocate for R-3 to 17
Mr. Faheem Nisar Shah G.A. for R-18

HIGH COURT JAMMU & KASHMIR

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

JUDGMENT

Sanjeev Kumar, J

1 The idiom "*to have your cake and eat it too*" completely fits in the controversy raised and the relief prayed for in this petition.

2. In this petition, the petitioners have, *inter alia*, prayed for the following reliefs:

(i) writ, order or direction in the nature of writ of certiorari to quash the seniority list of Munsiffs issued by the High Court vide order No. 728 dated 19.11.2011 wherein the petitioners have been shown at S. Nos. 31, 32, 33, & 34 instead of S. Nos. 16, 17, 18 & 26.

(ii) writ, order or direction in the nature of writ of mandamus commanding upon the respondents to fix the seniority of the petitioners on the basis of their *inter se* merit as depicted in Annexure A of Government order dated 24.09.2010 and accordingly show them at S. No. 16, 17, 18 and 26 respectively in the final seniority list of Munsiffs.

Factual matrix:

3. Vide communication No. LD(A)2007/79 dated 09.07.2008, the Department of Law referred 35 posts of Munsiffs, including 04 backlog vacancies in the Scheduled Tribe category, to the Jammu and Kashmir Public Service Commission ["the PSC"] for initiating the process of selection. Vide notification dated 24.10.2008 read with a notice dated 12.12.2008, the PSC notified the said vacancies of Munsiffs for selection. More than 1000 candidates, including the petitioners, responded to the Advertisement Notification and threw their candidature for selection. After conducting the selection process, the PSC recommended 35 candidates, including the petitioners, in the order of merit for medical examination by the respective Medical Boards at Jammu and Srinagar. All the 35 candidates were declared medically fit to assume the office of Munsiffs. On the basis of overall performance of candidates in the written test, viva voce and medical examination, the PSC, in terms of letter dated 24.09.2010, forwarded a list of 35 candidates which included the candidates selected under various reserved categories for appointment as Munsiffs. The list so forwarded

by the PSC included the names of the petitioners at S. Nos. 16, 17, 18 in the open merit and S. No. 26 under RBA category respectively. Accepting the recommendations made by the PSC, the Government, vide Government order dated 05.10.2010, accorded approval to the selection of 35 candidates including the petitioners herein. Upon grant of approval to the selection and as recommended by the High Court, the Government, vide Government order dated 01.04.2011, accorded sanction to the officiating appointments of the selected candidates as Munsiffs in the Subordinate Judiciary of the then State of Jammu and Kashmir (now the UT of Jammu and Kashmir and Ladakh). The petitioners did not figure in the aforesaid list for the reason that there were only 31 vacant posts of Munsiffs available with the respondents. Subsequently, on more posts of Munsiffs becoming available due to promotions etc., the petitioners were also appointed as Munsiffs in terms of Government order dated 29.09.2011.

HIGH COURT JAMMU & KASHMIR

4 Vide order dated 19.11.2011, the High Court issued a seniority list of Munsiffs appointed vide Government order dated 01.04.2011 and 29.09.2011, in which the petitioners, who were appointed by subsequent order, were placed next to the Munsiffs appointed earlier vide Government order dated 01.04.2011.

5 Feeling aggrieved by the seniority position assigned, the petitioners moved a joint representation before the Registrar General of this Court which, upon consideration by the competent authority, came to be rejected. The decision of the Administrative Committee of the High Court rejecting the representation of the petitioners was conveyed to them individually. It is in these circumstances, and feeling

dissatisfied by the response of the High Court to their representation, the petitioners are before us for ventilation of their grievance.

Contentions of the petitioners:

6 The petitioners assail the impugned seniority list primarily on the ground that, in view of their merit, they were figuring in the select list at S. Nos. 16, 17, 18 and 26 respectively, therefore, they would be entitled to the said position in the seniority list of Munsiffs in terms of clear and unambiguous provisions of Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 ["CCA Rules"], notwithstanding that their appointments were delayed because of reasons purely attributable to the respondents. It is submitted that the petitioners were figuring in the select list prepared by the PSC and forwarded to the Government vide communication dated 24.09.2010, and merely because the appointment in the case of the petitioners got delayed because of non-availability of vacancies cannot be a good and legally justifiable reason to deny them placement in the seniority list on the basis of their merit in the selection. Learned counsel appearing for the petitioners would argue that the appointment of the petitioners, though made later in point of time, is part of a single selection process, and, therefore, the petitioners cannot have been treated as a separate stream or class for meting out to them differential treatment.

Contentions of the respondents:

7 In the reply affidavit filed by the High Court, it is contended that the seniority list of Munsiffs impugned in the writ

HIGH COURT JAMMU & KASHMIR

petition was finalized in the year 2011 and the same was challenged by the petitioners in the year 2018, i.e., after 7 years, that too without rendering any explanation for delay and laches. It is submitted that the seniority position of the Munsiffs, including the petitioners, determined on 19.11.2011, stood acted upon and promotions made to the next rank of Sub Judge before the same was objected to and challenged by the petitioners. It is submitted that the settled seniority position, particularly when it has been acted upon, cannot be unsettled at the instance of those who approach the Court belatedly without even rendering any explanation for such delay.

8 On facts, it is pointed out that the process of selection to fill up the available posts of Munsiffs was initiated by the High Court in the year 2008 when, vide letter dated 09.06.2008, a requisition was made to the Law Department for filling up of 31 posts of Munsiffs through PSC. In the requisition, it was clearly mentioned that selection of 31 posts of Munsiffs also included the 04 backlog vacancies under ST category. However, the Department of Law, while referring the vacancies to the PSC for initiating the process of selection, committed a mistake, in that, it mentioned 04 backlog vacancies in the ST category in addition to 31 posts referred by the High Court in terms of its communication dated 09.06.2008. This is how, as against 31 available vacancies of Munsiffs, including 04 backlog vacancies of Munsiffs, the PSC, vide its communication dated 24.10.2008, came to notify 35 posts and, accordingly, concluded its selection by recommending 35 candidates.

9 It is contended that, had the Law Department and the PSC not committed the *faux pas* and made selections against the clear available 31 vacancies, the petitioners would not have been included in the selection list at all. It is contended that the petitioners were the candidates selected and recommended by the PSC over and above the 31 available posts of Munsiffs and, therefore, acquired no right to be appointed. After the approval was granted by the Government to the selection, the High Court, while recommending the selected candidates for appointments as Munsiffs, noticed that it had only 31 vacancies of Munsiffs available and not 35 for which the PSC had made selection. Immediately, the Registrar General of this Court, vide communication dated 28.01.2011, communicated to the Secretary to the Government, Department of Law, that the High Court had only 31 posts of Munsiffs available and, therefore, the sanction to the selection of 35 Munsiffs granted by His Excellency the Governor in terms of Rule 39 of the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967 ["Recruitment Rules, 1967"], was being implemented only by recommending the officiating appointment of 31 candidates. Accordingly, only 31 candidates, excluding the petitioners, were recommended by the High Court for appointment. The recommendations were accepted by the Government and, vide Government order dated 01.04.2011, as many as 31 candidates in different categories were appointed as Munsiffs in the Subordinate Judiciary.

10 The further case of the High Court, as pleaded before us, is that in the year 2011, promotions to the cadre of District Judge and Sub

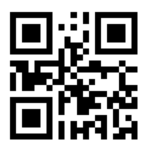
HIGH COURT JAMMU & KASHMIR

Judge were recommended by the Full Court vide its resolution adopted on 11.06.2011. Accordingly, 16 Sub Judges were promoted to the cadre of District Judge and alongside 15 Munsiffs were also promoted to the cadre of Sub Judge against the vacancies so caused due to promotion of Sub Judges. With a view to accommodating the petitioners, who upon their selection by the PSC, were legitimately expecting appointment, a process was initiated by the High Court to accommodate them against the fresh vacancies that had fallen vacant due to promotions. Accordingly, the Registrar General of this Court, vide communication dated 16.06.2011, took up the matter with the Secretary to the Government, Department of Law. The Government concurred with the proposal submitted by the High Court and, pursuant to a formal recommendation made by the High Court, the Government, vide Government order dated 27.09.2011, accorded sanction to the appointments of the petitioners as well, as Munsiffs in the Subordinate Judiciary by utilizing 04 future vacancies.

HIGH COURT JAMMU & KASHMIR

11 It is, thus, contended by the High Court that since the appointment of the petitioners was against the future vacancies, though on the basis of merit determined in the selection process initiated by the PSC vide Advertisement Notification dated 24.10.2008, as such, they were to be treated as a different stream/class and were not entitled to seniority over and above those who were selected against the available vacancies. To a similar extent is the reply affidavit of the private respondents and the submissions made by their learned counsel appearing on their behalf.

Analysis and discussion:



12 We have given thoughtful consideration to the rival contentions and we find that the relevant facts are not in dispute. Indisputably, when the process of selection for recruitment of Munsiffs was initiated, there were in all 31 vacant posts of Munsiffs available. The requisition of the High Court to the Department of Law was very clear and unequivocal. It clearly mentioned that there were 31 posts of Munsiffs lying vacant which were required to be filled up by selection to be made by the PSC. The said 31 vacant posts included 04 backlog posts in the ST category. However, the Department of Law, while making a formal reference to the PSC, committed a clerical mistake and instead of indicating that 31 referred posts included 04 backlog posts in the ST category, mentioned that 04 backlog posts in the ST category were to be notified over and above the 31 posts referred by the High Court. This mistake was carried by the PSC in its advertisement notification. Instead of 31, 35 candidates came to be selected as Munsiffs by the PSC. The Government even accorded approval to the selection conducted by the PSC for 35 posts. It is not in dispute that had the Department of Law referred 31 available posts and not committed the mistake of referring 35 posts, the petitioners would not have figured in the select list.

HIGH COURT JAMMU & KASHMIR

13 Be that as it may, because of the mistake committed by the Department of Law while making reference to the PSC, the petitioners 1 to 3 were the candidates shown last selected in the open merit, whereas petitioner No. 4 was the candidate shown last selected under the RBA category. It is, however, equally true that before recommending the appointment of the selected candidates, the list

whereof was forwarded by the PSC through the Government, the High Court detected the mistake and found itself helpless to accommodate all the 35 candidates in view of availability of only 31 clear vacancies. The High Court did nothing wrong in recommending the appointment of only 31 candidates selected by the PSC to fill the 31 available posts of Munsiffs. With the appointment of 31 candidates, which of course were to the exclusion of the petitioners, the select list came to be exhausted.

14 There could be no dispute with regard to the proposition that the petitioners acquired no right to be appointed only on the basis of their mere placement in the select list, particularly when they were the candidates selected over and above the available vacancies of Munsiffs. The petitioners could have been very well denied the appointment and there was no obligation on the respondents to accommodate them against the future vacancies.

HIGH COURT JAMMU & KASHMIR

15 The High Court, as it appears from the sequence of events, took a compassionate view in the matter and utilised the four future vacancies that fell vacant after the conclusion of the selection process on account of promotions of Munsiffs to the posts of Sub Judge. Ordinarily, these future posts, which were 15 in number, ought to have been notified afresh for selection and the utilisation of 04 posts out of these posts was to the prejudice of and to the detriment of the candidates who had acquired eligibility after the cut-off date in the advertisement notification issued in the year 2008. The utilisation of four future vacancies to accommodate the petitioners was clearly *de hors* the Rules and against the settled position of law.

16 To put it succinctly, we have no manner of doubt that the appointment of the petitioners against the future vacancies was *de hors* the Rules and, in any case, irregular, if not *void ab initio*. Viewed from this angle, it cannot be legitimately contended that the petitioners, having been appointed against the four future vacancies, form a class with those selected and appointed against the clear vacancies and, therefore, their seniority must be fixed on the basis of *inter se* merit obtained by them in the selection process initiated in terms of advertisement notification of 2008.

17 The selection process, as stated above, came to close with the appointment of Munsiffs against the 31 available posts. The subsequent appointment of the petitioners against future vacancies is neither by operation of a waiting list nor a continuation of the selection process initiated in the year 2008, which, as stated above, came to be concluded in the year 2011 with the appointment of 31 candidates recommended by the High Court. Rule 24 of the CCA Rules will not, therefore, be attracted in the given facts and circumstances of the case.

18 Before we proceed, we deem it appropriate to set out Rule 24 of CCA Rules herein below:

> 24. **Seniority**.-
>
> (1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.
>
> Note 1.-The rule in this clause will not effect the seniority on the date on which these rules come into force of a member of any service, class, category or grade as fixed in accordance with the rules and orders in force before the

date on which these rules come into force. Interpretation.- The words "date of first appointment" occurring in the above rule will mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment on probation on a clear vacancy, confirmation in the latter case being subject to good work and conduct and/or passing of any examination or examinations and/or tests:

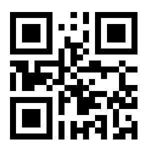
Provided that the inter se seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being, posted to different stations, be determined (a) in the case of those promoted by their relative seniority in the lower service, class, category or grade;(b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections; (c) as between those promoted and recruited direct by the order in which appointments have to be allocated for promotion and direct recruitment as prescribed by the rules.

Note.2 Any substantive appointments or permanent promotions made in any department prior to 15th May, 1953, will not be disturbed if otherwise in order unless such appointments or promotions are already the subject of any appeal, review or revision or otherwise pending decision.

(2) A member of a service, class, category or grade, unless he is reduced in seniority as a punishment shall retain seniority in such service or grade as determined by sub-rule (1) notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade.

(3) Where a member of any service, class, category or grade reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall rank in such lower service, class, category or grade next below any specified member thereof."

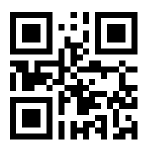
HIGH COURT JAMMU & KASHMIR



19 From a reading of Rule 24, it clearly transpires that the seniority of a person in his service, class, category or grade, as the case may be, is required to be determined by the date of his/her first appointment to such service, class, category or grade. However, *inter se* seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, in the case of direct recruitment, be determined according to the positions attained by or assigned to them in the order of merit at the time of competitive examination, etc. It is, thus, evident that in case two or more candidates are appointed to a service, class, category or grade simultaneously pursuant to a single selection process, they will take their position in the seniority list as per their merit, notwithstanding the fact that they may have assumed duties of their appointment on different dates by reason of being posted to different stations.

HIGH COURT JAMMU & KASHMIR

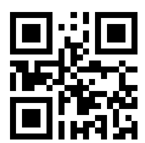
20 In the instant case, the petitioners and the private respondents are not the persons appointed as Munsiffs simultaneously. The petitioners were admittedly appointed on 29.09.2011, whereas the private respondents and other selected candidates came to be appointed as Munsiffs on 01.04.2011. It is also not the case of the petitioners that they had a right to be appointed as Munsiffs along with the private respondents w.e.f. 01.04.2011 but were denied such appointments because of some act or omission of the respondents. Rather, it is a clear and undisputed case that the petitioners were not entitled to be appointed as Munsiffs pursuant to the selection process conducted by the PSC vide Advertisement Notification dated 24.10.2008.The names of the petitioners appeared in the select list prepared by the PSC only



because of a *bona fide* error committed by the Law Department by referring 35 posts instead of 31 available posts of Munsiffs to the PSC for selection. The petitioners, whose names figured in the select list, acquired no indefeasible right to be appointed, and, therefore, they were rightly denied appointment when the Government order dated 01.04.2011 appointing 31 Munsiffs was issued by the Government. The High Court did not recommend the petitioners for appointment for want of available posts of Munsiffs. The petitioners, who were later accommodated against the future vacancies having fallen vacant due to promotions of 15 Munsiffs to the rank of Sub Judge in June 2011, cannot be treated as part of the selection process initiated in the year 2009 which culminated with the issuance of Government order dated 01.04.2011. That being the clear position emerging from the facts and circumstances of the case, the petitioners cannot claim to have been appointed simultaneously with the candidates who were appointed against clear vacancies in terms of Government order dated 01.04.2011.The date of first appointment of the petitioners is, and has to be taken as, 29.09.2011, and, therefore, they have to take their seniority accordingly. They cannot claim to be senior to the candidates appointed against the clear vacancies in terms of Government order dated 01.04.2011 merely on the ground that they have higher merit in the selection than some of the category candidates.

21 It is trite law that those appointed irregularly or *de hors* or even in relaxation of the rules cannot take precedence over candidates who are regularly appointed in accordance with the rules in the matter of seniority. It is not the case pleaded or even set up by the petitioners

HIGH COURT JAMMU & KASHMIR



that they are entitled to their appointment retrospectively w.e.f. 01.04.2011. It is trite law that a candidate does not acquire an indefeasible right to be appointed merely on the ground that his name figures in the select list. The employer may, for good or legally justifiable reasons, deny appointment to such selected candidates.

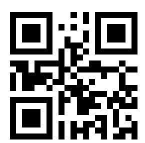
22 The Apex Court, in the case of **Shankarsan Dash v. Union of India, (1991) 3 SCC 47**, has clarified this position of law. It is true that a selected candidate does not acquire an indefeasible right to be appointed, but the employer, particularly if it is the Government, cannot be permitted to act arbitrarily and decide not to offer appointment to the selected candidates purely on its whims. The decision not to offer appointment to the selected candidates has to be taken *bona fide* and for appropriate reasons.

HIGH COURT JAMMU & KASHMIR

23 The Supreme Court considered a matter, which is very close to the facts of the instant case, in the case of **Sudesh Kumar Goyal v. State of Haryana (2023) 10 SCC 54**, wherein a selected candidate was denied appointment by the Government on the ground of non-availability of post. In the said case, the Punjab and Haryana High Court, on 18.05.2007, issued a notification for selection of 22 officers in the Haryana Superior Judicial Service by direct recruitment from the Bar, out of which 14 were earmarked for the general category. The selection was accordingly made and the petitioner, Sudesh Kumar Goel, figured at S. No. 14. The appointments were, however, offered only to 13 candidates, thereby denying appointment to Sudesh Kumar Goyal. Feeling aggrieved, Sudesh Kumar Goyal invoked the writ jurisdiction of the Punjab and Haryana High Court seeking his

appointment against the 14th post of the general category. The respondents in that case justified the non-appointment of Ms. Sudesh Kumari Goyal on the ground that subsequent to the issuance of the advertisement notification for 14 posts in the general category, 4 general category candidates who were working as Additional District and Sessions Judges (Fast Track Courts), Haryana, were absorbed in regular service to comply with the judgment of Supreme Court in the case of **Brij Mohan Lal v. Union of India, (2002) 5 SCC 1.** The referred posts thus came to be reduced to 9, to which five fresh vacancies meant for direct recruitment were added, and this took the tally of available vacant posts to 13. The justification was accepted by the High Court and the writ petition of Mr. Goyal was dismissed. On appeal, the Supreme Court dismissed the appeal and accepted the reasons given by the Government/High Court to deny appointment to Mr. Goyal against 14th advertised post which ceased to exist during the pendency of the selection process. Applying the legal position enunciated in *Sudesh Kumar Goel's case (supra)*, it cannot be gainsaid that in the instant case the respondents had even stronger reasons to deny appointment to the petitioners. The posts were not available for the petitioners even at the time of initiation of the selection process, nor did the posts become available on conclusion of the selection process, which ended with the appointment of 31 candidates selected against the available vacant posts of Munsiffs.

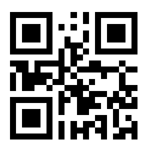
24 That apart, it is equally well settled that persons who are appointed to a service, class or cadre irregularly or de hors the Rules cannot be preferred over those who are selected in accordance with the



rules in the matter of fixation of seniority. The issue is fully covered by the judgment of the Supreme Court in **State of U.P. v. Rafiquddin (1987) Supp SCC 401**, where the Apex Court was confronted with a situation in which, while on one hand, a batch of persons was appointed in the Judicial Service of the State in violation of the relevant Recruitment Rules, and, on the other hand, a batch of persons was appointed in accordance with the rules. The irregular appointees had been accorded seniority over the regular appointees on the ground that the irregular appointees were selected from the selection test held in the year 1970, whereas the regular appointees were selected from the selection test held in the year 1972. Resolving the aforesaid situation posed by the case, the Supreme Court, in paragraphs 13, 14, 15 and 16, held thus:

> "13. The question arises as to whether the unplaced candidates "included in the third list" were appointed to the service on the result of the competitive examination of 1970. We have already referred to necessary facts in detail indicating the circumstances under which the 'unplaced candidates (included in the third list) of 1970 examination were appointed. Initially the Public Service Commission had fixed 40 per cent of aggregate marks and 35 per cent as minimum marks in the viva voce test for judging the suitability of candidates and on that basis it had recommended 46 candidates for appointment but subsequently on a suggestion made by the Government the Commission forwarded another list of 33 candidates for appointment to service on the basis of 35 per cent marks in the aggregate as well as 35 per cent minimum marks in viva voce. In forwarding the first and the second list, the Commission had applied the criteria of minimum marks of 35 per cent in viva voce test. The Commission had not recommended any candidate in either of the two lists, . who had failed to secure minimum marks of 35 per cent in viva vote test. After the amendment of Rule 19 and deletion of the two proviso the State Government on the representation. of the unsuccessful candidates of 1970 examination made suggestion to the Commission for approving more candidates of the Examinations held in 1967, 1968, 1969 and 1970 for appointment to the service

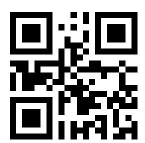
on the basis of 40 per cent of marks in aggregate disregarding the minimum marks fixed for viva voce. The Commission refused to accept the suggestion but subsequently in pursuance of the decision taken by the high level committee it forwarded the list of 37 unsuccessful candidates of 1970 examination who had obtained 40 per cent or more marks in the aggregate but had not qualified in the viva voce. The Commission by its letter dated 19th June, 1974 forwarded the list of 37 candidates to the State Government. The Commission's letter shows that it had not approved the appointment of those included in the third list as they had failed to secure minimum prescribed marks in the viva voce test. During the course of hearing before us, serious dispute and doubt was raised on the genuineness of the annexure to the letter on behalf of the "unplaced candidates." It was suggested on their behalf that the Commission had approved and recommended the names mentioned in the third list for appointment and that it had no where stated that they were unsuccessful candidates or that they had not been found suitable by the Commission. In order to resolve this controversy, on our directive, the State Counsel produced the original of the letter before the Court and on a perusal of the same we found that the Commission had neither in the body of the letter nor in the annexure appended thereto ever expressed its views that the candidates mentioned therein had been found suitable by it. On the contrary, the note appended to the list which was annexed to the letter clearly stated that the candidates mentioned in the list had not been found suitable by the Commission. This would clearly show that the unplaced candidates (those included in the third list) were unsuccessful at the Competitive examination and their ' names were not-included'-in the list of approved candidates as contemplated by Rule 19 as they had failed to obtain the minimum marks in the viva voce test. The Commission had never made any recommendation for their appointment instead under the influence of the Government, it had forwarded the list without its recommendation. The appointment of unplaced candidates made in pursuance of the decision taken by the high level committee, is not countenanced by the Rules. There is no escape from the conclusion that the unplaced candidates were not appointed to the service on the basis of the result of the competitive examination of 1970. Their appointment was made in breach of the Rules, in pursuance to the decision of the high level committee. It is well-settled that where recruitment to service is regulated by the statutory rules, recruitment must be made in accordance with those Rules, any appointment made in breach of rule would be illegal. The appointment of 21 "unplaced candidates" made out of the third list was illegal as it was made in violation of the provisions of the Rules.



The high level committee which took decision for recruitment of candidates to the service on the basis of the 40 per cent aggregate marks disregarding the minimum marks fixed by the Commission for viva voce test had no authority in law, as the Rules do not contemplate any such committee and any decision taken by it could not be implemented.

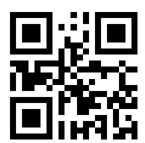
14. We are surprised that the Chief Justice, Chief Minister as well as the Chairman of the Commission agreed to adopt this procedure which was contrary' to the Rules. The high level committee even though constituted by highly placed persons had no authority in law to disregard the Rules and to direct the Commission to make recommendation in favour of unsuccessful candidates disregarding the minimum marks prescribed for the viva voce test. The high level committee's view that after the amendment of Rule 19, the minimum qualifying marks fixed for viva voce could be ignored was wholly wrong. Rule 19 was amended in January 1972, but before that 1970 examination had already beep held. Since the amendment was not retrospective the result of any examination held before January 1972 could not be determined on the basis of amended Rules. The Public Service Commission is a constitutional and independent authority. It plays a pivotal role in the selection and appointment of persons to public services. It secures efficiency in the public administration by selecting suitable and efficient persons for appointment to the services. The Commission has to perform its functions and duties in an independent and objective manner uninfluenced by the dictates of any other authority. It is not subservient to the directions of the Government unless such directions are permissible by law. Rules vest power in the Commission to hold the competitive examination and to select suitable candidates on the criteria fixed by it. The State Government or the high level committee could not issue any directions to the Commission for making recommendation in favour of those candidates who failed to achieve the minimum prescribed standards as the Rules did not confer any such power on the State Government. In this view even if the Commission had made recommendation in favour of the unplaced candidates under the directions of the Government the appointment of the unplaced candidates was illegal as the same was made in violation of the Rules.

15. On behalf of the respondents the "unplaced candidates" it was contended that there was acute shortage of Munsif/Magistrates in the State as a result of which large number of cases were pending in the courts. In order to meet the shortage of Munsifs State Government and the high level committee, keeping in view the amendment Of



Rule 19 suggested to the Commission to recommend the names of those candidates who may have obtained 40 per cent or more marks in the aggregate disregarding the minimum qualifying marks fixed for the viva vice test in the examination of 1967, 1968, 1969, and 1970. It was urged that the suggestion eg the committee was accepted by the Commission and therefore it forward the names of 37 candidates for appointment to the service. We have already noticed that the Commission never agreed to the proposal. The Chairman of the Commission was a member of the High level committee but the Commission never took any decision to accept the proposals of the high level committee. No material has been placed before the court to support this contention. On the contrary, the Commission's letter dated 19th June 1974, clearly indicates that the Commission as directed by the State Government merely forwarded the list ot 37 candidates of 1970 examination, without making any recommendation and yet they were appointed in service in breach of th6 Rules. But even if the Commission had agreed to the Government's suggestion, their appointments continued to be illegal, as the same were made in breach of Rules. There was no justification for the appointment of the unsuccessful candidates in 1975, because by that time result of 1972 examination had been announced and duly selected candidates were available for appointment.

16. In this context, it is necessary to consider as to how long the list of candidates for a particular examination can be utilised for appointment. There is no express provision in the Rules as to for what period the list prepared under Rule 19 can be utilised for making appointment to, the service. In the absence of any provision in the Rules a reasonable period must Re followed during which the appointment on the basis of the result of a particular examination should be made. The State Government and the Commission had announced 85 vacancies for being filled up through the competitive examination of 1970. In-normal course, 85 vacancies could be filled on the basis of the result of the competitive examination of 1970 but if all the vacancies could not be filled up on account of non-availability of suitable candidates, the appointment to the remaining vacancies could be made on the basis of the result of the subsequent competitive examination. The unfilled vacancies of 1970 examination could hot be filled after 5 years as subsequent competitive examinations of the year 1972 and of the year 1973 had taken place and the results had been declared The list prepared by the Commission on the basis of the competitive examination of a particular year could be utilised by the Government for making appointment to the service before the declaration of the result of the subsequent examination. If selected candidates are available for appointment on the



> basis of the competitive examinations of subsequent years, it would be unreasonable and unjust to revise the list of earlier examination by changing norms to fill up the vacancies as that would adversely affect the right of those selected at the subsequent examination in matters relating to their seniority under Rule. 22. The 1970 examination could not' be utilised as a perennial source or inexhaustible reservoir for making appointments indefinitely. The result of a particular examination must come to an end at some point of time, like a "dead ball" in cricket. It could not be kept alive for years to come for making appointments. The practice of revising the list prepared by the Commission under Rule 19 at the behest of the Government by lowering down the standards and norms fixed by the Commission to enable appointment of unsuccessful candidates is subversive of rule of law. This practice is fraught with dangers of favouritism and nepotism and it would open back door entry to the service. We are, therefore, of the opinion that once the result of the subsequent examination of 1972 was declared, the Commission could not revise the list of approved candidates of 1970 examination prepared by it under Rule 19 at the behest of the Government by lowering down the standard fixed by it".

HIGH COURT JAMMU & KASHMIR

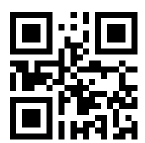
25 From the above exposition of law set out in *Rafiquddin's case (supra)*, it is abundantly clear that candidates appointed to service in breach of law or rules constitute a class distinct from those appointed in accordance with the rules, whose appointments are not under challenge. Acting otherwise would be putting a premium on the irregular appointments made and would be tantamount to acting to the prejudice of those who had secured a berth in the selection and appointment by following the procedure laid down by the rules and the law obtaining on the subject.

26 Indisputably, the appointment of the petitioners against the future vacancies which became available on promotion of Munsiffs to the rank of Sub Judge, after the conclusion of the selection process and appointment of the selected candidates, was clearly *de hors* the rules and the law. We have no hesitation to say that the appointment of the

petitioners was not only irregular but illegal and in derogation of the settled legal position. By accommodating the petitioners against the four future vacancies, the right of invisible candidates who had acquired eligibility to seek consideration against these posts was clearly taken away.

27 Be that as it may, the High Court showed compassion and recommended their candidature for appointment against the future vacancies. The Government showed grace and accepted the recommendation of the High Court and offered appointment to the petitioners. The petitioners should have been thankful that they got the appointment to the posts of Munsiffs, to which they had acquired no indefeasible right. Not only did the petitioners accept the prospective appointment as Munsiffs, but, on the basis of the impugned seniority that was framed on 19.11.2011, they got promoted to the rank of Sub Judge. They, however, thought of challenging the seniority list by filing the instant writ petition in the year 2018. The writ petition, as rightly contended by the respondents, is hit by delay and laches and deserves to be dismissed at the threshold.

28. It needs no reiteration that seniority once settled and acted upon cannot be unsettled, that too, at the instance of those who are fence-sitters and approach the Court after long delay. The doctrine of delay and laches applied with greater vigour to matters relating to seniority and promotion as this has adverse effect on third parties, who in the meantime, have moved up the ladder of seniority and/or promotion. Raking up old matters like seniority and promotion after long time is likely to result in administrative complications and difficulties. In

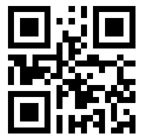


SHIBA SHANKAR MOHAPATRA V. STATE OF ORRISA, (2010)12 SCC 471, Hon'ble Supreme Court in para 18 held thus:

> 18. In R.S. Makashi v. I.M. Menon & Ors. AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under:-
>
> "We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

29. Earlier, in ***K. R. Mudgal v. R. P. Singh (1986) 4 SCC 531***, Apex Court laid down in unequivocal terms that a seniority list which remains in existence for 3 to 4 years unchallenged should not be disturbed unless the person approaching belatedly explains the delay and laches by furnishing satisfactory explanation. This position of law is restated by the Supreme Court in ***Ajay Kumar Shukla and others v. Arvind Rai and others (2022) 12 SCC 579***. In the case on hand, there is no satisfactory explanation rendered for approaching the court after seven years, that too, when impugned seniority stood acted upon and promotion to the rank of Sub-Judge had been made.

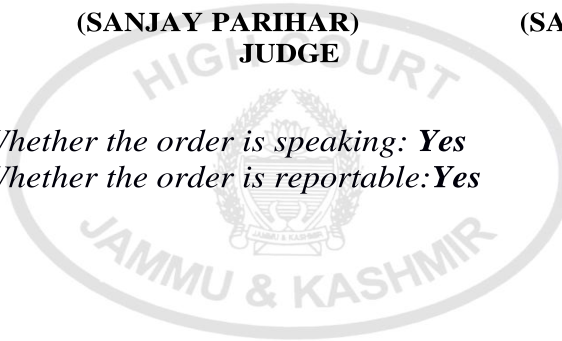
30 Learned counsel for the petitioners tried to find fault with the fixation/allocation of roster points to various categories in the



selection process to contend that the allocation of roster, particularly the manner in which the four backlog vacancies in the ST categories were supplied, was in violation of the Jammu and Kashmir Reservation Act and the Rules framed thereunder. We did pay some heed to the aforesaid contention, but we are of the view that, in the absence of any challenge to the select list and the manner in which the roster has been applied, we are not inclined to examine the issue in much detail. Suffice it to say that not only the writ petition filed by the petitioners is hit by delay and laches, but the same is, otherwise, devoid of any merit. This petition is, accordingly, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE



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

Srinagar
Yasmeen
06.05.2026