

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 90/2026
CM No.2867/2026**

1. Union Territory of Jammu and Kashmir through Principal Secretary to Government Home Department, Jammu and Kashmir, Civil Secretariat, Srinagar/ Jammu. UT of J&K and Ors.
2. Director General of Police, Jammu and Kashmir, Jammu/ Srinagar.
3. Senior Superintendent of Police Kupwara.Appellants.

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

Vs.

Mushtaq Ahmad Shah Son of Abdul Khaliq Shah
Resident of Kawari Liderwan Tehsil Trehgam District
Kupwara.Respondent

Through: Mr. M. A. Wani, Advocate, with
Mr. Zain ul Abidin, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEVKUMAR, JUDGE

ORDER (Oral)
10.09.2026

1. In this case the facts submitted before this Court are that the appellants are aggrieved by an order dated 15.09.2025, whereby the Writ Court disposed of the writ petition [WP(C) No.1073/2021] quashing the order dated 24.04.2021 and directing the respondents to reinstate the petitioner as SPO (Special Police Officer).
2. The respondent herein was engaged as SPO by District Police Officer in District Police Office, Kupwara, vide order dated 11.10.2000. In the month of April 2021, the respondent during his deployment in Police Station Kupwara prepared and signed a false and fabricated verification report in respect of one Ghulam Rasool War S/o Abdul Rehman War R/o Gonipora,

Hyhama, who was involved in number of criminal cases of Police Station Kupwara, depicting the misconduct. The formal departmental enquiry was ordered vide order dated 26.04.2021 by the District Police Officer, Kupwara, and the findings recorded in the order dated 12.05.2025 recommended the SPO to be disengaged. The allegation against the respondent was that he managed the issuance of fake verification report while verifying that person in question was not involved in any subversive activities. On such gross negligence and misconduct, the respondent SPO was disengaged on 24.01.2021. It is noted that aggrieved by such disengagement, the petitioner approached the Writ Court which quashed the order of disengagement while directing to reinstate the petitioner as SPO with liberty to the Police Department to revisit and reconsider the case of the petitioner after issuance of a show cause notice to the petitioner.

3. The counsel for the appellants submits that Sections 18, 19 and 20 of the Police Act, 1983, have to be read in tandem to understand the powers, privileges, protections and immunities which were required to be given to such SPOs. The counsel for the appellants further submitted that the immunities in question were strictly operational in nature arising out of the work exigencies laid down in the Statute itself but does not call for the procedural safeguards which are available to a full time regular police officer as the tenure of the SPO is purely of temporary nature on honorarium based arrangement which does not amount to hold him a civil post. The counsel for the appellants submits that Section 19 of the Act was not giving any kind of entitlement at the same level of a regular police officer whether it was a protection or any other immunity but actually was a need based requirement which required the SPO to act with such immunity for maintaining the law and order. As per counsel for the appellants, the powers, privileges and protections were strictly for maintaining the law and order and discharging the duties thereon and could not be compared with the procedural safeguards which are available to a regular public servant under Article 311 of the Constitution. The counsel for the appellants submits that a proper enquiry was held and enquiry had reasons for arriving at a conclusion that it was not a fit case for continuance of the respondent as SPO.

4. The counsel for the appellants has referred to the judgment of ***State of J&K and others v. Mohammad Iqbal Mallah : 2014 SCC OnLine J&K 58***, whereby the Division Bench of this Hon'ble Court had laid down that once the respondent was not holding a post regulated by any statutory rules then it was not possible for the department to hold a departmental enquiry which might have been necessary in case of a regular police officer. The counsel for the appellants submits that the respondent does not hold the civil post and once there is demeanour issue with the SPO in question, he has no right to such post and there shall be no requirement of law to hold an enquiry to comply with the rules and the principles of natural justice.

5. The counsel has further relied upon the judgment in ***Aijaz Rashid Khanday v. State of J&K and others [WP(C) No.1757/2019 decided on 04.07.2024]***, and emphasized para-10 which reads as follows:

10) From a perusal of the provisions contained in Section 18 of the Police Act, it is revealed that SPOs are appointed by Police Officers above a particular rank for specific purposes when the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants. The provision makes it clear that residents of neighbourhood can be appointed as SPOs for dealing with specific contingencies. Thus, engagement of SPOs is not of a permanent nature but it is only to take care of a particular contingency. It is in this context that the provisions contained in Section 19 of the Act are required to be interpreted. By doing so, it becomes axiomatic that SPOs enjoy same powers, privileges and protections as do the ordinary officers in the matter of crowd control, prevention of unlawful assemblies or contingencies of like nature. The said provision cannot be interpreted in a manner so as to extend even the powers, privileges and protections relating to service conditions of an ordinary police officer to the SPOs, who, admittedly, do not hold any civil posts regulated by any Statutory rules. Therefore, they are not entitled to any protection as afforded to ordinary police officers under Police Rules or Civil Service Regulations. I am supported in my aforesaid view by the judgment of a Division Bench of this Court in State of J&K v. Mohammad Iqbal Mallah (LPA No.153 of 2012 decided on 05.06.2014).

6. The counsel for the respondent has, however, relied upon the judgment in ***Gh. Haider v. State of J&K : 2014 JKJ 3 461*** in which it was held that though the engagement of the petitioner was temporary in nature then in case of a stigmatic order an opportunity of hearing is to be given before terminating the services. However, the said judgment does not support any full scale enquiry. The relevant part of the judgment reads as follows:

10. A Division Bench of this Court in LPASW No. 105/2011 decided on 01.03.2013, has held that the State-appellant was required to hold an inquiry into the matter and pass fresh order after giving opportunity of hearing to the writ petitioner.

11. It is not in dispute that the initial engagement of petitioner was temporary in nature, therefore, the simplicitor order of termination would not have given him any right to challenge the same. However, the specific stand taken by the respondents is that the petitioner was removed from service as he had misused his official position by harassing one Din Mohammad, which is stigmatic in nature. The petitioner, therefore, was required to be afforded an opportunity of hearing before terminating his services.

12. In view of the discussion made hereinabove, the writ petition is allowed and the order of termination so far as it pertains to the petitioner is quashed. However, respondents are at liberty to conduct inquiry against the petitioner in accordance with the rules occupying the field and complete the same within a period of two months from the date a copy of this order is served upon them. Petitioner's retention in service or otherwise shall depend on the outcome of such inquiry.

7. The counsel for the respondent has also referred to the judgment in ***UT of J&K and others v. Shahan Shah (LPA No.152/2025 decided on 06.08.2025)*** and the relevant para thereof reads as follows:

9. In the present case, respondent-writ petitioner has put a challenge in the writ petition to the order dated 20.09.2019 on the ground that the same is in contravention of the rules of natural justice, having been issued without holding a departmental enquiry or giving an opportunity of being heard to the respondent-writ petitioner to explain his position and vindicate his honour, but, the sole basis upon which the order impugned dated 20.09.2019 has been issued against the respondent-writ petitioner by the SSP, Jammu, was that he was

involved in case FIR No.113/2019 registered with Police Station Domana for the commission of offences punishable under Sections 376/342 RPC. In the said FIR, the respondent- writ petitioner was acquitted of the charges levelled against him vide judgment dated 27.12.2021 passed by the Presiding Officer, Fast Track Court, Jammu. On being acquitted, the respondent-writ petitioner approached the appellants-writ respondents and submitted representation dated 19.02.2022, however, no action was taken on his representation. Before passing the order dated 20.09.2019 by which the respondent writ petitioner was disengaged, the appellants-writ respondents were required to provide an opportunity of being heard to the respondent writ petitioner, so as to defend his position, but, in the instant case, appellants- writ respondents without affording any opportunity of being heard to the respondent-writ petitioner have terminated/disengaged the respondent-writ petitioner from the service which is palpably bad in the eyes of law as the order impugned being stigmatic in nature has been passed in violation of the principles of natural justice.

10. The judgment dated 05.06.2014 relied upon by Mrs. Monika Kohli, learned Sr. AAG in case titled State of J&K and others Vs. Mohammad Iqbal Mallah passed in LPA No. 153 of 2012 is distinguishable on facts and is not applicable in the present case. In the present case, respondent-petitioner was disengaged on the ground that he was involved in serious criminal case, but, later on he was acquitted of the charges levelled against him by the Presiding Officer, Fast Track Court, Jammu and also on being remained absent from duties.

11. It is settled law that even where appointment is contractual and contractual employee is to be disengaged on account of some misconduct or adverse performance, he/she is required to be heard before disengaging him/her from services. In this context, it would be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in case titled U.P. State Road Transport Corporation and others Vs. Brijesh Kumar and another, reported in 2024 INSC 638. The para 19 is relevant, which is extracted here as under :-

“19. The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the respondent. No show cause notice appears to have been issued to the respondent. Therefore, the order of

termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.”(Emphasis added).

8. The counsel has also relied upon the judgment of the Hon’ble Apex Court in **Swati Priyadarshini v. The State of Madhya Pradesh : AIR 2024 SC 4339** in which the purport was that the notice had to be given if the removal of the contractual employee was to be examined. The relevant part of the judgment reads as follows:

“31. Perusal of Clause 4 makes it clear that ordinarily, for inefficiency, one month’s notice is sufficient. The Clause also makes it clear that if someone is found to have indulged in “undesirable activities”, the Mission Director was competent to terminate such person’s services “with immediate effect”. We are afraid that the Respondents have placed themselves in a Catch-22 situation. If the order dated 30.03.2013 falls within the former part of Clause 4, as contended by the respondent, on the premise that it is a case of termination simpliciter and non-stigmatic, then one month’s notice was required to be issued to the appellant, which admittedly was not done in the instant matter. Arguendo, were the order dated 30.03.2013 to be seen as falling under the latter part of Clause 4, it would be stigmatic, as made clear by the use of the words “indulged in undesirable activities amounting to degradation of dignity of Mission.

32. In either of the above-noted eventualities, the Impugned Judgment would have to necessarily be set aside. Nevertheless, let us examine the reasoning of the Division Bench, which opined that the order is non-stigmatic and simpliciter non-renewal of contract. The order dated 30.03.2013 was, quite obviously, the culmination of the process set into motion by the two SCNs, which has been overlooked by the Division Bench. The mere non-mention of the background situation or the SCNs in the order dated 30.03.2013 cannot, by itself, be determinative of the nature of the order.

9. The counsel has also referred to the judgment in **Sharaz Hussain Shah v. State of J & K and others (LPA No.134/2018 decided on**

26.07.2023) in which the court has dealt with the applicability of Rule 359 of the Jammu & Kashmir Police Rules, 1960, viz-a-viz Section 18 of the Police Act, 1983. The para-16 of the judgment reads as follows:

16. The plea and contention of the official respondents that the petitioner appellant herein came to be disengaged after holding an enquiry in accordance with Rule 359 supra patently and factually is found to be incorrect and without any basis.

*The judgment referred and relied upon by the counsel for the respondents passed in case “**State of J&K and Ors Vs. Mohammad Iqbal Mallah**”, supra wherein the Division Bench has held that in the matter of disengagement of an SPO there is no requirement of law to hold an enquiry for complying with the rules of principle of natural justice for being not holding a post, is manifestly distinguishable and not applicable to the instant case for the sole reason that the respondents themselves have admitted in the reply filed before the writ court that a departmental enquiry in conformity with Rule 359 supra was conducted whereafter the petitioner was disengaged. The judgment supra thus would not lend any support to the respondents.*

10. The counsel for the respondent also referred to the judgment in **Nihal Singh & Ors. v. State of Punjab and Ors. : AIR 2013 SC 3547**, whereby the Hon’ble Apex Court has directed creation of cadre or sanctioned post regarding the pay anomalies. Relevant paras 35 and 36 reads as follows:

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the

finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

11. Heard learned counsel for the parties at length.

12. The jurisprudence regarding the issue is quiet on the same tandem. The bare reading of Sections 18, 19 and 20 of the Police Act, 1983, clears the legislative intent behind calling for appointment of Special Police Officers who could help the police personnel in meeting the exigencies of law and order arising in a particular localised area. The legislative intent called for immediate steps to be taken by the concerned police authorities for preservation and protection of the inhabitants and the properties which would be impacted by a sudden unlawful assembly and disturbance of peace by gathering support of local people which have been specifically claimed as residents of the neighbourhood and could help out to meet such exigencies. Since, such temporary measures were required to maintain the law and order conditions, the legislature further gave them certain immunities in terms of powers laid down under Section 19 whereby the powers, privileges and functions were brought at par with the ordinary police officers so as to ensure that if any incident while meeting out the eventuality happens, the person so appointed will get the required immunity, protection and compensation in the shape of privileges, thus, incentivising such temporary appointment and extracting such human resources for the immediate purpose.

13. It is needless to say that unless such immunities, privileges and protections were afforded any person would be hesitant to be a supportive parameter of the regular police force as it could involve risk and cost apart from the emoluments for the services rendered. To meet out the risk and cost of maintaining the law and order such Section 19 is in the statute book. But, Section 20 is equally important to understand the parameters of Sections 18 and 19 because the refusal to serve as SPO has been though reflecting to attract a conviction but the resultant penalty is only a fine not exceeding fifty rupees for each such neglect, thus, indicating the intent of the legislation envisaged under Section 18, 19 and 20. The courts have time and again in the judgments referred to, while refusing to go into the factual parameters of each case, narrowed down the compass of the judicial examination by stipulating that the minimum level of the parameters of the natural justice would even operate for a contractual employee and in the present perspective as well. The judgments are indicating that such minimum opportunity of hearing need to be given before any final order is passed for discontinuing the SPO particularly when it is stigmatic.

14. It is needless to say that this Court is not hesitant to lay down and say that if at all such SPO is no longer required due to the end of exigencies envisaged under Section 18 and the termination is only on account of end of the task in question then probably even the parameters of natural justice would not be attracted as it would amount to only completion of the task in question for which the powers under Section 18 were invoked. Even in the contractual employment, it is a settled phenomenon that a person could be ousted for his misconduct, end of the contractual period and if the scheme or project for which he is employed comes to an end. Similarly, in the present perspective under Section 18 of the Act if the powers are invoked for a particular exigency and the exigency would come to an end it would be a natural corollary that role of the SPO will also automatically come to an end but in the exceptional cases, where services of SPO is terminated or disengaged on account of any misconduct then it shall be a minimum requirement as laid down in various jurisprudences such as ***UT of J&K and others v. Shahen Shah*** (supra) that the opportunity of hearing and doctrine of *audi alteram partem* has to be followed. This court is of the firm opinion

that in the given perspective of Sections 18 and 19, Article 311 of the Constitution will not operate and only the immediate safeguard of a notice and a reply to the satisfaction of the respondent shall operate. Hence, while agreeing with the judgment in *Mohammad Iqbal Mallah* as well as the judgment in *Gh. Haider* and *Shahen Shah* this Court deems it appropriate to modify the impugned order to the extent that for disengagement of people appointed under Section 18 of the Act, it shall be a requirement that wherever a stigma or allegation has resulted into such disengagement, they shall be entitled to a notice prior to the disengagement and after such notice is given and reasonable opportunity for filing reply or hearing is given, the appellant shall be free to pass appropriate orders. Accordingly, it is directed that in the present case the order dated 24.04.2021, for the reasons mentioned, shall stand quashed but at the same time the appellants are given liberty to revisit the issue and reconsider the case of the petitioner after issuance of show cause notice and providing an adequate opportunity of hearing.

15. It is apt to note that since the termination was stayed, the period of continuation shall depend upon the decision taken by the appellants. However, the decision shall be taken expeditiously, preferably within thirty days from today.

16. It is needless to say that any observation in the impugned order which indicates or reflects that a regular enquiry or any kind of procedure envisaged for a regular police officer to take action would not operate in these cases.

17. Disposed of in the above terms.

(SANJEEV KUMAR)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

Srinagar

10.09.2026

Abdul Qayoom, Secy.