IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINIAGAR

WP(C) 1663/2024

Reserved on: 13.10.2026
Pronounced on: 30.10.2026
Uploaded on: 31.10.2026
Whether the operative part or full judgment is pronounced: ***Full***

1. **Zareena Akhter,** Age 35 Years D/o Abdul Gaffar Paul R/o Ompora Budgam.
2. **Tanveer Ahmad Wani**, Age 25 Years S/o Abdul Ahad Wani R/o Ompora Budgam.

…Petitioner(s)/Appellant(s).

Through: Mr. Ahmad Javid, Advocate

Vs.

1. **Union of India** through Secretary to Railway Department, Rail Bhawan, New Delhi, Pin Code: 110001;
2. **Divisional Manager,** Northern Railways at Ferozpur Cantt. Punjab, Pin Code: 152116;
3. **Sr. Divisional Personnel Officer**, Northern Railways at Ferozpur, Punjab; Pin Code: 152116;
4. **Chief Area Manager**, Railway Yard Ompora Budgam.

...Respondent(s).

Through: Mr. Faizan Ahmad Ganai, CGC vice
Mr. T.M. Shamsi, DSGI

CORAM:HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT
30.10.2026

Facts of the Case

1. The petitioners have approached this Court by way of the instant writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the respondents to issue formal engagement orders

in their favour under the land-loser quota, with a further direction to extend to them the same treatment as has allegedly been extended to similarly situated persons, including retrospective consideration of their cases.

2. The case set up by the petitioners is that the respondents acquired approximately four kanals of land belonging to the family of petitioner No. 1 and one kanal of land belonging to the father of petitioner No. 2 at Ompora, Budgam, for the construction of a railway yard and workshop. According to the petitioners, the respondents, in addition to payment of compensation, had been providing employment to eligible members of families whose land had been acquired for the said purpose.

3. Insofar as petitioner No. 1 is concerned, it is pleaded that her brother was considered for appointment under the land-loser quota and was initially found suitable for the post of Trackman upon screening conducted on 12.08.2009. However, upon medical examination, he was declared unfit for all categories vide communication dated 28.10.2009. The matter was thereafter taken before the Court of the learned Sub-Judge, Budgam, which, vide order dated 20.09.2017, directed further medical examination. Pursuant thereto, a fresh medical board was constituted, which again declared him unfit for all categories on 14.02.2018.

4. The petitioners further plead that the respondents, vide communication dated 17.07.2012, had advised the father of petitioner No. 1 that another ward of the family could be considered for appointment under the land-loser quota. Accordingly, the name of petitioner No. 1 was forwarded for consideration.

However, despite the representation dated 28.03.2018 and the subsequent submission of requisite documents, her case was not finalised.

5. With respect to petitioner No. 2, it is pleaded that the land belonging to his father was acquired in the year 1999–2000 and that his father's name figured at Serial No. 76 in a selection list published in the newspaper Srinagar Times. The petitioners contend that his father could not join service on account of being illiterate and overage, whereafter the documents of petitioner No. 2 were submitted for consideration under the land-loser quota. The respondents, however, dispute the assertion that the father's case had earlier been received for appointment and state that the case of petitioner No. 2 was received in the year 2023, nearly 23 years after the acquisition of the land.

6. The petitioners further rely upon a communication dated 03.07.2024, which, according to them, reflects that 29 cases of land losers were under process in the Ferozepur Division. On the strength of the aforesaid facts, they allege arbitrary and discriminatory treatment at the hands of the respondents, particularly when, according to them, similarly situated persons have been provided employment.

Submissions on Behalf of the Petitioners

7. Learned counsel appearing for the petitioners submits that the respondents, having acquired the land belonging to the petitioners' families and having initiated the process for their consideration under the then-prevailing land-loser policy, cannot arbitrarily decline to take the claims to their logical conclusion. It is contended that the case of petitioner No. 1 is not an

independent or belated claim, inasmuch as her brother had already been considered for appointment and, upon his medical disqualification, the respondents themselves had advised the family to nominate another ward for consideration.

8. It is further submitted that petitioner No. 1's father acted upon the aforesaid communication and forwarded her name for appointment. The subsequent receipt of her case in the year 2023, according to learned counsel, cannot by itself defeat the claim when the process originated under the earlier policy and the delay is attributable to the manner in which the respondents dealt with the matter.

9. With regard to petitioner No. 2, learned counsel submits that the land was acquired in 1999–2000 and that the claim is supported by the documents relied upon in the writ petition, including the newspaper publication allegedly reflecting the name of his father in the selection list. It is argued that the respondents' denial of the earlier receipt of the father's case requires examination of the relevant departmental records.

10. Learned counsel further submits that the respondents have extended the benefit of employment to other similarly situated land losers, whereas the petitioners have been denied similar treatment without any justifiable reason. Such differential treatment, it is contended, is arbitrary and violative of Article 14 of the Constitution of India.

11. It is also urged that the withdrawal of the policy in 2019 cannot be applied mechanically to defeat claims which had already been initiated or were pending consideration under the earlier policy. The respondents, at the very

least, were required to examine the status of the petitioners' claims in the light of the applicable policy and the relevant transitional instructions before rejecting them.

12. On the question of maintainability, learned counsel submits that the existence of an alternative remedy does not constitute an absolute bar to the exercise of jurisdiction under Article 226, particularly where arbitrary State action and violation of constitutional guarantees are alleged. A prayer is, accordingly, made for allowing the writ petition and directing the respondents to issue engagement orders in favour of the petitioners or, in the alternative, to consider their claims in accordance with law.

Submissions on Behalf of the Respondents

13. Per contra, learned counsel appearing for the respondents submits that the writ petition is misconceived and that the petitioners have failed to establish any enforceable right to appointment under the land-loser quota. It is contended that the policy under which such appointments were earlier considered was withdrawn by the Railway Board in 2019 (withdrawn policy hereinafter) and that the subsequent policy provides for a lump-sum payment of ₹5 lakh to the affected family.

14. With regard to petitioner No. 1, learned counsel submits that her brother was declared medically unfit for all categories on 28.10.2009 and that, even upon constitution of a fresh medical board pursuant to the order of the learned Sub-Judge, Budgam, he was again found unfit on 14.02.2018. It is argued that no appointment could, therefore, be offered to him. The case of petitioner No. 1, according to the respondents, was received only in 2023,

after the withdrawal of the relevant policy, and consequently cannot be considered for appointment thereunder.

15. As regards petitioner No. 2, learned counsel submits that the land belonging to his father was acquired in 1999–2000, whereas the case of petitioner No. 2 was received in 2023. The claim, it is contended, has been raised after an inordinate delay of approximately 23 years. The respondents further dispute the assertion that the father's case had earlier been received for appointment under the land-loser quota.

16. Learned counsel denies the allegations of arbitrariness and discrimination and submits that the mere fact that other persons may have been appointed under the earlier policy does not confer upon the petitioners an indefeasible right to appointment. It is argued that public employment can be claimed only in accordance with the applicable policy and the eligibility conditions prescribed thereunder.

17. It is further contended that the writ petition raises disputed questions of fact which cannot appropriately be adjudicated in summary writ proceedings. Learned counsel also raises an objection to the maintainability of the petition, submitting that the dispute pertains to a Central Government establishment and that the petitioners ought to have approached the Central Administrative Tribunal. On these grounds, dismissal of the writ petition is sought, with a further prayer that, in the alternative, the matter be transferred to the competent Tribunal.

Legal Analysis

18. Heard learned counsel for the parties and perused the material on record.

19. The controversy involved in the present writ petition centres around the claim of the petitioners for appointment under the land-loser quota, notwithstanding the withdrawal of the policy governing such appointments by the Railway Board in the year 2019. The petitioners seek a direction commanding the respondents to issue formal engagement orders in their favour, principally on the ground that their families' land was acquired for a public purpose and that similarly situated persons have been provided employment.

20. At the outset, it is required to be observed that the acquisition of land by the State or its instrumentalities, by itself, does not confer upon the landowner or any member of the affected family an indefeasible right to public employment. The entitlement to appointment, if any, must be traced to the governing policy or statutory framework and is subject to the conditions stipulated therein. A writ of mandamus can be issued only where the petitioner establishes a subsisting legal right corresponding to a public duty enforceable against the respondent. In the absence of such a right, a direction commanding appointment cannot be sustained in law.

21. In the present case, the respondents have specifically pleaded that the Railway Board withdrew the policy providing for appointment under the land-loser quota in 2019 and that, under the revised arrangement, a lump-sum payment of Rs. 5 lakh was contemplated for the affected family. The petitioners, while disputing the applicability of the withdrawal to their

claims, have not, on the material presently set out, demonstrated that the governing instructions conferred upon them a vested right to appointment which had crystallised before the policy was withdrawn. The mere submission of a representation, forwarding of a name, or pendency of a claim does notcreate an indefeasible right to appointment under a policy that has subsequently ceased to operate. The decisive consideration is whether the applicable instructions preserved pending claims or otherwise entitled the petitioners to consideration under the earlier policy. No such enforceable entitlement has been established in the present proceedings.

22. So far as petitioner No. 1 is concerned, the record, as pleaded by the respondents, indicates that her brother was initially screened for the post of Trackman but was declared medically unfit for all categories upon medical examination on 28.10.2009. Even after the constitution of a fresh medical board pursuant to the order dated 20.09.2017 passed by the learned Sub-Judge, Budgam, he was again declared unfit on 14.02.2018. Thus, the claim of her brother did not culminate in appointment owing to his medical disqualification.

23. The petitioner's rely upon the communication dated 17.07.2012, stated to have advised the father of petitioner No. 1 to nominate another ward for consideration. However, such communication, in the absence of proof that it constituted an unconditional and binding assurance of appointment or that the subsequent claim was protected under the applicable policy, cannot be construed as conferring an automatic right to engagement upon petitioner No. 1. The forwarding of her name and the subsequent receipt of her case in 2023 cannot, by themselves, override the eligibility conditions or the policy

instructions governing appointment. No material has been shown from which a legally enforceable obligation to appoint petitioner No. 1 can be deduced.

24. Insofar as petitioner No. 2 is concerned, the respondents have stated that the land belonging to his father was acquired in the year 1999–2000, whereas the case of petitioner No. 2 was received by the department only in 2023. The petitioners have not placed on record any conclusive departmental order establishing that petitioner No. 2, or his father, had acquired an enforceable right to appointment under the earlier policy. The reliance placed upon a newspaper publication allegedly containing the name of petitioner No. 2's father does not, by itself, establish that a final appointment order had been issued in his favour or that petitioner No. 2 subsequently became entitled to appointment as his substitute. The assertion that the father could not join service on account of being illiterate and overage further requires proof of the precise nature and status of the alleged selection.

25. Even assuming that the land was acquired in 1999–2000 and that the petitioners' family subsequently pursued the claim, the extraordinary jurisdiction of this Court cannot be invoked to secure public employment merely on the basis of a claim arising out of a long-past acquisition, particularly when the petitioners have failed to establish a subsisting right under the applicable policy. The delay in approaching the department is a relevant consideration, especially where the claim is sought to be enforced after the policy governing such appointments has been withdrawn. The petitioners have not established any sufficient legal basis for directing the respondents to grant them appointment notwithstanding the intervening change in policy.

26. The contention regarding discriminatory treatment also does not merit acceptance. The petitioners have alleged that other similarly situated land losers were provided employment; however, a general assertion of parity, unsupported by sufficient particulars establishing that the cases relied upon are identical in material respects and are governed by the same applicable instructions, cannot furnish a basis for issuing a writ of mandamus. The principle of equality enshrined under Article 14 of the Constitution mandates fair and non-arbitrary State action; it does not, however, confer a right to claim a benefit contrary to the governing policy merely because such benefit may have been extended to others. The petitioners were, therefore, required to establish not only the alleged differential treatment but also their own entitlement under the relevant policy. That essential requirement remains unfulfilled.

27. The communication dated 03.07.2024, relied upon by the petitioners, which allegedly records 29 cases under process in the Ferozepur Division, does not, by itself, establish that the petitioners' claims were approved or that the respondents were under a subsisting legal obligation to issue engagement orders in their favour. The mere pendency of cases or their inclusion in a list of matters under process cannot be equated with final selection or conferment of a right to appointment. In the absence of material demonstrating that the petitioners' cases were covered by an applicable saving or transitional provision under the withdrawn policy, the said communication cannot sustain the relief sought.

28. This Court is of the considered view that there has been an interlude of decades since the land acquisition took place, but the petitioners have failed

before numerous forums to establish their right to employment under the withdrawn policy due to numerous reasons, including but not limited to lack of basic qualification andmedical fitness. The petitioners having already failed to establish their right to employment before competent authorities when the policy was in vogue are now just flogging a dead horse by filing the instant petition seeking employment, which can't be allowed.

29. It is also pertinent to note that the petitioners have sought not merely consideration of their claims but issuance of formal engagement orders, together with retrospective treatment. Such relief cannot be granted in the absence of an established legal entitlement to appointment. A direction for consideration, even where warranted, cannot be converted into a direction to appoint irrespective of the governing policy, eligibility requirements and the legal status of the claim. In the present case, neither petitioner has demonstrated a vested right to appointment, nor has sufficient material been placed on record to establish that the respondents are under a legally enforceable duty to issue engagement orders under the withdrawn policy.

30. This Court is of the considered view that even if it is assumed, for the sake of argument, that the petitioners fulfilled the eligibility criteria prescribed under the withdrawn policy, the same would not, by itself, vest in them any right to claim appointment thereunder because the withdrawn policy was not consistent with Articles 14 and 16, as the public employment is governed by the mandate of Articles 14 and 16 of the Constitution of India and that every public appointment must be made in accordance with the applicable recruitment rules, through a fair, transparent and open selection process, affording equal opportunity to all eligible candidates to compete on merit.

The Hon'ble Supreme Court has consistently held that public employment cannot be distributed by adopting a mode of appointment which bypasses the constitutional scheme of equal opportunity.

31. Even though the withdrawn policy is not in vogue now and this Court is not dealing with its constitutionality test in the instant case, however, when tested on the aforesaid touchstone, the erstwhile policy does not withstand constitutional scrutiny. The policy contemplated grant of employment to landowners merely in lieu of acquisition of their land, without providing for any open selection or competitive process. In effect, it carved out a separate avenue for entry into public employment, divorced from the prescribed recruitment mechanism and without affording other eligible candidates an opportunity to compete for the posts. The acquisition of land, howsoever genuine the claim for compensation may be, cannot furnish an independent basis for appointment to a public post in disregard of the constitutional requirements governing public employment. The policy, to the extent it contemplated such appointments without adherence to the principles of Articles 14 and 16, was therefore constitutionally unsustainable and could not have been enforced in derogation of the applicable recruitment rules.

32. Once the policy itself is found to be inconsistent with the constitutional scheme, the petitioners cannot derive any enforceable right merely on the basis of their alleged eligibility thereunder. The subsequent withdrawal of the policy, therefore, leaves no basis for the petitioners to claim appointment under its provisions. In any event, even during the subsistence of the policy, no appointment could have been claimed as a matter of right by relying upon a mechanism which did not conform to the constitutional requirements of equality of opportunity in public employment.

33. Accordingly, the petitioners cannot seek enforcement of the withdrawn policy or claim a direction for their appointment on the strength of an eligibility which, even if assumed to exist, does not translate into a legally enforceable right to public employment.

34. The Hon'ble Supreme Court of India has, in a catena of judgments, consistently deprecated the practice of making appointments in violation of the constitutional mandates enshrined under Articles 14 and 16 of the Constitution of India. The constitutional scheme governing public employment mandates that all appointments to public posts be made in a fair, transparent, and non-arbitrary manner, ensuring equal opportunity to all eligible and similarly situated candidates. Any appointment made dehors the applicable recruitment rules, without following the prescribed procedure, or by granting undue preference to a select few, undermines the fundamental principles of equality before the law and equality of opportunity in matters of public employment.

35. The Hon'ble Apex Court has repeatedly emphasised that public employment cannot be treated as a matter of private discretion or favouritism, but must be governed by the rule of law, merit, and fairness. Accordingly, any appointment made in disregard of the constitutional guarantees under Articles 14 and 16 is liable to be scrutinised in accordance with law, as such practices strike at the very foundation of a fair and equitable public employment system.

36. The Hon'ble Supreme court in **State of Karnataka v. Umadevi (2) reported as (2006) 4 SCC 1** at page 36 held as under:

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.....the High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

37. Furthermore, Hon'ble Supreme Court in**State of Orissa v. Mamata Mohanty reported as (2011) 3 SCC 436**held as under:

"35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : AIR 1992 SC 789] , State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130] , Excise Supdt. v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420] , Arun Tewari v. Zila Mansavi Shikshak Sangh [(1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331] , Binod Kumar Gupta v. Ram Ashray Mahoto [(2005) 4 SCC 209 : 2005 SCC (L&S) 501 : AIR 2005 SC 2103] , National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319] , Telecom District Manager v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] , State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and State of M.P. v. Mohd. Abrahim [(2009) 15 SCC 214 : (2010) 1 SCC (L&S) 508] .)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is

made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

38. A conjoint reading of the aforesaid judgments makes it abundantly clear that adherence to the constitutional mandate of equality enshrined under Articles 14 and 16 of the Constitution of India is an indispensable prerequisite for appointments to public posts. The Hon'ble Supreme Court has unequivocally held that every public appointment must be made in accordance with the applicable recruitment rules and the constitutional scheme of fair, transparent, and open competition, affording all eligible candidates an equal opportunity to compete on merit. Any appointment made without inviting applications through an appropriate public advertisement, or by circumventing the prescribed recruitment procedure, is violative of the aforesaid constitutional provisions and cannot be legitimised merely on account of the appointee's continuance in service. The law, therefore, does not countenance appointments made through arbitrary or backdoor methods, as the same deprive other eligible candidates of their fundamental right to equal consideration for public employment.

39. Having regard to the judgments supra, this Court finds that the petitioners have

failed to establish, before the competent authorities or before this Court, any subsisting legal entitlement to appointment under the erstwhile land-loser policy. Neither the alleged consideration of their claims at an earlier stage nor the assertion that other similarly situated persons were appointed is sufficient to establish an enforceable right in the absence of cogent material demonstrating that their cases were covered by a subsisting policy or a valid saving provision. A claim to public employment cannot be kept alive indefinitely merely on the strength of a past policy, particularly when the claimants have failed to establish their entitlement under the applicable framework. To grant the relief sought in such circumstances would amount to elevating an unsubstantiated claim into an enforceable right to public employment, at the expense of the constitutional requirement of fairness and equal opportunity.

Conclusion

40. For the foregoing reasons, this Court finds that the petitioners have failed to establish an enforceable right to appointment under the land-loser quota or a corresponding public duty on the part of the respondents warranting issuance of a writ of mandamus. The allegations of arbitrariness and discrimination, in the absence of sufficient material establishing an actionable violation of Article 14, do not warrant the relief sought. The petitioners have, therefore, failed to make out a case for interference under Article 226 of the Constitution of India.

41. Consequently, the writ petition which is devoid of any merit and deserves dismissal and the same is accordingly dismissed along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
30.10.2026
Mubashir

i. Whether the order is speaking: Yes
ii. Whether the order is reportable: Yes/No

HIGH COURT OF JAMMU & KASHMIR AND LADAKH