Serial No.29
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on : 03.11.2026
Pronounced on : 12 .11.2026
Whether the operative part or full judgment is pronounced: Full

WP(C) No. 251/2026
CM No. 635/2026.

MUDASIR BASHIR. …Appellant/Petitioner(s)

Through: Mr. Shariq Reyaz Jan, Advocate with
Ms. Humaira Sajad, Advocate.

Vs.

HON'BLE HIGH COURT OF J AND K AND OTHERS. ...Respondent(s)

Through: Mr. Syed Faisal Qadri, Sr. Advocate with
Mr. Mir Mohsin Abbas, Advocate for R1-2.
Ms. Farhat Riyaz, Advocate vice
Mr. Shah Amir, Advocate for R5.

CORAM:
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER
12.11.2026

Sanjeev Kumar 'J':

01. The petitioner is a Civil Judge (Junior Division) and is aggrieved by the rejection of his representation dated 16th of February, 2024, seeking fixation of seniority in the cadre of Civil Judge (Junior Division) as per the merit obtained by him in the selection process. The petitioner also seeks a writ of mandamus commanding respondents 1 and 2 to redraw the seniority list and place him over and above respondents 6 to 23 (private respondents).

02. Before we advert to the grounds of challenge pleaded and urged in the petition, we deem it appropriate to give a brief factual background leading to the filing of this petition.

03. Vide Advertisement Notification No. PSC/Exam/2018/39 dated 30.05.2018, the Jammu and Kashmir Public Service Commission (PSC) invited applications for filling up 42 posts of Civil Judge (Junior Division) in the Department of Law, Justice and Parliamentary Affairs. Out of the said 42 notified posts, 24 posts were earmarked for the open merit / general category, whereas the remaining 18 posts were reserved for various reserved categories.

04. The petitioner, along with other eligible candidates, participated in the said examination as a general category candidate and, upon culmination of the selection process, figured at serial number 24 in the order of merit in the result declared by the PSC on 22nd of August, 2019. The merit of the petitioner was tied with that of one Ms. Uzma Amin, who was the last candidate selected under the general category. The petitioner was not selected and offered appointment on the ground that the tie between him and Ms. Uzma Amin was broken by applying Rule 51-A of the Jammu and Kashmir Public Service Commission (Conduct of Examinations) Rules, 2005 (the Rules of 2005), and on account of the petitioner having secured lesser points in the viva-voce as compared to the said Uzma Amin.

05. Feeling aggrieved, the petitioner filed SWP No. 3898 of 2019 before this Court challenging, *inter alia*, the vires of Rule 51-A of the Rules of 2005, as well as the consequential action of the PSC in giving precedence to Ms. Uzma Amin over the petitioner.

06. During the pendency of the aforesaid writ petition, one Nikita Mahajan, a general category candidate figuring at serial number 14 of the select list prepared vide Government Order dated 20th of November, 2019, opted not to join the service, resulting in a vacancy of Civil Judge (Junior Division) in the open merit category becoming available to be filled up by the candidate ranking at serial number 1 in the waiting list.

07. In view of the aforesaid development, SWP No. 3898 of 2019 was disposed of by this Court vide order dated 18th of February, 2021, directing the Department of Law to write a formal communication to the PSC within a period of two weeks for forwarding the name of the petitioner, who was next in order of merit, with its recommendations to appoint him against the post that had fallen vacant due to the non-joining of Nikita Mahajan. A further direction was issued to the Public Service Commission to arrange the medical test of the petitioner as envisaged under the recruitment rules and, if found fit, to make recommendations to the Department of Law for his appointment.

08. In compliance with the directions passed by this Court, the selection of the petitioner was ultimately approved by the Government vide Government Order No. 3474-JK(LD) of 2021 dated 20th of May, 2021. This was followed by his order of temporary appointment as Civil Judge (Junior Division) in terms of Government Order No. 4768-JK(LD) of 2021 dated 11th of October, 2021. The petitioner was thus appointed.

09. He, however, raised a grievance in terms of his representation dated 16th of February, 2024, addressed to the Registrar General of this Court, claiming seniority on the basis of the merit obtained by him in the PSC selection and seeking to be placed over and above the private respondents, who were selected in different reserved categories but had secured lower merit than him. The representation was considered by the Administrative Committee and was found not tenable in law. The matter was thereafter placed before the Full Court, which, in its meeting held on 6th of June, 2025, approved the decision of the Administrative Committee taken on 10th of December, 2024. Consequently, the claim of the petitioner for fixing his seniority in the cadre of Civil Judge (Junior Division) over and above the private respondents was rejected vide impugned order dated 7th of June, 2025.

10. The impugned rejection order is challenged and directions prayed for are claimed on the ground that the respondents

failed to consider that the petitioner was part of the selection process initiated vide notification dated 30th of May, 2018. It is contended that in terms of Rule 24(1)(b) of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 (the Rules of 1956) read with Rules 39 and 42 of the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967 (the Rules of 1967), the petitioner is entitled to be placed in the seniority list of Civil Judge (Junior Division) strictly as per the merit obtained by him in the said selection.

11. It is argued that since the petitioner's merit points are admittedly higher than those of the private respondents who made it to the select list under reserved categories, he is required to be placed senior to all the private respondents.

12. Having heard the learned counsel for the parties and perused the material on record, the questions that arise for determination in this petition can be framed as under:

(a) Whether a candidate appointed against a vacancy that accrues on account of the non-joining of a selected/appointed candidate can claim seniority from a date anterior to his actual appointment?

(b) Whether a candidate appointed by the operation of a waiting list can claim to have been appointed along with the candidates appointed on the basis of the final select list issued by the selecting body, and is consequently entitled to his/her placement in the

seniority list along with the candidates appointed pursuant to the final selection on the strength of the merit obtained in such selection?

13. Before we proceed further, we need to note that the recruitment to the post of Civil Judge (Junior Division) is governed by the Rules of 1967. Rule 39 of the Rules of 1967, upon which strong reliance has been placed by the petitioner, pertains to the preparation of the final list and reads as under:

> *"39.* ***Final list:*** *The list of selected candidates, after it is approved, shall be published by the Government in the Government Gazette, and the copy thereof shall be sent to the Court along with the waiting list, if any, furnished by the Commission for record in their office."*

14. A plain reading of Rule 39 indicates that the recruiting agency, the PSC, in the instant case, is obliged to prepare a select list which, upon approval by the Government, is to be published in the Government Gazette. A copy of this approved select list, along with the waiting list, if any, is required to be sent to the High Court to serve as a reservoir for making appointments against the available vacancies.

15. It is thus not in dispute that the petitioner did not figure in the final select list of candidates approved and published by

the Government in the Government Gazette. He came to be selected and recommended for appointment only upon a post of Civil Judge (Junior Division) becoming available due to the non-joining of a selected candidate, namely Ms. Nikita Mahajan. The selection and appointment of the petitioner is, therefore, admittedly against a post which fell vacant subsequent to the conclusion of the selection process and the consequent appointment of candidates selected thereunder. For this reason, while the final select list was operated and the private respondents were appointed on 1st of June, 2021, but the petitioner was appointed only on 11th of October, 2021.

16. It is in the background of these facts, when we consider the grievance of the petitioner for fixation of seniority over and above the private respondents we find that the answer to the submissions made by the learned counsel for the petitioner is found in Rule 24 of the Rules of 1956 itself, which is set out 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 is 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."

17. From a reading of sub-rule (1) of Rule 24, it is abundantly clear that the seniority of a person has reference to the service, class, category, or grade in which the question arises, and such seniority is required to be determined by the date of his first appointment to such service, class, category, or grade, as the case may be. The expression "date of first appointment" occurring in sub-rule (1) of Rule 24 has been defined in the interpretation clause appended thereto, which prescribes that the words "date of first appointment" mean the date of first substantive appointment or the date of first appointment on probation against a clear vacancy.

18. In the instant case, there is no dispute that the petitioner came to be appointed only on 11th of October, 2021, against a clear vacancy that became available subsequent to the selection and appointment of the private respondents due to the non-joining of one of the selected candidates in the general category, namely Nikita Mahajan. The date of first appointment of the petitioner, for the purposes of sub-rule (1) of Rule 24, is 11th of October, 2021, and the same cannot be pushed back to 1st of June, 2021, when the private respondents, along with other general category candidates, were appointed. The petitioner had not even entered the service when the private respondents were deputed to undergo training in the J&K Judicial Academy.

19. Strong reliance was placed by the learned counsel for the petitioner on clause (b) of the proviso appended to sub-rule (1) of Rule 24 of the Rules of 1956. Needless to say, the proviso is attracted only in a case where there is a dispute regarding the *inter se* seniority of two or more persons appointed to the same service, class, category, or grade simultaneously. Direct recruits save for those who fail to join duty when vacancies are offered have their seniority determined in the order of merit secured at the competitive examination, or on the basis of merit, ability, and physical fitness where no examination is conducted. Clause (b) is therefore attracted only when the issue concerns the *inter se* seniority of persons appointed to the service simultaneously.

20. In the present case, the petitioner and the private respondents were neither appointed together nor simultaneously. The date of first appointment vis-à-vis the petitioner is the date on which he was appointed against the vacancy resulting from the non-joining of Ms. Nikita Mahajan. The final select list, in which the petitioner did not figure, stood exhausted and operated upon, pursuant to which the selection of the private respondents was approved and followed by their appointment.

21. Given that the dates of initial appointment of the petitioner and the private respondents were different meaning thereby that they were not appointed simultaneously, the proviso to

sub-rule (1) of Rule 24 was not attracted. Sub-rule (1) of Rule 24, read with the definition of "date of first appointment" in the interpretation clause, would have govern the *inter se* seniority between the petitioner and the private respondents.

22. That apart, having been appointed on 11th of October, 2021, the petitioner cannot claim seniority alongside the private respondents who were appointed on 1st of June, 2021, when he had not even been born in the cadre.

23. To sum up, the right to be considered for appointment as Civil Judge (Junior Division) accrued to the petitioner only when a notified vacancy became available due to the non-joining of a selected candidate in the general category, namely Ms. Nikita Mahajan. Had this post not fallen vacant, the petitioner would not have been selected or appointed at all, whereas the selection and appointment of the private respondents would have remained undisturbed.

24. Viewed thus, the plea of the petitioner that he should rank senior to the private respondents by virtue of his higher merit in the selection process is legally unsustainable. His date of initial appointment cannot be preponed to the date of appointment of the private respondents, as on that date no vacancy in the cadre of Civil Judge (Junior Division) was available against which he could have been appointed.

25. For the foregoing reasons, we find no merit in this petition; the same is accordingly ***dismissed***.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
12.11.2026
"Shaista-PS"

Whether the Judgment is Speaking *Yes/No*
Whether the Judgment is Reportable *Yes/No*

HIGH COURT
JAMMU & KASHMIR AND LADAKH