

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CJ Court

Case: **WP(C) PIL No. 43 of 2019**

c/w

WP(C) No. 4330 of 2019

WP(C) No. 4391 of 2019

WP(C) No. 4563 of 2019

Amit Pathania and another.

...Petitioner(s)/Appellant(s)

Through: Sh. A. P. Singh, Advocate in
WP(C)PIL No. 43/2019.
Sh. Jagpaul Singh, Advocate in
WP(C) No. 4330/2019
Sh. M. K. Bhardwaj, Sr. Advocate
with Sh. Rahul Raina, Advocate in
WP(C) No. 4391/2019
Sh. S. S. Ahmed, Advocate in
WP(C) No. 4563/2019

v/s

Union of India and others.

.... Respondent(s)

Through: Sh. Vishal Sharma, ASGI for
respondent no.1
Sh. Raman Sharma, AAG for
respondent nos. 2 to 4

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE

ORDER

01. Heard Sh. M. K. Bhardwaj, Sr. Advocate along with M/s S. S. Ahmed A. P. Singh, Jagpaul Singh, Rahul Raina, Advocates for the petitioners and Sh. Vishal Sharma, learned Assistant Solicitor General of India and Sh. Raman Sharma, learned Additional Advocate General for respondents.
02. This petition in public interest seeks to challenge the Government Order No. 1104-Home of 2019 dated 30.10.2019 whereunder a separate prosecution

Wing known as '*J&K Prosecution Service*' has been created pursuant to the directions of Supreme Court in the case *S. B. Shahane and others vs. State of Maharashtra (AIR 1995 SC 1628)*. The contention of learned counsel for the petitioners is that the aforesaid service so created by the notification consists of members of J&K Police (Gazetted) service (Prosecution wing) and Prosecuting officers (Non-Gazetted) as its members and these persons are not eligible for appointment as Prosecutors in view of Section 24(7) of Code of Criminal Procedure which clearly provides that a person is eligible for appointment as Public Prosecutor /Additional Public Prosecutor only if he has been in practice as an Advocate for not less than seven years.

03. Sh. Raman Sharma, learned counsel appearing for respondents has drawn the attention of the court to sub section 9 of Section 24 and submits that in view of the aforesaid deeming clause a person who had been in service as Public Prosecutor or Additional Public Prosecutor or Assistant Public Prosecutor shall be deemed to be in practice as an Advocate and, therefore, the Police Officers who were working as Prosecuting Officers with a Degree of Law would be covered and eligible for appointment.

04. Learned counsel for the petitioners at this stage submits that *J&K Prosecution Service Recruitment Rules, 2020* in Schedule II provide for appointment of Prosecuting Officers by direct recruitment from amongst the persons possessing Bachelor of Law (LLB) Degree of a University established by Law. The said Rule completely ignores seven years of practice as stipulated under sub-rule 7 of Section 24 of the Cr.P.C. and as is in conflict with the Code.

05. In view of the aforesaid facts and circumstances, we deem it proper to call for a reply from the respondents.

06. Sh. Raman Sharma, learned Additional Advocate General appearing for respondent nos. 2 to 4 prays for and is allowed a month's further time and no more to file response to the writ petition.

List all the petitions for consideration on 15th March 2021.

(DHIRAJ SINGH THAKUR)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
11.02.2021
Sunita.

