

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

Case No. :- WP(C) No. 1318/2022

CM Nos. 3726/2022 &  
941/2024

c/w

WP(C) No. 1317/2022

CM Nos. 3725/2022,  
1887/2024, 939/2024 &  
1514/2024

WP(C) No. 1323/2022

CM Nos. 3731/2022, 938/2024  
& 1515/2024

WP(C) No. 1392/2022

CM Nos. 1608/2024 &  
3840/2022

WP(C) No. 1399/2022

CM Nos. 3868/2022, 942/2024  
& 957/2024

WP(C) No. 1403/2022 CM

Nos. 3873/2022, 943/2024 &  
958/2024

Shafket Ali and ors.

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

Through: Mr. Wasim Akram, Advocate. vice  
Mr. N.D. Qazi, Advocate in  
WP(C) Nos. 1317/2022, 1318/2022 &  
1323/2022.  
None in WP(C) Nos. 1392/2022,  
1399/2022 & 1403/2022

**Vs**

UT of J&K and ors.

..... Respondent(s)

Through: Mr. Amit Gupta, AAG for  
official respondent in all petitions.

M/S Rahul Sharma, Bhavesh Bhushan  
and Rupali Sharma, Advocates for  
R-5 to 27 in WP(C) No. **1318/2022**.

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

**ORDER**  
**24.04.2024**

1. The instant matters are taken up out of turn at the request of learned counsel for the respondents and it has been conveyed by both the counsel for the

respondents that Mr. N.D. Qazi, arguing counsel for the petitioners in WP(C) Nos. 1318/2022, 1317/2022 & 1323/2022 has been informed by them for taking the instant cases out of turn and in spite of that, he has not appeared, however, his proxy counsel-Mr. Wasim Akram, Advocate has appeared on his behalf in WP(C) Nos. 1318/2022, 1317/2022 & 1323/2022. It has also been brought to the notice of this Court by Mr. Rahul Sharma, learned counsel for the private respondents that he has personally informed Mr. Mazher Ali Khan, Advocate to intimate Mr. Muzaffar Ali Khan, arguing counsel for the petitioners that the instant matters are being taken up out of turn in the post-lunch session, but in spite of that, neither the arguing counsel for the petitioners nor his proxy counsel appeared in WP(C) Nos. 1392/2022, 1399/2022 & 1403/2022.

2. It has been brought to the notice of this Court by the learned counsel for the respondents that the interim directions passed by this Court vide orders dated 16.06.2022 & 24.06.2022 in all the above-stated writ petitions are harshly working against the respondents, therefore, an application bearing CM No. 941/2024, seeking vacation of the interim directions dated 16.06.2022 was filed on behalf of the official respondents. Besides, an application bearing CM No. 1463/2024, seeking impleadment of the applicants has also been filed by Mr. Rahul Sharma, Advocate. The said application was allowed by this Court vide order dated 27.03.2024.

3. Since the issue involved in all the petitions is the same and the Advertisement Notice under challenge is also the same, therefore, this Court is proposed to pass a common order in all the petitions.

4. It is an admitted case of the parties that the petitioners were engaged as Gram Rozgar Sevak (*in short*, “GRS”) on contractual basis for a period of one year under a Scheme viz Mahatma Gandhi National Rural Employment Guarantee Act (*in short*, “MGNREGA”). They are seeking their claim on the basis of a proposed amendment in J&K Rural Development (Sub-ordinate) Service Recruitment Rules, 2007 (*hereinafter referred to as the “Rules of 2007”*), whereby the post of GRS has been proposed to be incorporated in Clause V and Category D as one of the feeding cadre post for promotion to the post of Panchayat Secretary/VLWs.

5. The further case of the petitioners is that an Advertisement Notification No. 03 of 2022 dated 26.05.2022 was issued by the respondent No. 4, advertising 1395 posts of Panchayat Secretary, to be appointed as such by the Rural Development and Panchayati Raj Department. The instant petitions have been filed on behalf of the petitioners on a mere apprehension that if the selection process pursuant to the aforesaid notification is completed and 1395 posts of Panchayat Secretary are filled up, there may not be any vacancy left for GRS, whereto they would be promoted (provided the proposed amendment in the recruitment rules are finally notified and enforced) and in the aforesaid backdrop, the petitioners have filed the instant petitions, *inter-alia*, challenging the said notification with a view to stall the selection process. For the facility of reference, the order dated 16.06.2022 passed in WP(C) Nos. 1318/2022, 1317/2022 & 1323/2022 & orders dated 24.06.2022 passed in WP(C) Nos. 1392/2022, 1399/2022 & 1403/2022, whereby interim directions have been

passed by this Court and also the order dated 27.03.2024, whereby the impleadment of the applicants has been made, read as follows:-

**Order dated 16.06.2022 passed in WP(C) No. 1317/2022**

*“Meanwhile, respondents are directed not to fill up any vacancy of Panchayat Secretary (Level-2) (VLW) in Rural Development Department, District Cadre Kishtwar in terms of Advertisement notification No. 03 of 2022 dated 26.05.2022, unless and until the cases of petitioners are considered for regularization.”*

**Order dated 16.06.2022 passed in WP(C) Nos. 1318/2022**

*“Meanwhile, respondents are directed not to fill up any vacancy of Panchayat Secretary (Level-2) (VLW) in Rural Development Department, District Cadre Doda in terms of Advertisement notification No. 03 of 2022 dated 26.05.2022, unless and until the cases of petitioners are considered for regularization.”*

**Order dated 16.06.2022 passed in WP(C) No. 1323/2022**

*“Meanwhile, respondents are directed not to fill up any vacancy of Panchayat Secretary (Level-2) (VLW) in Rural Development Department, District Cadre Poonch in terms of Advertisement notification No. 03 of 2022 dated 26.05.2022, unless and until the cases of petitioners are considered for regularization.”*

**Order dated 24.06.2022 passed in WP(C) No. 1392/2022**

*The petitioners, 24 in number, have joined together to come up with the present writ petition on account of the shared grievance that they all reckon that as being long serving Gram Rozgar Sahayaks/Sevaks (in short GRSs) under the administrative regime of the Department of Rural Development & Panchayati Raj, Govt., of J&K, their prospect of absorption and encadrement in the main service J&K Rural Development (Subordinate) Service is likely to be frustrated in the face of the impugned Selection Advertisement Notification no. 03 of 2022 dated 26/05/2022 issued by the respondent no. 4, i.e., the J&K Service Selection Board issued for the purpose of direct recruitment to district cadre 1395 number of posts of Panchayat Secretary in 19 districts of UT of J&K under the Department of Rural Development & Panchayati Raj, Govt. of J&K. The petitioners submit that while the Govt. of J&K through its concerned administrative department on one hand is simultaneously seized in the conception and creation of a policy for effecting the absorption and encadrement of the contractually engaged GRSs manning almost all the panchayats through out UT of J&K in the*

*regular service, on the other hand going for direct recruitment through the impugned notification would result in usurping and appropriating the entire pool of the posts of Panchayat Secretary leaving nothing behind for the petitioners to strive for their absorption and encadrement.*

*A perusal of the averments made in the writ petition brings forth a situation that the long and short of the petitioners case is that the working of the petitioners as GRSs at panchayat level in district Poonch is relatable to the MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act, 2005) under which the contractual natured engagement of the petitioners by following the due procedure of selection came into being and which in the long course of time as per their legitimate expectation has given them a quasi permanent employment status only awaiting much expected decision in pipeline at the Govt.'s end which would bring them in the cadre of regular service which would be feeding cadre or even a regular cadre for appointment to the posts of Panchayat Secretary. Annexure VII along with the writ petition comprising of a Communication no. LGS &PS (LG)/ 2020/216 dated 11/06/2020 from the Office of the Principal Secretary to Lieutenant Governor, UT of J&K to the Chief Secretary Govt. of J&K, Govt. Order no. 169 RD & PR of 2018 dated 07/07/2018, Communication No. Estt/19207 dated 14/08/2018 of the Joint Director Rural Development Jammu to the Secretary Department of Rural Development & Panchayati Raj, J&K Govt., Srinagar have been referred to by the learned counsel for the petitioners to lend credence to the submission that there is serious exercise at the Govt. level to regularize the GRSs in regular service but the direct recruitment intended by the impugned notification issued by the respondent no. 4 at the instance of the respondent no. 1 & 2 would be at the cost of their legitimate expectation keeping the status quo going on with respect to their status as GRSs on contractual basis even after investment of the prime time of their life in serving and strengthening the Panchayati Raj institutions by their service.*

*The case set up by the petitioners gives birth to issues of importance. Issue notice to the respondents for the reply cum objections from their respective end.*

*However, taking a balanced view of the facts and circumstances of the case available as on date on the record of the case, this court deems it proper that in the misc. application CM 3868/2022 filed by the petitioners asking for stay of the respondent no. 4 issued selection advertisement notification no. 03/2022 dated 26/05/2022 in so far as district cadre posts of Panchayat Secretary of District Poonch the respondent no. 4 is directed to go ahead with the selection process but the declaration of the final selection list of Poonch District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order from this Court in the present writ petition.*

*It is, thus, ordered accordingly that the respondent no. 4 is at liberty to go ahead with the selection process under the advertisement notification no. 03/2022 dated 26/05/2022 but the declaration of the final selection list of Poonch District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order in the matter from this court.”*

**Order dated 24.06.2022 passed in WP(C) No. 1399/2022**

*The petitioners, 19 in number, have joined together to come up with the present writ petition on account of the shared grievance that they all reckon that as being long serving Gram Rozgar Sahayaks/Sevaks (in short GRSs) under the administrative regime of the Department of Rural Development & Panchayati Raj, Govt., of J&K, their prospect of absorption and encadrement in the main service J&K Rural Development (Subordinate) Service is likely to be frustrated in the face of the impugned Selection Advertisement Notification no. 03 of 2022 dated 26/05/2022 issued by the respondent no. 4, i.e., the J&K Service Selection Board issued for the purpose of direct recruitment to district cadre 1395 number of posts of Panchayat Secretary in 19 districts of UT of J&K under the Department of Rural Development & Panchayati Raj, Govt. of J&K. The petitioners submit that while the Govt. of J&K through its concerned administrative department on one hand is simultaneously seized in the conception and creation of a policy for effecting the absorption and encadrement of the contractually engaged GRSs manning almost all the panchayats through out UT of J&K in the regular service, on the other hand going for direct recruitment through the impugned notification would result in usurping and appropriating the entire pool of the posts of Panchayat Secretary leaving nothing behind for the petitioners to strive for their absorption and encadrement.*

*A perusal of the averments made in the writ petition brings forth a situation that the long and short of the petitioners case is that the working of the petitioners as GRSs at panchayat level in district Uhdampur is relatable to the MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act, 2005) under which the contractual natured engagement of the petitioners by following the due procedure of selection came into being and which in the long course of time as per their legitimate expectation has given them a quasi permanent employment status only awaiting much expected decision in pipeline at the Govt.'s end which would bring them in the cadre of regular service which would be feeding cadre or even a regular cadre for appointment to the posts of Panchayat Secretary. Annexure VII along with the writ petition comprising of a Communication no. LGS &PS (LG)/ 2020/216 dated 11/06/2020 from the Office of the Principal Secretary to Lieutenant Governor, UT of J&K to the Chief Secretary Govt. of J&K, Govt. Order no. 169 RD & PR of 2018 dated 07/07/2018, Communication No. Estt/19207 dated 14/08/2018 of the Joint Director Rural Development Jammu to the Secretary Department of Rural Development & Panchayati Raj, J&K Govt., Srinagar have been referred to by the learned counsel for the petitioners to lend credence to the submission that there is serious exercise at the Govt. level to regularize the GRSs in regular service but the direct recruitment intended by the impugned notification issued by the respondent no. 4 at the instance of the respondent no. 1 & 2 would be at the cost of their legitimate expectation keeping the status quo going on with respect to their status as GRSs on contractual basis even after investment of the prime time of their life in serving and strengthening the Panchayati Raj institutions by their service.*

*The case set up by the petitioners gives birth to issues of importance. Issue notice to the respondents for the reply cum objections from their respective end.*

*However, taking a balanced view of the facts and circumstances of the case available as on date on the record of the case, this court deems it proper that in the misc. application CM 3868/2022 filed by the petitioners asking for stay of the respondent no. 4 issued selection advertisement notification no. 03/2022 dated 26/05/2022 in so far as district cadre posts of Panchayat Secretary of District Udhampur the respondent no. 4 is directed to go ahead with the selection process but the declaration of the final selection list of Udhampur District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order from this Court in the present writ petition.*

*It is, thus, ordered accordingly that the respondent no. 4 is at liberty to go ahead with the selection process under the advertisement notification no. 03/2022 dated 26/05/2022 but the declaration of the final selection list of Udhampur District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order in the matter from this court.”*

**Order dated 24.06.2022 passed in WP(C) No. 1403/2022**

*“The petitioners, 25 in number, have joined together to come up with the present writ petition on account of the shared grievance that they all reckon that as being long serving Gram Rozgar Sahayaks/Sevaks (in short GRSs) under the administrative regime of the Department of Rural Development & Panchayati Raj, Govt., of J&K, their prospect of absorption and encadrement in the main service J&K Rural Development (Subordinate) Service is likely to be frustrated in the face of the impugned Selection Advertisement Notification no. 03 of 2022 dated 26/05/2022 issued by the respondent no. 4, i.e., the J&K Service Selection Board issued for the purpose of direct recruitment to district cadre 1395 number of posts of Panchayat Secretary in 19 districts of UT of J&K under the Department of Rural Development & Panchayati Raj, Govt. of J&K. The petitioners submit that while the Govt. of J&K through its concerned administrative department on one hand is simultaneously seized in the conception and creation of a policy for effecting the absorption and encadrement of the contractually engaged GRSs manning almost all the panchayats through out UT of J&K in the regular service, on the other hand going for direct recruitment through the impugned notification would result in usurping and appropriating the entire pool of the posts of Panchayat Secretary leaving nothing behind for the petitioners to strive for their absorption and encadrement.*

*A perusal of the averments made in the writ petition brings forth a situation that the long and short of the petitioners case is that the working of the petitioners as GRSs at panchayat level in district Samba is relatable to the MGNREGA (Mahatma Gandhi National Rural Employment Guarantee Act, 2005) under which the contractual natured engagement of the petitioners by following the due procedure of selection came into being and which in the long course of time as per their legitimate expectation has given them a quasi permanent employment status only awaiting much expected*

*decision in pipeline at the Govt.'s end which would bring them in the cadre of regular service which would be feeding cadre or even a regular cadre for appointment to the posts of Panchayat Secretary. Annexure VII along with the writ petition comprising of a Communication no. LGS &PS (LG)/ 2020/216 dated 11/06/2020 from the Office of the Principal Secretary to Lieutenant Governor, UT of J&K to the Chief Secretary Govt. of J&K, Govt. Order no. 169 RD & PR of 2018 dated 07/07/2018, Communication No. Estt/19207 dated 14/08/2018 of the Joint Director Rural Development Jammu to the Secretary Department of Rural Development & Panchayati Raj, J&K Govt., Srinagar have been referred to by the learned counsel for the petitioners to lend credence to the submission that there is serious exercise at the Govt. level to regularize the GRSs in regular service but the direct recruitment intended by the impugned notification issued by the respondent no. 4 at the instance of the respondent no. 1 & 2 would be at the cost of their legitimate expectation keeping the status quo going on with respect to their status as GRSs on contractual basis even after investment of the prime time of their life in serving and strengthening the Panchayati Raj institutions by their service.*

*The case set up by the petitioners gives birth to issues of importance. Issue notice to the respondents for the reply cum objections from their respective end.*

*However, taking a balanced view of the facts and circumstances of the case available as on date on the record of the case, this court deems it proper that in the misc. application CM 386812022 filed by the petitioners asking for stay of the respondent no. 4 issued selection advertisement notification no. 03/2022 dated 26/05/2022 in so far as district cadre posts of Panchayat Secretary of District Samba, the respondent no. 4 is directed to go ahead with the selection process but the declaration of the final selection list of Samba District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order from this Court in the present writ petition.*

*It is, thus, ordered accordingly that the respondent no. 4 is at liberty to go ahead with the selection process under the advertisement notification no. 03/2022 dated 26/05/2022 but the declaration of the final selection list of Samba District for recommendation for appointment to the respondent no. 1 shall not be made without further direction/order in the matter from this court.”*

**Order dated 27.03.2024 passed in CM No. 1463/2024 in WP(C) No. 1318/2022**

*“This is an application by the applicants, seeking their impleadment as party respondents in the writ petition. It is submitted that in this petition, the petitioners have, inter-alia, prayed for quashing advertisement Notice No. 03 of 2022 dated 26<sup>th</sup> May, 2022 issued by the respondent No. 4, whereby amongst others, 69 posts of Panchayat Secretary (Level-2) in the Rural Development Department for District Doda have been notified for recruitment. It is submitted that the applicants are the candidates, who have participated in the selection process, in terms of the aforesaid notification, and have been provisionally selected. However, in view of the pendency of the writ petition and the interim order dated 16.06.2022 passed therein,*



*the applicants have not been finally selected and appointed. It is submitted that the applicants are the party aggrieved and, therefore, have locus to contest this petition.*

*The application, for the reasons stated therein, is allowed. The applicants are impleaded as party respondent Nos. 5 to 28. Learned counsel for the applicants shall file fresh memo of parties before the Registry.*

*Objections, if any, by the newly impleaded respondents by the next date fixed in the main petition, i.e., 03.04.2024.”*

6. From a bare perusal of the writ petitions coupled with what has been argued by Mr. Amit Gupta, learned AAG and Mr. Rahul Sharma, learned counsel for the newly impleaded respondents, it can safely be concluded that the writ petitions so far as challenging the advertisement notification are concerned, are premature and based on mere apprehension on part of the petitioners. The petitioners are admittedly the contractual employees, who were engaged under MGNREGA Scheme and whose engagements were co-terminus with the said scheme, have filed the instant petitions on the basis of a proposed draft amendment in the Recruitment Rules, which till date, has not seen the light of the day and has not been accepted by the Government.

7. The law is settled in this regard that the draft rules unless accepted and takes the form of statutory flavor, cannot be relied upon for taking any benefit, particularly, in view of the existence of already applicable statutory rules in place. The record further reveals that in compliance to order dated 16.06.2022 passed by this Court in Writ Petitions bearing WP(C) Nos. 1318/2022, 1317/2022 & 1323/2022, the Department of Rural Development and Panchayati Raj considered the case of the petitioners for regularization and rejected the same by virtue of Government Order No. 225-RD&PR of 2022 dated 02.09.2022.

8. The record further reveals that all the supporting staff (contractual staff) including the petitioners, has been engaged under the Centrally Sponsored Scheme MGNREGA purely on contractual basis and their engagement was temporarily till the end of the contract or the expiry of the scheme, whichever is earlier.

9. Even, on a perusal of the MGNREGA guidelines, it is clearly envisaged that the services of MGNREGA supporting staff are hired purely on contractual basis and there is no provision under law for their permanent absorption in the existing Recruitment Rules, as their contractual engagements shall expire with the expiry of the scheme/period of their contract, whichever is earlier.

10. Even an exercise was carried out by the respondent-department for adjustment of the subordinate staff engaged under the aforesaid scheme in the erstwhile State against the posts of non-gazetted cadre of the department and it was found that the proposal requires amendment in the Rules of 2007. Accordingly, the case was examined and proposal in this regard was taken up with the Finance Department for concurrence as well as with the Law Department, however, the **proposal has not been agreed upon and there is presently no policy with the Government for regularization/absorption of the supporting staff engaged under MGNREGA on contractual basis.**

11. Since the proposal for amendment of the aforesaid rules was not agreed by the department, then the posts of VLWs/MPWs are required to be filled up in accordance with the existing Rules of 2007 issued vide SRO-178

dated 09.05.2007 and the method of recruitment as embodied in the said rules is as under:-

Village Level Worker/Multi Purpose Worker Grade-3050-4910	<p>a. 70% by direct recruitment; and</p> <p>b. 30% by promotion from Class V Categories A, B &amp; C with minimum qualification of matric and five years experiencing in that category.</p> <p>“They will initially be appointed in the pay scale of Rs. 3050-4910 and will be placed in the grade of Rs. 4000-6000 after putting 08 years service”</p>
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**12.** Whereas, Class V Categories A, B & C, as laid down in the aforesaid rules includes Plantation Supervisor/Watcher (Grade-2550-3200), Malies (Grade-2550-3200) and Mirabs (Grade-2550-3200) and there is no provision for regularization/absorption/promotion of the supporting staff engaged under MGNREGA on contractual basis in the aforesaid recruitment rules, as such, the claim of the petitioners against the said posts is baseless, premature and liable to be rejected.

**13.** Admittedly, the petitioners have been engaged under MGNREGA Scheme on contractual basis and not against sanctioned posts of VLWs, which otherwise required to be filled up in accordance with the existing recruitment rules and not as per the draft proposal, which has since been rejected by the Government. The case of the petitioners cannot be considered in violation of the recruitment rules, which are in vogue.

**14.** The fact that the draft rules, on which the reliance has been placed by the petitioners, stood rejected by the competent authority and are *non-est*, is further evident from the publication of new proposed draft amendments in the Rules of 2007 for inviting objections. In the said proposed draft amendments,

the post of Panchayat Secretary (Level-2) has been proposed to be filled up through 100% by way of direct recruitment. The said proposal is reproduced as under:-

Class	Category	Designation	Grade/Pay Level	Minimum Qualification	Proposed method of recruitment
II	I	Panchayat Secretary	Level-2 19900-63200	Graduation from any recognized University	100% by direct recruitment  They will initially be appointed in the pay scale of Rs. 3050-4910 and will be placed in the grade of Rs. 4000-6000 after putting 08 years service.

**15.** Therefore, the entire basis of the petitioners' case to the extent of challenging the impugned notification, falls flat and consequently, the interim directions, which have been passed by this Court deserve to be vacated, as the official respondents have finalized the selection and a provisional select list has been issued on 01.02.2024, but due to the rider imposed by this Court, the final select list could not be issued, which has caused grave prejudice to the private respondents. The respondent No 4 has been precluded to proceed further in issuing the final select list in light of the rider imposed by this Court, which is liable to be lifted as per the learned counsel appearing for the official respondents and the newly added respondents.

**16.** Although the interim directions passed by this Court vide orders dated 16.06.2022 & 24.06.2022 are with respect to the posts falling in particular districts, however, in view of the fact that there is a composite select list for all the districts, in which the selection is made on the basis of district preferences, the respondent No. 4 is not proceeding ahead even with respect to those district

posts, in which there was no restraint order. Therefore, the candidates even, who have been selected in District Cadre Jammu are also affected by the pendency of the instant writ petitions and continuance of the interim orders and in the aforesaid backdrop, the affected parties were impleaded as party respondents in the instant writ petition.

17. Since, the interim orders stalling the process of recruitment have adverse impact and have seriously jeopardized the functioning of the department, as has been projected by the learned counsel appearing on behalf of the respondents, this Court, accordingly, is required to consider not only the interest of the parties, but also the **larger interest of services, as also the element of public interest whether to continue the interim orders or to vacate the same by stalling the whole recruitment process, which not only causes injury to the large number of employees, who are deprived of the right of consideration for appointment, but is also antithesis of public interest and adversely affect the service as a whole.**

18. It is beyond any cavil of doubt that before passing an interim order, the Courts should not only consider the **prima-facie case, balance of convenience and irreparable injury**, but also has to consider the affect on public interest, as well. The public interest in the instant cases demands that the process should be continued, thus, an interim order involving public interest in public law cases must receive different considerations.

19. Since the respondents have projected acute shortage of manpower to run the administration and the stalling of selection process is in nobody's interest, therefore, this Court deems it proper to permit the official respondents

to go ahead with the selection process and make appointments, accordingly, which, however, shall be subject to the final outcome of the present proceedings.

20. In the similar facts and circumstances, the Hon'ble Apex Court vide interim order dated 01.05.2023 in case titled, "*Yogesh Kumar Thakur Vs. Guru Ghasidas Sahiya Avam Sanskriti Academy and ors*" modified the interim order on the ground that **the situation cannot be permitted where State does not have a requisite manpower to run the administration and, accordingly, modified the interim order by permitting the State to go ahead with the selection process.** The operative part of the said order reads as follows:-

*"We find that a situation cannot be permitted where the State does not have requisite manpower to run the administration.*

*We, therefore, permit the State to go ahead with the selection process and make appointments and promotions.*

*However, it is made clear that the same shall be subject to the result of the petition.*

*All appointment and promotion orders shall specifically mentions that such appointments and promotions are subject to the final outcome of the present proceedings"*

21. This Court draws support by the law laid down by the Apex Court in case titled, "*Prabhjot Singh Mand and others Vs. Bhagwant Singh and ors.*", reported in (2009) 9 SCC 435", wherein, it has been held that Courts should give due weightage to the public interest while passing interim orders. The relevant extracts of the said judgment are reproduced hereinabove:-

.....  
25. *We need not delve upon the said question in great detail. But it is beyond any cavil of doubt that before passing an interim order, the courts should not only consider prima facie case, balance of convenience, and irreparable injury but also its effect on public interest also. The public interest demands that the process should be continued.*

28. *The Tribunal refused to pass an interim order but observed that any action taken would be subject to ultimate result of the original application. Thus, in a situation of this nature, the High Court should have considered the question as to whether the respondent No. 1 had any prima facie case or is there any balance of convenience in his favour. It is not a case where the*

*dispute is between the private parties. Appointment to the cadre of IAS is a matter of public interest. An interim order involving public interest in public law cases must receive different considerations.”*

22. This Court also draws support by the judgment passed by the Full Bench of the Punjab and Haryana High Court in case titled, “*Sukhdev Singh Sidhu Vs. State of Punjab*”, decided on 21.04.2003, wherein it has been held that the Courts **should not stay the selection process, where the public interest is involved**. For facility of reference, the relevant paras of the said judgment are extracted hereunder:-

- “ .....
28. *In our opinion, before passing any interim order which had the effect of frustrating the process of selection in its entirety, the Tribunal was duty-bound to consider the important issue relating to irreparable injury and public interest and its failure to do so has the effect of vitiating the impugner orders.*
29. *We are further of the view that in such matter, the Tribunal is required to consider not only the interest of the parties but also the larger interest of service as also the element of public interest. An order of the Court or Tribunal stalling the process of recruitment or promotion has adverse impact on the entire cadre. At times, such an order jeopardizes the functioning of the department and affect the morale of the service. Therefore, the Court and the Tribunals should be loath to pass interim orders like the one impugned in these petitions.*
35. *The ratio of the above noted decision is that the Courts and the Tribunals should not stay the process of recruitment/selection because that not only causes injury to a large number of employees who are deprived of the right of consideration for appointment but is also antithesis of public interest and adversely affect service as a whole.”*

23. The law has been settled as naught by the Apex Court in case titled, “*Union of India Th. Govt. of Pondicherry and Anr. Vs. V. Ramakrishnan and others*, reported in (2005) 8 SCC 394” that the draft rules can be acted upon, where there are no rules governing the matter and where the recruitment is governed by the departmental instructions or executive order under Article 162 of the Constitution of India. Thus, it can safely be held that the **draft rules have**

**no statutory force.** It is apt to reproduce the relevant para of the said judgment.

For facility of reference, the same is reproduced hereunder:-

“.....  
 28. *Valid rules made under proviso appended to Article 309 of the Constitution of India operates so long the said rules are not repealed and replaced. The draft rules, therefore, could not form the basis for grant of promotion, when Rules to the contrary is holding the field. It can safely be assumed that the principle in Abraham Jacob (supra), Vimal Kumari (supra) and Gujarat Kisan Mazdoor Panchayat (supra) that draft Rules can be acted upon, will apply where there are no rules governing the matter and where recruitment is governed by departmental instructions or executive orders under Article 162 of the Constitution.*”

24. This Court is fortified by the judgment passed by the Division Bench of this Court in WP(C) No. 1635/2022 in case titled, “*Tanveer Mustafa Vs. Union Territory of J&K and ors.*”, decided on 01.08.2022. For facility of reference, the operative portion of the said judgment is reproduced hereunder:-

“.....  
 11. *One of the decisions cited by the counsel for the petitioner, Union of India & Anr. vs. V. Ramakrishnan & Ors. supra categorically lays down that the draft rules framed during the validity of the existing rules cannot be enforced and made operative. The draft rules herein cannot be enforced and implemented during the operation of the validly framed rules i.e., J&K Academy Rules 2007 which have a statutory flavour inasmuch as they have been framed in the light of the decision of the Supreme Court in the All India Judges case supra.*  
 12. *The aforesaid decision also in unequivocal terms states that the principle in Abraham Jacob & Ors, Vimal Kumari & Gujarat Kishan Mazdoor Panchayat that draft rules can be enforced is applicable only when there are no rules governing the matter and the recruitment is governed by the departmental instructions. This is not the position in the case at hand. The academy has its own J&K Judicial Academy Rules 2007 in place and the recruitment thereto is not being governed by any executive instructions. Therefore, the draft rules which in effect have not been accepted by the Chief Justice and approved by the Full Court has no application whatsoever and that the services of the staff employees of Academy shall continue to be governed by the specific rules in vogue and as amended from time to time.*  
 13. *This apart, even the decision of Vimal Kumari’s case provides that the draft rules cannot be followed if there is no intention to notify them as they do not have the statutory character. The draft rules framed as aforesaid have not yet been approved by the Full Court and, as such, there can be no proposal or intention to notify the same as on date.*”



25. It is very strange that the petitioners instead of participating in the selection process, have filed the instant writ petitions with a view to stall the selection process by way of misrepresentation of the facts and on mere apprehension, as they have based their claim on the draft rules, the proposal of which has already been rejected by the competent authority.

26. That due to the passing of the interim orders in the aforesaid writ petitions, the whole selection process has been stalled and as per the learned counsel appearing for the official respondents, the department is suffering due to dearth of staff and has prayed for vacation of the interim orders. Even otherwise also, this Court is *prima-facie* of the view that the petitioners have no locus to challenge the selection process for direct recruitment, as there is no preferential fundamental right of the petitioners for seeking regularization. Thus, it can safely be concluded that the Jammu and Kashmir Service Selection Board being a creature of the statute, is under an obligation to carry out and finalize the selection process for the advertised posts strictly in accordance with the rules/regulations occupying the field and not as per the draft proposal, which has since been rejected by the competent authority.

27. Thus, after hearing learned counsel for the parties, this Court is of the opinion that no fruitful purpose will be served to extend the interim directions, which are being harshly working against the interests of the candidates, who have since been selected and not being appointed due to the rider imposed by this Court and in the aforesaid backdrop, the interim directions passed by this Court vide orders dated 16.06.2022 & 24.06.2022 in all the

above-stated writ petitions are hereby vacated and the official respondents are directed to finalize the selection process, expeditiously.

28. However, the selection/appointment of the selected candidates shall be subject to the final outcome of the instant writ petitions.

29. Registry is directed to list all these matters on **31.05.2024**.

(Wasim Sadiq Nargal)  
Judge

JAMMU  
24.04.2024  
Ram Krishan

