

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

WP(C) No. 2393/2025

1. UT of Jammu and Kashmir  
through Commissioner/Secretary  
to Govt. Health and Medical  
Education Department, Civil  
Secretariat, Jammu-180001.
2. Director, Health Service,  
Jammu-180001.
3. Chief Medical Officer, Doda.
4. Chairman J & K Service  
Selection Board, Jammu.
5. Secretary, J & K Service  
Selection Board, Jammu.

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

Through: Mr. Raman Sharma, AAG

vs

Syed Touseef Ikhlaq, Age 26 years,  
S/o Syed Ikhlaq Hussain  
R/o Khalihand Tehsil and District  
Doda.

..... Respondent(s)

Through: Mr. N.D. Qazi, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**  
**HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER(ORAL)**

**01.09.2025**

**Sanjeev Kumar J**

1. This petition, under Article 226 of the Constitution of India, filed by the Union Territory of J & K and four others challenges an order and judgment dated 13.06.2024, passed by the Central Administrative Tribunal, Jammu Bench, Jammu (“**the Tribunal**”) in TA No. 568/2020 (SWP No. 2297/2015) titled “Syed Touseef

Ikhlaq vs. State of J & K and Ors.” whereby the Tribunal has allowed the OA of the respondent and has also directed the petitioners to appoint him to the post of Dental Assistant/Junior Dental Technician notified for selection vide advertisement notice no. 10 of 2013 dated 10.10.2013 under open merit category. He has been given the benefit of appointment notionally from the date other selected candidates in reference to the aforesaid notification came to be appointed.

2. Briefly put, the relevant facts leading to the filing of this petition are: -

- a. That vide advertisement notification no. 10 of 2013 dated 10.10.2013, the petitioner-Board invited applications from the eligible permanent residents of Jammu and Kashmir for making selection to various posts which included 11 posts of Dental Assistant/Junior Dental Technician in the District Cadre Doda. Out of 11 posts, 5 were earmarked for the open merit category. The respondent possessing requisite qualification applied for the post under open merit category.
- b. Upon conclusion of the select list, the petitioner-Board issued a select list selecting five candidates under the open merit category and placed respondent at serial no. 1 in the wait list of the open merit.

c. The selection of candidate figuring at serial no. 2 in the open merit category was, however, kept withheld for want of certain clarification.

3. Although, the original writ petition filed by the respondent was directed against the entire select list on numerous grounds including that the selection criteria adopted by the petitioner-Board was illegal and arbitrary.
4. In the writ petition filed before the Court, which was later transferred to the Tribunal, the respondent had also raised issue with regard to shifting of meritorious category candidates to the open merit category, thus, depriving him a place in the select list. However, during the pendency of the petition, it was brought to the notice of the Tribunal that the candidate selected at serial no. 2 was not recommended by the petitioner-Board on the ground that he was lacking eligibility to hold the post and that because of his exclusion from the select list, the respondent was entitled to be put at the bottom of the select list as a fifth candidate in the open merit.
5. As a matter of fact, the candidate figuring at serial no. 2 had challenged his exclusion from select list before the Tribunal, but later withdrew his challenge, realising that he was not likely to succeed.
6. Be that as it may, when it was found by the Tribunal that the candidate figuring at serial no. 2 was erroneously placed in the select list, despite being ineligible, the Tribunal moulded the relief and, accordingly, found the respondent entitled to be placed in the

select list at serial no. 5. It is in these circumstances, the OA filed by the respondent was allowed, not on the grounds originally urged in the writ petition, but taking note of the subsequent development.

7. The impugned judgment is assailed by the petitioners primarily on the following grounds.

- i. That the Tribunal has granted the relief which was not prayed by the respondent in the writ petition.
- ii. That in terms of Office Memorandum no. GAD-MTG0RBIV/35/2022-09-GAD-Part(3) dated 03.08.2023 all posts for which selections had not been finalized and where there was litigation stood withdrawn by the Government and, therefore, no relief could have been granted by the Tribunal.

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal does not suffer from any legal infirmity nor do we find any merit in the submissions made by the learned counsel for the petitioners. It is true that in the writ petition which was filed before this Court and later transferred to the Tribunal, the respondent had prayed for a writ of certiorari for quashing the entire select list of Dental Assistant/Junior Dental Technician in the District Cadre Doda, made in pursuance of advertisement notification no. 10 of 2013 dated 10.10.2013 and the challenge to the select list was on the ground that the petitioner-Board had followed a selection criteria which was illegal and

arbitrary. The respondent had also pleaded in the writ petition that because of illegal shifting of meritorious category candidates to the open, the respondent, which was next in the order of merit and placed in the wait list at serial no. 1, was deprived of selection.

9. Apart from seeking a writ of certiorari, the respondent also prayed for an appropriate final relief, that the Court may deem appropriate in the circumstances of the case.
10. There is no denial of the fact that the candidate who was placed at serial no. 2 of the select list was not recommended by the Board for the reason that he was lacking eligibility to hold the post. It is equally true that the said candidate had approached the Tribunal to challenge his exclusion from the select list, but did not pursue the writ petition having realised that he had no merit to sustain challenge to selection. As a result of this development, it came to fore that respondent no. 2 was wrongly placed in the select list at the cost of the respondent who was denied selection and was placed in the wait list at serial no. 1. When this fact was brought to the notice of the Tribunal, the Tribunal came to the conclusion that the respondent could not make it to the select list only because the petitioner-Board had erroneously selected another candidate who was not eligible to be considered in the selection at all.
11. Having found that the respondent ought to have been in the select list of open merit category at serial no. 5, the petition was allowed and the directions which we have noticed hereinabove were issued by the Tribunal. The plea of the petitioners that the petition of the

respondent could not have been allowed with the directions as have been passed by the Tribunal for the reason that all posts where the selection had not been concluded and where the litigation was pending stood withdrawn vide Office Memorandum dated 03.08.2023 is also without any substance for the following reasons:

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- i. That in the instant case, not only the selection stood finalized, but candidates in the select list also stood appointed prior to issuance of Office Memorandum.
- ii. That pending disposal of the petition filed by the respondent, one post of Dental Assistant/Junior Dental Technician in the District Cadre Doda was kept reserved by the Court by way of an interim order and, therefore, the Office Memorandum could not have taken away that post without violating Court order.

12. For all these reasons, we find no merit in this petition and the same is, accordingly, dismissed. We would, however, like to clarify the operative portion of the impugned judgment by providing as under:

- i. That the respondent shall be deemed to have been selected and placed at serial no. 5 of the select list under open merit category for the post of Dental Assistant/Junior Dental Technician in the District Cadre Doda along with other selected candidates.

- ii. That the select list along with the wait list already stood recommended by the Board and, therefore, there shall be hardly any necessity to make any further or fresh recommendation by the Board.
- iii. That the, selection qua the respondent shall be immediately acted upon and an appropriate order of appointment, subject to completion of requisite formalities, shall be issued by the Department of Health and Medical Education Department within a period of three months from today. The appointment as provided by the Tribunal shall be with effect from the date the candidates in the same select list were appointed, notionally and without any monetary benefits.

(Sanjay Parihar)  
Judge

(Sanjeev Kumar)  
Judge

**Jammu**  
01.09.2025  
Manik

*Whether the order is speaking: yes/no*

*Whether the order is reportable: yes/no*