

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

WP(C) No. 2605/2025

UT of Jammu and Kashmir and others
Petitioners

Through: - Mr.S.S.Nanda Sr. AAG

Vs.

Vikas Chander son of Sh. Ramesh Chander
resident of A-21 Tirath Nagar Talab Tilo, Jammu

...Respondent(s)

Through: - Mr.Gagan Basotra Sr. Advocate with
Ms. Navdeep Kour Advocate

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

JUDGMENT(ORAL)

Caveat No.1798/2025.

With the appearance of learned counsel for the
caveator/respondent, caveat stands discharged.

WP(C) No. 2605/2025

SanjeevKumar, J

1 UT of Jammu and Kashmir and others [“petitioners herein”] are aggrieved of and have challenged an order and judgment dated 18.02.2025 passed by the Central Administrative Tribunal, Jammu Bench [“Tribunal”] in OA No. 1906/2021 titled Vikas Chander v. UT of Jammu and Kashmir and others, whereby the Tribunal has allowed the petition filed by the respondent herein by holding that the petitioners herein faulted by not adhering to the reservation policy and

not appointing the respondent against an unfilled SC category vacancy. The Tribunal has further held that the denial of appointment to the respondent, despite the availability of vacancy in the SC category, violates the principles of equity and fairness in public employment. Accordingly, the Tribunal has directed the petitioners herein to appoint the respondent as Executive Officer in the Urban Local Bodies of Kashmir Division against the unfilled SC category vacancy. And, if no vacancy exists, the respondent be accommodated by creating such a supernumerary post so as to ensure that his seniority and service conditions are not adversely affected. The petitioners are further directed to complete the entire exercise expeditiously, and in any event not later than eight weeks from the date of receipt of the judgment.

2 The impugned judgment is assailed by the petitioners on multiple grounds. However, before adverting to the grounds of challenge urged by Mr. S.S. Nanda, learned Sr. AAG appearing for the petitioners, we deem it appropriate to briefly notice the background facts leading to the present litigation.

3 The Housing and Urban Development Department, vide Advertisement Notification dated 01.09.2015, invited applications for the posts of Executive Officer under various categories including the SC category. The advertisement was for both Jammu and Kashmir Divisions. One vacancy for Jammu and Kashmir Divisions was earned for 'SC' category. The respondent applied for both the Divisions and participated as a candidate under SC category in the computer-based test held on 09.05.2019 at Jammu. Subsequently, respondent No. 3, i.e., the General Administration Department (GAD), issued Notification

dated 08.05.2019 inviting the candidates under the SC category to club their applications for both the Divisions. A public notice dated 09.05.2019 was also issued in the leading newspaper “Daily Excelsior”. The respondent was the only candidate who submitted a clubbing request before the cut-off date of 15.05.2019. In Jammu Division, the respondent could not made grade. Despite being the only eligible candidate for consideration under the SC category in Kashmir Division, the respondent was not selected.

4 Petitioner No. 1 had initially confirmed the eligibility of the respondent through a communication dated 09.06.2020, while respondent No. 3 reaffirmed the same through a communication dated 27.11.2020. However, despite these confirmations, the respondent was not considered for appointment, prompting him to approach the Tribunal through OA No. 510/2021. The Tribunal, vide order dated 23.03.2021, directed respondent No. 1 to consider the respondent’s case for appointment. However, respondent No. 1, vide the order impugned in the OA before the Tribunal, rejected the case of the respondent for appointment to the post of Executive Officer in Urban Local Bodies, Kashmir Division, against the SC category advertised in pursuance of the aforesaid Advertisement Notification. This constrained the respondent to file the present OA challenging the action of the petitioners.

5 The aforesaid OA was contested by the petitioners on multiple grounds. It was submitted before the Tribunal that the post of Executive Officer is a Divisional Cadre post and separate advertisements were issued for the Jammu and Kashmir Divisions. The

selection lists were also prepared separately. While the J&K Services Selection Board (SSB) conducted the written examination, the final selection was made by the Housing and Urban Development Department strictly on the basis of merit and reservation rules. It was further submitted that no waiting list was prepared by the Department and that the selection list expired after one year of its notification. The respondent did not secure sufficient merit in the Jammu Division, thereby failing to make it to selection. It was also contended that the number of posts of Executive Officers was reduced due to the reorganization of the then State of Jammu and Kashmir and creation of Union Territory of Jammu and Kashmir and UT of Ladakh. Although the respondent had applied for both the Divisions and requested clubbing of his applications, yet the J&K SSB did not consider his request and issued an admit card only for the Jammu Division. It was the further stand of the petitioners that the respondent lacked the required merit in the Jammu Division, whereas his request for appointment in the Kashmir Division was untenable. The petitioners further submitted that the General Administration Department (GAD) opined that the selection list had outlived its life and, therefore, could not be acted upon to fill vacancies after its expiry. Consequently, the respondent's claim for appointment under the SC category for the post of Executive Officer was rejected vide Government Order dated 16.11.2021.

6 Having heard learned counsel for the parties and perused the pleadings, the Tribunal allowed the OA filed by the respondent. The Tribunal observed that the respondent, belonging to the SC category,

was entitled to be considered against an unfilled reserved vacancy of SC in Kashmir Division. The failure of the petitioners to consider his appointment against such an unfilled vacancy was contrary to the principles laid down in *Indra Sawhney v. Union of India*, wherein it was held that the intent of reservations is to ensure adequate representation of marginalized groups. The Tribunal further held that the petitioners' contention regarding the absence of a waiting list could not be accepted as a valid ground for denying appointment, particularly when vacancy under the SC category admittedly remained unfilled. The Tribunal also rejected the plea of the petitioners that the reduction in posts consequent upon the reorganization of Jammu and Kashmir justified the denial of appointment, holding that the operation of reservation policy cannot be frustrated on that account and that candidates entitled under the reservation policy cannot be deprived of their rightful appointments. Reliance was also placed upon an earlier order dated 13.07.2022 passed in OA No. 1567/2021, whereby a specific direction had been issued to the petitioners to consider the case of the respondent in light of Rule 14(7) of the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Rules, 2010 (SRO 533), which mandates preparation of a waiting list on the basis of the examination conducted pursuant to the Advertisement Notification dated 01.09.2015. The Tribunal ultimately held that the petitioners failed to adhere to the reservation policy by not appointing the respondent against the unfilled SC category vacancy and accordingly allowed the OA filed by the respondent.

7 The order impugned has been challenged by the petitioners on the ground that the respondent had applied for the post of Executive Officer under SC category in the Urban Local Bodies for both the Jammu and Kashmir Divisions. However, the admit card was issued to him only for the Jammu Division. The respondent had also submitted a request for clubbing of his applications, but the same was not considered by the SSB. The respondent, thus, sat in the written examination conducted in Jammu Division. The name of the respondent did not figure in the merit list for Jammu Division. The selection was purely based on merit of the candidates and no meritorious candidate was left out. This aspect of the matter, according to the petitioners, has not been appreciated by the Tribunal while passing the impugned order and, therefore, the same deserves to be set aside.

8 It is further submitted by the petitioners that it is a settled rule of recruitment that a candidate can apply only for one Divisional Cadre post and no candidate is permitted to apply for both Divisions. The respondent had applied in both Divisions and had submitted a clubbing request, but the same was not considered for the reason that the clubbing option was given only to those candidates who had been issued more than one admit card. In the case of the respondent, since he was a resident of Jammu Division, the admit card was issued to him for Jammu Division only, and therefore, there was no requirement for him to submit a clubbing request. It is for this reason that his request for clubbing was not accepted. However, the Tribunal, without appreciating this material aspect of the matter, passed the impugned

order which, according to the petitioners, is erroneous and without application of mind. On this score alone, it is contended, the impugned order is unsustainable in law and liable to be quashed.

9 Per contra, learned senior counsel appearing for the respondent would submit that the Tribunal has rightly allowed the Original Application filed by the respondent by issuing a direction to the petitioners to appoint the respondent as an 'Executive Officer' in the Urban Local Bodies of Kashmir Division against the vacancy earmarked for the Scheduled Caste (SC) category. It is urged that the Tribunal, after appreciating the pleadings and considering the material placed on record, has arrived at a just and lawful conclusion which does not call for any interference in exercise of writ jurisdiction. It is further submitted that the petitioners had failed to adhere to the rules governing reservation in services, thereby depriving the respondent of his rightful claim. By rectifying this illegality, the Tribunal has only ensured that constitutional guarantees and statutory provisions relating to reservation are given effect to in their true spirit. The learned counsel has, therefore, supported the judgment under challenge in its entirety and prayed for dismissal of the present petition.

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

11 At the outset and in order to appreciate the controversy involved in the present case, it is appropriate to reproduce Rule 13 of the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Rules, 2010, as amended vide SO.1245(E) dated 03.04.2020, which reads as under:

“13. Procedure for Inviting applications by the Board and eligibility for applying to different cadres:

(1) The Board shall advertise all State cadre vacancies referred to it by the requisitioning authority and invite applications for selection to the said posts from the permanent residents of the State and possessing the prescribed qualification, eligibility and experience for such posts.

(2) The divisional offices of the Board shall advertise the Divisional cadre vacancies of the concerned division referred to it by the requisitioning authority and invite applications for selection to the said posts from such permanent residents of the State who are residents of that Division and possess the prescribed qualification, eligibility and experience for such posts.

(3) The district offices of the Board shall advertise the District cadre vacancies of the concerned district referred to it by the requisitioning authority and invite applications for selection to the said posts from such permanent residents of the State who are residents of that District and possess the prescribed qualification, eligibility and experience for such posts.

(4) For purposes of this rule, the permanent resident certificate shall be the conclusive proof of residence of a candidate in a particular District or the Division.

(5) Notwithstanding anything contrary contained in sub-rules (2) and (3), for vacancies reserved for the Scheduled Caste category in any Divisional or District cadre, candidates belonging to that category shall be eligible to apply for the said reserved vacancies irrespective of their residence in the concerned District or Division.

(6) The advertisement notices shall be given wide publicity through [Government Gazette], Employment and Counselling Centres, print and electronic media”.

12 Sub-rule (5) of Rule 13 clearly stipulates that notwithstanding anything contrary contained in sub-rules (2) and (3), for vacancies reserved for the Scheduled Caste category in any Divisional or District cadre, candidates belonging to that category shall be eligible to apply for the said reserved vacancies irrespective of their residence in the concerned District or Division.

13. A plain reading of the aforesaid provision makes it abundantly clear that Scheduled Caste candidates are eligible to apply for reserved vacancies irrespective of their residence in the concerned

District or Division. The respondent, being an SC candidate, was entitled to apply for the post in Kashmir Division despite being a resident of Jammu Division.

14. A Division Bench of this Court in **SWP No. 1753/2018**, titled **Mulakh Raj and others vs. State**, decided on 20.04.2023, has dealt with a similar controversy and settled the issue. A perusal of the judgment aforesaid indicates that this Court, in similar set of circumstances, has held that no citizen can be discriminated against in matters of employment on the basis of residence, in view of the constitutional guarantee under Article 16(2) of the Constitution. It was further held that any prescription of residence requirement for public employment, without a law enacted by the Parliament under Article 16(3), is unconstitutional. The observations of the aforesaid case, being contextually relevant are reproduced hereinbelow.:

“26. From the discussion made and the case law cited above, the legal position is crystal clear. No citizen should be discriminated against for the purpose of employment to any office under the State or Union. The prohibited grounds of discrimination under Article 16(2) of the Constitution of India, inter alia, are religion, race, caste, place of birth and residence. The only exception that is carved out by clause (3) of Article 16 of the Constitution is in relation to requirement as to residence within a State or Union Territory prior to employment or appointment of a candidate to an office under the State or Union Territory or any local or other authority within such State or Union Territory etc. and this exception can be made only by law made by the Parliament prescribing such requirement as to residence. 27 As noted above, the Parliament has not made any such law prescribing any requirement as to residence within a State or Union Territory in regard to any class or classes of employment or appointment under the Union Territory of Jammu and Kashmir. That being the position, neither the Union Territory of Jammu and Kashmir, nor the High Court can prescribe any such requirement as to

residence in regard to any class or classes of employment or appointment under it. Clause 3(A) of the Advertisement Notification (supra), therefore, flies on the face of clauses 1 and 2 of Article 16 of Constitution of India. Clause 3 (A) of the Advertisement Notification impugned in this petition is declared ultra vires the Constitution and, therefore, shall not be given effect to.

28 For the foregoing reasons, we allow this petition and direct respondent No.2 to declare the result of the petitioners and subject them to the process of interview. Since the petitioners, who have participated in the selection process pursuant to the interim directions passed by this Court are less than the posts of Junior Assistant earmarked/reserved for SC category, as such, it is expected that all the petitioners must have qualified the written test. Be that as it may, let the candidature of the petitioners be considered ignoring their ineligibility in terms of clause 3(A) of the Advertisement Notification and the selection process for 18 posts of Junior Assistants earmarked for SC category in Kashmir Division be finalized within a period of two months”.

15 Article 16 of the Constitution of India guarantees equality of opportunity in matters relating to employment or appointment to any office under the State and prohibits discrimination on grounds of religion, race, caste, sex, descent, place of birth or residence, subject to the limited exception under Article 16(3), which vests the Parliament alone with the power to prescribe residence requirements. Apart from the Public Employment (Requirement as to Residence) Act, 1957, no such law has been enacted by the Parliament.

16. The Hon’ble Supreme Court in **Dr. Pradeep Jain and others vs. Union of India, (1984) 3 SCC 654**, while interpreting Article 16(2), has strongly deprecated “sons of the soil” policies adopted by some States prescribing preference based on domicile or residence. The Court emphasized that such preference or restriction, in absence of parliamentary enactment, is constitutionally impermissible.

17. In **Indra Sawhney vs. Union of India**, the Hon'ble Supreme Court has reiterated that the purpose of reservations is to ensure adequate representation of marginalized groups. The Tribunal has rightly relied on the said judgment in holding that the denial of appointment to the respondent against an unfilled SC category vacancy was contrary to settled principles of law.

18. The contention of the petitioners that the respondent did not secure sufficient merit in the Jammu Division and, therefore, was not selected may not be found fault with. However, the respondent had also applied for appointment in the Kashmir Division. The select lists were prepared separately for each Division, and, therefore, the respondent's position in the Jammu Division had no bearing on his eligibility in the Kashmir Division. The other contention regarding reduction of posts on account of reorganization is equally untenable in law. The operation of reservation policy cannot be frustrated on such grounds, and candidates entitled under the reservation policy cannot be deprived of their rightful appointments. Likewise, the plea of the petitioners that the selection list had outlived its life is also not sustainable in view of the fact that the respondent was not claiming preparation or operation of wait list.

19. The plea that non-availability of a waiting list justified denial of appointment to the respondent is equally devoid of substance, for the reason that the claim of the respondent was against unfilled vacancy of Executive Officer under SC category being the only candidate for the said vacancy.

20. For the reasons stated above, we are of the considered view that the writ petition is devoid of merit. The respondent, being an SC candidate, was entitled to be considered for the post in Kashmir Division irrespective of his residence in Jammu Division, in terms of Rule 13(5) of the Rules of 2010. Consequently, the direction of the Tribunal to appoint the respondent is legally justified and in accordance with law. Accordingly, the writ petition is dismissed. The directions issued by the Tribunal shall be complied with by the petitioners within a period of eight weeks from the date of receipt of a copy of this judgment.

Jammu
19.09.2025
Sanjeev

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Whether the order is speaking: Yes
Whether the order is reportable: Yes/No