

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

...

WP (C) No. 2771/2024
CM no. 6745/2024

*Reserved on: 31.07.2025
Pronounced on: 22.08.2025*

Mamit Kumar
S/o Sh. Hans Raj,
R/o Village Khour Deonia Tehsil R. S. Pura, District Jammu

.....Petitioner(s)

Through:
Mr. Rahul Pant Sr. Advocate with
Mr Dhruv Pant, Advocate
Mr Ayush Sharma, Advocate

Versus

1. UT of Jammu and Kashmir through Commissioner/ Secretary to Government, Health and Medical Education Department J&K, Government, Civil Secretariat, Jammu.
2. Jammu and Kashmir Public Service Commission, Reshamghar Colony, Bakshi Nagar, Jammu, through its Secretary
3. Commissioner/Secretary to Government General Administration Department, Jammu and Kashmir Government, Civil Secretariat, Jammu.

.....Respondent(s)

Through:
Mr Monika Kohli, Sr. AAG
Mr P. N. Raina, Sr. Advocate with
Ms Diksha Handoo, Advocate
Mr Raman Sharma, AAG
Mr F. A. Natnoo, Advocate

CORAM:

**HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE
HON'BLE MR JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT

Per Moksha, J

- 1.** The petitioner is assailing the order dated 13/11/2024, hereinafter to be referred as impugned order, passed by the Central Administrative

Tribunal Jammu Bench, for short as Tribunal, in OA Nos. 474/2022 and 827/2022 titled Mamit Kumar v. Union Territory of J&K and others, whereby the two petitions preferred by the petitioner to challenge the O.M. No. GAD-MTGORBIV/200/2021-09-GAD-I dated 30.03.2022 and communication No. ME-GZTED/56/2022 (e-office) dated 06.04.2022, have been dismissed.

BRIEF FACTS

- 2.** The petitioner is stated to be a post graduate in Oral Surgery and in his capacity as such had applied for appointment against the post of lecturer in the Government Dental College Srinagar in the year 2018 as a Scheduled Caste category candidate pursuant to the advertisement issued by the respondents advertising various posts including the post of lecturer in Oral Surgery. The said post, however, could not be filled up as the petitioner was declared ineligible and no other candidate in such category had applied.
- 3.** The respondents subsequently issued an advertisement Notice No. 13-PSC(DR-P) of 2021 dated 15.12.2021 wherein the post of lecturer in the department of Oral Surgery was sought to be filled up as a second special drive in the Scheduled Caste category. The petitioner applied for the post again and his application form was duly entertained by the Jammu and Kashmir Public Service Commission (JKPSC).
- 4.** Thereafter, a notification dated 03.02.2022 was issued by the respondents, by virtue of which, all the posts which had been referred prior to 31.10.2019, in which selection had not been finalized, were withdrawn.

5. The General Administration Department in terms of its decision bearing O.M. No. GAD-MTGORBIV/200/2021-09-GAD-I dated 30.03.2022 directed the respondent-Department to restart roster from point No.1. The General Administration Department (GAD) subsequently re-referred the posts on 06.04.2022 including the post of lecturer in Oral Surgery mentioning the post in question as Open Merit category post. The respondent No. 2, thereafter, issued an advertisement notification bearing No. 16-PSC (DR-P) of 2020 dated 12.07.2022 mentioning the post in question in the Open Merit Category. The petitioner enquired as to how the Schedule Caste post was changed into the Open Merit category post and he was told that since S.O 127 dated 20.04.2020, has been issued and the Jammu and Kashmir Reservation Rules, 2005, have been amended as such the roster has been operated from Point No. 01.
6. Feeling aggrieved of the OM dated 30.03.2022, and the subsequent advertisement dated 12.07.2022, the petitioner challenged the same by filing two separate OA's before the Tribunal to seek its quashment. The respondents appeared and filed their objections to the OA's. The tribunal after considering the matter dismissed both OA's.
7. It would be profitable to reproduce para 17 of the impugned judgment herein:

“It is also seen that Reservation Rules have been amended and the reservation roster has been substituted by virtue of S.O. 127 of 2020. There cannot be any justification for continuing with the roster points prescribed by the unamended roster and since respondents have taken a conscious decision for carrying out amendment in Reservation Rules and has substituted the earlier prescribed roster with the new roster. It is to be noted that the applicant has applied for the post of Lecturer in the Department of Oral Surgery in response to notification dated 15.12.2021 which was published in the newspaper

after the said SO 127 of 2020 dated 20.04.2020. Therefore, the applicant having applied for the post wherein the position of SC in the roster point would be determined based on the extant of SO 127 of 2020, cannot now claim that he should be considered under SC roster point which was prevailing prior to 15.12.2021 by virtue of the unamended J&K Reservation Rules, 2005.

8. The petitioner being dissatisfied with the decision of the tribunal, filed the present petition to seek setting aside of the order of the tribunal as also the decision of the respondents dated 30.03.2022 and the advertisement notification dated 12.07.2022 primarily on the ground that the tribunal failed to appreciate that the vacancy in respect of the post of lecturer in Oral Surgery was a backlog vacancy and was required to be filled up as per the mandate of Section 5 of the Jammu and Kashmir Reservation Act, 2004.
9. Upon notice respondents appeared and filed their objections resisting the claim of the petitioner *inter-alia* on the grounds that none of the constitutional, fundamental or statutory right of the petitioner has been infringed by any of the acts of the respondent that may give a cause to the petitioner to file the petition in hand; that the petitioner has not approached this court with clean hands and has raised disputed questions of fact which cannot be gone into by this court in its writ jurisdiction; the respondent Health and Medical Education Department, pursuant to communication of the General Administration Department bearing No. GAD-MTRGORBIV/200/2021-09-GAD-I dated 30.03.2022 had re-referred 118 vacancies of medical education to the Jammu and Kashmir Public Service Commission vide letter dated 06.04.2022, which included the 01 post of lecturer in the department of Oral Surgery in Government

Dental College Srinagar under roster point 01 (OM) in terms of SO 127 of 2020; the writ petition suffers from *suppressio-veri* and *suggestio-falsi* which renders it liable to be dismissed in limine.

10. We have heard learned counsel for the parties.

11. The learned Senior Counsel for the petitioner, while reiterating the grounds taken in the writ petition, has laid much stress on the point that the tribunal has erred in law by holding that the action taken by the respondents in the instant matter for filling up the post in question was justified, in that the tribunal has lost sight of the fact that the post in question was indeed a backlog vacancy meant for the candidate belonging to the Scheduled Caste category falling at serial No. 15 of the roster point. The learned Senior Counsel while elaborating the point further submitted that a backlog vacancy, in terms of the J&K Reservation Rules, 2004, had to be filled up in terms of section 5 of the Reservation Rules Act 2005, and not in terms of SO 127 of 2020. The learned Senior Counsel in support of his submissions has referred to and relied upon the judgement of the Supreme Court delivered in case titled ***R.K Sabharwal and Ors VS State of Punjab*** and Ors reported as ***1995 SCC (2) 745***.

12. The vacancy has to be operated in terms of SRO 126-Reservation Act & Rules. Section 5 & Rule 5(2) (3) have neither been amended nor been substituted as such respondents could not have substituted roster point as per SO 127. It had to start from S. No 15 vacancy of SC.

5. Roster for direct recruitment

[(1) With a view to giving effect to the reservation herein before provided in this part, the appointing authority shall, in respect of each service, class, category and grade in the

services and posts under the State, maintain a roster of 100 vacancies in the form given herein after:

1.	Open Competition
2.	Backward Area
3.	Scheduled Caste
4.	Open Competition
5.	Open Competition
6.	Scheduled Tribe
7.	Open Competition
8.	Open Competition
9.	Economically Weaker Section
10.	Line of Actual Control/International Border
11.	Open Competition
12.	Backward Area
13.	<i>*[Pahari Ethnic People] * Substituted for “Pahari Speaking People (PSP)” by S.O 537 of 2022 dated 19.10.2022</i>
14.	Open Competition
15.	Scheduled Caste
16.	Scheduled Tribe
17.	Social Caste
18.	Open Competition
19.	Economically Weaker Section
20.	Open Competition
21.	Open Competition
22.	Backward Area
23.	Open Competition
24.	Open Competition
25.	Open Competition
26.	Scheduled Tribe
27.	Scheduled Caste
28.	Open Competition
29.	Economically Weaker Section
30.	Open Competition
31.	Open Competition
32.	Open Competition
33.	Backward Area
34.	Open Competition
35.	<i>*[Pahari Ethnic People] * Substituted for “Pahari Speaking People (PSP)” by S.O 537 of 2022 dated 19.10.2022</i>

36.	<i>Scheduled Tribe</i>
37.	<i>Open Competition</i>
38.	<i>Line of Actual Contro/International Border</i>
39.	<i>Scheduled Caste</i>
40.	<i>Economically Weaker Section</i>
41.	<i>Open Competition</i>
42.	<i>Social Caste</i>
43.	<i>Backward Area</i>
44.	<i>Open Competition</i>
45.	<i>Open Competition</i>
46.	<i>Scheduled Tribe</i>
47.	<i>Open Competition</i>
48.	<i>Open Competition</i>
49.	<i>Open Competition</i>
50.	<i>Economically Weaker Section</i>
51.	<i>Scheduled Caste</i>
52.	<i>Open Competition</i>
53.	<i>Backward Area</i>
54.	<i>Open Competition</i>
55.	<i>Open Competition</i>
56.	<i>Scheduled Tribe</i>
57.	<i>Open Competition</i>
58.	<i>Open Competition</i>
59.	<i>Open Competition</i>
60.	<i>Economically Weaker Section</i>
61.	<i>Open Competition</i>
62.	<i>*[Pahari Ethnic People] * Substituted for “Pahari Speaking People (PSP)” by S.O 537 of 2022 dated 19.10.2022</i>
63.	<i>Scheduled Caste</i>
64.	<i>Backward Area</i>
65.	<i>Open Competition</i>
66.	<i>Scheduled Tribe</i>
67.	<i>Line of Actual Contro/International Border</i>
68.	<i>Open Competition</i>
69.	<i>Open Competition</i>
70.	<i>Economically Weaker Section</i>
71.	<i>Social Caste</i>
72.	<i>Open Competition</i>

73.	Open Competition
74.	Backward Area
75.	Scheduled Caste
76.	Scheduled Tribe
77.	Open Competition
78.	Open Competition
79.	Open Competition
80.	Open Competition
81.	Economically Weaker Section
82.	Open Competition
83.	Open Competition
84.	Backward Area
85.	Open Competition
86.	Scheduled Tribe
87.	Open Competition
88.	<i>*[Pahari Ethnic People] * Substituted for “Pahari Speaking People (PSP)” by S.O 537 of 2022 dated 19.10.2022</i>
89.	Scheduled Caste
90.	Open Competition
91.	Economically Weaker Section
92.	Open Competition
93.	Social Caste
94.	Open Competition
95.	Backward Area
96.	Scheduled Tribe
97.	Line of Actual Control/International Border
98.	Open Competition
99.	Economically Weaker Section
100.	Open Competition

- (2) *The roster shall be maintained as a running account from year to year and will start at the commencement of a year at the point following the point which was utilized at the end of the previous year.*

Provided that where the last point utilized in the preceding year was a reserved point and was treated as un-reserved for want of a suitable candidate from the reserved class, the first point to be started as aforesaid shall be the reserved point:

Provided further that where, on any occasion of selection in any year, a reserved vacancy is treated as un-reserved for want of a suitable candidate from the reserved category, the

succeeding un-reserved vacancy shall on the next occasion of selection in that year be treated reserved.

- (3) *The roster register shall be maintained as per the details given in Annexure-“E”.*

13. Per contra, the learned senior counsel for the respondents, submitted that the impugned judgement is quite reasoned as the process for the vacancy in question was not finalised by the time SO 127 of 2020 came into effect, therefore, the respondents were bound to follow the purport of the said SO and restart the roster from point No. 1 as the said SO substituted the earlier rule governing the subject.

14. Learned senior counsel for respondent No. 4 Mr. P. N Raina, has stated that after Reorganization in 2019 pursuant to abrogation of Article 370, State of J&K was divided into UT of J&K and Ladakh, as such, it had become necessary for the Government of UT of J&K to substitute/amend Reservation Rule 5. Petitioner has neither questioned policy decision i.e., SO 127 nor withdrawal of the posts by the Government. Learned senior counsel further submits that the Executive has the power to frame rules. Learned counsel has relied upon judgment of the Apex Court delivered in case titled **Indira Sawhney and others v. Union of India**, reported as **1992 Supp 3 SCC 217**.

15. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and perused the impugned order as also the allied material made available.

16. It is an admitted position that the petitioner in response to the advertisement issued by the respondents for filling up the vacancy in Oral Surgery, had offered his candidature in Scheduled Caste

category, however, he was adjudged ineligible and post remained unfilled as there was no other eligible candidate in the said category to be selected and appointed for the post in question. The contention of the petitioner that the post was again advertised after having remained unfilled because of his ineligibility and that the petitioner again responded to the advertisement is also not denied by the respondents, however, at the same time, the petitioner on his own showing has projected that during the currency of the advertisement issued by the respondents in the year 2021 the respondents instructed the departments in terms of notification dated 03.02.2022 to recall the indents made in respect of various posts which had been referred prior to 31.10.2019 for an obvious reason that the same are required to be resubmitted and filled up in terms of the SO 127 of 2020, accordingly, all those posts where the selection had not been finalized were recalled. These posts include the one i.e., the subject matter of the present writ petition.

- 17.** The controversy projected in the OA’s before the tribunal as also in the instant petition is only in respect of the mechanism adopted by the respondents thereby following the roster point for filling up the vacancy in question, while the petitioner contends that the vacancy belongs to the scheduled caste category being a backlog vacancy, the respondents take the same as a fresh vacancy to be placed at point 1 of the roster in pursuance to the SO 127 of 2020.
- 18.** The roster comparison prior to and after the commencement of the SO 127 of 2020, for facility of reference, is taken note of herein, thus:

Previous Roster	New Roster
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1	Open competition	1	Open competition
2	Backward Area	2	Backward Area
3	Scheduled Caste	3	Scheduled Caste
4	Open competition	4	Open competition
5	Open competition	5	Open competition
6	Scheduled Tribe	6	Scheduled Tribe
7	Backward area	7	Open competition
8	Open competition	8	Open competition
9	Open competition	9	Economically Weaker Section
10	Line of actual control	10	Line of Actual Control/ International Border
11	Open competition	11	Open competition
12	Backward area	12	Backward Area
13	Open competition	13	Pahari Speaking People (PSP)
14	Open competition	14	Open competition
15	Scheduled Caste	15	Scheduled Caste

In terms of SO 127 of 2020, Sub-rule (1) of Rule 5 has been substituted for maintaining a roster of 100 vacancies.

19. The post in question has admittedly been advertised twice before the posts were withdrawn and the petitioner has got an opportunity to respond to both the advertisement notices, however, the subsequent withdrawal of the posts and its re-submission with the different methods to the recruiting agency has constrained the petitioner to challenge the action before the court of law. Essentially, it is the withdrawal of the posts including the post in question that has started the rigmarole and the subsequent re-submission as also the issuance of the advertisement notices are only an offshoot of such an exercise. One can very conveniently find that the withdrawal of the posts including the post in question was not *ipso facto* an action in vacuum but had a very well founded origin in SO 127 of 2020. The OM dated

13.03.2022 which mandated fresh reservation roster for future vacancies and the communication dated 06.04.2022 by virtue of which the post of lecturer in the discipline of Oral Surgery in the Government Medical College Srinagar was mentioned in the Open Merit category had emanated from SO 127 of 2020. Therefore, the petitioner having questioned the OM dated 13.03.2022 and the communication dated 06.04.2022 ought to have challenged the SO 127 of 2020 as well because it is the said SO the womb of which has given birth to the OM dated 13.03.2022 and the communication dated 06.04.2022.

20. As per above table, it is pertinent to note that roster point at No. 7(OM has been substituted as Backward Area) No. 9 (OM- substituted as Economically Weaker Section) No. 13 (OM-substituted as Pahari Speaking People, PSP) so on & so forth till roster point 15. The roster points have been allotted after proper scrutiny of posts, designations, number of vacancies, eligibility criteria with respect to the Recruitment Rules of the concerned department, so as to ensure that the posts which have been re-referred are under relevant categories as per percentage of reservation fixed under relevant categories.

21. After substitution of new roster, respondents have rightly stated that after re-referral of 175 gazetted posts, roster was followed afresh in terms of OM dated 30.03.2022. It would be relevant to extract the concluding paragraph of the OM dated 30.03.2022, herein, thus:

“Besides, while referring the posts to the recruiting agency, the department shall maintain the roster points as per S.O 127 of 2020 and also maintain fresh reservation roster register for reference and referral of vacancies in future.”

22. The perusal of the above referred text would make it clear that the respondents have re-framed/substituted roster strictly on the basis of reservation fixed as per Act.
23. The tribunal in terms of the impugned order has observed that the S.O. 127 of 2020, has substituted the reservation rules meaning thereby that the rule the petitioner is seeking application of to the instant case is unfounded as the SO 127 of 2020, had completely replaced the said rule and it was SO 127 of 2020, that governed the field, as such, dismissed the OA's of the petitioner. This is, in essence, the only finding that the tribunal has returned in respect of the controversy and of which the petitioner is aggrieved of, however, we do not see any infirmity attached with the observation of the Tribunal as the finding is well reasoned and logical too, in that, the SO 127 of 2020 had actually amended/substituted the Reservation Rules, & the roster points, thus, was to be made applicable to every vacancy that had not been filled up till the time the said SO came into effect. The respondents appear to have acted quite fairly in the matter by adhering to the instructions conveyed in pursuance to the issuance of SO 127 of 2020. This mechanism was not followed in isolation particularly for this post but for all such posts which were not finalised by the time the SO 127 of 2020 came into effect.
24. The contention of the learned Senior Counsel for the petitioner that the post in question was a backlog vacancy for having been put to advertisement twice before the issuance of SO 127 of 2020 and as such ought to have been placed in the Scheduled Caste category only

at roster point 15 does not carry weight in absence of the challenge thrown to SO 127 of 2020, dated 20.04.2020. Once roster was substituted in terms of SO 127 of 2020, it was incumbent upon the petitioner to challenge SO 127 of 2020 as rightly contended by learned counsel for the respondent. Moreover, almost all selections have already been made by the Government in terms of SO 127 of 2020, the candidates have been selected and appointed except in this case. The SO 127 of 2020 has admittedly introduced reservation for certain new categories also as indicated in the table *supra*, therefore, the new mechanism was necessarily to be followed, in absence of any challenge to it, from the start so as to ensure that the benefit of reservation is extended in favour of the candidates of such categories at the earliest and that was possible only when the roster was followed from the starting point rather than allowing it to operate from the point where it had reached prior to commencement of SO 127 of 2020. Having said that, the respondents, do not appear to have acted arbitrarily in any way while following the reservation roster from the start in terms of SO 127 of 2020.

25. The ratio laid down by the Apex Court in case titled **Indira Sawhney and others v. Union of India**, reported as **1992 Supp 3 SCC 217** is clear that the Executive can provide for the measure of the nature contemplated by Article 16 (4), therefore, on that count also the petitioner does not have a case in his favour. Relevant portion of paragraph no. 735 of the judgment *supra* is taken note of herein:

“735. The words "order", "bye-law", "rule" and "regulation" in this definition are significant. Reading the definition of "State" in Article 12 and of "Law" in Article 13(3)(a), it becomes clear that a measure

of the nature contemplated by Article 16(4) can be provided not only by the Parliament/Legislature but also by the executive in respect of Central/State services and by the local bodies and "other authorities" contemplated by Article 12, in respect of their respective services.”

26. For all what has been stated hereinbefore, we do not see any perversity attached with the impugned order. Accordingly, the writ petition is dismissed being devoid of any merit. The impugned order as a consequence thereto is maintained.

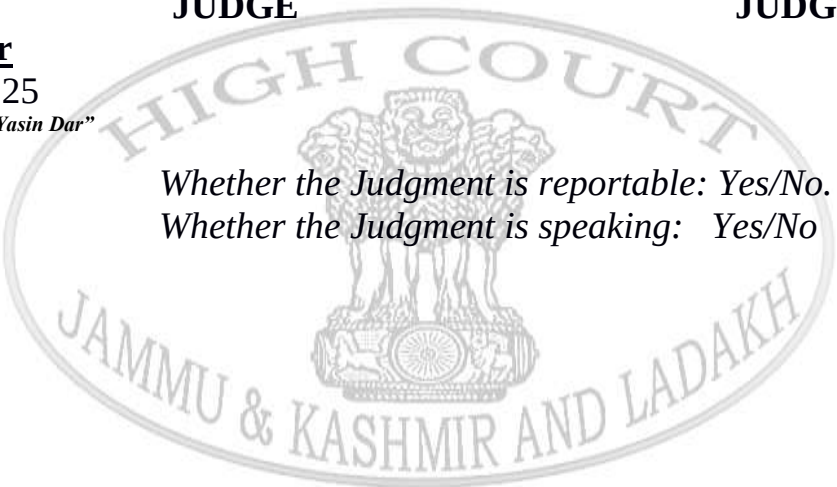
(MOHD. YOUSUF WANI)
JUDGE

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar

22.08.2025

“Mohammad Yasin Dar”



Whether the Judgment is reportable: Yes/No.
Whether the Judgment is speaking: Yes/No