

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

WP(C) No. 144/2025

Reserved on: 30.07.2025
Pronounced on: 30.08.2025

UT of Jammu and Kashmir and others
Petitioners

Through: - Mr. Mohsin Qadri Sr. AAG

Vs.

Rauoof Ahmad Zargar and others

...Respondent(s)

Through: - Mr. J.I. Ganai Sr. Advocate with
Mrs Mehnaz Rather Advocate.

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

JUDGMENT

Sanjeev Kumar J

1 UT of Jammu and Kashmir and others [“petitioners herein”] are aggrieved of and have challenged a common order and judgment dated 14.02.2023 passed by the Central Administrative Tribunal, Srinagar Bench [“Tribunal”] in TA No. 6803/2020 (SWP No. 2272/2018) titled ‘Rauoof Ahmad Zargar and others vs State and others’ whereby the Tribunal has, while allowing the petition filed by the respondents herein, held that since the respondents were not at fault, their service conditions were to be governed under the Pension Rules as applicable in the year 2009. Accordingly, the Tribunal directed the petitioners herein to regulate the service conditions of the respondents under the Pension Rules applicable in 2009 and to pass all

necessary consequential orders within a period of three months from the date 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. Mohsin Qadri, learned Senior AAG appearing for the petitioners, we deem it appropriate to briefly notice few background facts leading to the present litigation.

3 PHQ J&K, vide Advertisement Notification dated 09.03.2007, invited applications for the posts of Constables (Operators) in J&K Police, to which the respondents herein applied by submitting their application forms. Vide PHQ J&K Order dated 01.08.2009, a select list was published on the basis of merit prepared at the District level. The respondents herein also figured in the said list. All the candidates selected in the aforesaid selection process were directed to report to the Zonal SSPs of Telecommunication for verification of their documents and character antecedents before issuance of formal appointment orders. Before the requisite formalities could be completed and the formal orders of appointment in favour of the candidates, including the respondents, could be issued, some aggrieved candidates challenged the selection process by filing SWP No. 1478/2009 and SWP No. 2167/2009, inter alia, on the ground that the selection was required to be made on State level instead of District level. Vide interim orders dated 17.08.2009 and 08.09.2009 passed in SWP Nos. 1478/2009 and 2167/2009 respectively, operation of the selection list was stayed, which interim order was later modified on 17.08.2009, permitting the petitioners to make appointments of the selectees,

including the respondents herein, as Constable Operators subject to the outcome of the writ petitions. This paved the way for issuance of formal appointment orders in favour of the selectees. However, before the formal appointment orders could be issued in favour of the selectees, including the respondents, interim order dated 30.04.2010 came to be challenged by the aggrieved candidates in LPA No. 67/2010 titled **Sheikh Muzaffar and others vs. State and others**. The said LPA came to be dismissed by the Division Bench of this Court on 17.05.2010 and it is only after dismissal of the appeal, formal orders of appointment in favour of the selectees, including the respondents, were issued.

4 The litigation launched by the aggrieved non-selected candidates, seeking selection on State level, was put to an end at the Single Bench level in terms of judgment dated 09.05.2014, whereby the Single Bench of this Court quashed the selection list issued by the PHQ at District level with a further direction to reframe the select list at State level keeping in view the J&K Reservation Rules, 2005 as well. The judgment also provided that the selection and appointment of those candidates who would find place in the reframed select list would remain intact and undisturbed. There was a review petition filed, which was also dismissed by this Court. The judgment passed by this Court was duly complied with and the merit list at the State level was redrawn against the available 1126 vacancies. The names of the respondents also figured in the redrawn list and, accordingly, their selection as well as appointment remained intact and undisturbed. Since the respondents could be appointed only after 17.05.2010, their service conditions came

to be governed by the New Pension Scheme in terms of SRO 400 of 2009 dated 24.12.2009.

5 Feeling aggrieved, the respondents filed SWP No. 2272/2018 which, on transfer to the Central Administrative Tribunal after enactment of the Jammu and Kashmir Reorganisation Act, 2019 and constitution of the Tribunal, was registered as TA No. 6803/2020. The said TA was disposed of in terms of the judgment impugned in this petition.

6 In the present case, the respondents belonging to the Kashmir Province were formally appointed on **10.06.2010**, while those belonging to the Jammu Province came to be appointed on **12.06.2010**.

6 In the backdrop of the aforementioned factual matrix, the petitioners seek to challenge the impugned judgment on the ground that the Tribunal has not appreciated the legal and factual aspects of the case in right perspective. It is submitted that the respondents were brought under the New Pension Scheme, solely for the reason that the their appointments to Government service were made after 01.01.2010. It is argued that the Tribunal conveniently ignored the mandate of SRO 400 of 2009, whereby Article 167 of the J&K CSR was amended to unequivocally provide that the existing Pension Rules (the Old Defined Pension Scheme) would not be applicable to Government employees appointed or brought on regular establishment on or after 01.01.2010.

7 Mr Mohsin Qadri, learned Sr. AAG appearing for the petitioners would further argue that the Tribunal has also failed to appreciate that mere inclusion of a candidate's name in the provisional

selection list does not confer any vested right to appointment, that too, from the date of such selection and that an appointment becomes effective only upon issuance of a formal order of appointment by the competent authority after completion of all the requisite formalities.

8 *Per contra*, learned counsel appearing for the respondents would submit that the judgment passed by the Tribunal is both legally as well as factually correct and does not call for any interference. It is argued that vide order dated **01.08.2009**, the Police Headquarters, J&K, accorded approval for the selection of candidates strictly in terms of the select list, in which the names of the respondents also figured. Pursuant thereto, the respondents were directed to report to the Zonal SSPs Telecom, Jammu/Srinagar, for verification of their documents. However, before the respondents could complete the said process and formal appointment orders could be issued in their favour, certain aggrieved non-selected candidates approached this Court challenging their non-selection, which resulted in delaying the issuance of formal orders in favour of the respondents. Learned counsel would further submit that once there was a clear and specific direction issued by the learned Single Judge of this Court that the appointments of the respondents who would make it to reframed select list shall remain intact and undisturbed, their appointments would necessarily relate back to the date on which the Police Headquarters had accorded approval and directed them to report to the Zonal SSPs Telecom, Jammu/Srinagar.

9 Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out the relevant

amendment carried in Article 167 of the J&K CSR in terms of SRO 400 of 2009, which reads as under:

i) In Article 167 dealing with Pension Rules under the caption 'SECTION I – EXTENT OF APPLICATION' after exception 5, the following shall be added as exception (6):-

(6)(i) "The State Government Employees appointed on or after 01.01.2010 shall be governed by "New Pension Scheme" as per Article 249-M(B) added after 249-M(A) and accordingly, the existing Pension Rules shall not be applicable to Government Employees appointed or brought on regular establishment on, or after, 01.01.2010".

(ii).....

(iii).....”

10 From a perusal of Clause 6 reproduced hereinabove, it is evident that the State Government employees appointed on or after 01.01.2010 shall be governed by the “New Pension Scheme” as per Article 249-M(B), added after 249-M(A) and, accordingly, the existing pension rules shall not be applicable to Government employees appointed or brought on regular establishment on or after 01.01.2010. The language of exception (6) appended to Article 167 of J&K CSR is quite clear, unequivocal and does not admit of two interpretations. All the Government employees who are either appointed or brought on regular establishment on or after 01.01.2010 would be governed by the “New Pension Scheme”.

11 There is no dispute with regard to the fact that though the selection process for appointment of Constables in the instant case was initiated vide Advertisement Notification dated 09.03.2007 and even the selection process culminated into issuance of provisional select list on 01.08.2009, yet the formal orders of appointment on completion of

mandatory formalities were issued in favour of the respondents after 01.01.2010. Going by the plain language of SRO 400 of 2009 dated 24.12.2009, which was of course not the subject matter of challenge in the petitions before the Tribunal, the respondents would be governed by the New Pension Scheme. However the grievance of the respondents as was projected by them in their petition, is that the inordinate delay in issuing the formal orders of appointment in their favour in terms of the selection process initiated on 09.03.2007 cannot inure to the benefit of the petitioners and work to their prejudice.

12 There is no dispute with regard to the fact that the benefit of Old Pension Scheme is available only to the Government employees who are appointed to the service before 01.01.2010. However, as is concluded by the Tribunal and also having regard to the fact that pension is a welfare measure for the benefit of an employee and that the Old Pension Scheme is admittedly advantageous, the appointment of the respondents should be treated to have been made before 01.01.2010.

13 There is no dispute with regard to the proposition that a candidate figuring in a select list, provisional or otherwise, is not entitled to selection and appointment as a matter of right. The Government or the employer, as the case may be, is well within its power not to act upon the selection and issue appointment orders if it has good and justifiable reasons to do so. In the instant case, the selection has been acted upon and the formal orders of appointment have been issued. The only grievance of the respondents is that they

ought to have been appointed prior to 01.01.2010 so as to enable them to seek the benefit of Old Defined Pension Scheme.

14 In the present case, the provisional selection list came to be issued on 01.08.2009, wherein the names of the respondents also figured. However, before formal appointment orders could be issued in their favour, certain aggrieved candidates, who were dissatisfied with the outcome of the selection process, approached this Court by way of litigation challenging the said selection. As a result of the pendency of such proceedings, the competent authority refrained from issuing formal orders of appointment in favour of the respondents, and the entire process of their appointment stood delayed for reasons beyond their control.

15 At this stage, we deem it appropriate to deal with the plea raised by the petitioners that the petition filed by the respondents was barred by delay and laches. The said plea cannot be accepted. The right to seek pension constitutes a recurring cause of action, which, in the present case, would, in fact, accrue only upon the retirement of the respondents. Thus, any delay in approaching the Court by the respondents is inconsequential and deserves to be ignored.

16 In the view which we have taken, we are supported by the Division Bench judgment of the Delhi High Court in **Inspector Rajendra Singh and others v. Union of India & Others** (W.P.(C)) No. 2810 of 2016, decided on 27.03.2017). Paragraphs , (37) and (39), being relevant to the context, are reproduced hereunder:

37. In *H.D Vora v. State of Maharashtra & Ors.* reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the court where it found violation of substantive legal rights of the applicant *in that case*.

39. It is well settled that relief under [Article 226](#) of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay”.

17 The aforesaid judgment of the Delhi High Court is fully attracted to the facts of the present case, leaving no scope for further debate on the issue.

18 Viewed from any angle, and in particular for the reasons stated above, we are on all fours with the Tribunal that since the respondents were not at fault, they should be treated to have been appointed prior to 01.01.2010 and held entitled to the benefit of the Pension Rules as were applicable prior to 01.01.2010.

19 For all these reasons, this petition is disposed of by providing as under:

(i) The respondents herein shall be deemed to have been appointed as Constables (Operators) prior to 01.01.2010 and, therefore, they shall be held entitled to the benefit of the Pension Rules as were existing and applicable to the Government employees prior to 01.01.2010;

(ii) The date of appointment of the respondents is preponed only for enabling them to take the benefit of Old Pension Scheme and for no other purpose; and,

(iii) The requisite steps for complying with this judgment and setting the record straight by issuing a formal order shall be taken by the petitioners within a period of three months from the date of the judgment.

21 Accordingly, the judgment of the Tribunal impugned in this petition is modified to the aforesaid extent.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
30.08.2025
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes

