

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

Reserved on: 02.09.2025

Pronounced on:17.09.2025

CJ Court

WP(C) No.300/2024

Mushtaq Ahmad Mir, aged: 36
years
S/o Abdul Ahad Mir
R/o Dragmulla District Kupwara,
Pin code-193222.

...PETITIONER(S)

*Through: - Mr. S. A. Makroo, Sr. Advocate,
Mr. Rahil Noor & Mr. Danish Yousuf,
Advocates.*

Vs.

1. UT of J&K through
Commissioner/Secretary to Govt. Health
Department, Civil Secretariat,
Srinagar/Jammu.
2. Commissioner/Secretary to Govt. General
Administration Department, Civil
Secretariat Srinagar/Jammu.
3. Chairman, J&K Service Selection Board,
Srinagar.
4. Secretary, J&K Service Selection Board,
Srinagar.

...RESPONDENT(S)

*Through: - Mr. Abdul Rashid Malik, Sr. AAG, with
Mr. Younis Ahad, Assisting Counsel
Mr. Waseem Gull, GA.*

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

1) Pursuant to the Advertisement Notice dated
24.12.2010, issued by respondent No.3, the petitioner

applied for the post of Sr. ECG Technician in the Health Department under Open Merit category. The last date for submission of application forms was 29.01.2011. After the conclusion of selection process, the selection list was issued on 14.04.2016, wherein one post in open merit category and one slot in the waiting list were kept withheld for want of certain clarifications. The petitioner figured at serial No.2 in the waiting list. Two posts remained vacant on account of non-joining by one candidate and cancellation of candidature of another candidate, as such the petitioner claims to have requested the respondents to operate waiting list. Respondent No.3 raised certain objections in respect of declaration of result of the diploma of the petitioner, the marks certificate for which was issued in his favour on 16th February, 2011, whereas the result was declared on 11th January, 2011 i.e. prior to the last date for submission of application forms, which was 29th January, 2011.

2) When the case of the petitioner was not considered on the ground that diploma and marks certificate were issued on 16th February, 2011, whereas the date of declaration of result was 11th January, 2011, the petitioner filed a representation with the respondents and when the said representation did not yield any result, he filed a writ

petition bearing SWP No.438/2017 which was disposed of vide order dated 13th March, 2017, by directing the respondents therein to decide the said representation.

3) The aforesaid representation came to be decided and rejected vide order dated 14.07.2017, which was impugned by the petitioner through the medium of a writ petition bearing SWP No.1833/2017. The said writ petition subsequently came to be transferred to the learned Tribunal and was re-numbered as T.A No.3429/2021. The respondents objected to the claim of the petitioner.

4) The learned Tribunal, after hearing the parties, vide order dated 30th September, 2021, while disposing of T.A. No. 3429/2021, issued the following directions:

*“We, therefore, dispose of the T. A. with a direction to the applicant to procure the original Certificate of Appearance in the Final Examination from the Institution of Public Health & Hygiene, Mahipalpur, New Delhi – 110 037, within four weeks and produce the same before the respondents. **On receipt of such Certificate, the respondents shall verify the same and if the same is found genuine, reconsider the case of the applicant, within three months thereafter.** However, this will be subject to the availability of vacancies. There shall be no order as to costs.”*

5) The petitioner further claims to have submitted a representation with the respondent No.3 against receipt

No.3136 dated 20th October, 2021 along with order dated 30th September, 2021, passed by the learned Tribunal and also the original certificate of appearance in the final examination. The petitioner further claims to have submitted another representation dated 23.12.2021 against receipt No.4938.

6) When despite repeated representations, the respondent No.3 did not comply with the order passed by the learned Tribunal, the petitioner filed a contempt petition before the learned Tribunal thereby complaining the non-compliance of order dated 30th September, 2021. It was stated that the respondent No.3 got the diploma of the petitioner verified from the Institute of Public Health and Hygiene, Mahipalpur, New Delhi, through the medium of communication dated 8th February, 2022, and vide communication dated 12th February, 2023, the concerned Institute confirmed the authenticity of the diploma of the petitioner.

7) The respondents, after causing their appearance before the learned Tribunal, filed their response admitting therein that vide communication dated 8th February, 2022, addressed to the Controller of Examination, Institute of Public Health & Hygiene, New Delhi, a request was made to intimate as to whether the certificate bearing Roll No.J-251

Session 2008-2010, furnished by the petitioner and issued by the said Institute is genuine or otherwise and the concerned Institute, vide communication 12th February, 2022, authenticated the genuineness of diploma of the petitioner but in the meanwhile, the Government, after the enactment of the J&K Reorganization Act, 2019, took a policy decision on 29th January, 2022, whereby all the posts referred to the JKPSC/JKSSB prior to 31.10.2019, for which selections were not finalized and also the posts involved in litigations and cases were pending before the courts, were ordered to be withdrawn with immediate effect. It was further stated that the Administrative Council vide its decision dated 15.03.2022 had decided that the posts referred prior to 31.10.2019 to the JKPSC/JKSSB by different intending agencies, in respect of which recommendations were received from the recruiting agencies and which were free from all encumbrances, shall be acted upon and the orders of appointment shall be issued subject to fulfilment of all codal formalities and the process was to be completed within a period of one month. It was also stated by the respondents that the petitioner was supposed to procure the original certificate of appearance in the final examination from the Institute of Public Health & Hygiene within four weeks and produce the

same before the respondents but the petitioner was not able to furnish the same in the given timeframe and the selection process so initiated could not have been left open ended.

8) The learned Tribunal, after hearing the parties, vide its order dated 10.08.2023, closed the contempt proceedings. The aforesaid order has been impugned by the petitioner in the instant writ petition, *inter-alia*, on the grounds that the learned Tribunal is not correct in returning a finding that the petitioner had not produced the certificate/document with the respondents within the time limit, as the petitioner had produced the same in original within time fixed by the learned Tribunal, which is substantiated by the documents appended with the contempt petition. It is further contended that the Administrative Council Decision dated 29th January, 2022, read with Decision dated 15th March, 2022, could not have formed the basis for rejection of the claim of the petitioner. Besides, it is also urged that respondent No.3 has itself verified the diploma of the petitioner from the Institute of Public Health and Hygiene through the medium of communication dated 8th February, 2022 and in response thereof, the concerned institute vide its communication dated 12th February, 2022, has confirmed the authenticity

of the diploma of the petitioner. Precisely, the contention of the petitioner is that the learned Tribunal has not rightly appreciated the import of the orders of the Administrative Council and inaction on the part of the respondent No.3 in not complying the order passed by the learned Tribunal within the timeline prescribed by the learned Tribunal in terms of order dated 30th September, 2021.

2) The learned senior counsel appearing for the petitioner has vehemently argued that it was not open to the learned Tribunal to close the contempt proceedings by placing reliance upon orders dated 29th January, 2022 and 15th March, 2022 of the Administrative Council, because the same were not applicable to the case of the petitioner as the selection process in the instant case was already complete and only the diploma of the petitioner was to be verified by the respondent No.3, which it miserably failed to do within the time limit prescribed by the learned Tribunal. He has strenuously argued that the petitioner had submitted the order dated 30th September, 2021, along with his diploma, with the respondent No.3 on 20th October, 2021, against proper receipt bearing No.3136 and the said fact was reiterated in the subsequent representation dated 23.12.2021 but the learned Tribunal has erroneously closed the contempt proceedings. He has

further stated that the learned Tribunal was only concerned with the compliance of the judgment and once the respondent No.3 had itself proceeded in the matter even after issuance of Administrative Council Decision dated 29th January, 2022, to confirm the diploma of the petitioner, the learned Tribunal could not have formed the said decision of the Administrative Council as basis for closure of the contempt proceedings.

10) Mr. Malik, learned Sr. AAG, has argued that in the contempt proceedings, it was not open to the learned Tribunal to determine the validity/invalidity of action of the respondent No.3 in not considering the claim of the petitioner in light of the Administrative Council Decision dated 29th January, 2022, as such the learned Tribunal has rightly closed the contempt proceedings. He has placed reliance upon the judgment passed by a Coordinate Bench of this Court in CCP(D) No.8/2022 titled “**Ishfaq Ahmad Tantray vs. Khalid Jahangir, Chairman, Service Selection Board**” dated 21.07.2023, to contend that the learned Tribunal has rightly closed the contempt proceedings. He has further placed reliance upon the judgment passed by a Division Bench of the High Court of Allahabad in the case of “**Dr. Brajendra Singh Chauhan and others vs. Central Administrative Tribunal and**

others” to submit that the present writ petition is not maintainable.

11) In rebuttal, Mr. Makroo, learned senior advocate appearing for the petitioner, has submitted that the judgment of Allahabad High Court relied upon by Mr. Malik, Sr. AAG, has been set aside by the Hon’ble Supreme Court of India in Special Leave to Appeal (C) No.10302/2024 decided on 2ndDecember, 2024.

12) Heard and perused the record.

13) The preliminary objection raised by Mr. Malik, Sr. AAG, is in respect of maintainability of the writ petition against the order passed by the learned Tribunal in contempt petition. In the judgment of the Allahabad High Court relied upon by Mr. Malik, it was held that the writ petition is not maintainable against the orders passed by the Central Administrative Tribunal and remedy is to file appeal before Supreme Court. But the aforesaid decision of Allahabad High Court was set aside by the Hon’ble Supreme Court in Special Leave to Appeal (C) No.10302/2024 decided on 2ndDecember, 2024 and the High Court was requested to decide the writ petition expeditiously. Therefore, the objection raised by Mr. Malik, learned Sr. A.A.G is not sustainable and, as such is rejected.

14) Now we are only confronted with the issue as to whether the learned Tribunal has rightly closed the contempt proceedings or not.

15) The perusal of the order impugned reveals that the learned Tribunal has placed relied upon the decision taken by the Administrative Council after the enactment of the Jammu and Kashmir Reorganization Act, 2019, whereby the posts referred to the JKPSC/JKSSB prior to 31stOctober, 2019, have been withdrawn. For reference and convenience, the relevant policy decisions of 29th January, 2022 and 15th March, 2022, are extracted as under

Policy Decision dated 29th January, 2022:

"All posts referred to JKPSC/JKSSB prior to 31.10.2019 for which selection have not been finalized till date as also the posts in which there are litigations and the cases are pending in normal course, shall be deemed to have been withdrawn with immediate effect."

Policy Decision dated 15th March, 2022:

"The posts referred prior to 31.10.2019 to the JKPSC/JKSSB by the different intending agencies in respect of which recommendations have been received from the recruiting agencies and the posts are still free from encumbrances shall be acted upon accordingly and orders of appointment shall be issued subject to fulfilment of all codal formalities and the process has to be concluded within a period of one month."

16) The perusal of the policy decisions (supra) reveals that the posts which were referred to the JKPSC/JKSSB prior to 31.10.2019, for which selections were not finalized and also the posts involved in litigation, were withdrawn with

immediate effect. So far as the present case is concerned, the proper selection had taken place which is evident from the selection list dated 14.04.2016 issued by respondent No.3. The record depicts that the petitioner pursuant to the order dated 30th September, 2021, passed by the learned Tribunal in T.A No.3429/2021, submitted the requisite documents on 20th October, 2021 against proper receipt bearing No.3136. Another representation dated 23.12.2021 was submitted by the petitioner with the respondent No.3 against proper receipt bearing No.4938 dated 23rd December, 2021 and its perusal would also demonstrate that the petitioner had specifically mentioned therein that the office of respondent No.3 had received the order passed by the learned Tribunal and diploma on 20th October, 2021. Even the photocopy of the record produced by the respondents reveals that the representation dated 20th October 2021 was received in Srinagar office of the respondent No.3 on 20th October, 2021 against receipt No. 3136 and this representation was accompanied with the order dated 30th September 2021 and the diploma, as per the contents of representation. The respondents in para-17 of their response before the learned Tribunal have made a vague and bald averment, contrary to their own record that the petitioner did not submit the original certificate of

appearance before the respondents within the given timeframe in terms of order dated 30th September 2021. Vide order dated 30th September, 2021, the respondents were under obligation to get the documents so submitted by the petitioner verified and in the event of established genuineness of documents, to reconsider the case of petitioner within three months thereafter. There was absolute inaction on the part of the respondent No.3 to comply the order dated 30th September 2021, passed by the learned Tribunal and the process which was required to be completed by the respondent No.3 within the time limit laid down in order *ibid*, was initiated only in the month of February, 2022 i.e. after more than three months of receipt of order and the certificate. The respondents cannot derive any benefit out of their own wrong in respect of non-compliance of the directions of the learned Tribunal.

17) Pursuant to our order dated 20th August, 2025, Secretary, J&K Service Selection Board had caused his appearance through virtual mode, and he had very fairly conceded that the petitioner was in possession of the requisite qualification as on cutoff date.

18) At the cost of repetition it is reiterated that the respondent No.3 had, vide communication dated 8th February, 2022, sought authentication of the diploma

issued by the Institute of Public Health and Hygiene, Mahipalpur, New Delhi, in favour of the petitioner and the said Institute vide its communication dated 12th February, 2022, verified the authenticity of the diploma certificate of the petitioner. The petitioner had submitted the requisite documents in terms of order dated 30th September, 2021, passed by the learned Tribunal, with the respondent No.3 at Srinagar office on 20th October, 2021, which is duly substantiated by the record of the office of respondent No.3, well within the period stipulated in the order dated 30th September, 2021 passed by the learned Tribunal but the respondent No.3 violated the timeline laid down by the Tribunal and after remaining in deep slumber for three months, initiated the process in terms of order dated 30th September, 2021 only after the expiry of the timeline laid down by the learned Tribunal.

19) It appears that the Administrative Council Decision dated 29th January, 2022 is being merely used as a shield by the respondent No.3 to hide its own indolence in not considering the case of the petitioner within the time frame fixed by the learned Tribunal and we are surprised that there is no order issued by the respondent No.3 in respect of rejection of candidature of the petitioner and the contempt proceedings were objected to by the respondents

only by taking refuge under the Administrative Council Decision dated 29th January, 2022.

20) The judgment passed by a Coordinate Bench in CCP(D) No.8/2022 relied upon by the respondents, is not at all applicable to the facts of the present case, as in the said case, the directions were issued by the Court to proceed ahead with the selection process afresh and by placing reliance upon the Policy Decision dated 29th January, 2022 (supra), the contempt proceedings were closed. So far as the present case is concerned, the selection process was already complete. As such, the judgment cited by Mr. Malik, Sr. AAG, is distinguishable on facts.

21) We have examined the order passed by the learned Tribunal and find that the learned Tribunal got swayed with the decision of the Administrative Council dated 29th January, 2022, as mentioned above and has also not taken note of the fact that the petitioner in compliance to the order dated 30th September, 2021, submitted not only the said order but also the certificate which was subsequently authenticated by the concerned Institute pursuant to communication dated 8th February, 2022, issued by the respondent No.3. Even otherwise, the petitioner could not have been penalized just because of slackness of

respondent No.3 in getting the certificate authenticated from the concerned institute as it took more than three months to get the said certificate authenticated from the concerned institute. We are unable to agree with the reasons assigned by the learned Tribunal in the order impugned while closing the contempt proceedings. The learned Tribunal has not rightly exercised the jurisdiction vested in it. Therefore, the impugned order is liable to be set aside.

22) Accordingly, the writ petition is allowed and the impugned order 10.08.2023 passed by the learned Tribunal is set aside. As a necessary corollary, the contempt proceedings are revived, and the learned Tribunal is requested to proceed ahead with the proceedings and conclude the same in accordance with law, as expeditiously as possible. The parties are directed to appear before learned Tribunal on **15.10.2025**.

23) The record be returned to learned counsel for the respondents.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
17.09.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	No