

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

WP(C) No. 1323/2025

Reserved on: 30.07.2025
Pronounced on: 30.08.2025

Aijaz Ahmad Parray and others

Petitioners

Through: - Mr. R.A.Jan Sr. Advocate with
Mr. Shariq J Reyaz Advocate

VS

UT of Jammu and Kashmir and others.

...Respondent(s)

Through: - Mr. Mohsin Qadri Sr. AAG.

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

JUDGMENT

Sanjeev Kumar J

1 The petitioners are aggrieved of and have assailed an order and judgment dated 11.12.2024 passed in TA no. 3756/2021 titled 'Aijaz Ahmad Parray vs UT of Jammu and Kashmir and others' by the Central Administrative Tribunal, Srinagar Bench, Srinagar ["Tribunal"], whereby the Tribunal has disposed of the petition of the petitioners with a direction to the respondents to consider their claim for the benefit of the Old Pension Scheme in light of the judgment passed by the Tribunal in TA Nos. 8613/2020, 6895/2020 and 1623/2021, provided the petitioners are found to be similarly situated

employees, within a period of two months from the date of the judgment.

2 Before advertizing to the grounds of challenge, we deem it appropriate to notice a few facts relevant for the disposal of this petition.

3 The Police Headquarters, Jammu and Kashmir, vide Advertisement Notification dated 29.01.2019, invited applications from the eligible permanent residents of the then State of Jammu and Kashmir for the posts of Sub-Inspector in the Executive Wing of J&K Police. The petitioners, being eligible, participated in the selection process, which culminated with the issuance of the select list on 10.10.2010. Upon completion of the requisite formalities, formal orders of appointment in favour of petitioners were issued, obviously after 01.01.2010. Regard being had to the plain and unequivocal language of SRO 400 of 2009 dated 24.12.2009, the petitioners were held entitled to be governed by the 'New Pension Scheme'.

4 Feeling aggrieved, the petitioners filed a writ petition before this Court, which, upon transfer to the Tribunal after the enactment of J&K Reorganisation Act, 2009 and constitution of the Tribunal, came to be registered as TA No. 3756/2021. The said TA was considered by the Tribunal, but having regard to the statement made by the learned counsel for the petitioners that the case of the petitioners was covered by the judgment of the Tribunal passed in TA Nos. 8613/2020, 6895/2020 and 1623/2021, the Tribunal disposed of TA of the petitioners with a direction to the respondents herein to consider

the claim of the petitioners on the basis of the judgment passed in the aforesaid petitions, provided there were similarly placed.

5 It seems that the petitioners later realised that, having been selected and appointed after 01.01.2010, they were not similarly placed with the petitioners of TA Nos. 8613/2020, 6895/2020 and 1623/2021 and, therefore, decided to approach this Court to throw challenge to the consideration order passed by the Tribunal on the concession of their counsel.

6 The impugned judgment of the Tribunal is challenged by the petitioners primarily on the ground that the Tribunal has not addressed the controversy raised in the petition in correct perspective and has erroneously disposed of the their TA with a direction to the respondents to consider their case in light of the earlier judgment passed in TA Nos. 8613/2020, 6895/2020 and 1623/2021. The judgment impugned is also challenged on the ground that the Tribunal did not appreciate the settled position of law that service rights, including those governing pension and other post-retiral benefits, get crystallised with reference to the date on which the process of recruitment commences and not on the date on which the formal appointment is made after selection. Reliance is placed by the learned counsel appearing for the petitioners on a couple of judgments rendered by the High Court of Delhi in **Dr. Davinder Singh Brar vs. UOI, 2020 SCC Online Del 2771**, the High Court of Judicature at Allahabad in **Nirupama Malviya vs State of UP, 2023 SCC Online All 4052**, the High Court of Judicature at Madras in **Savarana Bose vs Government of Tamil Nadu, WP(MD) No. 1630/2023**, the High Court of Punjab

and Haryana in **Hitesh Kumar and ors vs. State of Haryana, WP No. 1804/2018**, and the High Court of Judicature at Bombay in **Khilari Rajendra Eknath vs State of Maharashtra, WP No. 2270/2021** to buttress his submissions.

7 *Per contra*, Mr. Mohsin Qadri learned Sr. AAG, appearing for the respondents submits that the judgments relied upon by learned counsel for the petitioners are distinguishable on facts. He also opposes the writ petition on the ground that the judgment impugned was passed on the request and concession made by learned counsel for the petitioners to dispose of the petition in light of the earlier judgment passed by the Tribunal in the case of Constables. He would argue that the petitioners cannot be permitted to turn around and challenge the impugned judgment passed by the Tribunal after having themselves prayed for the disposal of their case in the manner in which it has been disposed of by the Tribunal.

8 Having heard learned counsel for the parties and perused the material on record, the twin questions that arise for determination in this petition can be formulated in the following manner:

(i) Whether the right of an employee to be governed by a particular pension regime gets crystallised with reference to the date on which the process of recruitment, which culminates in his appointment, commences ?.

(ii) Whether there was an inordinate delay in completing the selection process leading to the appointment of the petitioners, and if so, what is its effect ?.

9 Before we address the aforesaid questions, it would be appropriate to notice the prayer clause of the petition, which is reproduced herein-below:

(i) A writ of mandamus commanding the respondents that, in the facts and circumstances of the case, the petitioners be conferred pensionary benefits under the Old Defined Pension Scheme as has been done in the case of similarly situated persons, reference whereof is made in paragraph 7 of the writ petition;

(ii) A writ of certiorari for quashing notification dated 24.12.2009 issued by respondent No.4 to the extent of the petitioners, whereby the petitioners have been brought under the New Pension Scheme; and,

(iii) A writ of prohibition restraining the respondents from compelling the petitioners to contribute under the New Pension Scheme.

10 From a reading of the prayer clause, it is abundantly clearly that the petitioners have not sought their appointment retrospectively from the date anterior to 01.01.2010, which is the cut-off date for implementation of the New Pension Scheme in terms of SRO 400 of 2009. We also do not find any foundation laid in the writ petition to challenge the *vires* of SRO 400 of 2009 dated 24.12.2009 and the fixation of the cut-off date of 01.01.2010 for implementation of the New Pension Scheme. It is for this reason that the learned counsel for the petitioners did not press this relief before the Tribunal. The petitioners restricted their petition only to relief No.(i), to which learned State counsel did not object.

11 It is in these circumstances that the TA of the petitioners was disposed by the Tribunal in terms of the judgment impugned, by directing the respondents to consider the claim of the petitioners for

being governed by the Old Pension Scheme in light of the judgment passed in TA No. 8613/2020, 6895/2020 and 1623/2021, provided petitioners were found similarly situated with such persons.

12 This petition is an afterthought and has been filed after realizing that, in the cases of the petitioners in TA Nos. 8613/2020, 6895/2020 and 1623/2021, the selection process stood concluded prior to 01.01.2010, but the formal orders of appointment got delayed because of the time taken by the appointing authorities in verification of their documents and character antecedents, whereas, in the case of the petitioners herein, the select list was prepared and published only on 10.10.2010, much after the cut-off date of 01.01.2010. It is in these circumstances, and also on a new ground that the pension rules as were in-vogue on the date of commencement of the selection process should govern the pensionary rights of the petitioners, that the instant petition has been filed.

13 Having given our thoughtful consideration to the arguments of learned counsel for the petitioners, we are of the considered opinion that the date of commencement of selection process is not the date on which the service rights of candidates, who after participating in the selection process get appointed, stand crystallised. The relevant date to determine the service rights of such candidates is the date of their appointment i.e the date on which a candidate becomes a member of the service. The service conditions of an employee cannot be made static and unalterable qua such employee till his retirement, and even post retirement. An employee appointed to Government service is not guaranteed a particular set of service conditions,

including his post-retiral benefits. The Government is well within its rights to alter the service conditions of its employees from time to time. The order of appointment issued in favour of a Government employee invariably provides that the appointment shall be governed by the terms and conditions of appointment and the service conditions laid down by the Government from time to time.

14 It is not the case of the petitioners that in the appointment orders issued in their favour there was any stipulation providing for the applicability of a particular set of pensionary rule. It is only the rules with regard to eligibility and method of recruitment which have reference to the commencement of selection process. The rules of eligibility and the mode and method of recruitment, as were in-vogue at the commencement of selection process, would govern the selection, and subsequent changes therein would not affect the pending selection. This is a well-settled and unexceptionable legal position.

15 The judgments relied upon by learned counsel for the petitioners are all distinguishable on facts, and none of them conclusively lays down a proposition that the pensionary rules/pension regime as was in vogue at the time of commencement of the recruitment process would govern the appointments made in pursuance of the said selection process, and that any subsequent change in the pension regime would not affect the rights of such candidates having been crystallised on the date of commencement of selection process. To reiterate, a Government employee is bound by the service conditions governing his service on the date of his becoming a member of the service, and he would be governed by such service conditions as are

laid down by the Government from time to time. Such is the clear stipulation in the order of appointment, which is nothing but a service contract. Nothing has been brought to our notice to show that, as per the service contract entered into by the petitioners with the Government in terms of their appointment orders, there was any stipulation that the pension regime in vogue at the time of commencement of the process would govern their pension notwithstanding any subsequent change in the regime. Most of the judgments relied upon by learned counsel for the petitioners have taken note of the inordinate delay committed by the employer in concluding the selection process and issuing formal orders of appointment.

16 In the instant case, the selection process was initiated on 29.01.2009, which consisted of various stages to be undertaken by the respondents for selection and appointment of Sub-Inspectors. The selection process consisted of: (i) physical measurement test; (ii) outdoor tests; (iii) written examination; and (iv) viva voce /personal assessment test. The post of Sub-Inspector is a State-level post and, therefore, all eligible candidates from Jammu, Kashmir and Ladakh are entitled to participate. Having regard to the nature of selection process which was required to be undertaken and the enormous response from all the three regions of the then State of Jammu and Kashmir, the selection process was bound to take some time. The conclusion of selection process with the issuance of select list on 10.10.2010, therefore, cannot be said to be so inordinate as to warrant pre-dating the appointment of the petitioners to the date anterior to 01.01.2010. With a little bit of promptitude and swiftness, the respondents may possibly

have succeeded in accomplishing the task of completing the selection process and issuance of appointment orders after due verification of documents and character antecedents of the selected candidates in the first quarter of the year 2010. Viewed from any angle, there was hardly any likelihood of the petitioners being appointed on or before 31.12.2009.

17 That apart, it is not even the case of the petitioners that any candidate who was selected in the selection process commenced with the notification dated 29.01.2009 was appointed prior to 01.01.2010. The case of the petitioners is not similar to the case of Constables who were petitioners in. TA Nos. 8613/2020, 6895/2020 and 1623/2021 for the reason that the petitioners in the aforesaid TAs stood selected much prior to 01.01.2010, but their appointments were delayed only by a few days due to the indolence shown by their employer in completing the requisite formalities.

18 For all these reasons, we find no merit in this petition and the same is, accordingly, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
30 .08.2025
Sanjeev

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