

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

Reserved on: 16.09.2025

Pronounced on: 08.10.2025

CJ Court

WP(C) No.1812/2023

1. Union Territory of J&K through Additional Chief Secretary to Govt. Home Department, Civil Sectt. Srinagar/Jammu.
2. Director General of Police, J&K, Srinagar/Jammu.

...PETITIONER(S)

*Through: - Mr. Mohsin S. Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting
Counsel.*

Vs.

Mushtaq Ahmad Sheikh, aged: 40 years s/o
Manzoor Ahmad Sheikh R/o Tangdar Karnah of
District Kupwara.

...RESPONDENT(S)

*Through: - Mr. R. A. Jan, Sr. Advocate, with
Mr. Aijaz Moulvi, Advocate.*

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

JUDGMENT

OSWAL 'J'

FACTUAL MATRIX:

1) In the year 2007, applications were invited from the eligible candidates for the posts of Sub-Inspector in the J&K Police Department, but the said posts were withdrawn vide order dated 01.07.2008. Thereafter in the year 2009, fresh advertisement notice was issued for filling up the vacancies of Sub-Inspectors in the J&K Police Department. The

respondent along with other candidates applied for the said post but their candidatures were not accepted on account of having crossed the upper age limit prescribed in the notification. These candidates along with the respondent herein filed number of writ petitions and the lead case bearing SWP No.373/2009 titled "*Bhavneet Singh and others vs. State of J&K and others*" along with other connected writ petitions was disposed of vide judgment dated 07.03.2014. The writ petition preferred by the respondent along with others bearing SWP No.396/2009 titled "*Ashiq Hussain and others vs. State and others*" was also disposed of vide judgment dated 18.04.2014 passed in Srinagar Wing of this Court. The judgment dated 07.03.2014 passed in SWP No.373/2009 formed the basis for the disposal of the writ petition preferred by the respondent along with others.

2) The petitioners, in light of the judgment dated 18.04.2014, vide Government Order No.386-Home of 2016 dated 08.07.2016, accorded sanction in respect of eight candidates including the respondent herein for their appointment as Sub-Inspectors in the J&K Police Department with immediate effect by granting relaxation in upper age limit, and they were formally appointed in the year 2016 itself. Thereafter, the respondent along with others submitted a representation with Police Headquarter, J&K

(for short “PHQ”) seeking parity with those Sub-Inspectors, who were appointed in the year 2010 but the claim of the respondent along with others was rejected by the PHQ in terms of order dated 07.01.2020.

3) Aggrieved of the order dated 07.01.2020, the respondent filed a writ petition bearing SWP No.656/2020, subsequently transferred to the Central Administrative Tribunal, Srinagar Bench (for short “the Tribunal”) and was re-numbered as TA No.148/2021. The petitioners objected to the claim of the respondent before the learned Tribunal. The learned Tribunal, vide its order dated 27.07.2022, disposed of the TA by directing that the respondent shall be entitled to only notional fixation of seniority at par with the candidates who were appointed in the year 2010 by the same recruitment process but he would not be entitled to arrears of salary or other monetary benefits. Besides, the impugned order dated 07.01.2020 was quashed and the petitioners were directed to re-fix the seniority extending the benefit of seniority to the respondent as well.

Grounds of Challenge:

4) The petitioners being aggrieved of the order dated 27.07.2022 passed by the learned Tribunal have assailed the same on the following grounds:

- (I) That the learned Tribunal has passed the order impugned without considering the objections of the petitioners wherein a specific stand was taken by the petitioners that in terms of the Government Order whereby sanction was accorded to the appointment of the respondent, it was specifically mentioned that the seniority shall be determined in terms of the relevant provisions of the Police Rules and further that the seniority of the respondent and other similarly situated persons was accordingly determined from the date of their actual appointment i.e. 2016 and on the basis of BRTC in terms of Rule 111 of the Police Manual.
- (II) That the respondent was appointed Sub-Inspector in compliance of the judgment dated 18.04.2014 passed in SWP No.396/2009 and there was no specific direction for appointment of the respondent retrospectively or even allowing him seniority/promotion on notional basis at par with the candidates who were appointed in the year 2010 in the Police Department.
- (III) That the impugned order is bad in law for the reason that the respondent was not selected earlier by the Recruiting Agency but an exceptional treatment was accorded to him only on the basis of judgment mentioned above.
- (IV) That the learned Tribunal has not taken into consideration that a person is disentitled to claim seniority from a date when he was not borne in service

and as the respondent was appointed only in the year 2016, so no benefit of retrospective appointment could have been granted to him.

5) The respondent has filed his response to the writ petition wherein he has narrated the factual aspects of the fact, that have already been taken note of hereinbefore.

SUBMISSIONS OF PETITIONERS:

6) Mr. Mohsin Qadri, learned senior AAG, has submitted that the respondent cannot draw any parity qua the other candidates who were appointed as Sub-Inspectors in the year 2010, as the respondent was not at all eligible to participate in the recruitment process being overaged and he was appointed only after the age relaxation was granted. He has further submitted that the Sub-Inspectors who were appointed in the year 2010 participated in the BRTC and after successful completion thereof, they were placed at their respective places in the seniority list in accordance with the merit obtained in the BRTC. He has further submitted that as the respondent participated in the BRTC in the year 2016, so he cannot be treated at par with those candidates who participated in basic recruitment training course (BRTC) earlier to him. Mr. Qadri has also argued that in the writ petition preferred by the respondent pursuant to which he was appointed, there was no direction to the petitioners to

grant the benefit of retrospective appointment to the respondent and it is settled law that a person cannot be granted the benefit of seniority from the date when he was not born on the cadre of service. Mr. Qadiri has placed reliance upon the judgment of a Coordinate Bench of this Court in the case titled '**Parshottam Lal & Ors. V. State of J&K**' 2016(3)JKJ 7.

SUBMISSIONS OF RESPONDENT:

7) *Per contra*, Mr. R. A. Jan, learned senior counsel appearing for the respondent, has submitted that the respondent appointed as Sub-Inspector in the year 2016 and the candidates appointed in the year 2010, had participated in the same selection process and once the petitioners, in compliance to the judgment dated 18.04.2014, appointed the respondent, it was not open for them to discriminate the respondent qua the other candidates who were appointed in the year 2010 simply because the process of appointment of the respondent was delayed on account of litigation and conduct of the petitioners. Had there been no litigation on account of arbitrary act of the petitioners, the respondent would have been appointed only in the year 2010 itself along with candidates. Mr. Jan has further argued that the contention of the petitioners that there was no direction in the judgment for grant of retrospective appointment to the

respondent is misconceived as no such occasion arose before the Court to issue such direction at that time. He has also submitted that mere participation in a separate BRTC does not form an intelligible differentia to create a separate class for the respondent vis-à-vis other candidates who were appointed in the year 2010, as all of them had participated in the same recruitment process and the seniority in terms of Rule 111 of the Police Manual can be fixed by taking into consideration the comparative merit of the respondent and other candidates appointed in the year 2010. In support of his submissions, Mr. Jan has placed reliance upon the judgment of the Hon'ble Supreme Court in the case titled '**C. Jayachandran v. State of Kerala and Ors.**', (2020) 5 SCC 230.

DISCUSSION:

8) After hearing learned counsel for the parties and perusing the record, the following issue crops-up for determination of this Court:

Whether the respondent can draw parity in appointment/seniority vis-à-vis the candidates who were appointed in the year 2010 pursuant to same selection process in light of Rule 111 of J&K Police Manual?

9) Before, this court proceeds ahead to determine and adjudicate the abovementioned issue, it is deemed

appropriate to have a glance over the judicial precedents governing the issue.

10) In '**State of Bihar v. Arbind Jee**', (2021) 14 SCC 38, the respondent was appointed on compassionate grounds on 10.02.2996, and he sought the relief of retrospective seniority w.e.f. 05.12.1985. The Hon'ble Supreme Court quashed the direction of the High Court in respect of grant of retrospective seniority on the grounds that he was not borne on the cadre of the service, and the appointment of respondent was not based on selection but on compassionate grounds, where the element of competitive recruitment was lacking. Though the claim of respondent for grant of retrospective seniority was not accepted, but it was observed as under:

“The records here reflects that the State have faithfully implemented the direction issued by this Court and appointed the respondent. Moreover, the action of the authorities in determination of the respondent's seniority from the date of entering service is found to be consistent with the applicable laws. **There could be individual cases where a bunch of applicants are recruited through a common competitive process but for one reason or another, one of them is left out while others get appointed. When the denial of analogous appointment is founded to be arbitrary and legally incorrect, the benefit of notional seniority may be conferred on the deprived individual.** However, the present is not a case of that category.”

(emphasis added)

11) In '**C. Jayachandran v. State of Kerala and Ors.**', (2020) 5 SCC 230 the appellant though participated in the

same selection process but was not appointed on account of adoption of moderation of marks. Subsequently, the action of the High Court in resorting to moderation of marks was held to be illegal and as such the appellant was appointed subsequently. The Hon'ble Supreme Court of India while holding the appellant entitled to notional appointment and consequential seniority, observed as under:

36. The earlier writ petition filed by the appellant was allowed on 13th September, 2010. The Division Bench of the High Court has directed to re-cast the seniority amongst the seven shortlisted candidates. The appellant was one of them. The challenge to the said order by three affected candidates remained unsuccessful when SLP was dismissed by this Court on 8th October, 2010. The SLP was filed by the candidates who were granted benefit of moderation of marks. Once the direction of the Division Bench has attained finality, the appellant was entitled to seniority as per the select list to be revised as per merit of the candidates. In terms of Rule 6(2), the seniority is to be determined by the serial order in which the name appeared in the appointment order. **The argument of learned counsel appearing for respondent No. 5 that the appellant was not appointed by the same appointment order, therefore, the appellant cannot claim seniority is not tenable. The appellant was entitled to be appointed along with other three candidates but because of the action of the High Court in adopting moderation of marks, the appellant was excluded from appointment. The exclusion of appellant from appointment was on account of an illegal act by the High Court which has been so found by the judgment dated 13th September, 2010. Since the select list has to be revised, the appellant would be deemed to be the part of the appointment along with other candidates in the same select list. As the actual date of appointment was on 24th February, 2011, the appellant cannot actually be treated to be appointed on 30th March, 2009 but is entitled to notional appointment from that date and consequential seniority.**

(emphasis added)

12) From the abovementioned pronouncements of the Hon'ble Supreme Court of India, it can be inferred that generally as a rule, the benefit of retrospective appointment/seniority cannot be granted to an employee prior to his birth on the cadre of the service. But there are exceptions as well, i.e. when the service rules permit so; the courts find that the injustice has been meted out to an employee for one reason or another including discrimination or wrongful denial of appointment, but in that case, only the benefit of notional appointment/seniority without monetary benefits can be granted.

13) If the claim of the respondent is tested on the anvil of the principles culled out as above, this court finds that the respondent was a part of same selection process but of course was appointed pursuant to the directions issued in the writ petition filed by the respondent. Had the petitioners not objected to the candidature of the respondent and allowed him to participate in the selection process without intervention of the court, he would have been appointed as Sub-Inspector in the year 2010 itself along with other candidates who participated in the same selection process. Once, the petitioners have accepted the judgment rendered in the writ petition filed by the respondent and appointed him as Sub-Inspector, though in the year 2016, they cannot

deny the benefit of notional appointment to the petitioner from the date the similarly recruited candidates were appointed as Sub-Inspectors in the year 2010.

14) Mr. Qadri, learned Sr. A.A.G has relied upon the judgment passed by the coordinate bench of this court in **'Parshottam Lal & Ors. V. State of J&K'** 2016(3)JKJ 7, to submit that the respondent has undergone basic recruitment training course in the year 2016 and as such he cannot be granted the same benefit of appointment vis-à-vis other candidates who had undergone BRTC in the year 2010. Precisely, his contention is that in terms of Rule 111 of J&K Police Rules, the seniority in respect of direct recruits is to be fixed on the basis of merit in BRTC and as respondent has not participated in the same BRTC, so he cannot be treated at par with other Sub-Inspectors, who participated in BRTC in the year 2010. It is true that in terms of Rule *ibid* merit in the training course is relevant for fixing seniority, but it is not the case of the petitioners that the respondent failed at any stage during BRTC, as was the situation in the case of **Parshottam Lal** (supra). The judgment relied upon by learned Sr. A.A.G is distinguishable on the facts and as such cannot be applied in the present case.

15) There is also no force in the contention of the petitioners that no direction in respect of grant of notional

appointment/seniority was issued by the learned writ court in the writ petition preferred by the respondent and as such, the petitioners are well within their domain to grant the benefit of seniority to the respondent from the date of his actual appointment, particularly when the respondent has not chosen to assail his order of appointment. It needs to be noted that no cause of action accrued to the respondent to claim seniority till he was appointed and in the appointment order dated 08.07.2016 itself, it has been mentioned that the seniority shall be determined strictly in terms of the relevant provisions of the Rules.

Conclusion:

16) We have examined the order impugned in this petition and we find that the same does not suffer from any illegality or infirmity. Accordingly, the writ petition fails on merit and is dismissed.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
08.10.2025
“Bhat Altaj”

<i>Whether the Judgment is speaking:</i>	Yes
<i>Whether the judgment is reportable:</i>	Yes