

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

Case No. :- SWP No. 2338/2017

Reserved on: 07.10.2025

Pronounced on: 10.11.2025

Uploaded on: 10.11.2025

*Whether the operative part
or full judgment is pronounced?*

**Hakeem Abid Mubarak (Aged 37)
S/o Hakeem Mubarak Ahmad
R/o Gopalpora, Now Hakimabad
Tehsil and District Kulgam.**

.... Petitioner(s)

Through:- Mr. G. A. Lone, Advocate

V/s

**1. Union Territory of J&K through
Commissioner/Secretary to Government
Industries and Commerce Department
Civil Secretariat Srinagar/Jammu**

....Respondent(s)

**2. J&K Entrepreneurship Development Institute
(JKEDI) through its Director Pampore,
Kashmir.**

Through:- Mr. Waseem Gul, GA

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. Petitioner herein initially filed instant petition seeking therein the following reliefs:

i. Writ, order or direction in the nature of Certiorari for quashing the selection and appointment of respondents 3 to 5 against the posts of Communication Officer advertised vide Advertisement Notice bearing endorsement No. JKEDI/HR/ADVT/2017/3213 dated 29.08.2017.

ii. Writ, order or direction in the nature of mandamus commanding the respondents to select the

petitioner on the basis of merit obtained by him in the selection process or refer the post to the Service Selection Board.

iii. Any other writ, order or direction which the Hon'ble Court may deem fit may also be passed"

2. However, subsequently, in terms of order dated 25.08.2025 passed by this Court amended the same whereby private respondents 3 to 5 came to be deleted from the array of respondents and consequently the following reliefs therein the amended petition came to be sought:

a. Writ, order or direction in the nature of mandamus commanding the respondents to appoint the petitioner on the basis of merit obtained by him in the selection process against the vacant post or Communication Officer in respondent Institute.

b. Any other writ, order or direction which the Hon'ble Court may deem fit may also be passed."

3. Before advertng to the issues involved in the instant petition, a brief background of the facts delineated in the petition becomes imperative hereunder;

(i). J&K Entrepreneurship Development Institute (for short "the Institute"), respondent No. 2 herein, an organization of Government of J&K and amenable to the writ jurisdiction of this Court is stated to have issued an advertisement notice No. JKEDI/HR/ADVT/2017/3213 dated 29.08.2017, inviting applications for selection and appointment of three Communication Officers and two Associate Senior Consultants providing the prescribed qualification for the post of Communication Officer as Master's Degree in Management (MBA/Sociology/Social Work/Mass Communication and Tourism with 55% marks and five years relevant experience in any Government/Autonomous/Corporate organization and for the post of Associate Senior Consultant, a Master's Degree in Management (MBA/Economics with 55% marks and five years experience in the

Product Development, Distribution Channel Development in reputed Corporate.

(ii). Petitioner herein claims to be possessed of eligibility prescribed for both the said posts, states to have applied thereof, whereupon the respondent-Institute is stated to have prepared a list of eligible/ineligible candidates for the post of Communication Officers wherein the petitioner was shown to be figuring at Serial No. 30.

(iii). All the eligible candidates thereafter are stated to have been put to a screening test/objective type test, whereupon, a list of short listed candidates came to be displayed by respondent-Institute on its website on 28.10.2017, in which list the petitioner figured at Serial No. 29, whereafter, the said short listed candidates including petitioner herein came to be subjected to a descriptive written test, upon conclusion of which, the petitioner was shown to have secured 36 marks figuring at Serial No. 06 in the list drawn by the respondent-Institute.

(iv). A select list thereafter is stated to have been prepared of the selected candidates by the respondent-Institute wherein earlier impleaded respondents 3 to 5 in the petition were shown to have been selected and appointed against the posts of Communication Officers. However, without displaying the orders of appointment of the said candidates on the website of the respondent-Institute.

4. Aggrieved of his non selection and selection of said candidates, the petitioner herein challenged the same *inter alia* on the grounds that the earlier impleaded private respondents 3 and 4 were already employed in the respondent-Institute and seemed to have been favoured by appointing them without publishing the procedure prescribed for making the selection pursuant to the aforesaid advertisement notice and that the respondent-Institute did not conduct the selection process by referring the post to J&K Services Selection Board constituted under the J&K Civil Services

(Decentralization and Recruitment) Rules, 2010 applicable to the respondent-Institute and that the selection process undertaken by the respondent-Institute was *dehors* the rules void *ab initio* aimed at to favour the earlier impleaded respondents 3 to 5 and that respondent-Institute reserved high percentage of 25% marks for interview of a candidate with an object to facilitate the selection and appointment of earlier impleaded respondent no. 5 and that though the petitioner herein approached the respondent-Institute for issuance of copies of appointment orders issued in respect of earlier impleaded respondents 3 to 5, same was refused and that earlier impleaded respondent 5 namely Mohsin Qadir Wani is shown to have secured 6.5 marks in the written test and 25 marks in the descriptive test with total of 31.5 marks whereas the petitioner herein has been shown to have secured 08 marks in the objective test and 28 marks in the descriptive test with the total of 36 marks, however, in view of higher percentage of marks earmarked for interview by the respondent-Institute, the said private respondent got selected and appointed instead of the petitioner herein and that an information under Right to Information Act came to be sought by the petitioner herein in this regard from the respondent-Institute in response whereof on 07.06.2019, the petitioner herein came to be informed that the said earlier impleaded respondent 5- Mohsin Qadir Wani has not accepted appointment and that the post is vacant and that owing to the said position, on the basis of merit secured, the petitioner herein became entitled to be appointed against the said post, which, however, came to be refused by respondent-Institute although the petitioner herein was figuring at Serial No. 4 in the select list just below the said Mohsin Qadir Wani and that the other candidates figuring ahead

of the petitioner herein in the select list for the post of Communication Officers stands already employed in the respondent-Institute or elsewhere and had not, as such, sought appointment against the said post which had been offered to said Mohsin Qadir Wani and that since the post having remained vacant, the petitioner herein ought to have been appointed against the said post and that none of the candidates ahead of the petitioner herein in the select list filed any petition before this Court or sought appointment against the said vacant post.

5. Objections to the petition have been filed by the respondents wherein while opposing the petition, it is being stated, that the respondent-Institute is a society registered under the Societies Registration Act 1860 and that the method of recruitment/appointment to a service therein in the institute is regulated by the recruitment rules which do not envisage a reference to be made to the J&K Services Selection Board and that the 25% marks earmarked for interview is not excessive where maximum weightage is provided to the written test and that there has been proportional distribution of marks in accordance with the law in the selection process in question and that since the petitioner herein has participated in the selection process pursuant to the advertisement notice without any demur, as such, the petitioner herein is estopped from challenging the validity of the process of selection or else the mode and criteria adopted thereof and that the respondent-Institute being a society registered under Societies Registration Act is not amenable to the writ jurisdiction being not a State under Article 12 of the Constitution of India, and that the imputations regarding biasness and the malafides alleged in the process of selection in question are unfounded

and denied and that the selection has been conducted in accordance with conditions of advertisement and that the petitioner herein participated therein the said process of selection under a uniform process and that the selection has been made fairly in accordance with rules and that as per the final merit list for the post of Communication Officer, respondent No. 5 had obtained 53 marks in aggregate and figured at Serial No. 3 in the list, whereas the petitioner herein in aggregate had secured 45 marks and figured at Serial No. 10 therein the list and that the petitioner herein is seeking his appointment against the post of Communication Officer which is not available in the respondent-Institute any more after the adoption of J&KEDI Mission Strategy and Action Plan, 2030 in November, 2017, in which the posts of Communication Officers were reduced to two and, as such, no post of Communication Officer is lying vacant, although respondent No. 5 namely Mohsin Qadir Wani joined against the post in the respondent-Institute, however, subsequently resigned on 21.11.2017 and, as such, even if the said post has fallen vacant, same has to be filled up by undertaking a fresh selection process in terms of judgment of Apex Court passed in case titled **Sudesh Kumar Goyal v. State of Haryana and others** reported as **(2023) 10 SCC 54** and that since the number of posts of Communication Officers was reduced to two under Action Plan of 2030, no fresh selection process was initiated by the respondent-Institute thereafter.

6. It is significant to mention here that the petitioner herein, during the pendency of the petition, filed two applications one being CM No. 4513/2019 for placing on record the communication of the respondent-Institute dated 07.06.2019 being an information furnished to the petitioner

under Right to Information Act revealing that amongst three candidates selected for the post of Information Officer, the candidate namely Mohsin Qadir Wani did not join the service and the another being CM No. 5697/2025 wherein the petitioner herein placed on record supplementary affidavit in support of the pleadings of the petition stating therein that there has been no order placed on record by the respondent-Institute regarding the reduction of post of Communication Officer to two from three except a placement order dated 20.11.2017 and enclosures to which order showed the placement of two candidates namely Ishfaq Ahmed Mir and Arif Ahmad Khan as Communication Officers whereas the said Ishfaq Ahmed Mir was one of the candidate who got selected through the selection process in question and consequently got appointed as Communication Officer, however, the candidate Arif Ahmed Khan had neither applied for the post in question nor was appointed against such advertised post, yet is shown to have been holding the post of Communication Officer in the said placement order dated 20.11.2017 and that the other candidate appointed through the selection process namely Rayees Manzoor in the said placement order dated 20.11.2017 is shown to be figuring at a different place as a Faculty, despite having been appointed as Communication Officer and that in so far as the selection of candidate namely Mohsin Qadir Wani is concerned who came to be appointed pursuant to order dated 31.10.2017, but, he did not join the said post which information had been disclosed by the respondent-Institute to the petitioner under Right to Information Act vide communication dated 07.06.2019 and that the respondent-Institute fabricated a document to show that the said candidate namely, Mohsin Qadir Wani after joining the

post of Communication Officer resigned immediately thereafter on 16.11.2017 while addressing a communication on 21.11.2017 to the respondent-Institute.

Heard learned counsel for the parties and perused the record.

7. Having regard to the respective pleadings of the parties, the claim of the petitioner against the post of Communication Officer in question is being opposed by the respondent-Institute mainly on three grounds, **firstly**, that the candidate namely Mohsin Qadir Wani after joining the post in question resigned therefrom, as such, the petitioner cannot claim appointment against the said post in view of the law of the Apex Court, **secondly**, that the post of Communication Officers in the respondent-Institute came to be reduced from three to two and, as such, there is no post available in the respondent-Institute and, **thirdly**, that the writ petition is not maintainable against the respondent-Institute being not a State within the meaning of Article 12 of the Constitution.

8. Before advertng to the aforesaid three grounds of the respondents, it is significant to mention here that petitioner's eligibility against the post of Communication Officer is not being disputed by the respondent-Institute.

9. Perusal of the record available on the file, however, reveals that candidate namely Mohsin Qadir Wani submitted a communication to the respondent-Institute on 21.11.2017 which reads as under:

**"The Director,
EDI JLN Udhyog Bhawan, Jammu 180012**

**Sub: Engaging the other candidates agasint the post of
Communication Officer.**

Sir,

**I regret to inform you that due to unforeseen contingencies
and domestic circumstances, I will not be able to join your**

esteemed organization. So it is requested to engage other candidates as deemed fit by your organization.

Yours faithfully

**Sd/-
(Mohsin Qadir Wani)
S/o Gh. Qadir Wani
R/o 48-A Gogjibagh, Srinagar”**

10. Record tends to show that the aforesaid communication dated 21.11.2017 has been placed on record by the respondent-Institute itself and, as such, on the basis of said communication, it cannot, but, be said, that the said Mohsin Qadir Wani did not join the post, as such, the post remained vacant and was required to be filled up by a candidate in order of merit at that relevant point of time.

Therefore, in view of the above, the plea of respondent-Institute that Mohsin Qadir Wani joined and left the job after joining the post falls flat and is found to be factually incorrect.

11. In so far as the aforesaid second ground urged by the respondent Institute qua the reduction of the post of Communication Officer is concerned, same as well seemingly is misconceived aimed at to non suit the petitioner herein as a closer examination of the order dated 20.11.2017 (supra) relates to the implementation of JKEDI Mission Strategy Action Plan 2030, and nowhere remotely suggests that there has been reduction of the posts of Communication Officers, as a bare perusal of the said order dated 20.11.2017 reveals that same, is, in fact, a placement order of the staff working in the respondent-Institute reflecting the placement of candidate namely Ishfaq Ahmed Mir and Arif Ahmed Khan as Communication Officers, although another candidate namely Rayees Manzoor who got selected and appointed as Communication Officer

pursuant to the process of selection in question is figuring in the said order somewhere as Faculty, whereas the candidate namely Arif Ahmed Khan shown to be as a Communication Officer in the said order dated 20.11.2017 had never applied against the post of Communication Officer in the process of selection in question or else appointed in furtherance thereof.

The aforesaid position obtaining in the matter, therefore, manifestly reveals that respondent-Institute has opposed the claim of the petitioner herein by misleading the court while wrongly placing reliance on order dated 20.11.2017.

12. In so far as the aforesaid third ground urged by the respondent-institute *qua* the maintainability of the petition against the respondent-Institute is concerned, the said issue stands addressed by a Co-ordinate Bench in case titled **“Raheela Nazir and ors v. J&K EDI and others [WP(C) No. 988/2021] decided on 27.10.2022”** wherein it has been authoritatively held that the respondent-Institute is an organization amenable to the writ jurisdiction and, thus, this court has no reason, upon perusal of the said judgment, to take a different view in this regard.

13. It is pertinent to mention here that indisputably the petitioner alone has maintained before this Court a claim against the post of Communication Officer against which post the candidate namely, Mohsin Qadir Wani did not join and indisputably none of the candidates, other than the petitioner, who had been figuring in the select list drawn by the respondent-Institute *qua* the post of Communication Officer have either filed a petition before this court seeking appointment against the post in question or claimed the appointment against the said post and therefore,

having an overall view of the matter, it can safely be concluded that petitioner alone having sought his appointment against the post in question having become available on account of non joining of Mohsin Qadir Wani but for the placement of the candidate Arif Ahmed Khan by the respondent-Institute who had never applied for the post in question, a case for indulgence in the matter is carved out in favour of the petitioner herein for his consideration for appointment against the said post of Communication Officer.

14. Viewed, thus, for what has been observed, considered and analyzed herein-above, the instant petition *succeeds*, as a consequence whereof, the respondent-Institute is commanded to offer the appointment of the post of Communication Officer to the petitioner herein having got available on account of non joining of Mohsin Qadir Wani and consequently extend him all the benefits, to which, the petitioner becomes entitled thereto.

15. *Disposed of* along with all connected application(s), if any.

(JAVED IQBAL WANI)
JUDGE

JAMMU
10.11.2025
Paramjeet

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes