

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

Reserved on: 19.08.2025

Pronounced on: 22.08.2025

CJ Court

WP(C) No.3372/2023

1. Mir Sajad Hussain (aged: 41 years) s/o
Ghulam Mohideen Mir R/o Pandrethan,
Srinagar Kashmir.
2. Ruby Jan (aged: 37 years) D/o Ghulam
Nabi Bhat R/o Nowbugh, Anantnag,
Kashmir.
3. Arif Ahmad Bhat (aged: 32 years) S/o
Ghulam Rasool Bhat R/o Pinglena,
Pulwama, Kashmir.

...PETITIONER(S)

Through: - Mr. Shuja-ul-Haq, Advocate.

Vs.

1. Union Territory of J&K through Principal
Secretary to Govt. Industries & Commerce
Department, Civil Secretariat,
Srinagar/Jammu.
2. Director, Handicrafts & Handloom, J&K
Government, Kashmir Srinagar.
3. Assistant Director, Handicrafts, Baramulla.
4. Assistant Director, Handicrafts, Kulgam.

...RESPONDENT(S)

*Through: - Mr. Waseem Gul, GA, with
Ms. Shaila Shameem, Assisting Counsel.*

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

JUDGMENT

OSWAL 'J'

1) The petitioners claim to have been appointed as Assistant Handicrafts Training Officers initially on a probation period of two years vide order dated 26.04.2018

issued by respondent No.2. The petitioner No.1 and 3 were posted in District Baramulla whereas petitioner No.2 was posted in District Kulgam. However, vide order dated 24.12.2020 followed by communication dated 11.01.2021 issued by respondent No.2, the appointment of the petitioners was cancelled *ab initio* and process for recovery of illegally drawn amount on account of salary/other emoluments by the petitioners was directed to be initiated by respondent No.3 and 4.

2) The petitioners being aggrieved of the order and communication (supra) assailed the same before the Central Administrative Tribunal, Srinagar Bench (for short “the Tribunal”) through the medium of OA No.220 of 2021, on the grounds that the orders impugned were issued by the respondents in utter violation of principles of natural justice.

3) The claim of the petitioners was objected to by the respondents by submitting that the petitioners were appointed to the post of Assistant Handicrafts Training Officer on fake and fabricated letter as their names were never recommended by the Service Selection Board in the main list by which the names of the selected candidates were recommended to the department vide order dated 26.04.2017. The names of the petitioners were neither figuring in the select list nor in the waiting list but

subsequently fake letter of recommendation was issued, on the basis of which the petitioners came to be appointed. An FIR bearing No.29/2021 stands already registered and the matter is pending before the court of competent criminal jurisdiction.

4) The learned Tribunal vide order dated 25.08.2023 dismissed the OA preferred by the petitioners by returning a finding that the petitioners were in service on the basis forged documents and their appointment was non-est right from the very beginning.

5) Feeling dissatisfied with the order dated 25.08.2023 passed by the learned Tribunal, the petitioners have assailed the same through the medium of instant petition on the identical grounds as were urged before the learned Tribunal. The respondents in their response reiterated their stand by stating that the Additional Commissioner, Kashmir (the then Secretary SSB, J&K) vide his letter dated 04.12.2020, while requesting for lodging of FIR with the Crime Branch, had revealed that the selection list dated 15.03.2018 was forwarded to the Industries and Commerce Department with his fake signatures and, accordingly, FIR No.29/2021 was registered with Crime Branch, Kashmir, under Section 420, 468, 471, 120-B IPC read with Section 5(2) of Prevention of Corruption Act. It was further stated that the Administrative

Department vide letter dated 23.12.2020 authorized the Directorate of Handicrafts, Kashmir, to cancel *ab initio* the appointment orders of the petitioners and, accordingly, vide order dated 24.12.2020, the appointment orders of the petitioners were cancelled *ab initio*. Vide communication dated 11.01.2021, Assistant Director, Kulgam/Baramulla were directed to initiate the process of recovery of illegally drawn amount on account of salary/other emoluments by the petitioners during their tenure as Assistant Handicrafts Training Officers and remit the same into the Government Treasury.

6) Learned counsel for the petitioners has submitted that the petitioners have been condemned unheard but the learned Tribunal has not rightly appreciated the contention of the petitioners.

7) Mr. Waseem Gull, learned GA, has submitted that the petitioners had secured appointment on the basis of fake select list, as such, their appointment was void *ab initio*, and, as such, was rightly cancelled by the respondents

8) Heard and perused the record.

9) The petitioners have neither been able to demonstrate before the Tribunal nor before this Court that the select list pursuant to which they secured appointment was not forged.

The record depicts that FIR No.29/2021 under Section 420, 468, 471, 120-B IPC read with Section 5(2) of Prevention of Corruption Act, was registered with Crime Branch, Kashmir, in which challan has also been filed against them. It is also not rebutted by the petitioners that the select list allegedly issued by the Service Selection Board recommending their names for appointment for Kashmir Division, wherein item number was mentioned as 52, was, in fact for Jammu Division. Thus, we have no hesitation to hold that the petitioners had secured appointment on the basis of fake and forged select list.

10) Now the only issue that is required to be considered is as to whether the petitioners were required to be afforded any opportunity of hearing before passing the impugned orders or not.

11) We are of the considered view that when the appointment is obtained on the basis of fake/forged select list/appointment letter, no opportunity of hearing is required to be afforded to the delinquent employee and in such cases, no relationship of employer and employee exists as the appointment of such a delinquent employee is illegal from the very inception. In this context, it would be advantageous to take note of the judgment of the Hon'ble Apex Court in '**State of**

Manipur v. Y. Token Singh, (2007) 5 SCC 65' wherein it has been observed

and held as under:

16. The offers of appointment issued in favour of the respondents herein were cancelled inter alia on the premise that the same had been done without the knowledge of the Revenue Department of the State. No records therefor were available with the State. As noticed hereinbefore, an inquiry had been made wherein the said Shri Tayeng, the then Commissioner of Revenue stated that no such appointment had been made to his knowledge. The State proceeded on the said basis. The offers of appointment were cancelled not on the ground that some irregularities had been committed in the process of recruitment but on the ground that they had been non est in the eye of the law. The purported appointment letters were fake ones. They were not issued by any authority competent therefor.

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefor and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fides.

18. Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility-----.

(emphasis added)

12) The same position has been reiterated in **State of Bihar vs. Kirti Narayan Prasad**, (2019) 13 SCC 250, wherein the Hon'ble Supreme Court has held that if the appointment is illegal from its inception, such employee is not entitled to protection under Article 311 of the Constitution. Paras 16 and 17 of the said judgment are reproduced as under:

16. In *State of Orissa and Anr. v. Mamata Mohanty*, (2011) 3 SCC 436, this Court has held that once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage. It was held thus:

"68(i) The procedure prescribed under the 1974 Rules has not been followed in all the cases while making the appointment of the respondents/teachers at initial stage. Some of the persons had admittedly been appointed merely by putting some note on the notice board of the College. Some of these teachers did not face the interview test before the Selection Board. Once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage". (Emphasis supplied)

17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their

appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.

13) We have examined the judgment passed by the learned Tribunal, which stands the test of judicial scrutiny and we do not find any reason to show indulgence. Accordingly, the present petition is dismissed along with connected applications, being bereft of any merit. Interim direction, if any, shall cease to be in operation.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
22.08.2025
"Bhat Altaf"

Whether the **Judgment** is speaking:

Whether the **judgment** is reportable:

Yes

No