

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.135/2026

c/w

WP(C) No.217/2026

Reserved on: 11.02.2026

Pronounced on: 11.03.2026

Uploaded on: 12 .03.2026

1. UT of Jammu & Kashmir through its Commissioner/Secretary to the Government, Health & Medical Education, Civil Secretariat, Jammu-180001.
2. Project Director, State AIDS Prevention & Control Society
Department of Health & Medical Education, Jammu-180004
3. Deputy Director, State AIDS Prevention & Control Society
Department of Health & Medical Education, Jammu-180004.
4. Director, Health Services, Government of UT of J&K, Jammu-180001.

...Petitioners(s)

Through:-

Mr. Raman Sharma, AAG with
Ms. Jagmeet Kour, Advocate

Versus

1. Surinder Kumar, Age 51 years S/o Sh. Karan Chand R/o
Langotian, Tehsil R.S.Pora District Jammu.

...Respondent(s)

Through:- Mr. Abhinav Sharma, Sr. Advocate
with Mr. Abhirash Sharma, Advocate

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

JUDGMENT

Sanjeev Kumar 'J'

1. These two writ petitions filed by the Union Territory of Jammu & Kashmir and three others arise out of a common judgment dated 13th August, 2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [“the Tribunal”] in OA No.267/2022 and OA No.1020/2024, both titled *Surinder Kumar v. U.T. of J&K and others*. In terms of the judgment impugned dated 13th August, 2025, the Tribunal has allowed both the OAs and has issued to the petitioners following directions:

- “a) *The respondents are directed to promote the applicant to the post of Chauffeur in the pay scale of Rs.9300-34800 + GP Rs.4240, with effect from the date he became eligible under SRO 28 of 1996, i.e. in the year 2004, with all consequential and monetary benefits.*
- b) *The impugned relieving order No.JKACS/Adm/24/4618-22 dated 03.09.2024 issued by respondent no.3 is set aside being without jurisdiction, and the applicant shall be deemed to have continued in service of respondent no.2 (JKSACS) without interruption.*
- c) *Respondents are directed to release all withheld salary to the applicant from January 2024 till date, including Dearness Allowance, annual increments, and other admissible allowances, within a period of four weeks from the date of receipt of a certified copy of this order.*
- d) *The respondents shall also pay the arrears resulting from the delayed promotion from 2004 till actual promotion as Chauffeur, along with interest at the rate of 6% per annum from the date of entitlement till the date of actual payment.*

e) The respondents are further directed to ensure that the applicant's future salary is released in time every month, failing which, this Tribunal shall be constrained to initiate action under the Contempt of Courts Act, 1971."

2. The impugned judgment is assailed by the petitioners on numerous grounds. However, before we advert to the grounds of challenge urged on behalf of the petitioners, we deem it appropriate to narrate few facts from both the OAs filed by the respondent before the Tribunal as are germane to the determination of the controversy raised in this petition.
3. The respondent, namely, Surinder Kumar was appointed as Driver in the then pay scale of 950-1150 plus usual allowances in State AIDS Control Cell by the then Deputy Director, State AIDS Control Cell vide Order No.80/SACC/94 dated 31.08.1994. There is controversy with regard to this order, which, in any case, is initial order of appointment of the respondent as Driver. As per copy of the order appended by the respondent with OA No.267/2022, initial appointment of the respondent as Driver in State AIDS Control Cell was against an available vacancy and on substantive capacity, though, the same was made not pursuant to any selection process conducted in consonance with Article 14 of the Constitution of India, but as per the desire of the Commissioner/Secretary to Government, Health and Medical Education.

4. Interestingly, copy of the initial appointment order of the respondent placed alongside OA No.1020/2024 clearly indicates that the initial appointment of the respondent as Driver, made in terms of order dated 31.08.1994, was purely on stop gap basis till post was filled up by the State Subordinate Recruitment Board, J&K, Jammu. Both the orders have been placed on record by none other than the respondent. The stand of the petitioners herein is that the order dated 31.08.1994 appended by the respondent with OA No.1020/2024 is the real one whereas the same order, which is appended with OA No.267/2022 is forged and fabricated, in that, the words “purely on stop gap basis, till the post is filled up by the State Subordinate Recruitment Board, J&K, Jammu whichever is earlier” are missing therefrom.
5. Be that as it may, the respondent gained his entry in the State AIDS Control Cell of the Health and Medical Education Department pursuant to order dated 31.08.1994 (*supra*). Vide Government Order No.1073/HME of 1997 dated 22.12.1997 amongst others, the post of Driver in the then pay scale of Rs.950-1500 was created in the State AIDS Control Cell for implementation of National Control Programme (Centrally Sponsored Scheme) till life of the project. The post was provided to be filled up by way of deputation from State Motor Garage. The respondent, who was working on *ad hoc* basis against the post of Driver in the State AIDS Control Cell was transferred

and directed to report to the Project Director, J&K AIDS Prevention and Control Society [“AIDS Control Society”] vide Additional Secretary to Government, Health and Medical Education, Srinagar letter No.HD/87/98-FW(AIDS) dated 08.07.1999.

6. It needs to be mentioned that the AIDS Control Society was registered in the year 1998. While the respondent was working as Driver in the AIDS Control Society, the petitioners vide Government Order No.480/HME of 2007 dated 24.07.2007 transferred one post of Driver from overall sanctioned strength of Drivers of Director of Health Services, Jammu to the Project Director, AIDS Control Society for adjustment of the respondent. This order was necessitated for the reason that the respondent was, though, performing his duties as Driver in the AIDS Control Society, yet there was no substantive post of Driver available or created in the AIDS Control Society. It seems that this Government Order dated 24.07.2007 was taken as an order of substantive appointment of the respondent against the post of Driver transferred from Directorate of Health Services, Jammu to the AIDS Control Society. This is so evident from the pleadings of the respondent in OA No.1020/2024, wherein the respondent has claimed his substantive appointment against the post of Driver w.e.f. 24th July, 2007.

7. Be that as it may, the fact remains that even the Society considered the respondent having been substantively appointed as Driver w.e.f. 24th July, 2007. His service book also seems to have been prepared in the year 2007. This is also quite evident from few pages of the service book, placed on record by the respondent himself along with OA No.1020/2024. On completion of five years and after having been so adjusted in AIDS Control Society w.e.f. 24th July, 2007, the respondent staked his claim to his placement in Grade-I of the Driver i.e. 1200-2040 and to his placement in the Grade of Chauffeur i.e. 1640-2900 after completing further service of five years as Grade-I in terms of J&K Civil Services (Revised Pay) Rules, 1992, as amended vide SRO 28 of 1996 dated 25.01.1996. The respondent, after exhausting his remedy of making representation to the petitioners and having been denied the claims projected by him, filed OA No.267/2002 before the Tribunal in which he, *inter alia*, prayed for the following reliefs:

- i) *Quashing the seniority list of Grade-I and Grade-II Drivers of the Jammu Division in which his name did not figure.*
- ii) *Directing the petitioners herein to place him in the seniority list of Grade-I Drivers of Jammu Division and also to promote him as Chauffeur w.e.f. the date he had*

attained the eligibility for the post in terms of SRO 28/1996 dated 25.01.1996.

8. While this petition was pending consideration before the Tribunal, an order came to be issued by the Project Director, AIDS Control Society vide his No.JKSACS/Adm/24/4618-22 dated 03.09.2024, whereby the respondent was relieved from the Society and directed to report back to the Director, Health Services, Jammu for further duties. This order was followed by communication of the Project Director dated 30th March, 2024 addressed to the Secretary to Government, Health and Medical Education requesting the later to shift the respondent back to the Directorate of Health Services, Jammu on the ground that his services were no longer required by the Society.
9. Feeling aggrieved by his transfer and repatriation to Directorate of health Services, Jammu, the respondent filed OA No.1020/2024 and prayed therein, *inter alia*, for quashing the order dated 03.09.2024 and communication dated 30.03.2024 issued by the Project Director of AIDS Control Society. Both these petitions were contested by the petitioners. In their reply affidavit filed before the Tribunal, it was the clear stand taken by the petitioners that the respondent was never appointed as Driver on substantive basis by any competent authority and, therefore, was not entitled to seek his promotion to the Grade-I Driver and Chauffeur. The issue of placing on record forged appointment

order to claim and project that he was a substantively appointed Driver in the Department of Health was seriously agitated by the petitioners. A prayer was made before the Tribunal for launching of criminal proceedings for forgery, fabrication and misleading the Court. It was also claimed that the inadvertent promotion given to the respondent as Grade-I Driver and inclusion of his name in the seniority list was illegal and contrary to the records, on which no relief can be claimed by the respondent.

10. Having heard learned counsel for the parties and perused the material on record, the Tribunal prima facie found substance in the contentions of the petitioners that one of the two orders, placed on record by the respondent, was indeed forged and fabricated but left it to the petitioners to initiate appropriate action under service and criminal law before the competent authorities, providing further that till such action was taken by the competent authority, the respondent could not be deprived of his service benefits, which were due to him under law. This is how the Tribunal disposed of both the petitions and granted relief to the respondent, prayed for in the OAs.

Grounds of Challenge

11. The order impugned is challenged by the petitioners primarily on the following grounds:-

- i) That the Tribunal has failed to appreciate that the respondent was a backdoor appointee having managed his initial entry as Driver in the AIDS Control Cell on 31.08.1994 on stop gap basis and thereafter managed himself to be treated as permanent Driver on the basis of Government Order dated 24.07.2007 (*supra*), whereas the fact remains that the respondent was neither appointed as Driver substantively nor were his *ad hoc* services ever regularized.
- ii) That the Tribunal has brushed aside serious objection taken by the petitioners to the maintainability of the petitions on the ground that the respondent had not approached the Court with clean hands, in that, he had, with a view to getting favourable order, placed on record the order of his initial engagement purportedly issued on 31.08.1994, which, on the face of it, was a forged and fabricated document.
- iii) That the Tribunal has also failed to appreciate that the AIDS Control Society which was registered under the Societies Registration Act did not have its own permanent cadre. The respondent was, therefore, not entitled to the benefit of the J&K Civil Services (Revised Pay) Rules, 1992 , as amended vide SRO 28 of 1996, which was not

applicable to an isolated cadre consisting only of one post or no post.

12. *Per contra*, Mr. Abhinav Sharma, learned senior counsel appearing for the respondent would argue that there is no dispute that there are two orders bearing the same number and date pertaining to the appointment of the respondent as Driver in the AIDS Control Cell in existence and it is not possible to discern as to which one is real one. He, however, feigns ignorance about the circumstances that may have led to the issuance of aforesaid two orders or forging of one of them. He would submit that to unearth truth a thorough investigation in the matter is required for which the tribunal has already issued necessary directions. Regarding his entitlement to be placed in the Grade of Chauffeur, he claims that in terms of SRO 28 of 1996, he having completed more than five years service as Driver in Grade-I is entitled to such promotion.

13. It is argued by Mr. Abhinav Sharma, learned senior counsel that the Government order of 2007 is required to be construed as an order of substantive appointment of the respondent as Driver in the Aids Control Society and, therefore, even if we leave aside the controversy as to whether the respondent was appointed on substantive post or on ad hoc basis in terms of order dated 31st August, 1994, the respondent would be entitled to be placed in the higher pay scale in terms of SRO 28 of 1996. He, however,

could not furnish any explanation as to how he came in possession two orders of his initial appointment and why he placed the order in OA No.267/2022 different from the one he later placed on record along with OA No.1020/2024.

14. Having heard learned counsel for the parties and perused the material on record, we find that the facts are not much in dispute. The original order of first engagement of the respondent is an order placed on record by the respondent himself along with OA No.1020/2024, a perusal whereof clearly indicates that he was appointed on ad hoc basis and that, too, on the desires of the then Commissioner/Secretary to Government, Health and Medical Education. Even order dated 31.08.1994, which is appended with OA No.267/2022, begins with “as desired by the Commissioner/Secretary to Government Health and Medical Education” making it manifest that the appointment, which was offered to the respondent vide order dated 31.08.1994 was an *ad hoc* appointment and not a substantive appointment made pursuant to any selection process conducted by the petitioners in conformity with the requirements of Article 14 and 16 of the Constitution. It is also beyond pale of any discussion that the order purportedly issued on 31.08.1994, which is placed on record by the respondent along with OA NO.267/2022 is a fake order manufactured by tempering the original order dated 31.08.1994, which is part of OA No.1020/2024.

15. In the absence of any explanation from the respondent as to how he came in possession of the two orders bearing same dispatch number and date, it has to be presumed that the order appended with OA No.267/2022, on which the entire OA was based, was a fake order manufactured by none other than the respondent. It is also relevant to point out that when OA No.267/2022 containing fake order was contested by the petitioners and a specific allegation of fabrication of the order was made in the objections, the respondent realized the blunder he had committed and rectified the same by placing the correct order along with OA No.1020/2024 and claiming his first substantive appointment w.e.f. 24th July, 2007.
16. The aforesaid aspect, if taken seriously, is good enough to entail the dismissal of both the petitions. Needless to say that extraordinary writ jurisdiction of this Court vested under Article 226 of the Constitution of India is an equitable jurisdiction and this Court would be justified to throw the writ petition out of the window even if it has merits, if the person invoking writ jurisdiction of the Court is found not approaching the Court with clean hands. “One who seeks equity must do equity” is a well known maxim underlying the exercise of equitable jurisdiction.
17. Having said that, we now turned to the merits of the case. Indisputably, the entry of the respondent in the State AIDS Control Cell as Driver was on stop gap arrangement. In the year

1994, the State AIDS Control Cell was part of the department of Health and engagement of the respondent, which was against the available vacancy, was to continue till the post was filled up through regular selection process to be conducted by the State Subordinate Services Recruitment Board. He continued to work in the AIDS Control Cell of the department of Health till he was shifted from the Cell to the AIDS Control Society, an autonomous Institution registered under the Jammu & Kashmir Societies Registration Act. The AIDS control society did not have any cadre of its own, therefore, transfer and adjustment of the respondent in the AIDS Control Society was only a transfer of an *ad hoc* appointee from the government department to the Society and nothing more.

18. Be that as it may, the respondent continued to drive the vehicle of the AIDS Control Society, but without there being any substantive post to man either substantively or on ad hoc basis. With a view to facilitating the adjustment of the respondent against an available post, the petitioners vide Government Order dated 24.07.2007 transferred one post from the overall sanctioned strength of Drivers of Directorate of Health Services, Jammu to the Aids Control Society.
19. Viewed from any angle and from any perspective, adjustment of the respondent against the post of Driver, which, for the first time became available in the AIDS Control Society in terms of

Government Order dated 24.07.2007, was in essence ad hoc appointment against an available post but it seems that the respondent and for his benefit the officers of the AIDS Control Society treated that order as substantive appointment of the respondent as Driver in the AIDS Control Society forgetting that substantive appointments are made after following due process, which is in consonance with Article 14 and 16 of the Constitution of India.

20. On the basis of order dated 24.07.2007, service book of the respondent was prepared by the AIDS Control Society in the year 2007 and in this way the respondent came to be treated as Driver having been appointed on substantive basis in the AIDS Control Society. Because of this reason alone, he also came to be shown in the seniority list of Drivers of the State Health Transport Organization, Jammu and figured at S.No.91. He even got the benefit of promotion to Driver Grade-I in terms of order dated 31.07.2012 passed by the Chief Accounts Officer of the AIDS Control Society on the ground that he had completed five years minimum service in Grade-II under SRO 28 dated 25.01.1996.
21. The respondent was sought to be repatriated to the Directorate of Health Services, which was objected to by him. It furnished fresh cause of action to the respondent for filing OA

No.1020/2024 to which we have adverted to in detail in the beginning of this judgment.

22. In the aforesaid backdrop, three short questions arise for determination:

- i) *Whether the respondent was ever appointed as Driver in substantive capacity or his ad hoc services ever regularized by the Government in the Department of Health and Medical Education or the AIDS Control Society?*
- ii) *Whether the respondent is an employee of the Directorate of Health Services or AIDS Control Society?*
- iii) *Whether the respondent is entitled to the benefit envisaged under SRO 28 dated 25.01.1996.*

23. We take up these questions for consideration notwithstanding that the respondent is not entitled to any relief for having not approached the Court with clean hands.

Question No.(i)

24. Initial appointment of the respondent as Driver in terms of order dated 31.08.1994 is by way of an *ad hoc* arrangement and cannot be construed as permanent appointment. At the cost of repetition,

we may say that the order dated 31.08.1994 was passed to fulfill the wish and desire of the then Commissioner/Secretary to Government, Health and Medical Education and not pursuant to any selection process conducted by the petitioners in consonance with Article 14 and 16 of the Constitution of India. Initial appointment of the respondent was in the AIDS Control Cell during the year 1994, which was part of the Health and Medical Education Department, Government of J&K. However, when the AIDS Control Society came into existence in the year 1998, services of the respondent were transferred to the AIDS Control Society, which did not have any post of Driver on its cadre. The Government Order dated 24.07.2007 was issued only to facilitate continuation of the respondent as Driver in the AIDS Control Society by providing one permanent post of Driver from overall sanctioned strength of Drivers of Directorate of Health Services, Jammu to the AIDS Control Society. The order was not intended to offer permanent appointment to the respondent. It was only for the purposes of his adjustment. Sadly, the aforesaid order for obvious reasons was taken as order of appointment both by the respondent as well as the Project Director of the time and service book of the respondent was also prepared. He was even given the benefit of up-gradation in the year 2012 placing reliance on SRO 28 of 1996 without realizing that SRO 28 of 1996 had no application in the department or organization, which only had an isolated cadre of Driver consisting of one post or no post.

25. The posts of Driver Grade-I and Chauffeur, as envisaged under SRO 28 of 1996, were not to be separately created. The Driver Grade-I were the posts i.e. 30% of the total posts of driver available in the department. 20% of the total number of posts of drivers were similarly re-designated as Chauffeurs. In the Aids Control Society there was only one post of Driver, which it had got by transfer from the Directorate of Health Services in terms of Order of 2007. That being the position, SRO 28 of 1996 had no application to the cadre of Drivers of the AIDS Control Society.
26. Be that as it may, the then Project Director Aids Control Society once again became generous and granted the benefit of up-gradation to the respondent only on the ground that he had worked as Driver Grade-II for five years having been appointed in the said Grade in the year 2007. The provisions of SRO 28 of 1996 were totally misconstrued and, we may say, were deliberately ignored to confer wrongful benefit upon the respondent.
27. Viewed thus, irresistible conclusion that can be drawn from the facts and circumstances narrated above is that the respondent never became Driver in the AIDS Control Society in substantive capacity nor his services were ever regularized. Since the respondent has been treated by the petitioners with effect from 24.07.2007 as a Driver holding the post on substantive basis, as

such, it would be too late in the day to turn the clock back. He has even been given wrong benefit of up-gradation to the post of Driver Grade-I, which despite being clearly *de hors* the Rule may not be interfered with at this stage. Suffice it to say that the authorities at the helm of affairs have deliberately and for the reasons best known to them ignored the Rules and Regulations and conferred the wrongful benefit upon the respondent. However, having come to our notice, we cannot permit the respondent to take any further benefit in his service.

Question No.(ii)

28. From the discussion we have made above, we are of the considered opinion that the respondent cannot be treated as a permanent employee either of the Government/Directorate of Health Services or the AIDS Control Society, for, his services, which were *ad hoc* in nature, were never regularized by any competent authority by issuing any formal order. However, if we were to construe the Government Order dated 24.07.2007 as an order of substantive appointment of the respondent as Driver, then he shall be deemed to be an employee of the AIDS Control Society. The one post of Driver from the overall strength of the Directorate of Health Services, Jammu was permanently transferred to the AIDS Control Society against which the respondent was adjusted. He, therefore, became the employee of the AIDS Control Society.

29. We are, however, in agreement with the learned counsel for the respondent that he being borne on the cadre of AIDS Control Society pursuant to Government Order dated 24.07.2007, cannot be repatriated to the Department of Health and Medical Education/Directorate of Health Services.

Question No.(iii)

30. As we have already discussed above, the respondent having been appointed against an isolated cadre consisting of one post only is not entitled to the benefit of SRO 28 of 1996. The SRO 28 of 1996 would apply only to the department, which has sufficient number of posts of Drivers Grade-II so as to convert a percentage thereof as Driver Grade-I and Chauffeurs.
31. For the foregoing reasons, we find merit in the writ petitions filed by the petitioners except that the respondent is entitled to be treated an employee of the AIDS Control Society and, therefore, not liable to be repatriated to the Directorate of Health Services. The writ petitions to the extent aforesaid are allowed and the judgment of the Tribunal, impugned in these petitions, is set aside except that petitioner may institute an inquiry or file criminal proceedings as regard the forgery of order of initial engagement of the respondent as directed by the Tribunal.
32. Record be returned back to the learned counsel for the petitioners.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
11.03.2026
Vinod, Secy

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