

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

CPLPA No. 03/2018 in LPASW No. 159/2016 c/w
WP(C) Nos. 755/2022, 1415/2022, 1416/2022 &
1669/2022

Reserved on 17.09.2026.
Pronounced on 28 .09.2026
Uploaded on 29 .09.2026
Full judgment is pronounced

Kartar Chand and others Petitioner (s)
Dr. Yasmeen Ashai and others
UT of J&K and others
UT of J&K and others
UT of J&K and others

Through :- Mr Z.A.Shah Sr. Advocate with
Mr. Javed I. Bhalwal Advocate in WP(C)
No. 755/2022 (Th. V.C)
Mr. Dewakar Sharma Dy.AG in
WP(C) Nos. 1415/2022, 1416/2022
& 1669/2022
Mr. Abhinav Sharma Sr. Advocate with
Mr. Abhirash Sharma Advocate in
CPLPA No. 03/2018.

V/s

Dr. Asgar Hussain Samoon and Respondent(s)
another
UT of Jammu and Kashmir and
others
Dr. Y.P.Kundal and others
Kartar Chand and others
Kartar Chand and others

Through :- Mr. Abhinav Sharma Sr. Advocate with
Mr. Abhirash Sharma Advocate
Mr. M.Y.Akhood Advocate.
Mr. F.A.Natnoo Advocate.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

JUDGMENT

Sanjeev Kumar J

WP(C) Nos. 1669/2022, 1415/2022 & 1416/2022 & WP(C) No. 755/2022

Facts:

1 A common order and judgment dated 12.01.2022 (hereinafter referred to as “the impugned judgment”) passed by the Central Administrative

Tribunal, Jammu Bench, Jammu (hereinafter referred to as “the Tribunal”) in TA Nos. 5796/2021, 5809/2021 and 5800/2021 is the subject matter of challenge in these four writ petitions; three i.e. WP(C) Nos. 1669/2022, 1415/2022 & 1416/2022 filed by the UT of Jammu and Kashmir through Secretary to the Government, Department of Higher Education, and one i.e. WP(C) No. 755/2022 filed by Dr. Yasmeen Ashai and thirty-two (32) others. In terms of the impugned judgment, TAs of the private respondents in these writ petitions have been allowed and the Government Order No. 684-HE of 2017 dated 12.12.2017 promoting the petitioners in WP(C) No. 755/2022, has been quashed. It is pertinent to mention here that the matters were initially filed before this Court as SWP Nos. 2966/2017, 789/2016 and 1902/2017. However, after the enactment of the Jammu and Kashmir Reorganisation Act, 2019, and the constitution of the Tribunal, the aforesaid petitions were transferred to the Tribunal and registered as the TAs aforesaid.

2 Before we advert to the grounds of challenge urged by the UT of Jammu and Kashmir and the promoted candidates, namely, Yasmeen Ashai and others, to the impugned judgment, we deem it appropriate to set out a few facts that are germane to the disposal of these writ petitions.

3 The private respondents herein came to be appointed as Lecturers in various Degree Colleges of the then State of Jammu and Kashmir. The appointment and method of recruitment of the private respondents and those working as Lecturers in various Degree Colleges was governed by the J&K Education (Gazetted) College Service Recruitment Rules, 1995, which were later repealed and replaced by the J&K Education (Gazetted) Colleges Service Recruitment Rules, 2004 (hereinafter referred to as the “Rules of 2004”). The Rules of 2004 were also later repealed and replaced by the J&K Education

(Gazetted) Colleges Service Recruitment Rules, 2008 (hereinafter referred to as the “Rules of 2008”). The private respondents holding the posts of Lecturer (Selection Grade) were posted as In-charge Principals in various Government Degree Colleges purely on a stop-gap basis in their own pay and grade between the years 2010 and 2014, with a clear stipulation that their posting as Principals in In-charge capacity would not confer any preferential right upon them for being regularized under the rules. Recognising that the private respondents had been performing the duties of higher posts, though in an officiating capacity, the Government, vide its Order No. 85-HE of 2013 dated 23.09.2013, sanctioned charge allowance in favour of the private respondents.

4 It is claimed by the private respondents that they were posted as In-charge Principals, though in their own pay and grade, because they were eligible to hold the posts and their confirmation was only subject to selection to be made by the DPC/PSC as per the Rules of 2008.

5 It seems that while the process for consideration of the private respondents for their regular appointments as Principals was under way, the Rules of 2008 came to be amended vide SRO 124 of 2014 dated 21.04.2014. The method of recruitment to the post of Principal also underwent a significant change. The said post was provided to be filled up by selection through DPC/PSC from Class-II, Category (A), from amongst persons having at least 15 years of teaching experience in Colleges, out of which at least three years must be as Associate Professor, provided that the number of candidates to be considered shall not ordinarily exceed five times the number of posts.

6 Sensing delay in considering their cases, some In-charge Principals working in Degree Colleges of Kashmir filed SWP No. 42/2014 in the Srinagar Wing of this Court, which was disposed of at the motion hearing

stage by a Bench of this Court vide order dated 16.01.2014, with a direction to the official respondents therein to convene a Departmental Promotion Committee at the earliest and consider the cases of the petitioners therein along with other eligible candidates for their confirmation in accordance with the Rules of 2004. The Public Service Commission initiated the process for appointment of Principals in Government Degree Colleges by way of selection and issued a notice dated 11.04.2016 notifying the schedule of interviews for the posts of Principal. This notice was called in question by the private respondents in TA No. 5809/2021 (SWP No. 789/2016). Dr. Y.P. Kundal, another private respondent, also challenged the aforesaid notice separately in TA No. 5800/2021 (SWP No. 1902/2017). In SWP No. 789/2016, titled 'Kartar Chand and ors v. State of J&K and ors' (TA No. 5809/2021), a Single Bench of this Court passed an interim order dated 20.10.2016 directing the Public Service Commission not to finalize the selection process initiated vide its notice dated 11.04.2016. Feeling aggrieved, the Public Service Commission filed LPASW No. 159/2016, wherein a Division Bench of this Court, vide its order dated 16.12.2016, modified the interim order passed in the writ petition and directed that the PSC would proceed with the selection of Principals to be appointed by promotion to such of those vacancies which had arisen prior to 21.04.2014, after obtaining the vacancy position from the Department of Higher Education, as per the procedure in vogue prior to 21.04.2014. The Division Bench further provided that the vacancies which arose after 21.04.2014 were to be filled up by following the procedure contemplated under SRO 124 dated 21.04.2014. The writ petitioners (private respondents herein) were permitted to participate in the selection process, subject to their right to seek regularisation, which was to be adjudicated at the time of final hearing of their writ petition. The review

petition filed by the PSC for recalling of the order dated 16.12.2016 (supra) also came to be dismissed. However, during the pendency of the review petition, the Government issued Order No. 684-HE of 2017 dated 12.12.2017, whereby the In-charge Principals of various Degree Colleges were appointed on substantive basis. Only a few amongst the In-charge Principals came to be confirmed.

7 Feeling aggrieved of the Government Order (supra), the private respondents filed fresh writ petitions i.e SWP Nos. 2966/2017, 789/2016 & 1902/2017 (TA Nos. 5796/2021, 5800/2021 and 5809/2021) to throw challenge to the selection of the candidates who had been appointed as Principals pursuant to the recommendations of the DPC/PSC. All the petitions came to be clubbed and disposed of by the impugned common judgment. The entire process of selection conducted by the PSC culminating into issuance of Government Order of 2017 was held bad and quashed. The Tribunal, while passing the impugned judgment, also directed the official respondents to initiate a fresh process of selection in accordance with law. It is this judgment of the Tribunal which is called in question in the writ petitions, reference to which has already been given in the beginning of this judgment.

Grounds of challenge:

8 The petitioners in WP(C) No. 755/2022, i.e the appointed Principals, have assailed the impugned judgment, primarily, on the following grounds:

- (i) That the Tribunal has misconstrued the rule position, in that, the post of Principal, as per the amended and un-amended recruitment rules, was to be filled up by selection and, therefore, the PSC was well within its right to determine and adopt any rational criteria for evaluating the merit and suitability and prepare a select list of candidates to be appointed as Principals. It is contended that the

Tribunal misconstrued the term ‘selection’ as promotion and landed in serious errors of law.

(ii) That the Tribunal did not correctly appreciate the import of order dated 16.12.2012 (supra), whereby the interim order passed by the writ Court was modified to provide that the vacancies of Principal which had arisen prior to 21.04.2014, i.e. the date of commencement of the amended rules, were to be filled up as per the procedure in vogue prior to 21.04.2014 and the vacancies which had arisen after 21.04.2014 were to be filled up in accordance with the procedure prescribed by SRO 124 of 2014. The aforesaid order, it is contended, was only an interim arrangement made during the pendency of the writ petition and was subject to vacation or modification by way of final judgment to be rendered in the writ petition. The Tribunal did not appreciate that the Division Bench, in its order dated 16.12.2016, had nowhere dealt with the issue of eligibility of the parties before it.

(iii) That the Tribunal has also not appreciated that the petitioners, having been appointed after facing a selection process, were, at the time of passing of the order, at the verge of retirement and, therefore, equity was heavily tilted in their favour.

9 The Union Territory of Jammu and Kashmir has assailed the impugned judgment, *inter alia*, on the following grounds:

(i) That the appointment of Principal by way of selection made in terms of Government Order of 2017 was pursuant to the recommendations made by the DPC/PSC and, therefore, ought not to have been found fault with by the Tribunal.

(ii) That the selection process was carried out by the J&K PSC strictly as per rules and even in conformity with the directions passed by the Division Bench vide its order dated 16.12.2012.

(iii) That indisputably, there were 51 posts of Principal lying vacant in the year 2012, yet those posts were required to be filled up from eligible Selection Grade Lecturers having the requisite period of service on the basis of selection made by the DPC/PSC. Since the appointment of Principal is by way of selection, therefore, the PSC was well within its right to frame a rational criterion to assess the merit, integrity and suitability of the eligible candidates to hold the posts. The private respondents could not pass muster in the process of selection conducted by the PSC and, therefore, could not be regularized/confirmed as Principals.

Submissions of the private respondents:

10 *Per contra*, Mr. Abhinav Sharma, learned Senior Counsel appearing for the private respondents, would support the judgment of the Tribunal on all fours and submits that the selection process was conducted by the PSC *de hors* the directions passed by the Division Bench vide order dated 16.12.2016 in LPASW No. 159/2016 and, therefore, was rightly held bad in the eye of law. He would also argue in the alternative and submit that the private respondents, having been posted as In-charge Principals during the period between 2012 to 2014, rendered decades of service before superannuation and, therefore, cannot be deprived of the benefit of regularization by applying selection criteria which was not *in vogue* at the time they were made In-charge. He would submit that had the PSC convened the DPC in time and adhered to the mandate of the J&K Civil Service (Reference of Vacancies and Holding of Meetings of Departmental Promotion Committees) Rules, 2005 [“the Rules of 2005”], the private respondents would have been confirmed long back on the basis of their merit, integrity and suitability, as was contemplated in the Rules of 2008. He, therefore, urges that since the posts held by the private respondents in In-charge capacity remained available till their superannuation, it would not be difficult for this Court to balance the equities and direct the PSC and the Government to regularize their services and hold them entitled to the benefit of the higher post of Principal. It is submitted that all the private respondents have now retired on superannuation and were holding the posts of Principal in In-charge capacity.

Analysis and findings:

11 Having heard learned counsel for the parties and perused the material on record, it is necessary to notice a few undisputed facts.

12 From the year 2010 to 21.04.2014, when most of the private respondents, holding substantively the posts of Selection Grade Lecturers, were posted as In-charge Principals, the Rules of 2008 were in vogue. As per the Rules of 2008, the post of Principal was provided to be filled up in the following manner:

“Principal- by selection through DPC/PSC from Class-II, Category (A), on the basis of integrity, merit and suitability from amongst persons having at least 10 years of service in that capacity”.

13 The Rules of 2008 underwent an amendment in the year 2014 vide SRO 124 of 2014, which prescribed the method of recruitment to the post of Principal in the following manner:

“Principal – by selection through PSC/DPC from Class-II, Category (A), from amongst persons having at least 15 years of teaching experience in Colleges, out of which at least three years must be as Associate Professor, provided that the number of candidates to be considered shall not ordinarily exceed five times the number of posts”.

14 When we compare the stipulation with regard to the method of recruitment to the post of Principal contained in the Rules of 2008 and the rules amended in terms of SRO 124 of 2014, we clearly find that the post of Principal was to be filled up by selection through PSC/DPC and this did not undergo any change. Whether the private respondents are considered under the unamended Rules of 2008 or as per the amended Rules of 2008 in terms of SRO 124 of 2014, the method of recruitment would remain the same, i.e. “by selection through PSC/DPC”, though there is a change in eligibility. It is, thus, evident that when the Division Bench, in terms of its order dated 16.12.2016, directed that the private respondents herein shall be considered

against the vacancies that had accrued prior to 21.04.2014 as per the procedure in vogue prior to the amendment, it did not change or direct the change in the method of selection. The PSC was, thus, under an obligation only to ensure that the private respondents who were eligible under the Rules of 2008 and may have been rendered ineligible as per the rules amended in the year 2014 were not kept out of the zone of consideration.

15 It is not the grievance of the private respondents that they or any of them was ever declared ineligible. Indisputably, they were all considered as per the criteria of selection adopted by the PSC, but were not found making the grade. It is because of this reason that they could not be recommended for appointment as Principals. There is no challenge to the fairness of the selection process, nor have the private respondents raised any allegations of arbitrariness or *mala fides* against the members of the PSC who constituted the selection committee. The private respondents only insist that their merit, integrity and suitability should have been determined as per the selection criteria which was *in vogue* when they were made In-charge Principals. They may be right in saying that, had the PSC and the Government undertaken a timely exercise for their confirmation as Principals, their merit could have been evaluated as per the selection criteria *in vogue* prior to 2012, reference to which has been made by the PSC in their reply affidavit. Be that as it may, it cannot be denied that the PSC, which framed a selection criterion for making selection to the post of Principal, was well within its right to change, alter or modify it at any time, provided the altered or modified criterion was in consonance with and in conformity with Articles 14 and 16 of the Constitution of India.

16 Viewed thus, it is difficult for us to accept the contention of the private respondents that their evaluation of merit in the selection process conducted by the PSC on the basis of a fresh criterion laid down after the amendment of the Rules prejudiced their right to be appointed as Principal. The argument is too specious to be accepted. We, however, find some substance in the submission of learned Senior Counsel appearing for the private respondents that the Government could not have prolonged the In-charge arrangements for a decade without taking effective steps for placing their cases before PSC/DPC. Whether or not the Rules of 2005 are directory or mandatory, the Government/PSC cannot absolve itself of its obligation to conduct regular PSCs/DPCs so as to consider the cases of candidates holding the posts in In-charge capacity for their confirmation.

17 Technically, it may be contended that the Rules of 2005 referred to only the vacancies to be filled up in the promotion quota, whereas the post of Principal is required to be supplied by way of selection, yet it does not absolve the Government/PSC to act diligently and conduct DPCs/PSCs periodically so that the *ad hoc* arrangements are not stretched beyond the permissible period. A note of caution was sounded by the Supreme Court in the year 2000 when it rendered a judgment in the case of **S.P. Gupta v. State of J&K, AIR 2000 SC 2386**, which was followed by the issuance of Government Order No. 743-GAD of 2007 dated 28.06.2007 to give effect to the aforesaid judgment. Despite the fact that the judgment was rendered 26 years back, yet the State (now UT) has not shunned the practice of *ad hocism*. In the instant case also, unnecessary litigation was generated by the Government/PSC due to its reluctance/inability to convene timely DPCs.

18 We are aware and would like to make it abundantly clear that the private respondents, having been made In-charge Principal, did not have any vested right to be necessarily regularized against such posts and their regularization was subject to their confirmation by PSC/DPC, which under the rules was enjoined to conduct a proper selection process. It took the PSC more than a decade to initiate and complete the process of selection for posting the regular Principals in the Degree Colleges of the UT. All along, the posts were held and manned by the In-charge Principals. It is not the case of the Government that the placement of the private respondents as Principals in In-charge capacity was *de hors* the Rules of 2008 or that the private respondents lacked eligibility to hold the posts. They were made In-charge Principals on the basis of their eligibility and seniority at the relevant point of time. It is true that had the PSC convened the DPC and made selection in time, possibly most of the private respondents would have been confirmed and appointed as Principals on substantive basis.

19 Mr. Abhinav Sharma learned Senior Counsel appearing for the private respondents is right in saying that in the earlier selection criteria there was adequate *weightage* given to seniority, which was drastically reduced in the selection criteria that was adopted in making the selection impugned in the petitions before the Tribunal. It is also not in dispute that with a view to filling up the posts of Principal on substantive basis, the process was set in motion by collecting the ACRs and other details of the eligible candidates in the year 2012 and why the said process was not taken to its logical end is not forthcoming from the record. Be that as it may, the formal process of selection was initiated by the official respondents only when the schedule of

interviews was notified by the PSC in terms of its notification dated 11.04.2016.

20 We would also like to make it clear that the order of the Division Bench dated 16.12.2016 passed in LPASW No. 159/2016 was only an order, supposed to subsist till the disposal of the writ petition, and, therefore, cannot be said to be an expression of final adjudication of any question of law or fact by the Division Bench. It seems that not only the private respondents but also the Tribunal has taken the order dated 16.12.2016 passed in LPASW No. 159/2016 as a judgment. The aforesaid order ultimately merged with the final judgment rendered by the Tribunal impugned in these petitions. However, since the process is claimed to have been conducted by the PSC by adhering to the directions issued by the Division Bench in terms of its order dated 16.12.2016, as such, we have examined the matter in that context.

Conclusion and relief:

21 Viewed from any angle, the selection process conducted by the PSC in which the petitioners in WP(C) No. 755/2022 emerged successful and were subsequently appointed vide Government Order No. 684-HE of 2017 dated 12.09.2017 cannot be said to be flawed in any manner and, therefore, deserves to be upheld. The directions of the Tribunal quashing the selection process culminating into issuance of Government Order of 2017 is, thus, totally flawed and cannot sustain. However, we cannot lose sight of the fact that those of the private respondents who were posted as In-charge Principals between the year 2010 and up to the amendment of the Rules of 2008 vide SRO 124 of 2014 too have suffered adversely and are required to be rescued in the given facts and circumstances for the following reasons:

(i) That they were posted as In-charge Principals in view of their eligibility and seniority and, therefore, this is not a case of random picking up.

(ii) That they continued to hold the posts in In-charge capacity with the benefit of charge allowance for decades together till they got superannuated from service. They have undoubtedly discharged the plenary duties of the Principal and, therefore, cannot be deprived of the benefit of regularization.

(iii) That the DPC/PSC, which was obliged to conduct the selection process periodically, failed to do so for years together, as a result whereof the private respondents continued to perform the duties of Principal, though in In-charge capacity and with the benefit of charge allowance only.

(iv) That had the DPC/PSC conducted the selection process periodically and at least without any undue delay, probably the result would have been different and most of the private respondents would have been confirmed long back, as the criteria in vogue at the time of their engagement as In-charge Principals was slightly different, having extra weightage to the seniority.

22 In view of the aforesaid, these writ petitions are allowed. The order impugned passed by the Tribunal is set aside. The selection and appointment of the petitioners in WP(C) No. 755/2022 and other similarly situated candidates is upheld. The Government is directed to treat all the private respondents who were holding the posts of Principal in In-charge capacity at the time of their superannuation as having been confirmed on the said posts retrospectively w.e.f. the date they were made In-charge Principals, though without any arrears of pay. The private respondents, however, shall be entitled to the revision of their post-retiral emoluments and pension as may be admissible to them under the rules.

CPLPA No.3/2018 in LPASW No. 159/2016

This is a petition seeking initiation of contempt proceedings against the respondents for alleged wilful disobedience and non-compliance of the

order dated 16.12.2016 passed by the Division Bench in LPASW No. 159/2016.

In view of the judgment rendered today in the connected writ petitions, whereby the selection process and consequential appointments have been upheld, no case of wilful or deliberate disobedience of the order dated 16.12.2016 is made out. The contempt petition is, accordingly, dismissed and the proceedings are closed.

(SHAHZAD AZEEM)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
28 .09.2026
SANJEEV

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