

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

SWP No.1957/2001 c/w
SWP No.2190/2001&
SWP No.2206/2001

Reserved on: 26.02.2026
Pronounced on: 25 .03. 2026
Uploaded on: 27.03.2026

whether the operative part or full
judgment is pronounced:Full

Nath Singh and others
Prem Nath and another
Suraj Parkash

Petitioners

Through: - Ms. Radha Sharma Advocate.

vs

High Court of J&K and Ladakh and others

...Respondent(s)

Through: - Mr. R.K.Gupta Sr. Advcoate with
Mr. Udhay Bhasker Advocate.
Mr. H.A.Siddiqui Advocate.

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

JUDGMENT

Sanjeev Kumar, J

SWP No.2190/2001 & SWP No.2206/2001

The petitioners do not wish to press these writ petitions.
Accordingly, both the writ petitions stand dismissed as not pressed.

SWP No.1957/2001

1 The present writ petition has been filed by the petitioners under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for quashing the impugned select list dated 19.07.2001 issued for the post of Junior Assistant in the Subordinate Courts by respondent No.2 on the recommendation of the Selection Committee. The petitioners have also prayed for a writ of mandamus directing respondent Nos.1 and 2 to consider their candidature for the said post strictly in accordance with the applicable rules and regulations.

2 Briefly stated, the case set up by the petitioners is that vide Advertisement Notification dated 07.04.1997, applications were invited from eligible candidates possessing the qualification of 10+2 or its equivalent. The last date for submission was extended vide notice dated 24.02.1998. The petitioners submitted their applications, appeared in the written examination, and qualified. They were subsequently called for a viva voce test conducted at the High Court at Jammu. According to the petitioners, they performed well in the interview. It is further pleaded that respondent No.2 issued individual appointment orders on 19.07.2001. However, the petitioners have contended that the select list was neither published in any newspaper nor displayed on the notice board.

3 The petitioners have challenged the select list primarily on the ground that the entire selection process is arbitrary, unfair, and violative of Articles 14 and 16 of the Constitution of India. They have pleaded that despite having qualified and performed well, they were ignored without justification. They have pointed out that the selected

candidates lacked prior Court experience and knowledge of Urdu, which is essential for subordinate court work, whereas petitioners Nos.1 and 2 possessed such experience and knowledge. Another ground of challenge is that the inordinate delay between the advertisement and the select list, renders the selection process doubtful. A specific challenge has been raised regarding the jurisdiction of the appointing authority. Reliance has been placed on Section 30(1) of the Civil Courts Act, which confers the power of appointment of ministerial officers upon the District Judge, subject to the control of the High Court under Section 30(4). The petitioners have contended that the High Court, being merely a controlling authority, could not have assumed the role of the appointing authority. They have argued that since the District Judge did not participate in the selection process, the entire selection stands vitiated due to lack of jurisdiction.

5 Objections have been filed on behalf of respondent Nos.1 to 3. It is stated that the petitioners, having failed to secure merit in selection, have filed the present petition on imaginary grounds. The respondents have contended that the selection was fair, transparent, and based on merit. With regard to the availability of records, the Registrar Vigilance have reported that the record pertaining to the selection was submitted to the Committee but is not traceable in the office. Despite summoning the record keeper, the record could not be found.

6 We have heard learned counsel for the parties and perused the material on record.

7 The case history shows that there has been a long delay in deciding the matter. The writ petition was admitted on 20.02.2002.

Over the years, the case moved from a Single Judge to a Division Bench. Vide order dated 28.12.2016, the Registrar General was directed to trace the missing record. On 14.03.2017, learned counsel for the petitioners alleged serious irregularities, including the selection of underage and overage candidates, as well as candidates with criminal antecedents, and undertook to file an affidavit. The petitioners subsequently filed a supplementary affidavit. However, in the order dated 31.03.2018, it is recorded that the selection record was not available despite efforts. The respondents reiterated the same position in respect of selection record even during hearing of this petition.

8 From a perusal of the communication dated 19.10.2016, it is confirmed that the record is not traceable. Despite repeated directions, the record has not been found. In the absence of the record, the Court is constrained to rely on the pleadings and affidavits on record.

9 At this stage, it is pertinent to note that except petitioner Nath Singh, all co-petitioners do not wish to press the petition. Their petitions are dismissed as not pressed.

10 The only remaining petitioner, Nath Singh, was about 35 years old when the writ petition was filed and is now nearly 60 years old. Even if the petitioner's claim is accepted as correct, it is not possible to grant him relief sought for. The Court cannot ignore the fact that the selection took place in 2001 and the selected candidates have been in service for more than twenty years. It has also been brought to the notice of the Court that some of the selected candidates have even passed away, while some have already retired. In these circumstances,

it would not be practical or fair to cancel the entire selection at such a belated stage that too on the solitary ground that the selection record is not traceable and, therefore, allegations made by the petitioner should be presumed to be correct. The selection was completed long ago, and therefore, this Court is unable to grant any relief to the petitioner. The petition has virtually become a fait accompli.

11 The petitioner, having participated in the selection process, is estopped from challenging the jurisdiction of the selection committee constituted by the High Court to conduct the selection after finding that he has not made it to the selection.

12 The petitioner has made general allegations of arbitrariness and mala fides. The law relating to allegations of mala fides is well settled. **In E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3**, the Supreme Court has held that allegations of mala fides require a high standard of proof and specific pleadings naming the persons who acted with bias. Vague allegations are insufficient. In the present case, the petitioner has failed to implead the persons against whom mala fides are alleged, nor has he placed any concrete material to substantiate such claims. It would be appropriate to reproduce Paragraph 92 to the aforesaid extent, which is reproduced as under:

“Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. the allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extra-ordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the

State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may land themselves to misconstruction and suspicion as to the bona fide of their author when the full facts and surrounding circumstances are not known. The Court would, therefore be slow to draw dubious inferences from incomplete facts placed before it by a party,, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social' life or administrative set up these. considerations are wholly irrelevant in judicial approach but because, otherwise, functioning effectively would become difficult in a democracy. It is from this stand point that we must assess that merits of the allegations of mala fides made by the petitioner against the second respondent”.

13 It is also well settled that a candidate who participates in a selection process without protest cannot subsequently challenge it after being unsuccessful. Reference is made to **Rekha Sharma vs. Rajasthan High Court (2024) SCC Online SC 2109**. It would be appropriate to reproduce Paragraph 92 of the said judgment to the aforesaid extent, which is reproduced as under:

“As well settled, the candidates who consciously took part in the process of selection cannot be permitted to question the advertisement or the methodology adopted by the respondents for making selection, on their having been declared as unsuccessful in the Preliminary Examinations. The appellants after they having found that their names do not appear in the list of successful candidates of Preliminary 11 Examination, could not have questioned the result on the ground that the respondents had not declared the cut off marks for the Persons with benchmark disabilities. As stated earlier, the respondents have declared the cut off marks for the persons falling under Compartmentalised Horizontal Reservation and not for the Overall Horizontal Reservation under which the appellants fall. Such action

could neither be said to be arbitrary nor violative of Article 14, 16 and 21 of the Constitution of India”.

14 The petitioner has admittedly participated in the entire process without raising any objection regarding the composition of the Committee or the lack of Urdu knowledge at the relevant time. Another significant aspect is the extraordinary lapse of time. Inordinate delay, which of course, is not attributable to the petitioner, is another aspect which cannot be ignored. As a result of this delay in disposal of the case, the selected/appointed candidates have been in service for more than two decades. Even the qualifications for the posts have been revised to graduation with knowledge of computer typing.

15 For the foregoing reasons, we do not find it a fit case for interference with the selection and appointments made more than 24 years back. The petition has become a fait accompli and is, therefore, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
25.03.2026
Sanjeev

Whether the order is speaking: Yes

Whether the order is reportable: Yes/No