

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 35/2024in
SWP No. 1264/2006

Reserved on: 29.08.2025
Pronounced on: 04.03.2026
Uploaded on: 05.03.2026

**State of Jammu & Kashmir
through Commissioner/Secretary
to Government, Education Department,
Civil Secretariat, Srinagar/Jammu**

.... Petitioner/Appellant(s)

Through: Mr. H. Aman Ali, Dy. AG.

V/s

- 1. Nasreen Shamus, Age 45 years,
D/o Shamus-ud-Din Tantry,
R/o Lal Bagh, Tehsil Handwara,
District Kupwara**
- 2. Chairman, Service Selection
Board, Jammu/Srinagar**
- 3. Secretary, Service Selection Board,
Jammu/Srinagar**

....Respondent(s)

Through: Mr. Pervaiz Lone, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Per: Sindhu Sharma-J

1. This Letters Patent Appeal is directed against the judgment and order dated 02.03.2016 passed by the learned Single Judge in a writ petition, i.e., SWP No. 1264/2006, titled '*Nasreen Shamus vs. State of J&K & Ors.*'
2. Briefly stated, the facts giving rise to the present appeal are that, the J&K Services Selection Recruitment Board (for short, 'SSRB'), issued Advertisement Notification No. 10 of 2005 dated 29.12.2005, inviting applications for selection to the posts of Teachers in various districts of the erstwhile State of Jammu and Kashmir, including 66 posts of Teachers in

District Kupwara. The said notification was published in the local daily newspaper 'Roshini' on 05.01.2006. The break-up of the posts was as under:

District Cadre Kupwara	OM	37
	SC	6
	ST	7
	RBA	13
	ALC	2
	SOC	1
Total		66 Posts

3. The interviews for the eligible short-listed candidates from the applicants were conducted from 16.09.2006 to 22.09.2006, while interviews of shortlisted candidates handicapped category and shortlisted in the supplementary open merit list were conducted on 18.10.2006 at Dak Banglow, Kupwara. The respondent No. 1, did not figure in the list of short-listed candidates and consequently, was not called for interview.

4. Feeling aggrieved of the fact that she was denied participation in the interview process, respondent No. 1 approached this Court by filing writ petition i.e. SWP No. 1264/2006. The respondent No. 1 sought a direction to the SSRB to conduct her interview for the post of Teacher advertised vide Notification No. 10 of 2005 dated 29.12.2005, primarily on the ground that she was not called for interview as the Selection Board has resorted to shortlisting to her detriment. This shortlisting, according to her, was not provided in the advertisement notice and has resulted in depriving her opportunity of consideration in the interview process and consequently, appointment for the post of Teacher in District Kupwara.

The respondent No. 1, thus, in the writ petition, prayed the following reliefs:

- “(I) Mandamus commanding the respondents Service Selection Board to conduct the interview of the petitioner for the advertised post of Teacher as per Advertisement Notification No. 10 of 2005.
- (II) Any other appropriate writ order or direction which the Hon’ble Court, deems fit and proper, in the peculiar circumstances of the case, be issued in favour of the petitioner against the respondents with costs.”

5. The learned writ Court, while issuing notice in the petition on 25.09.2006, permitted respondent No. 1 to appear in the interview at her own risk and responsibility subject to the condition that the interview process for the post in question was still in progress. She was eligible in terms of the applicable rules and norms and had actually applied for the post.

6. The writ petition was dismissed in default of appearance and interim directions were vacated on 03.02.2007. The petition was subsequently restored to its original number vide order dated 11.03.2009. During the pendency of the aforesaid writ petition, the respondents-Board were directed to file a status report indicating the date on which the interviews for the post were conducted. This direction was issued in view of the interim order dated 25.09.2006, directing interview of the respondent No. 1.

7. The Chairman, JKSSRB in the status report filed in compliance to the order dated 15.10.2009 submitted that the interviews of shortlisted candidates were conducted on 16.09.2006 to 22.09.2006. The interviews of the handicapped category candidates and the candidates shortlisted

under Open Merit were conducted on 18.10.2006. The interim order dated 25.09.2006 passed in SWP No. 1264/2006 was neither communicated to them nor did the respondent present herself with the order, therefore, the Board was not in a position to conduct her interview.

8. *Per contra*, learned counsel for respondent No. 1 submits that this Court, after considering their contentions, had directed the official respondent Nos. 2 and 3 to conduct her interview, but despite the interim order in her favour, the respondents-Board failed to comply with the direction. The official respondents were directed to produce record to show that respondent No. 1 had failed to serve the interim order upon the official respondents in time for conducting her interview. It appears that no record in this regard was produced, therefore, this Court, after considering the nature of the controversy and the fact that the respondent No. 1 could not participate in the selection process, proceeded to decide the writ petition on 02.03.2016.

9. The writ petition was decided vide impugned judgment and order dated 02.03.2016 by observing that since respondent No. 1 was precluded from participating in the selection process by not complying with the impugned order and held that she could have been selected for the post of Teacher had she been allowed to participate in the said process, as such, the petition was allowed with the following directions:

“Commissioner/Secretary to Government, Education Department and Director School Education, Kashmir are directed to appoint the petitioner on the available post of Teacher in District Kupwara. Appointment order be issued within two weeks from the date a copy of this order is served.

For the purpose of appointment, petitioner would be deemed to be within the prescribed age as at time of initiation of selection process, she was within prescribed age.”

10. The appellants are aggrieved of the impugned judgment on the ground that the learned Single Judge has travelled beyond the relief claimed in the petition, as the only relief claimed by the respondent was for conducting her interview to advertised post of teacher. The petition has been decided without considering all the facts and the appellant was directed to appoint the respondent without her selection or recommendation by the Board.

11. It is further submitted that the appellant, being the indenting department, had no role in the selection process and had issued appointment orders only on the recommendations of the SSRB. Therefore, in the absence of any recommendation from the SSRB in favour of respondent No. 1, the impugned order could not have been implemented. It is averred that respondent No. 1 was otherwise not entitled to appointment, as neither her interview was conducted nor her selection was recommended by the proforma respondents for issuance of appointment.

12. The disability certificate placed on record by respondent No. 1 which was relied upon by the learned writ Court did not specify the percentage of disability necessary for consideration under the handicapped category. Apart from this, the respondent No. 1 did not place any material on record to show that the interim order was duly served upon the respondents or that they had failed to comply with the same. It is lastly submitted that the writ petition involved disputed questions of fact and, therefore, was not maintainable.

13. The specific contention of the respondent in the writ petition was that she had approached the respondent-Board for participation in interview process but was denied the same on the plea that they had adopted shortlisting criteria for interview without incorporating the relevant clause in the advertisement notice. The respondent No. 1 submitted that shortlisting is permissible if the same is mentioned in the advertisement notice inviting applications. More specifically, the pleadings in para 8 of the writ petition being relevant are reproduced below: -

“That in the advertisement notice inviting applications for direct recruitments to jobs under the Govt. a clause has to be inserted regarding ‘short listing’. This condition has not been incorporated in the Advertisement Notice as such the respondents Service Selection Board has been arbitrarily, without any jurisdiction adopting a novel method of selection to the detriment of the petitioner.”

14. The question which arises for consideration is whether it is open for this Court to issue direction to appoint the respondent against the post of teacher, for which, the respondent was neither shortlisted nor interviewed.

15. The respondents-Board had issued an advertisement for appointment of 66 posts of Teachers in District Kupwara. The advertisement notice provided the procedure for selection, which reads as under:-

(b) A candidate can apply only in one District of his choice for District Cadre posts and in one Division of his choice in respect of Divisional Cadre posts advertised simultaneously. Provided that if any candidate applies for a post in more than one District or Division, his candidature shall be considered only for the District or Division in which he is ordinarily residing.

VI. PROCEDURE FOR SELECTION.

(a) The prescribed qualifications reflect the bare minimum requirement of the job and mere possession thereof does not entitle the candidate to be called for interview. Ordinarily the Board shall restrict the number of applicants to be admitted to oral/written test to five times the number of vacancies after doing the preliminary screening on the basis of marks obtained in the qualifying examination and grant of weightage for the additional qualification/s beneficial for the job to be undertaker in accordance with the criteria prescribed by the Board for the purpose and as notified in the official gazette.

(b) Ordinarily the Board will issue call letters for interview to the eligible short listed candidates specifying the venue (s) and date (s) for interview. In order to eliminate the possibility of late of Non receipt of call letters on account of postal delay, the Board shall give a wide publicity through print and electronic media about the venue(s)/date(s) of interview for the eligible short listed candidates. Therefore, the

candidates are advised to keep in touch with the print and electronic media as also the offices of the Board to ascertain the venue/date of interview. This is all the more important as the Board shall not entertain any claim for non receipt/belated receipt of call letters by any candidate for reasons whatsoever.”

16. The contention of the respondent No. 1 is that Board has resorted to shortlisting without a specific clause being incorporated in the advertisement notice is without any merit, as is evident from the procedure for selection. The advertisement notice specifically provided for procedure for selection and shortlisting of eligible candidates to five times the number of candidates. The advertisement notice contained the procedure of shortlisting and the respondent No. 1 did not obtain the requisite merit of shortlisting. This apart, the respondent otherwise could not claim appointment in view of the fact that the respondent having participated in the selection process and taken a chance before the selection authority could not turn around and challenge the same. The entire edifice of the contentions raised by respondent No. 1 in the writ petition was on a wrong premise that shortlisting clause was not incorporated in the advertisement notice and she was arbitrarily denied participation in the interview on that basis, which has violated her rights.

17. It is well settled that a candidate who consciously takes part in the process of selection cannot be permitted to question the advertisement or methodology adopted by the selection committee for making selection or he/she having been declared unsuccessful in the shortlisting. The unsuccessful candidate cannot turn around and challenge the recruitment process as held in **“Dhananjay Malik v. State of Uttranchal”, (2008) 4 SCC 171**, which reads as under: - .

8. More particularly, this Court in the case of Madan Lal’s (supra) has pointed out that when the petitioners appeared at the oral

interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been so done.

18. Clause VI of the advertisement notice clearly stipulated that mere possession of prescribed qualification would not entitle a candidate to be called for interview. It was not the case of the respondent No. 1 that she possessed the requisite merit and was still not called for interview. In fact, her submission was that respondents have resorted to shortlisting which was not incorporated in the advertisement notice. This is belied by advertisement notice. The learned Single Judge, without considering the merit of the case, has appeared to have proceeded only on the ground of non-compliance of interim order and directed the appellant to appoint respondent No. 1 to the post of teacher.

19. We are unable to agree with the view of the learned Single Judge. The respondent No. 1 was not called for interview because she did not possess the requisite merit, thus, the respondent could not be appointed to the post for which she was not shortlisted. The condition regarding shortlisting was duly incorporated in the advertisement notice. Pursuant to the same, the

respondents-Board conducted the selection process and invited candidates for interview, and completed the selection process.

20. The only other issue which weighed with the learned Single Judge was that despite interim order, the respondent was not interviewed. However, in view of the specific affidavit of the Chairman of the Board that the respondent did not appear before them while the interview process was still continuing, and no contemporaneous record was put forth by the respondent, no inference could be drawn against the selection authority. Thus, the respondent having neither been shortlisted nor interviewed for the post for which she lacked the requisite merit, no direction for appointment of such a candidate could be issued.

21. In view of the aforesaid facts and circumstances, this appeal is allowed and the impugned judgment dated 02.03.2016 is set aside. Consequently, the writ petition is also dismissed.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

Jammu:

04.03.2026

Michal Sharma/PS

Whether approved for reporting
Whether approved for reporting

: Yes
: Yes