

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

Reserved on: 07.08.2026

Pronounced on: 14.08.2026

Uploaded on: 14.08.2026

*Whether the operative part or full
judgment is pronounced: **Full***

WP(C) No.1154/2025

c/w

CCP(S) No.244/2025

AALIYA FAIROZ & ANOTHER

...PETITIONER(S)

Through: - Mr. M. Idrees Bhat, Advocate.

Vs.

UT OF J&K AND ORS.

...RESPONDENT(S)

*Through: - Mr. Faheem Nisar Shah, GA.
Mr. M. Younis Hafeez, Assisting Counsel.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present petition, the petitioners have thrown challenge to final selection/engagement order bearing No.190/GMCB of 2025 dated 10.05.2025, issued by respondent No.3, whereby private respondents No.4 and 5 have been engaged as Technical Assistants/Technicians (Laboratory Technicians) in Government Medical College, Baramulla on academic arrangement basis.

2) Briefly stated, the facts giving rise to filing of the present petition are that respondent No.3 issued

Advertisement Notification No.01 of 2025 dated 29.01.2025, inviting applications from eligible candidates of UT of J&K for their engagement to various posts in Government Medical College, Baramulla, on contractual basis initially for a period of one year extendable up to six years. Vide the said Advertisement Notice, eight posts of Technical Assistant/ Technician (Laboratory Technician) were also advertised. Out of these eight posts, three posts were earmarked for open merit category, one post each was earmarked for Scheduled Caste, Scheduled Tribe-1, Scheduled Tribe-2, Backward Area and OBC categories. The eligibility prescribed in terms of the Advertisement Notice was 10+2 with Science or above qualification with Diploma in Medical Lab Technology from any recognized institute or Medical Assistant Course from any recognized University/SMF. The mode of selection was prescribed as merit obtained in the written test.

3) It appears that an addendum to the Advertisement Notice (supra) came to be issued by respondent No. 3 on 20.02.2025, whereby it was clarified that the eligibility criteria reflected in the Advertisement Notice dated 29.01.2025 is minimum and that the candidates bearing higher requisite qualification in the relevant field can also apply.

4) Pursuant to the aforesaid Advertisement Notice, the petitioners, who claimed themselves to be eligible and qualified for the post of Technical Assistant/Technician (Laboratory Technician), submitted their application forms. Vide notification dated 09.04.2025, the written test was scheduled to be held on 20.04.2025. A total of 64 candidates including the petitioners and the private respondents participated in the written test.

5) Vide notification dated 30.04.2025, merit list/score sheet of the OMR based objective type screening test was declared by the Incharge Controller of Examinations, GMC, Baramulla. As per the said merit list, petitioner No.1 figured at merit position No.2 whereas petitioner No.2 figured at merit position No.3 and they secured 78.25 and 78 marks respectively. Private respondent No.4 is stated to have secured 5th position in the merit list, respondent No.5 is stated to have secured 7th position, respondent No.6 is stated to have secured 8th position whereas respondent No.7 is stated to have secured 9th position in the merit list by obtaining 76.25, 74.75, 72.25 and 69.25 marks respectively.

6) On 05.05.2025, respondent No.3 issued provisional select list of candidates, wherein the petitioners figured at

serial Nos.2 and 3. A total of 15 candidates, including the petitioners herein, were called for document verification. The process of document verification was held on 06.05.2025 and 07.05.2025. The petitioners appeared before the Designated Document Verification Committee on the scheduled dates and their documents were scrutinized by the Committee.

7) On 10.05.2025, respondent No. 3 issued the impugned final selection list in which names of the petitioners did not figure and instead, private respondents No.4 and 5 were shown to have been selected and private respondents No. 6 and 7 were shown to be figuring in the waiting list. According to the petitioners, they immediately made a detailed representation before respondent No.3 and objected to the impugned final selection list. It is the further case of the petitioners that they also made a representation before the Chairperson, State Allied and Healthcare Council, J&K, requesting issuance of registration certificate in their favour. It has been contended by the petitioners that vide notice dated 29.03.2025, the Council has informed that registration of all such candidates having valid enrollment number may be considered as “under process” till formal certificate is issued.

8) The petitioners have challenged the impugned engagement order on the ground that in the Advertisement Notice, the prescribed qualification was 10+2 with Science or above qualification with Diploma in Medical Lab Technology from a recognized Institute or Medical Assistant Course from any recognized University/SMF and the petitioners were possessing not only the said qualification but they had also qualified BSc (Medical Lab Technology) from GMC, Baramulla, and GMC, Srinagar, in the first division. It has been contended that the petitioners had secured highest marks in the written test but their superior merit has been ignored whereas the private respondents, who had secured less marks than the petitioners in the written test, have been preferred over them. It has been further contended that once the petitioners were fulfilling the eligibility criteria notified vide the Advertisement Notice pursuant to which the selection was made, it was not open to the official respondents to prescribe any other additional criteria for selection. It has been contended that in the Advertisement Notice, possession of Paramedical Registration Certificate was not prescribed as a condition of eligibility. Therefore, the official respondents cannot insist upon production of said certificate from the petitioners. According to the petitioners, even otherwise, they had applied for the registration

certificate with the prescribed authority and their applications were under process, therefore, the official respondents could not have rejected the candidature of the petitioners.

9) It is pertinent to mention here that at the motion stage, this Court vide interim order dated 20.05.2023, stayed the impugned select list to the extent of private respondents No. 4 to 7. The petitioners filed a contempt petition contending therein that in spite of order dated 20.05.2023, the official respondents have issued engagement orders in favour of private respondents No.4 and 5. Notice of the contempt petition was issued to the official respondents for filing statement of facts/compliance report and pursuant thereto, they have filed their compliance report.

10) In their compliance report/statement of facts, the official respondents, besides submitting that the order of engagement was implemented even before the passing of interim order dated 20.05.2023, have produced the record which shows that private respondents No.4 and 5 have submitted their joining reports with the official respondents on 13.05.2023, whereas the interim order came to be passed by this Court on 20.05.2023. It has been further submitted by the official respondents in their compliance report that during document verification, the petitioners could not

produce any valid registration certificate from J&K Paramedical Council, which is a mandatory precondition for eligibility to technical posts, including that of Technical Assistant/Technician, in terms of the provisions contained in Section 38, 44(1) and (2) of the J&K Paramedical Council Act. Therefore, the petitioners could not be engaged. It is also the stand of the official respondents that the petitioners were not in possession of even a provisional or under process certificate up to the cutoff date i.e. 28.02.2023, which rendered them ineligible.

11) Learned counsel for the official respondents, during the course of the hearing, has submitted that the compliance report filed by the official respondents to the contempt petition may be treated as reply to the writ petition. The same has, accordingly, been treated so.

12) I have heard learned counsel for the parties and perused record of the case, including the record produced by the official respondents.

13) So far as factual aspects of this case are concerned, the same are not in dispute. It is not in dispute that in the Advertisement Notice dated 29.01.2025, inviting applications, *inter alia*, for the post of Technical Assistant/Technician(Laboratory Technician), the eligibility

prescribed was 10+ 2 with Science or above qualification with Diploma in Medical Lab Technology from any recognized Institute or Medical Assistant Course from any recognized University/SMF. It is an admitted fact that the petitioners possessed the said qualification. So far as the higher merit of the petitioners, which they have obtained in the OMR based written test is concerned, the same is not being disputed by the official respondents. The only ground on which the petitioners were found to be ineligible for being engaged as Technical Assistant/Technician(Laboratory Technician) is that they were not in possession of certificate of registration from J&K Paramedical Council as mandated under the provisions of J&K Paramedical Council Act 2014.

14) The main plank of argument of the petitioners is that as per the Advertisement Notice, possession of a registration certificate from J&K Paramedical Council was not a condition of eligibility, as such, the official respondents could not have included an additional eligibility criteria after the issuance of the Advertisement Notice. On this ground it is being contended that the impugned action of the official respondents is not sustainable in law.

15) At its first blush, the argument raised by the petitioners appears to be attractive but when we examine the legal position on the issue, it comes to the fore that Section 44(1)

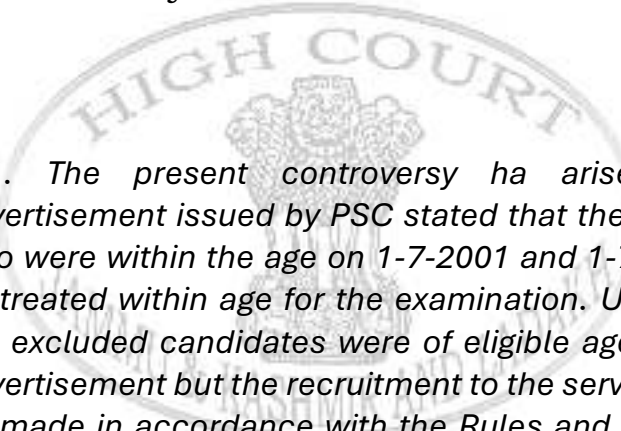
of the J&K Paramedical Council Act prohibits practice as a Paramedical Practitioner except in accordance with the provisions of the said Act. Section 38 of the J&K Paramedical Council Act provides for registration of a Paramedical Practitioner. A conjoint reading of the provisions contained in Section 38 and Section 44 of the J&K Paramedical Council Act leads to the conclusion that a person cannot practice as a Paramedical Practitioner unless he has been registered as such in terms of Section 38 of the Act. Sub-section (2) of Section 44 of the J&K Paramedical Council Act makes the contravention of sub-section (1) of Section 44 punishable with imprisonment or with fine, meaning thereby that the provisions contained in Section 44(1) of the Act are mandatory in nature. Thus, a person, who is not registered as a Paramedical Practitioner, cannot practice as such. The contravention of said condition is punishable under law.

16) The question that arises for determination is whether in absence of any mention about the requirement of registration as Paramedical Practitioner in the Advertisement Notice, it would be legally permissible for the petitioners to indulge in practice as Medical Practitioners without a valid registration certificate.

17) In the above context, it would be profitable to refer to the judgment of the Supreme Court in the case of **Ashish**

Kumar vs. State of Uttar Pradesh and others, (2018) 3 SCC

55. In the said case the Supreme Court has held that if any part of the advertisement notice is contrary to the statutory rules, it has to give way to the statutory prescription. The Supreme Court further observed that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. While holding so, the Supreme Court placed reliance upon its previous judgment in the case of **Malik Mazhar Sultan vs. U.P. Public Service Commission**, (2006) 9 SCC 507, and noted the following observations made by the said Court in the aforesaid judgment:



“21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

18) From the foregoing analysis of legal position, it is clear that even if, in the Advertisement Notice, it was not mentioned that a candidate has to possess a valid registration certificate from the Paramedical Council, yet the

said requirement has to be read into the eligibility criteria, because the same is a statutory requirement and it has to take precedence over the eligibility conditions mentioned in the Advertisement Notice.

19) In the present case, the petitioners, admittedly, could not produce the registration certificates at the time of document verification, which took place on 06.05.2025 and 07.5.2025. The petitioners have submitted that later on, they made a representation on 13.05.2025 before the official respondents, stating therein that their applications for registration are under process but by that time, the selection list had already been issued by the official respondents. The record produced by official respondents tends to show that not only the candidature of petitioners, but the candidature of few other candidates has also been rejected by the official respondents for not having been able to produce the requisite valid registration certificates whereas all the private respondents have produced valid registration certificates, which has enabled them to make the grade. In fact, the candidate figuring at serial No.1 of the merit list also could not be selected on account of his failure to produce the registration certificate.

20) As has already been discussed hereinbefore, possession of a valid registration certificate as a Paramedical

Practitioner is a *sine qua non* for practicing the profession of Paramedical Practitioner and in the absence of any valid registration certificate, indulging in practice as Paramedical Practitioner amounts to an offence, therefore, if the petitioners would have been appointed as Paramedical Practitioners without there being requisite valid registration certificates in their favour, it would not have been legally permissible for them to discharge their duties as Paramedical Practitioners. The official respondents have, therefore, rightly held them ineligible and selected private respondents No.4 and 5 who were next in merit.

21) For what has been discussed hereinabove, I do not find any merit in this petition. The same is dismissed accordingly. Interim order dated 20.05.2025 shall stand vacated.

22) The proceedings in the connected contempt petition, for the reasons already discussed hereinbefore, are closed and the contempt petition is disposed of.

23) The record be returned to learned counsel for the official respondents.

**(Sanjay Dhar)
Judge**

SRINAGAR

14.08.2026

“Bhat Altaf-Shergati”

Whether the **judgment** is reportable: **YES/NO**