S. No.45
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CCP(S) No.458/2024 in SWP 802/2017
CM(8544/2025)

RABIA SHAH

…..Petitioner(s)

Through: Mr.Zahoor A.Shah, Advocate

V/s

MR. DHEERAJ GUPTA AND ORS.

… ..Respondent(s)

Through: Mr.Mohammad Younis, Assisting Counsel
vice Mr.Mohsin Qadiri, Sr.AAG

HIGH COURT
JAMMU & KASHMIR AND LADAKH

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
07.07.2026

1. Through the medium of present petition, the petitioner is seeking implementation of judgment dated 22-10-2019 passed by the Writ Court, which has attained finality, whereby respondents were directed to release the pay scale attached to the post of Law Officer, i.e 9300-34000 with grade pay of 4800 in favor of the petitioner. A further direction was issued to the respondents to consider the petitioner for promotion to the next higher post along with other eligible officers in the department in accordance with law and rules governing the field.

2. The Respondents have filed a series of compliance reports. They have also placed on record copy of Government Order No. 114-JK(FST) of 2026, dated 11.06.2026 and also copy of Government Order No. 71-JK(FST) of 2025 dated 04.04.2025.

3. Vide Government Order dated 04.04.2025 (supra), the requisite grade attached to the post of Law Officer with grade pay of 4800 has been released in his favor. Vide Government Order dated 11.06.2026 (supra), the respondents have, after considering the claim of the petitioner for next higher post, found that the same is not tenable under the existing rules and the service framework. While rejecting the claim of the petitioner for promotion to the higher post, it has been observed by the respondents that the respondent-department does not have any sanctioned higher post or a clear vacancy in the higher cadre, against which the petitioner can be considered for promotion.

4. Learned counsel for the petitioner has submitted that the respondents were under obligation to create a post in the higher grade and consider the petitioner for promotion against the said post if the post was not available.

5. I am afraid the contention of learned counsel for the petitioner is entirely misconceived because in terms of the judgment of the Writ Court, the respondents were obliged to

consider the petitioner for promotion to the next higher post in accordance with law and rules governing the field. It is a settled position of law that an employee cannot be promoted to higher post unless there is vacancy available. In the present case, the respondents have clearly stated that the department does not have a vacancy in the higher cadre, as such, petitioner's case for promotion to the higher post cannot be considered. Thus, the respondents have complied with the directions of the Writ Court in its letter and spirit.

6. In view of the foregoing discussion, the contempt proceedings are closed, leaving it open to the petitioner to work out her remedy if she has any grievance.

(SANJAY DHAR)
JUDGE

SRINAGAR
07.07.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

Sarveeda Nissar
I attest to the accuracy and
authenticity of this document
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