

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(4363/2026) IN LPA 154/2021
CM(7570/2021)

NISAR AHMAD MALIK

...PETITIONER(S)

Through:
Mr. Shafqat Nazir, Advocate

V/s.

GOVERNMENT OF J AND K AND ORS
(SCHOOL EDUCATION DEPARTMENT)

...RESPONDENT(S)

Through:
Mr. Bikramdeep Singh, Dy. AG
Mr. Syed Faisal Qadri, Sr. Adv with
Ms. Fozia Rashid, Advocate
Mr. Bhat Fayaz, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

ORDER

15.09.2026

1. At the threshold, learned counsel for the respondent-State as well as the private respondent submitted that the issue is no more *res integra*, as the controversy involved is covered by the judgment passed in LPA No. 209/2024, rendered on 10.09.2024 in "*Mohammad Yousuf Dar v. Union Territory of J&K and Ors*". The relevant paragraphs of the judgment read as follows:

"14. A candidate would be entitled to be declared qualified a degree course only after he clears all the mandatory papers. Once it is not disputed that Environmental Studies module course is a mandatory course and the passing thereof is *sine qua non* for qualifying B.A degree, it does not lie in the mouth of the respondent-Nazir Ahmad Dar to contend that notwithstanding the fact that he cleared the paper of Environmental Studies much after the cut-off date mentioned in the advertisement notification, yet he should be declared

to have qualified the graduation even before the cut-off date. As a matter of fact, the Writ Court has also not accepted this argument of respondent-Nazir Ahmad Dar, though the Writ Court termed it only a minor irregularity in selection.

15. It is trite law that a person is required to possess the eligibility on the cut-off date and must submit proof of higher qualification, if any, possessed by him on the cut-off date. Neither the application form nor the qualification, if any, acquired after the cut-off date can be taken into consideration for the purposes of selection.
16. In the instant case, respondent-Nazir Ahmad Dar was only 10+2 on the cut-off date and acquired qualification of B.A. only when he cleared the paper of Environmental Studies, which he did more than two months after the cut-off date. Comparing merit of appellant with the merit of the respondent-Nazir Ahmad Dar at 10+2, admittedly the appellant is more meritorious. The appellant was, thus, entitled to be engaged as Rehbar-e-Taleem in the Primary School, NowabKhah and not respondent-Nazir Ahmad Dar. It is, thus, not in dispute that respondent-Nazir Ahmad Dar obtained appointment by withholding relevant information that he had not qualified B.A. examination, in that, he had yet to clear mandatory paper of Environmental Studies. The plea of **Mr. Jan** that respondent-Nazir Ahmad Dar had acted in a *bona fide* manner cannot be accepted.
17. We are also not in agreement with the Writ Court that the equity tilted heavily in favour of respondent-Nazir Ahmad Dar. Not only Nazir Ahmad Dar procured engagement by withholding relevant information but his engagement was disputed and challenged by the appellant both before this Court as well as before the Director School Education, Kashmir immediately after his name appeared in the select list. It is true that litigation has taken a long time to culminate but that fact alone cannot create equity only in favour of the respondent-Nazir Ahmad Dar. The appellant has waited for more than 13 years to establish his right to

engagement. While working out equities, the Court has to strike a balance between the parties and cannot be over swayed by the only consideration that a candidate has been in continuous service for more than 13 years. The judgments upon which reliance has been placed by the Writ Court have been rendered in different context and, therefore, are not attracted in the instant case.

18. The equity has no place in a case where the appointment/engagement has been obtained by misrepresentation or by withholding relevant information. It is equally wrong to hold that engagement of a person against a post in the face of availability of another eligible candidate with better merit is only a minor irregularity in selection. In public employment, which is given by the Government on merits in a fair and transparent selection process, ignoring the claim of a more meritorious candidate and offering appointment to a candidate with lesser merit is violation of right of equality and equal protection of laws conferred upon the citizens by Article 14 of the Constitution of India. In short, it was not a fit case to invoke the equity to save the illegal engagement of respondent-Nazir Ahmad Dar.”

2. The counsel for the petitioner is unable to make out any case for distinguishing the controversy involved in the present appeal from the controversy involved which has already been considered and decided by this Court and also the Special Leave Petition preferred against the aforesaid judgment came to be dismissed by the Hon'ble Supreme Court on 28.01.2026.

3. In the light of aforesaid, the present appeal is also dismissed, along with all connected CM(s).

(RAJNESH OSWAL)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR:
15.09.2026
Junaid