

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

WP (C) No. 2849/2019

Reserved on: 24.12.2025

Pronounced on: 30.12.2025

Uploaded on: 30.12.2025

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

Balwinder Kumar, Age 42 years

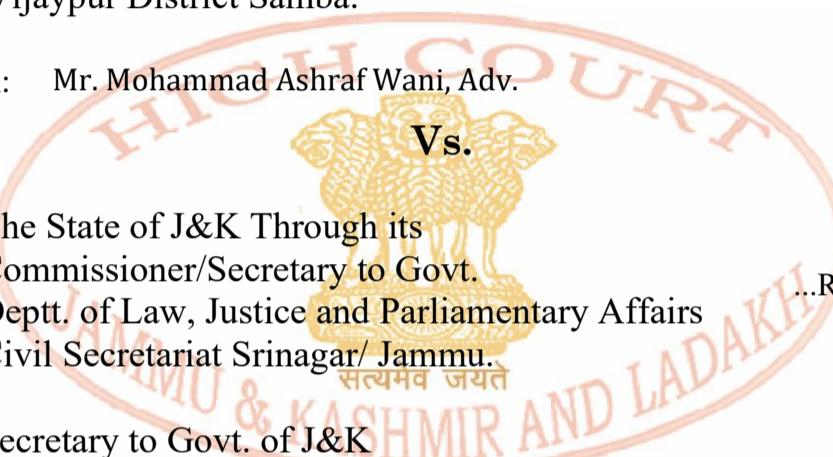
S/o Sham Lal

R/o Village Gudwal, P.O Vijaypur
Tehsil Vijaypur District Samba.

...Petitioner(s)/Appellant(s)

Through: Mr. Mohammad Ashraf Wani, Adv.

Vs.



1. The State of J&K Through its
Commissioner/Secretary to Govt.
Dept. of Law, Justice and Parliamentary Affairs
Civil Secretariat Srinagar/ Jammu.Respondent(s)
2. Secretary to Govt. of J&K
Social Welfare Department,
Civil Secretariat, Srinagar/Jammu.
3. The High court of Jammu and Kashmir
Through its Registrar General, Srinagar/Jammu.
4. The Principal Secretary to Hon'ble Chief Justice
High Court of Jammu and Kashmir.
Chief Justice's Secretariat, Srinagar/Jammu.
5. The Principal District & Sessions Judge, Baramulla,
(Chairman Interview committee for Class-IV of
District Baramulla)

Through: Mr. Aatir Javed Kawaosa, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per Sanjeev Kumar, J

1. In this petition filed under Article 226 of Constitution of India, the petitioner seeks following directions:-

- i. Commanding and directing the respondents to amend/clarify rule 11 and 12 of Jammu and Kashmir Ministerial staff of Subordinates court service, so that

same may be read as consonance with Rule-5 of J&K Reservation Rules 2005 dated 21.10.2005 issued vide SRO-294 dated 21.10.2005.

- ii. Commanding and directing the respondents to amend Clause-I (I) (A) of advertisement notice no. 01 of 2019 dated 10.01.2019 issued by respondent no. 4 for filling District cadre post of Orderly in District Baramulla.
- iii. Commanding and directing the respondents to allow the petitioner to participate in the process of selection for the post of Orderly in District cadre Baramulla as petitioner was shortlisted for interview/viva voce and his name was figured at serial no. 623.
- iv. Commanding and directing the respondents to select and appoint the petitioner against the post of Orderly under schedule cast category in District cadre Baramulla figuring at serial no. 31 of Annexure-A to the advertisement notice no. 01 of 2019 dated 10.01.2019 as the petitioner has applied for the same and has been shortlisted for interview/viva voce for the said post.

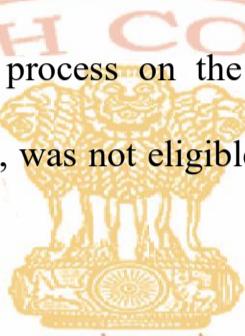
BRIEF FACTS.

2. Vide advertisement notification No. 01 of 2019 dated 10th of January 2019, the High Court of Jammu and Kashmir (Chief Justice's Secretariat) invited online applications from eligible candidates for participating in the selection process for various posts borne on Divisional and District cadres of District judiciary of Jammu and Kashmir. The notified vacancies included nine posts of Orderly borne on District cadre Baramulla with the category wise breakup as under:-

OM	5
RBA	2
SC	1
ST	1

3. The petitioner being a candidate belonging to SC Category and possessing the eligibility qualification of matriculation submitted his online application for the post of Orderly in District Baramulla against the lone post earmarked for SC Category. The respondent in his application clearly disclosed his permanent residence in District Samba. The petitioner was

amongst the candidates shortlisted for viva voce. The name of the petitioner figured at serial No. 623 in the shortlist of candidates selected for interview for the post of Orderly (Class IV) in District Baramulla. The interview of the petitioner was scheduled to be held in the office of respondent No. 5 i.e., Principal District and Session Judge Baramulla on 16th of July 2019. The petitioner responded to call for interview and appeared before respondent No. 5 for the purpose on the date fixed. However, he was not permitted to participate in the interview process on the ground that he belonged to District Samba and, therefore, was not eligible to apply for the post notified for District Baramulla.



4. Having faced his rejection at the stage of interview, the petitioner approached this court through the medium of instant petition seeking indulgence of this court to issue directions which we have reproduced hereinabove in the beginning of the judgment.

5. The refusal of respondent No. 5 who happen to be the Chairperson of the Selection Committee to allow the participation of the petitioner in the process of interview is assailed by the petitioner primarily on the ground that Clause 1 (i) (a) of the advertisement notification dated 10th of January 2019 supra, is unconstitutional, in that, no discrimination can be practiced by the State on the ground of residence. A reliance is placed by the learned counsel on a Division Bench judgment dated 20th of April 2023 passed in SWP No. 1753/2018 titled **Mulakh Raj & Ors. Vs. State of JK & Ors.** clubbed with SWP No. 1960/2018. It is thus argued that as held by the Division Bench, no citizen could be discriminated against for the purposes of employment to any

office under the State or Union only on the ground of religion, race, caste, place of birth and residence.

6. The writ petition is opposed by respondent Nos. 3 to 5 by filing reply affidavit signed by Registrar General of the High Court. It is submitted that the petitioner being fully aware of the stipulation contained in Clause 1 (i) (a) of the advertisement notification participated in the selection process with his eyes wide open and, therefore, is estopped from challenging the validity of the Clause after having faced rejection at the stage of process of interview.

7. It is the stand taken by respondents 3 to 5 that the appointments to various posts borne on different cadres of the Subordinate Courts is governed by J&K Ministerial Staff of the Subordinate Courts (Recruitment and Conditions of Service) Rules, 2016 [“the Rules of 2016”] which empowers the Chief Justice to make appointments to District cadre posts as specified in Schedule-A of the said Rules. It is submitted that a conjoint reading of Rule 2(f), 2(n) and Rule 5 and 12 of the Rules of 2016 read with Entry 19 of Schedule-A makes it clear that the Chief Justice is empowered to make appointments to the District cadre posts and regulate such selections and appointments by framing regulations providing for method of selection to a particular post.

8. Having heard learned counsel for the parties and perused material on record, following two questions arise for determination:-

(1) Whether the petitioner having submitted his application despite being aware of Clause 1 (i) (a) of the advertisement notification dated 10th of January

2019 is estopped from challenging the constitutionality of the said clause after having been rejected by the Selection Committee at the stage of interview/ viva voce.

(2) Whether Clause 1 (i) (a) of the advertisement notification offends Clause 1 and 2 of Article 16 of the Constitution and therefore ultra vires the constitution.

Estopple by participation in the selection process.

9. In the instant case, there is no dispute with regard to the fact that the petitioner though aware of the restriction imposed by Clause 1 (i) (a) of the advertisement notice submitted his application form and sought consideration against the post of Orderly under SC Category borne on District cadre Baramulla. The petitioner was admittedly a Domicile of District Samba and, therefore, could not have applied for and sought consideration against the post borne on District cadre Baramulla in the face of clear stipulation contained in Clause 1 (i) (a) of the advertisement notification. The petitioner did not suppress his residence but submitted his application for a post in District Baramulla probably on the bonafide belief that he being a candidate belonging to the SC category was entitled to apply anywhere in the State of Jammu and Kashmir and against any post borne in any District or Divisional cadre in view of the provisions of The Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010. That apart, the application form submitted by the petitioner was accepted by the respondents 3 to 5 despite the fact he was ineligible in terms of Clause 1 (i) (a) of the advertisement notification to apply for a post borne on District cadre, Baramulla. He was even shortlisted for viva voce. It is at the time of scrutiny of his testimonials before interview, it came to the notice of respondents 3 to 5 that he was a resident of Samba and, therefore, was not entitled to apply for the post of Orderly under SC Category borne on District cadre Baramulla in view of the stipulation contained in Clause 1 (i) (a) of the advertisement notification.

10. Viewed thus, it is not a case where the petitioner being aware of the offending clause in the advertisement notification participated with his eyes wide open and took chance in the selection. It is also not anybody's case that petitioner approached this court to challenge the impugned Clause of the advertisement notification after he failed to make grade in the selection. Strictly speaking, the doctrine of 'estoppel' as contended by the respondents is not attracted in the case on hand.

11. It is trite law that what is precluded from challenge after having participated in the selection process is the process, the procedure and selection criteria adopted. The estoppel however cannot be pleaded where a challenge by the candidate who has participated in the process of selection pertains to gross illegality in the selection process or where the selection has been completed under a provision which is *ultra virus* the Constitution. Without burdening this judgment with the case law on the issue, suffice it to place a reliance upon the judgment of Hon'ble Supreme Court in **Ashok Kumar vs State of Bihar & Ors. (2017) 4 SCC 357**. Para 13, 14 and 20 of the judgment are relevant for our purpose and are therefore set out below:-

“13. The law on the subject has been crystallized in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar*, this Court held that (SCC p. 107, para 18):

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See *Munindra Kumar v. Rajiv Govil and Rashmi Mishra v. M.P. Public Service Commission*)

14. The same view was reiterated in *Amlan Jyoti Borroah* where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are

not entitled to question it upon being declared to be unsuccessful.

20. The decision in *Raj Kumar v. Shakti Raj* (which was relied upon by the appellants) involved a case where the Government was found to have committed glaring illegalities in the procedure. Hence, it was held that the principle of estoppel by conducting or acquiescence had no application. The decision is distinguishable.”

12. In Dr. (Major) Meeta Sahai Vs. State of Bihar and Ors. (2019) 20 SCC 17, the question of estoppel against a candidate who has participated in the selection process and chooses to challenge the same after having failed to make grade was again considered. Para 16 and 17 of the judgment are noteworthy and, therefore, are reproduced hereunder:-

“16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments including *Manish Kumar Shahi v. State of Bihar*, observing as follows: (SCC p. 584, para 16)

16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same

cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

13. From the case law on the point, it is now well settled that a candidate by participating in the selection process only accepts the laid down procedure and not the illegality in it. Where the selection process has been conducted as per the rules or stipulations in the advertisement notification which bring about discriminatory consequences therefrom is not immune from challenge at the behest of a candidate who has partaken in it as is held by the Hon’ble Supreme Court in **Meeta Sahai**. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. Where the selection process suffers from incurable illegality or is conducted in derogation of the provisions of the Constitution, the plea of estoppel against the candidate who has partaken in the selection process cannot be permitted.

14. In the instant case, Clause 1 (i) (a) of the advertisement notification is in sheer violation of Article 16 (1) and (2) of the Constitution of India and the judgment passed by Division Bench of this court in **Mulakh Raj and Ors.** Para 26 and 27 of the Division Bench judgment deserves to be reproduced hereunder:-

26. From the discussion made and the case law cited above, the legal position is crystal clear. No citizen should be discriminated against for the purpose of employment to any office under the State or Union. The prohibited grounds of discrimination under Article 16(2) of the Constitution of India, *inter alia*, are religion, race, caste, place of birth and residence. The only exception that is carved out by clause (3) of Article 16 of the Constitution is in relation to requirement as to residence within a State or Union Territory prior to employment or appointment of a candidate to an office under the State or Union Territory or any local or other authority within such State or Union Territory etc. and this exception can be made only by law made by the Parliament prescribing such requirement as to residence.

27. As noted above, the Parliament has not made any such law prescribing any requirement as to residence within a State or Union Territory in regard to any class or classes

of employment or appointment under the Union Territory of Jammu and Kashmir. That being the position, neither the Union Territory of Jammu and Kashmir, nor the High Court can prescribe any such requirement as to residence in regard to any class or classes of employment or appointment under it. Clause 3(A) of the Advertisement Notification (supra), therefore, flies on the face of clauses 1 and 2 of Article 16 of Constitution of India. Clause 3 (A) of the Advertisement Notification impugned in this petition is declared *ultra vires* the Constitution and, therefore, shall not be given effect to."

15. It is thus beyond the pale of any discussion that impugned Clause of the advertisement notification clearly brought about discrimination, in that, it prohibited the petitioner for participating in the selection process for a post borne on District cadre Baramulla only on the ground of his residence. He was not allowed to participate on the ground that he belonged to District Samba, whereas, the notified post was borne on District cadre Baramulla.

16. For the foregoing reasons, this petition is **allowed**. Clause 1 (i) (a) of the advertisement notification is declared *ultra virus* the Constitution of India. The respondents 3 to 5 are directed to interview the petitioner and consider him for the post of Orderly under SC Category in District Baramulla notified vide advertisement notification No. 01 of 2019 dated 10th of January 2019.

17. Needless to say that in case the petitioner makes grade and is found to be the most meritorious candidate for the post in question, an order of appointment in his favour shall be issued.

18. The entire process shall be completed by the respondents 3 to 5 within a period of two months from the date a copy of this judgment is served upon them. It is clarified that the appointment of the petitioner in the given facts and circumstances shall be prospective i.e., shall take place from the date of passing of the formal order of appointment.

19. No order as to costs.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

30.12.2025

Altaf

Whether approved for reporting? Yes