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

Reserved on: 27.07.2026
Pronounced on:07.08.2026

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

WP(C) No.2784/2023

ADIL NISAR WANI & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. G. A. Lone, Senior Advocate, with
Mr. Mujeeb Andrabi, Advocate.

Vs.

UT OF J&K & ORS. ...RESPONDENT(S)

Through: - Mr. Adil Asmi, Advocate.

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

JUDGMENT

1) Through the medium of the present writ petition, the petitioners have sought a direction upon the respondents to promote them as Banking Associates on the basis of their merit and suitability and on the same basis on which respondents No. 5 and 6 have been promoted to the said posts.

2) As per case the projected of the petitioners, they were appointed as Banking Attendants in the respondent-Jammu and Kashmir Bank Limited on different dates between the years 2000 and 2012. The respondent Bank is stated to have

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issued Circular No.718 dated 31st January, 2004, thereby prescribing a Career Progression Policy of Banking Attendants. The said Policy provided for revised Career Progression of Banking Attendants. In so far as Banking Attendants with matric and above qualification are concerned, the Policy provided that Banking Attendants with graduation as qualification and four years of service would be eligible for promotion to the post of Assistant Banking Associates and after a service of two years as Assistant Banking Associates, they would be eligible for promotion to the posts of Banking Associate.

3) The respondent Bank sought willingness of eligible candidates for their promotion as Banking Associates, and in this regard, notification dated 13th December 2016 was issued by the respondent Bank. The petitioners are stated to have submitted their willingness. Vide notification dated 17th February 2017, those candidates who had submitted their willingness were asked to undergo a written test and interview. Accordingly, the petitioners appeared in the written test as well as interview. The final result was declared vide order dated 21st April 2017. The petitioners were promoted as Assistant Banking Associates in terms of said order. Respondents No.5 and 6 were also promoted along with the

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petitioners as Assistant Banking Associates vide the same order.

4) It has been submitted that as per the order of promotion of the petitioners, they had to remain outside the general cadre of Banking Associates for a period of two years, whereafter they were eligible for promotion through Career Progression process as Banking Associates. After the petitioners completed two years of service as Assistant Banking Associates, they became eligible to participate in the Career Progression for their promotion as Banking Associates. The respondent Bank initiated the necessary steps in this regard in the year 2019. The petitioners are stated to have participated in the process of selection and on the basis of their performance, they were recommended for absorption as Banking Associates on regular basis as they fulfilled the laid down criteria.

5) It has been contended that the respondent Bank ignored the petitioners for their promotion as Banking Associates but instead absorbed respondents No.5 and 6 on the posts of Banking Associates on completion of two years as Assistant Banking Associates. According to the petitioners, on all parameters of merit and suitability, they are either equal or superior to private respondents but the respondent Bank by

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ignoring their claim has discriminated against them, thereby violating Articles 14 and 16 of the Constitution.

6) It has been further contended that the respondents No.5 and 6 were working in the corporate office of the respondent Bank at Srinagar, and, therefore, they had access to the higher echelons of the respondent Bank and it is for this reason that promotion to the posts of Banking Associates was accorded in their favour, but the same treatment was denied to the petitioners though they are similarly situated.

7) It has been submitted that FIR Nos.10/2019 and 1/2020 have been registered by Police Station ACB Srinagar in connection with appointments made by the then Chairman of the respondent Bank, namely, Mr. Mushtaq Ahmad and Mr. Parvaiz Ahmad Nengroo but names of the petitioners do not figure in any of the FIRs or the challans. Therefore, the respondent Bank is not justified in withholding the promotion of the petitioners. It has contended that even if a candidate is named in an FIR, still then his promotion to the higher post cannot be denied upon mere registration of an FIR.

8) The respondent Bank has filed its reply to the writ petition. In its reply, the respondent Bank has raised a preliminary objection with regard to maintainability of the writ petition on the ground that the petitioners are "workmen" as defined under Section 2(s) of the Industrial Disputes Act,

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1947, as such, if at all there is any dispute between the petitioners and the respondent Bank, the same constitutes an industrial dispute in terms of Section 2(k) of the said Act, which is amenable to the jurisdiction of an Industrial Tribunal.

9) On merits, the respondent Bank has submitted that absorption of respondents Nos.5 and 6 on the posts of Banking Associates was made on the basis of their satisfactory conduct after obtaining No Objection Certificates from the concerned quarters and that their absorption on the posts of Banking Associates has been ordered by the competent authority. It has also been contended that the Board of the respondent Bank has approved a Promotion Policy of the Workmen Cadre vide Resolution No. 39 dated 13.07.2022, which is applicable to all the employees of the Bank including the petitioners. It has been submitted that prior to the approval of the said policy, Career Progression Policy issued vide Circular dated 03.01.2014 was in vogue. It has been submitted that cases of the petitioners cannot be considered because of introduction of the new promotion policy. It has been submitted that the petitioners could not be promoted in line with the process adopted in the case of respondents Nos. 5 and 6 in view of applicability of new

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promotion policy of Workmen approved by the Board of the Bank on 13.07.2022.

10) The respondents have further submitted that Anti-Corruption Bureau, J&K, has registered FIR Nos.10 of 2019 and 1 of 2020, relating to illegal appointments in the respondent Bank. These appointments pertain to the posts of Banking Attendants and Assistant Banking Associates and charge-sheets have also been filed in these cases whereas some cases are still pending investigation. It has been submitted that since the basic appointment of Banking Attendants and Assistant Banking Associates including that of the petitioners is under challenge, therefore, their inclusion in the promotion process would legitimise their appointments.

11) I have heard learned counsel for the parties and perused record of the case.

12) Since the respondent Bank has raised a preliminary objection with regard to maintainability of the writ petition on account of availability of an alternative remedy under the provisions of the Industrial Disputes Act, as such, it would be appropriate for this Court to deal with the said objection in the first instance. It is only if the petitioners cross this hurdle

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that this Court would undertake an exercise of going into the merits of the case.

13) As already noted, the contention of the respondent Bank is that the petitioners qualify to be the workmen within the meaning of Section 2(s) of the Industrial Disputes Act and the dispute raised by them qualifies to be an industrial dispute in terms of Section 2(k) of the said Act, therefore, it is only the Industrial Tribunal which has the jurisdiction to adjudicate upon the present case.

14) Section 2(s) of the Industrial Disputes Act provides that a "workman" means any person employed in any industry to do any manual, skilled, unskilled, technical, operational or clerical, or supervisory work for hire or reward but it does not include a person who is subject to Air Force Act, Army Act or the Navy Act or a person who is employed in the police service or an officer or other employee of a prison or a person who is employed mainly in a managerial or administrative capacity or a person being employed in a supervisory capacity draws wages exceeding Rs.10,000 per mensem.

15) It would also be apt to notice the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, wherein an “industry” has been defined as any business, trade, undertaking, manufacture or calling of employers and

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includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

16) The respondent-Jammu and Kashmir Bank, admittedly, is a banking company which is dealing in the business of banking. Therefore, it falls within the definition of 'industry' as contained in section 2(j) of the Industrial Disputes Act. So far as the petitioners are concerned, they are employees of the Jammu and Kashmir Bank Limited, which, as already stated, qualifies to be an industry under the provisions of the Industrial Disputes Act. The petitioners are working as Assistant Banking Associates and they are not working in the respondent Bank in any managerial or supervisory capacity. Therefore, irrespective of their income which they are drawing as salary from the respondent Bank, they qualify to be workmen within the meaning of Section 2(s) of the Industrial Disputes Act. In fact, their status as workmen is not even being disputed by the petitioners themselves.

17) The dispute raised by the petitioners is with regard to their service conditions, inasmuch as their grievance is that they are entitled to grant of promotion as Banking Associates from the date on which their counterparts, respondents No.5 and 6, have been promoted as such. As per Section 2(k) of the Industrial Disputes Act, an industrial dispute means any dispute, *inter-alia,* between employers and workmen which is

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concerned with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Since the dispute between the petitioners who happen to be the workmen and the respondent Bank which happens to be their employer, pertains to the terms of their employment, as such, the said dispute qualifies to be an industrial dispute.

18) Chapter II of the Industrial Disputes Act provides for the authorities under the Act. Section 7 of the Act, which falls under Chapter II, provides for constitution of Labour Courts for adjudication of industrial disputes relating to any matter specified in Second Schedule to the Act whereas Section 7A of the Act provides for constitution of Industrial Tribunals for adjudication of industrial disputes relating to any matter specified either in the Second Schedule or in the Third Schedule of the Act.

19) The Second Schedule of Industrial Disputes Act enumerates the matters which are within the jurisdiction of Labour Courts, whereas the Third Schedule illustrate the matters which fall within the jurisdiction of Industrial Tribunals. This includes the classification by grades as item No.7 in the said Schedule. Classification by grades refers to categorization of workers into distinct ranks or tiers based on skills, duties or responsibility. Thus, disputes regarding

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grading or classification of workman can be referred to an industrial tribunal.

20) In the present case, as already stated, the dispute is with regard to placing the petitioners in the higher grade of Banking Associates, which is also a position not connected with supervisory or managerial role. Therefore, in terms of the provisions of the Industrial Disputes Act, the dispute which has arisen between the petitioners and the respondent Bank is amenable to the jurisdiction of Industrial Tribunal constituted in terms of Section 7A of the Industrial Disputes Act read with Third Schedule of the said Act.

21) It has been contended by learned Senior Counsel for the petitioners that appropriate government in the case of a banking company like respondent Bank is Central Government and in UT of Jammu and Kashmir there is no Industrial Tribunal constituted by the Central Government in exercise of its powers under Section 7A of the Industrial Disputes Act. It has been contended that the nearest Industrial Tribunal constituted by the Central Government is located at Chandigarh, which is a far-off place. Therefore, the remedy available to the petitioners is cumbersome and costly hence not efficacious. The petitioners have, while relying upon the judgment of the Division Bench of this Court in the case of **M/S Hotel Alpine Ridge v. Union of India and**

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others, 2024 SCC online J&K 238, contended that in somewhat similar circumstances, when appellate remedy available to the borrowers was by way of filing an appeal before the Debts Recovery Tribunal at Chandigarh, this Court had, after analyzing the legal position on the subject, concluded that on account of non-availability of a redressal forum which is easily, readily and regularly available to the borrowers, the writ petition before this Court is maintainable.

22) There can be no quarrel with the legal proposition that has been enunciated by Division Bench of this Court in the case of **M/S Hotel Alpine Ridge and others** (supra) to the effect that providing a redressal forum which is easily, readily and regularly available to the litigants is *sine qua non* for effective and just implementation of the SARFAESI Act, which, in the said case, the Division Bench of this Court found was not available to the borrowers/aggrieved persons. However, a question arises as to whether the facts of the present case are identical to the facts that were subject matter of the determination before the Division Bench of this Court in the aforesaid case.

23) It is true that in U.T. of J&K, no Industrial Tribunal has been constituted by the Central Government to adjudicate industrial disputes of the industries regarding which appropriate government is the Central Government. It is also

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a settled position of law that in the case of respondent Jammu and Kashmir Bank, the appropriate government is the Central Government. (*Refer Jammu and Kashmir Bank Ltd. Vs. Industrial-cum-Labour Court OWP No.417/2019 decided on 01.01.2025*). But even the Industrial Tribunal constituted under Section 7A of the Industrial Dispute Act by the Central Government, which is located at Chandigarh, does not have jurisdiction over U.T. of J&K. So, it is not a case where for adjudication of industrial disputes relating to industries for which appropriate government happens to be the central government, workman or the employer will have to travel to Chandigarh. In fact, as per the provisions contained in third proviso to sub-section (1) of Section 10 of the Industrial Disputes Act, the Central Government is competent to refer the dispute, in relation to which it is the appropriate government, to a Labour Court or an Industrial Tribunal constituted by the State Government, meaning thereby that Central Government is competent to refer a dispute for adjudication even to an Industrial Tribunal constituted by the State Government in spite of the Central Government being the appropriate government in relation to that dispute. Thus, even if Central Government happens to be the appropriate government in respect of the respondent Bank, still then it would be well within its jurisdiction to refer the dispute

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between the petitioners and the respondent Bank to the tribunal constituted by the government of U.T. of J&K.

24) It is an admitted position that an Industrial Tribunal headed by an officer of the rank of District Judge is functioning in U.T. of J&K at Jammu as well as at Srinagar. Therefore, the petitioners can easily avail the remedy provided under the Industrial Disputes Act by seeking reference of disputes by the Central Government to the aforesaid Tribunal. The ratio laid down by the Division Bench of this Court in the case of **M/S Hotel Alpine Ridge** (supra), in the facts and circumstances of the present case, may not be applicable to this case.

25) The Supreme Court has consistently held that writ petitions pertaining to industrial disputes for which a statutory remedy is available under the Industrial Disputes Act should not be entertained unless aggrieved party can demonstrate existence of exceptional circumstances. Reliance in this regard is placed on the ratio laid down by the Supreme Court in the case titled **Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke**, (1976) 1 SCC 496. In the present case, the petitioners have not demonstrated any exceptional circumstances that would persuade this Court to entertain the present writ petition.

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26) For what has been discussed hereinbefore and in view of the availability of alternative and efficacious remedy of seeking reference of disputes to Industrial Tribunal located at Jammu/Srinagar and getting it adjudicated from the said Tribunal, the present writ petition is not maintainable. The same is, accordingly, dismissed along with connected CMs without rendering any opinion as to the merits of the case. The petitioners shall, however, be at liberty to avail the appropriate remedy as discussed hereinbefore.

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

(Sanjay Dhar)
Judge

SRINAGAR
07.08.2026
"Bhat Altaf-Secretary"

Whether the **Judgement** is speaking: **YES**
Whether the **Judgement** is reportable: **YES**