

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

Reserved on: 06.02.2025
Pronounced on: 13.02.2025

**WP(C) No.252/2023
c/w
WP(C) No.3075/2022**

WP(C) No.252/2023:

1. Syed Murtaza, aged: 48 years
S/o Syed Hadi R/o Changichik UT of Ladakh.
2. Mohd. Hassan, aged: 52 years
S/o Abass R/o Pushkium UT of Ladakh.
3. Ghulam Rasool, aged: 48 years
S/o Gh. Mohammad R/o Drass, Kargil, UT of
Ladakh.
4. Mohd. Hussain, aged: 52 years
S/o Mohd. Ali R/o Hardass, UT of Ladakh.
5. Sajad Hussain, aged: 42 years
S/o Gh. Raza R/o Goshan Ladakh, UT of Ladakh.
6. Mohd. Hasnain, aged: 38 years
S/o Haji Gh. Hussain R/o Minji, Kargil, UT of
Ladakh.

...PETITIONER(S)

Through: - Mr. Shuja-ul-Haq, Advocate.

Vs.

1. Ladakh Autonomous Hill Development Council
through its Chief Executive Officer, Deputy
Commissioner, Kargil UT of Ladakh.
2. Deputy Director, Employment and Counselling
Centre, Kargil/Ladakh, UT of Ladakh.
3. District Sub-Ordinate Service Recruitment
Selection Board, Kargil through its Secretary.
4. Chief Education Officer, Kargil/Ladakh, UT of
Ladakh.

...OFFICIAL RESPONDENT(S)

5. Gh. Mustafa S/o Fida Hussain (age 31 years) R/o Minjee, Kargil.
6. Stazin Rabzes D/o Tashi Tsering (age 29 years) R/o Kukshow, Kargil.
7. Zakir Hussain S/o Mohd. Hussain (age 33 years) R/o Kaksar, Kargil.
8. Raziya Banoo D/o Mohammad Rahim (age 29 years) R/o Jusgond, Kargil.
9. Yawar Abbas S/o Mohammad Hadi (age 27 years) R/o Purtichey Teh Suru, Kargil.
10. Shabir Hussain S/o Mohammad Ali (age 29 years) R/o Stapka, Kargil.
11. Ansar Hussain S/o Ahmed Ali (age 31 years) R/o Goma, Kargil.
12. Altaf Hussain S/o Mohammad Isaq (age 25 years) R/o Shargole, Kargil.
13. Mubara Ali S/o Mohd. Abass (age 27 years) R/o Hangis, Kargil.
14. Talib Hussain S/o Mohd Musa (age 31 years) R/o Chlikhamboo, Kargil.
15. Bilal Hussain S/o Zakir Hussain (age 27 years) R/o Lan Khore, Kargil.
16. Jaffar Ali S/o Abdul Gaffar (age 31 years) R/o Lamsoo, Kargil.
17. Zakir Hussain S/o Mohd. Hussain (age 28 years) R/o G. M. Pore, Kargil.
18. Sahira Bano D/o Mohd. Ibrahim (age 29 years) R/o Bemathang, Baroo, Kargil.
19. Richot Domla D/o Mohd. Ibrahim (age: 29 years) R/o Icher, Zanskar, Kargil.
20. Najab Hussain R/o Jaffer Ali (age: 31 years) R/o Chiktan, Kargil.
21. Mohd. Ibrahim S/o Gh. Mehdi (age: 36 years) R/o Sanjak, Kargil.

22. Mohd. Ishaq S/o Mursa, Khan (age: 26 years) S/o Shakar, Chaktan, Kargil.
23. Mohd. Ali Khan S/o Nissar Ali (age: 35 years) R/o Chanchik, Kargil.

...PRIVATE RESPONDENT(S)

Through:- Mr. T. M. Shamsi, DSGI

WP(C) No.3075/2022:

1. Fatima Akhtar, aged: 40 years
W/o Ratsun Khan R/o Zakashan Kargil.
2. Akbar Ali, aged: 40 years)
S/o Sheikh Ghulam Mohammad R/o Trespone,
Kargil.
3. Leela Banoo, aged: 37 years)
D/o Asgar Ali R/o Kargil, Main Bazar.
4. Nargis Banoo, aged: 37 years
D/o Sheikh Ghulam Mohammad R/o Yonabetah
Kargil.
5. Shakeela Shaheen, aged: 30 years
W/o Mohammad Yaseen R/o Drass, Kargil.
6. Zaina Banoo, aged: 30 years
D/o Mohammad Baqir R/o Shahar, Chiktan,
Kargil.

...PETITIONER(S)

Through: - Mr. Shuja-ul-Haq, Advocate.

Vs.

1. Ladakh Autonomous Hill Development Council
through its Chief Executive Officer, Deputy
Commissioner, Kargil.
2. Deputy Director, Employment and Counselling
Centre, Kargil, Ladakh.
3. District Sub-Ordinate Service Recruitment
Selection Board, Kargil through its Secretary.
4. Chief Education Officer, Kargil, Ladakh.

...OFFICIAL RESPONDENT(S)

5. Gh. Mustafa S/o Fida Hussain (age 31 years) R/o Minjee, Kargil.
6. Stazin Rabzes D/o Tashi Tsering (age 29 years) R/o Kukshow, Kargil.
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19. Richot Domla D/o Mohd. Ibrahim (age: 29 years) R/o Icher, Zanskar, Kargil.
20. Najab Hussain R/o Jaffer Ali (age: 31 years) R/o Chiktan, Kargil.

21. Mohd. Ibrahim S/o Gh. Mehdi (age: 36 years)
R/o Sanjak, Kargil.
22. Mohd. Ishaq S/o Mursa, Khan (age: 26 years) S/o
Shakar, Chaktan, Kargil.
23. Mohd. Ali Khan S/o Nissar Ali (age: 35 years) R/o
Chanchik, Kargil.

...RESPONDENT(S)

Through:- Mr. T. M. Shamsi, DSGI.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar 'J'

1) These two petitions filed by two set of the petitioners under Article 226 of the Constitution of India arise out of judgment dated 14th of December, 2022, passed by the Central Administrative Tribunal, Srinagar Bench [“the Tribunal”] in TA No.231 of 2021 titled “Ghulam Mustafa & Ors. vs. Ladakh Autonomous Hill Development Council & Ors.” whereby the Tribunal has allowed the petition of respondents 5 to 23 (the private respondents herein) and directed the respondents 1 to 4 (the official respondents herein) to revert the private respondents being promoted beyond their quota. The Tribunal has further directed the official respondents to take the process of selection for the posts of Junior Assistants to its logical conclusion by

issuing appointment orders in favour of the private respondents as per their merit with effect from the date the other similarly selected candidates have been appointed in pursuance of Advertisement Notice No.01 of 2016 dated 16th of January, 2016.

2) Before we advert to the grounds of challenged urged by Mr. Shuja-ul-Haq, learned counsel representing the petitioners in both the petitions, we deem it appropriate to allude to the factual antecedents leading to the filing of these petitions.

3) The Department of School Education vide its letter No.SSRB/2-13-2546 dated 24th of September, 2013, referred 42 posts of Junior Assistants in District Cadre Kargil to the District Subordinate Recruitment Board, Kargil, [“the Board”] for making selection. The Board vide Advertisement Notice No.01 of 2016 dated 16th of January, 2016, invited applications to fill up in as many as 96 posts of Junior Assistants available in district cadre of various departments. The notified 96 posts included 42 posts of Junior Assistants referred by the Education Department.

4) The private respondents responded to the aforesaid Advertisement Notice and sought their consideration against all the 96 posts of Junior Assistants notified by the Board. They participated in the written test and the viva-voce and were declared successful, as is evident from the award list prepared by the Board. While the private respondents were awaiting their appointment, they came to know that the Chief Education Officer, Kargil, had, vide its communication dated 8th of January, 2019, withdrawn some posts of Junior Assistants. The withdrawal of the posts by the Chief Education Officer, Kargil, directly impacted the chances of the private respondents being offered appointment in the Education Department. The move of the Chief Education Officer, Kargil, was resented by respondent No.2 and 3. Vide communication dated 8th of January, 2019, the Deputy Director, DEDCC, Kargil, wrote back to the Chief Education Officer, Kargil, and intimated to him that withdrawal of posts, that too for unjustifiable reasons, was without any authority.

5) When the Chief Education Officer, Kargil, did not budge, the private respondents herein were constrained to file WP(C) No.1882/2019 titled "Ghulam Mustafa & Ors vs.

Ladakh Autonomous Hill Development Council & Ors”. The learned Single Judge of this Court passed a detailed interlocutory order on 13th of September, 2019, directing the Deputy Commissioner/CEO, Ladakh Autonomous Hill Development Council, to take a decision on the recommendations of the Committee which had enquired into the issue of withdrawal of posts on the directions of the Deputy Commissioner and to ensure that the process of selection initiated in terms of Advertisement Notice No.01 of 2016 against the posts of Junior Assistants is taken to its logical conclusion. The learned Single Judge further directed the Deputy Commissioner to ensure that the posts utilized for promotees beyond their quota be diverted to the direct quota and an action in accordance with law is initiated against the erring officials who had violated the rules.

6) The petitioners in WP(C) No.3075/2022, namely, Fatima Akhter & Ors, who were promotee Junior Assistants in departments other than the Education Department, felt aggrieved by the interim directions passed by the learned Single Judge and, accordingly, filed LPA No.242 of 2019. A Division Bench of this Court vide order dated 14th of

October, 2019, allowed the Letters Patent Appeal and set aside the interim order dated 13th of September, 2019 passed in WP(C) No.1882/2019. The petitioners in WP(C) No.3075/2022 were directed to be impleaded as party/respondents in the petition and the writ petition was directed to be listed for consideration before the learned Single Bench on 15th of October, 2019. This is how the matter came up before the learned Single Judge for consideration. However, before the matter could be heard, with the promulgation of J&K Reorganization Act, 2019, and constitution of the Tribunal, the writ petition was transferred to the Tribunal and registered as TA No.231 of 2021. It is this writ petition, which, on transfer to the Tribunal and registered as TA, has been disposed of by the Tribunal vide the judgment impugned in both these petitions.

7) The writ petitioners of WP(C) No.252/2023 have challenged the impugned judgment, *inter-alia*, on the following grounds:

- (I) That the Tribunal has ignored to take note of the fact that the petitioners were not party before the Tribunal and thus condemned the petitioners unheard;

(II) That the impugned judgment has travelled beyond the scope of writ petition filed and the prayers made therein by the private respondents. The Tribunal did not appreciate the fact that no relief was sought by the private respondents against the substantive promotion of the petitioners made against the posts of Junior Assistants on the basis of recommendation made by the Departmental Promotion Committee;

(III) That the Tribunal did not appreciate the fact that the petitioners were holding the posts substantively and could not have been directed to be reverted back without following due process of law;

8) So far as the petitioners of WP(C) No.3075/2022 are concerned, they have challenged the impugned judgment on the additional ground that they have been promoted as Junior Assistants on substantive basis in the departments other than the Education Department and the grievance of the private respondents was only against the withdrawal of posts in the Department of Education. The Tribunal failed to appreciate that in the absence of any case set up by the private respondents against the petitioners, it could not

have issued sweeping directions reverting even the Junior Assistants promoted in the departments other than the Education Department.

9) *Per contra*, Mr. T. M. Shamsi, learned counsel appearing for the official respondents supported by Mr. Parvaiz Lone, appearing for private respondents, would submit that the petitioners in both the petitions, in particular the petitioners in WP(C) No.252/2023, had been promoted as Junior Assistants in excess of their quota illegally by the then Chief Education Officer, Kargil. The communication, which was impugned before the Tribunal, was issued by the Chief Education Officer only to save the promotions of the petitioners of WP(C) No.252/2023. The withdrawal of the posts directly impacted the private respondents who, in the absence of withdrawal of 29 posts by the Chief Education Officer, would have made it to the select list and appointed as Junior Assistants in the Education Department against the direct recruitment quota. It is, thus, submitted that the Chief Education Officer, by withdrawing 29 posts of Junior Assistants of Education Department without any lawful authority and justification, put the private respondents in dock. The

private respondents have been denied their right to be appointed despite being in the select list because of the illegality committed by the Chief Education Officer, Kargil, to save the illegal promotions of the writ petitioners in WP(C) No.252/2023 and few others.

10) Having heard learned counsel for the parties and perused the material on record, it is seen that process of selection for filling up the posts of Junior Assistants in District Kargil was initiated by the Board vide Advertisement Notice No.01 of 2016 dated 16th of January, 2016, and 96 posts notified for selection included 42 posts of Junior Assistants referred by the Chief Education Officer, Kargil. As per the information supplied by the official respondents on affidavit in terms of order dated 14th November, 2024, the total sanctioned strength of Junior Assistants in District Cadre Kargil is 67 and the same, as per rules, are required to be filled up 75% by direct recruitment and 25% by promotion. That being the position, 16.7 (17 posts) would fall to the share of promotees whereas 51 posts would fall to the share of direct recruits. Presently in District Kargil, only 17 persons are working as Junior Assistants against the direct recruitment

quota whereas 23 promotees are in position. 27 posts of Junior Assistants have been stated to be lying vacant.

11) It is not much disputed before us that when the writ petitioners of WP(C) No.252/2023 and few others were promoted as Junior Assistants, there were no posts available in the promotion quota and the quota meant for direct recruitment was utilized. It is with a view to justify such reversion of quota of direct recruitment to promotees, the Chief Education Officer, Kargil, issued the communication for withdrawal of 29 posts out of 42, which, of course, was not permissible in law and this withdrawal of posts un-necessarily affected the private respondents who were in merit and would have been selected and appointed had all the 42 referred posts been filled up by the official respondents. These illegal promotions of the Class IV employees utilizing 20 posts of Junior Assistants falling in the direct recruitment quota were made in the year 2015. Ordinarily, the Chief Education Officer ought to have filled up the vacant posts of direct recruitment quota by making only *ad hoc* and incharge arrangements with the stipulation that the incharge/officiating promotees shall be liable to be reverted on the direct recruits becoming

available by way of selection by the Board. Since the then Chief Education Officer, Kargil, for reasons best known to him, did not follow the law and usurped the quota of direct recruits to the extent of 27 posts of Junior Assistants by making substantive promotions of the Class IV employees including the writ petitioners of WP(C) No.252/2023, as such, he indulged in further illegality and issued communication to the Board withdrawing in as many as 29 posts out of 42 earlier referred posts to save the illegal promotions made by him. The communication issued by the Chief Education Officer withdrawing the posts was rightly challenged by the private respondents in TA No.231 of 2021, in which the private respondents, *inter-alia*, made following prayers:

- (I) Writ of Mandamus directing the respondents, particularly respondent No.4, to refer back the posts of Junior Assistants withdrawn by him during the course of process of direct recruitment in pursuance of Advertisement Notice No.01 of 2016 dated 16th January, 2016;
- (II) Writ of Prohibition restraining the respondents, particularly respondent No.4, from utilizing the posts of Junior Assistants withdrawn by him during the process of direct recruitment being made in terms of

Advertisement Notice No.01 of 2016 dated 16th January, 2016; and

- (III) Writ of Mandamus directing the respondents to show the petitioners having been selected on the basis of their merit and issue the orders of appointment as Junior Assistants;

12) As is apparent from the aforesaid prayers, the writ petition was entirely directed against the withdrawal of 29 posts by the Chief Education Officer, Kargil vide communications dated 9th of June, 2015 and 25th of June, 2016 and no relief has been claimed against the promotions to the posts of Junior Assistants, if any, made in other departments. It is also not in dispute that the writ petitioners, who were the beneficiaries of illegal promotions made by the then Chief Education Officer, Kargil, usurping the quota meant for direct recruitment, were not party before the Tribunal.

13) While we fully concur with the view of the Tribunal that the promotion of Class IV employees including writ petitioners of WP(C) No.252/2023 made against the quota meant for direct recruitment, was illegal and impermissible in law and also that there was no justification for withdrawing in as many as 29 posts out of referred 42 posts

by the then Chief Education Officer, Kargil, yet no order adverse to the interests of the promotees including the writ petitioners of WP(C) No.252/2023 could have been passed without providing them an opportunity of being heard. We also do not appreciate the passing of sweeping directions in the TA directing reversion of the writ petitioners of WP(C) No.3075/2022 who were promoted in the departments other than the Education Department for their promotion was not subject matter of challenge before the Tribunal.

14) In view of the aforesaid and having regard to the peculiar facts and circumstances of this case, we are inclined to **dispose** of these petitions by providing as under:

- (I) 29 posts of Junior Assistants in the Education Department, which were withdrawn by the then Chief Education Officer, Kargil, vide its communications dated 09.06.2015 and 25.06.2016, shall be deemed to have been restored to the Board for making selection.
- (II) The Board shall proceed to conclude the selection and fill up those 29 posts of Junior Assistants in the Education Department by recommending the candidates on the basis of their merit.

- (III) If, with a view to appoint the candidates selected in terms of direction No.(II), a promotee or promotees is/are required to be demoted, the process of law shall be followed and such promotee/promotees shall be afforded an opportunity of being heard.
- (IV) The appointment of the candidates consequent upon compliance with the aforementioned directions shall be retrospective from the date other candidates in the selection process initiated pursuant to Advertisement Notice No.01 of 2016 dated 16th January, 2016, were appointed. However, such appointment shall be notional and without any monetary benefits and the regular appointment shall be only with effect from the date the selected candidates are actually appointed.
- (V) The entire process of selection culminating in the appointment of the candidates in the manner aforesaid shall be completed within a period of three months from the date a copy of this judgment is served upon the official respondents.
- (VI) The writ petitioners of WP(C) No.3075/2022 shall remain un-affected by the judgment of the Tribunal and they shall not be reverted otherwise than in accordance with law.

15) Before we close, we need to mention that as on date, 27 posts of Junior Assistants are lying vacant and,

therefore, 27 new candidates can be accommodated against the available vacant posts and it is only for accommodating two more candidates, the promotees need to make place. We, however, leave it to the official respondents to act in their wisdom and ensure that the quota meant for aforesaid two sources is maintained and such litigation in future is avoided.

16) The judgment of the Tribunal is modified to the aforesaid extent and consequently both the petitions are disposed of in the manner as aforesaid.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
13.02.2025
"Mohammad Altaf"

Whether the order is reportable: Yes/No