

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

Reserved on: 26.05.2025.  
**Pronounced on: 30.05.2025**

**LPA No. 158/2023**

**In WP(C) No. 2029/2019**

**MUNEER AHMAD SHIGAN  
S/O: GHULAM NABI SHIGAN  
R/O: KAKASARIA, KARAN NAGAR, SRINAGAR.**

**...APPELLANT(S)**

Through: - Mr. Altaf Haqani, Sr. Advocate with  
Mr. Aasif Wani, Advocate

Vs.

- 1. SHER-I-KASHMIR UNIVERSITY OF AGRICULTURAL SCIENCES  
& TECHNOLOGY (SKAUST) THROUGH ITS VICE  
CHANCELLOR, SHALIMAR, SRINAGAR.**
- 2. REGISTRAR.  
SHER-I-KASHMIR UNIVERSITY OF AGRICULTURAL  
SCIENCES & TECHNOLOGY, SHALIMAR, SRINAGAR.**
- 3. SUMAIRA SHAFI  
COMPUTER PROGRAMMER, SKAUST.**
- 4. YASIR ARFAT  
COMPUTER PROGRAMMER, SKAUST.**
- 5. NASER-UL-ISLAM  
COMPUTER PROGRAMMER, SKAUST.**
- 6. MOHD IQBAL KOUL  
COMPUTER PROGRAMMER, SKAUST.**

**...RESPONDENT(S)**

Through:- Mr. M.Y. Bhat, Sr. Advocate with  
Mr. Sajid Ahmad, Advocate for R-1 and 2.  
Mr. Mian Tufail, Advocate with  
Mr. Mian Rouf, Advocate for R-3 to 6.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

## JUDGMENT

**Per: Sanjeev Kumar-J:**

1. This intra-court appeal by the appellant Muneer Ahmad Shigan, is directed against an order and judgment dated 2<sup>nd</sup> August, 2023, passed by the learned Single Judge of this Court [“the writ Court”] in WP(C) No. 2029/2019 titled “***Muneer Ahmad Shigan Vs. SKUAST and Ors.***” whereby the writ Court has dismissed the petition filed by the appellant.

2. Before we advert to the grounds of challenge urged by Mr. Altaf Haqani, learned senior counsel appearing for the appellant, we deem it appropriate to narrate a few facts which are germane to the disposal of the controversy raised in this appeal.

3. Vide Advertisement Notice No. 01 of 2004 dated 19<sup>th</sup> November, 2004, issued by the respondents No. 1 and 2 [“the official respondents”] for the recruitment to the posts of Computer Programmer (Training Assistant), now designated as Programme Assistant (Computer), the appellant along with many others including respondents 3 to 6 [“the private respondents”] submitted their application forms. The appellant was not amongst the candidates selected for the notified posts.

4. Feeling aggrieved by the result of the selection, the appellant filed SWP No. 778/2007. The writ petition was

allowed by the learned Single Judge vide order dated 29<sup>th</sup> November, 2014. The learned Single Judge came to the conclusion that the entire selection conducted by the official respondents was arbitrary and in conflict with Articles 14 and 16 of the Constitution of India. The learned Single Judge also found the private respondents ineligible to participate in the selection process conducted by the official respondents for the advertised posts. Having regard to the fact that the private respondents had been continuing in service post their appointment for more than seven years, the learned Single Judge did not disturb the selection and instead granted relief to the appellant. The official respondents were directed to appoint the appellant against any available post of Computer Programmer (Training Assistant) subject to completion of usual formalities etc.

5. When the judgment passed by the learned Single Judge in SWP No. 778824/2007 was not complied with by the official respondents, the appellant filed a contempt petition before this Court. During the pendency of the contempt petition, the official respondents issued Order No. 824(Est.) of 2015 dated 24<sup>th</sup> September, 2015, appointing the appellant as Programme Assistant (Computer) with immediate effect. The contempt petition was disposed of by the learned Single Judge with liberty to the appellant to

assail the order dated 24<sup>th</sup> September, 2015, *supra* in accordance with law.

6. This is how the appellant filed WP(C) No. 2029/2019 to challenge the order dated 24<sup>th</sup> September, 2015. The appellant also prayed for a writ of mandamus commanding the official respondents to grant retrospective effect to his appointment w.e.f. 15<sup>th</sup> March, 2006, and fix his seniority, over and above the private respondents.

7. This petition was contested by the official respondents. In the reply affidavit filed by the official respondents, a clear stand has been taken that there was no direction issued by the learned Single Judge to grant retrospective appointment to the appellant. It was also pleaded by the official respondents that the appellant, having accepted the appointment, cannot be permitted to turn around and seek his appointment retrospectively from the date others were selected and appointed. It was also contended by the official respondents that the direction of the learned Single Judge was to appoint the appellant against the available post and the post became available only on the death of Shri. Riyaz Ahmad Pandit, which had taken place on 15<sup>th</sup> February, 2013.

8. The writ Court having considered the rival contentions and perused the material on record came to the conclusion that the appellant was not entitled to retrospective

appointment nor was he entitled to have seniority over and above the private respondents. As a result, the writ petition was dismissed being devoid of any merit.

9. The appellant is aggrieved of and has called in question the impugned judgment, *inter alia*, on the ground that the appellant, having been found eligible by the learned Single Judge in its judgment dated 29<sup>th</sup> November, 2014, passed in SWP No. 778/2007, cannot be made junior to the private respondents, who were admittedly ineligible to participate in the selection process conducted in terms of Advertisement Notification dated 19<sup>th</sup> November, 2004. It is thus argued that the private respondents, whose appointment has been held to be illegal because of their ineligibility over the post, cannot be permitted to steal a march over appellant, who alone was possessing the requisite qualification prescribed for the post.

10. Reliance is placed by Mr. Altaf Haqani, learned senior counsel appearing for the appellant on the following judgments:-

- (i) AIR 2000 SC 3238.
- (ii) 2003(5) SCC 604.
- (iii) SLJ 2011(1) 235.
- (iv) JKJ 2013(2) 121.
- (v) 2021AIR SC 4648.

11. *Per contra*, Mr. M.Y. Bhat, learned senior counsel appearing for the official respondents, and Mr. Mian Tufail, learned counsel appearing for the private respondents,

would support the judgment of the writ Court. It is thus argued that once the learned Single Judge saved the selection and appointments, despite holding the entire selection process to be arbitrary, and gave appointment to the appellant as well, the appellant and the private respondents formed the same class and, therefore, the seniority *inter se* was required to be fixed as per the merit obtained in the selection process.

12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is legally perfect and the view taken by the writ Court in the given facts and circumstances of the case, is unexceptionable. The entire edifice of the case of the appellant rests on the true import and understanding of judgment passed by the learned Single Judge dated 29<sup>th</sup> November, 2014, in SWP No. 778/2007. In the aforesaid petition, the appellant had called in question the selection and appointment of the private respondents on several grounds including that the private respondents were not eligible to participate in the selection process initiated by the official respondents in terms of the Advertisement Notification dated 19<sup>th</sup> November, 2004. The writ petition filed by the appellant was contested by both, the official respondents as well as the private respondents.

13. The learned Single Judge having considered the rival contentions and perused the material on record came to the conclusion that the private respondents herein were not eligible to be appointed against the advertised posts, but they were appointed notwithstanding their ineligibility. The learned Single Judge also came to the conclusion that the manner in which the selection process was conducted had rendered it arbitrary and in conflict with Articles 14 and 16 of the Constitution of India.

14. Ordinarily, the writ Court, having found the entire selection process vitiated in law, should have quashed the entire selection process and directed the official respondents to issue fresh advertisement notification. In such a situation, neither the appellant nor the private respondents could have been appointed. The learned Single Judge, however, invoked its equitable jurisdiction and keeping in view the fact that the selected/appointed candidates had been in service for more than seven years, did not quash the selection. To balance equities, the appellant, who was otherwise not in the select list and, as was later found, was at serial No. 33 in the merit list, was directed to be appointed against the available post. It is not in dispute that the post became available only on 15<sup>th</sup> February, 2013, when the incumbent Riyaz Ahmad Pandit, passed away during the pendency of the writ petition. It is against this

post the appellant was considered and vide order dated 24<sup>th</sup> September, 2015, appointed.

15. From a reading of the entire judgment dated 29<sup>th</sup> November, 2014, supra, particularly its concluding Paragraph 25, it clearly transpires that the learned Single Judge found the entire selection process vitiated being arbitrary and in conflict with Articles 14 and 16 of the Constitution. That being the position, the appellant was not entitled to be appointed as a matter of right. This concession for appointment of the appellant came to be granted by the learned Single Judge with a view to save the appointment of the private respondents on equitable grounds. The direction for appointment of the appellant was clear and unequivocal. The appointment to be offered to the appellant was to be made against an available post. As is the emphatic case of the official respondents that post became available only during the pendency of the writ petition, when the incumbent-Reyaz Ahmad Pandit passed away on 15<sup>th</sup> February, 2013. Immediately upon the disposal of the writ petition, the matter was considered and the appointment was offered to the appellant vide University Order dated 24<sup>th</sup> September, 2015.

16. We are in agreement with the learned senior counsel appearing for the official respondents, that the appellant as well as the private respondents are the equal beneficiaries of

the benevolence of this Court. But for the exercise of equitable jurisdiction by the learned Single Judge, neither the appellant nor the private respondents could have been appointed. It is true that appellant was possessing the basic eligibility prescribed for the post, but that alone was not sufficient to clothe him with an absolute right of appointment. As has been rightly found by the writ Court after perusal of the record, that the appellant was at serial No. 33 of the merit list, suggesting that there were many other candidates with better merit than the appellant.

17. The appellant could get the appointment only because the learned Single Judge did not find it appropriate to disturb the illegal selection and appointment of the private respondents after they had rendered more than seven years of service. The judgment dated 29<sup>th</sup> November, 2014, was, therefore, based on equitable considerations. The appellant as well as the private respondents, thus, formed the same class and were the outcome of an illegal and arbitrary selection process conducted by the official respondents. Once the official respondents accepted the judgment of the learned Single Judge dated 29<sup>th</sup> November, 2014, and offered the appointment to the appellant, the seniority of the appellant as well as the private respondents was required to be determined on the basis of their *inter se* merit, as there is

no other mode prescribed for determining the seniority of the persons who have faced the same selection process.

18. The appellant, as is rightly held by the writ Court, is not entitled to retrospective appointment, for the reason that there is no such direction issued by the learned Single Judge in its judgment dated 29<sup>th</sup> November, 2014. The judgment relied upon by Mr. Altaf Haqani, learned senior counsel appearing for the appellant, have been elaborately discussed and distinguished by the writ Court, and we see no reason or justification to take a view contrary to the one taken by the writ Court. None of the judgments relied upon by Mr. Altaf Haqani, learned senior counsel are relevant to the present case, and discussing each one of these judgments would be a mere waste of time. Despite the vehement arguments advanced by Mr. Altaf Haqani, learned senior counsel, we could not persuade ourselves to accept that the appellant being eligible to hold the post was better placed than the private respondents.

19. For the foregoing reasons, we find no merit in this appeal and the same is, accordingly, **dismissed**.

(SANJAY PARIHAR)  
JUDGE

(SANJEEV KUMAR)  
JUDGE

Srinagar,  
30.05.2025  
"Mir Arif"

Whether the judgment is approved for reporting? Yes/No.