

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

Reserved on: 28.05.2025.
Pronounced on: 30.05.2025

LPA No. 93/2021

- 1. STATE OF J&K THROUGH FINANCIAL SECRETARY (HOME DEPARTMENT), CIVIL SECRETARIAT, SRINAGAR.**
- 2. DIRECTOR GENERAL OF POLICE, J&K POLICE HEAD QUARTERS, SRINAGAR.**
- 3. INSPECTOR GENERAL OF POLICE, ARMED JAMMU AND KASHMIR, SRINAGAR.**
- 4. SELECTION COMMITTEE THROUGH ITS CONVENER/CHAIRMAN, POLICE HEADQUARTERS, J&K, SRINAGAR.**

...APPELLANT(S)

Through: - Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Advocate

Vs.

- 2 BILAL AHMAD DAR
S/O: GH. HASSAN DAR
R/O: CHARIPORA PAKHERPORA, BUDGAM.**
- 4. JAVEED AHMAD LONE
S/O: GH. MOHAMMAD LONE
R/O: FOOTLIPORA CHARARISHARIEF, BUDGAM.**
- 5. JAVEED AHMAD DAR
S/O: MOHAMMAD RAMZAN RATHER
R/O: CHARARISHARIEF, BUDGAM**
- 7. HILAL AHMAD BHAT
S/O: GH. AHMAD BHAT
R/O: CHARARISHARIEF, BUDGAM.**
- 8. ROOF AHMAD ZARGAR
S/O: ABDUL AHAD ZARGAR
R/O: CHARARISHARIEF, BUDGAM**
- 9. FAROOQ AHMAD THOKAR
S/O: ABDUL AZIZ
R/O: KAKAWRING, CHARARISHARIEF.**
- 10. GH. MOHIDDIN RATHER
S/O: MOHAMMAD ISMAIL RATHER
R/O: CHARIPORA, PAKHERPORA.**

...RESPONDENT(S)

Through:- Mr. R.A. Jan, Sr. Advocate with
Ms. Humaira Sajad, Advocate

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, filed by the then State of Jammu and Kashmir (now Union Territory of J&K) and three others, is directed against an order and judgment dated 31st December, 2014, passed by the learned Single Judge of this Court [the "writ Court"] in SWP No. 961/2009, whereby the writ Court has disposed of the writ petition filed by the respondents 1 to 6, with a direction to the appellants to offer appointment to the aforesaid respondents to the post of Constables. The writ Court granted eight weeks' time to the appellants herein to issue appropriate orders of appointment in favour of respondents No. 1 to 6. During the pendency of this appeal, the respondents No. 1, 3 and 6 have been deleted from the array of respondents. This appeal is contested by the respondent No. 2-Bilal Ahmad Dar, respondent No. 4-Javeed Ahmad Lone, and respondent No. 5-Jaweed Ahmad Dar.

2. Before we proceed to consider the grounds of challenge urged by Mr. Mohsin Qadri, learned senior AAG on merits, we find it necessary to give a brief resume of the factual antecedents leading to the filing of this appeal.

3. Vide Advertisement Notice No. DJPK-3837 dated 19th July, 2008, issued by the Director General of Police, Jammu and Kashmir, the respondents 2, 4 and 5 along with respondents No. 7 to 10 and several others submitted their application forms for the post of Constable in the Jammu and Kashmir Executive Police, District Budgam of Kashmir Zone. The respondents 2, 4 and 5 (“the writ petitioners”) participated in the selection process, but could not make it to the select list. On the other hand, the respondents 7 to 10 figured in the select list and were consequently appointed as Constables. The respondents 2, 4 and 5 along with the respondents i.e., 1, 3 and 6 (now deleted) challenged the selection and appointment of respondents 7 to 10 in SWP No. 961/2009.

4. The writ petition was contested by the appellants by filing a reply affidavit. The writ Court considered the rival contentions and having regard to the fact that the allegations made by the writ petitioners i.e., respondents 2, 4 & 5 and three others (now deleted) had not been refuted or rebutted by the appellants in their reply affidavit, disposed of the writ petition holding that there were huge irregularities in the selection process and that the selection of respondents 7 to 10 was liable to be quashed. The writ Court, however, did not quash the selection on equitable considerations, but directed the appellants to offer

appointment to the respondents 2, 4 and 5 to balance the equities.

5. The appeal preferred by the appellants to challenge the impugned judgment dated 31st December, 2014, was belated and, therefore, accompanied by an application for condonation of delay. The application for condonation of delay was taken up for consideration by a Division Bench of this Court and vide order dated 1st June, 2018, the same was dismissed. As a consequence of dismissal of the application for condonation of delay, the belated appeal was also dismissed.

6. This order of the Division Bench of this Court was called in question by the appellants before the Hon'ble Supreme Court in Civil Appeal No. 2489/2021. The appeal was allowed by the Hon'ble Supreme Court and the order of the Division Bench dated 1st June, 2018, was set aside. The Hon'ble Supreme Court also condoned the delay occasioned in filing the LPA No. 93/2021, subject to the payment of costs of Rs. 60,000/-. While disposing of the Civil Appeal No. 2489/2021, the Hon'ble Supreme Court also held the appellants entitled to put in an affidavit in reply touching upon the merits of the matter. A direction was issued to the High Court to consider the appeal on its merits.

7. In compliance with the order of the Hon'ble Supreme Court, the appellants have filed an affidavit sworn by one

S.J.M. Gillani, IPS, Additional Director General of Police, Armed, refuting specifically the allegations made by the respondents 2, 4 and 5 (the writ petitioners) in the writ petition, particularly in Paragraph 8 and 10 thereof.

8. 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 not sustainable for more than one reason. The basis of the judgment impugned passed by the writ Court is that allegations made by the respondents 2, 4 and 5 in Paragraph 8 and 10 of the writ petition, remained uncontroverted, and that being the position, the bungling in the selection process were writ large. It is true that in the objections filed in opposition to the writ petition, the allegations made by the respondents 2, 4 and 5 (the writ petitioners) were not specifically refuted. In Paragraph 8 of the writ petition, it is alleged by the respondents 2, 4 and 5 (the writ petitioners) that respondent No. 8 was lacking eligibility in respect of the physical standard (height). The height of the respondent No. 8 was less than 5 feet 6 inches and, therefore, he ought not to have been allowed to participate in the selection process. The allegation made in Paragraph 10 is that respondents 7 to 9 herein had failed to qualify the mandatory outdoor tests.

9. In the objections filed by the appellants, the allegations in Paragraphs 8 and 10 of the writ petition were not specifically refuted. However, it was pleaded that the selection list had been prepared on the basis of the merit secured by the candidates and that there was no deviation from the criteria fixed by them. It was denied that the writ petitioners had a better claim than that of the respondents 7 to 10. It is on the basis of this evasive denial contained in the objections filed by the appellants that the writ Court proceeded to declare the entire selection process tainted with irregularities. The appellants have now filed a better reply affidavit and have clearly stated that as many as 1359 candidates, including the writ petitioners and respondents 7 to 10, had qualified the physical standard test and outdoor tests. Regarding the height of respondent No. 8, it is stated that he was 5 feet 9 inches and, therefore, much above the minimum prescribed height of 5 feet 6 inches. There is no rebuttal to this reply affidavit filed by the respondents in compliance with the directions of the Hon'ble Supreme Court dated 13th July, 2021. Otherwise, also from a perusal of the reply affidavit filed by the Additional Director General of Police, Armed, it is abundantly clear that none of the writ petitioners, in particular respondents 2, 4 and 5 herein, obtained marks equal to or more than the cutoff in their respective category.

10. Respondents No. 2, 4 and 5 have obtained 22, 20 and 22 marks respectively. The respondent No. 2 belongs to Reserved Backward Area (RBA) category, whereas respondent No. 4 and 5 belong to the Open Merit category. The cutoff in the Open Merit category for District Budgam was 26 marks, whereas cutoff merit in RBA category for District Budgam was 25 marks. The merit of respondents No. 2, 4 and 5 and that of respondents No. 7 to 10 clearly shows that the respondents 7 to 10 were not only more meritorious than the respondents 2, 4 and 5 (the writ petitioners), but had obtained merit equal to or higher than the cutoff prescribed for their respective categories.

11. Learned counsel appearing for the respondents No. 2, 4 and 5 (the writ petitioners) placed reliance upon the judgment of the Hon'ble Supreme Court in the case titled ***"Bharat Singh and Others Vs. State of Haryana and Others" 1988 (4 SCC 534)***, and argued that when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising such a point must plead and prove such facts through evidence which must appear from the writ petition or the counter affidavit as the case may be. We have no quarrel with the proposition of law laid down by the Hon'ble Supreme Court as elucidated by the learned senior counsel. Paragraph 13 of the judgment

was heavily relied upon and, is accordingly reproduced hereunder:-

“As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us PG NO 1060 by the appellants is not entertainable. But, in

spite of that, we have entertained it to show that it is devoid of any merit.”

12. The judgment relied upon by Mr. R.A. Jan, learned senior counsel, particularly Paragraph 13 reproduced above, clearly boomerangs. The respondents 2, 4 and 5 (the writ petitioners) have made serious allegations in Paragraphs 8 and 10 of the writ petition without substantiating the same by placing on record any evidence, documentary or otherwise. For example, the allegations of the respondents 2, 4 and 5, that the respondent No. 8-Mr. Roof Ahmad Zargar was under height, is not substantiated by any documentary evidence. On the other hand, the allegation was refuted by the Additional Director General of Police, Armed, in his reply affidavit by stating that the height of respondent No. 8 was 5 feet 9 inches far above the prescribed height. With regard to Paragraph 10, it is stated that in the physical standard tests and outdoor tests, 1359 candidates including the respondents No. 7 to 10 had qualified and were considered on the basis of criteria/norms laid down for allocation of marks to qualification, additional qualification, height by the Police Headquarters vide order No. Pers-A-91/2008/31850-950 dated 19th July, 2008.

13. The reply affidavit filed by the Additional Director General of Police, Armed, is in tune and conformity with the record produced by the appellants except that the marks

allocated to the respondents No.8-Roof Ahmad Zargar, are not correctly indicated. As per the record produced before us, respondent No. 8-Roof Ahmad Zargar has been awarded 29 points and has been rightly placed in the select list. However, his height as indicated in the record is 6^{1/2} feet and qualification is 10+2. The respondent No. 8 has been awarded 15 points for height, 12 points for 10+2 qualification and 2 points for one year diploma in computer applications, aggregating to a total of 29 points. There is some discrepancies in reproducing the breakup of the points awarded to respondent No. 8. However, since the total points would remain the same, the discrepancy noticed is inconsequential and does not affect the validity of his selection.

13. For the foregoing reasons, we find merit in the appeal filed by the appellants and the same is, accordingly, **allowed**, and the impugned Order/judgment passed by the writ Court is set aside. As a necessary corollary thereof, the writ petition to the extent of respondents 2, 4 and 5 is found to be devoid of merit and is, accordingly, **dismissed**.

14. Disposed of.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
30.05.2025
"Mir Arif"

Whether the judgment is approved for reporting? Yes.