

S. No. 11
Advance list

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

LPA No. 144/2019  
CM No. 3867/2019

Abdul Qadeer Tantray

....Appellant/Petitioner(s)  
Through: Mr. Syed Sajad Geelani, Advocate

Vs.

State of J&K and Others

....Respondent(s)  
Through: Mr. Mir Suhail, AAG for R1 to R3  
Mr. Mujeeb Andrabi, Adv. for R4 & R5.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE**

**ORDER**  
**29.11.2019**

1. The record of the case shows that this appeal was directed to be listed on 6<sup>th</sup> November, 2019, which has not been listed. The Registrar Judicial is directed to conduct an enquiry from the dealing hand as to why this appeal was not listed on the date as was directed by this Court.
2. We have heard learned counsel for the appellant and Mr. Mir Suhail, learned AAG as also Mr. Mujeeb Andrabi, learned counsel for the private respondent Nos. 4 & 5.
3. The appellant has assailed the order dated 17<sup>th</sup> May, 2019, whereby his WP(C) No. 1718/2019 was dismissed in limini. The appellant, *inter alia*, has made grievance that despite his having cleared the computer typing test as back as on 25<sup>th</sup> February, 2017, he has not been accorded consideration by a regularly constituted Departmental Promotional Committee for appointment

to the post of Junior Assistant. Instead of this, the respondents have requested him to perform his duties as “*I/C Junior Assistant*”. It is submitted by learned counsel for the appellant that the learned Writ Court has treated the case of the petitioner as one seeking prayer of regularization whereas it was not so.

4. This position is confirmed by the learned counsel for the respondents who submit that in fact the matter is pending for consideration of a regular Departmental Promotion Committee. We may note that the private respondents are disputing the eligibility as well seniority of the appellant on which he is placing reliance.

5. Be that as it may, inasmuch as these issues have not been considered by the learned Single Judge, they need not detain us at this stage.

6. However, the order dated 17<sup>th</sup> May, 2019 cannot be sustained, inasmuch as, the learned Writ Court has decided the issue which does not appear to be subject matter of the claim set up by the writ petitioner in WP(C) No. 1718/2019.

7. In view thereof, it is directed as follows:

- (i) The impugned order dated 17<sup>th</sup> May, 2019 dismissing the WP(C) 1718/2019 is hereby set aside and quashed.
- (ii) The WP(C) No. 1718/2019 is remanded for consideration afresh before the learned Single Judge.
- (iii) The respondents are permitted to file counter affidavit to the writ petition within four weeks from today. The petitioner may file rejoinder thereto before the learned Single Judge before the next date of hearing.
- (iv) The writ petition bearing WP(C) 1718/2019 shall be placed before the learned Single Judge for consideration on 19<sup>th</sup> February, 2020.

- (v) Interim order dated 1<sup>st</sup> July, 2019, whereby we had directed that the appellant shall not be replaced from the current assignment by a person who is junior to him or who has not qualified the type test as is required under rules, shall continue in operation till such time the same is modified or vacated by the learned Single judge

8. We make it clear that nothing herein contained is an expression of opinion on the merits of the case.

9. This appeal is allowed in the above terms.

10. In case any inquiry is pending in respect of the appellant, the respondents shall ensure that the same is proceeded expeditiously, concluded within two months from today and result thereof be placed before the learned Single Judge on the next date of hearing.

11. Copy of this order be furnished to learned counsel for the parties under the seal and signature of the Joint Registrar Cum Bench Secretary of this Court.

(SANJEEV KUMAR)  
JUDGE

(GITA MITTAL)  
CHIEF JUSTICE

SRINAGAR

29.11.2019

“Manzoor”