

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR.**

WP(C ) No. 164/2025  
WP(C ) No. 190/2025  
WP(C ) No. 191/2025  
(WP(C ) No. 2890/2024

Reserved on:30.07.2025  
Pronounced on: 30.08.2025

**WP(C ) No. 164/2025**

UT of Jammu and Kashmir and others vs. Imtiyaz Ahmad Laloo & ors

**WP(C ) No. 190/2025**

UT of Jammu and Kashmir and others vs. Zahoor Ahmad Khan

**WP(C ) No. 191/2025**

UT of Jammu and Kashmir and others vs. Imtiyaz Ahmad Tantray

**WP(C ) No. 2890/2024**

UT of Jammu and Kashmir and ors vs. John Mohammad Wani & ors

Mr. Mohsin Qadri Sr. AAG for the petitioners.  
Mr. S.A.Makoo Sr. Advocate with  
Mr. Irfan Rasool, Advocate for the respondents.

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

**JUDGMENT**

**Sanjeev Kumar J**

1 UT of Jammu and Kashmir and others [“petitioners herein”] are aggrieved of and have challenged a common order and judgment dated 24.08.2023 passed by the Central Administrative Tribunal, Srinagar Bench [“Tribunal”] in TA No. 1591/2021 (SWP No. 2161/2018) titled Imtiyaz Ahmad Laloo & ors vs. State and others, TA No. 6533/2021 (SWP No. 594/2017) titled Zahoor Ahmad Khan vs State and others, TA No. 3629/2021 (SWP No. 2912/2018) titled Imtiyaz Ahmad Tantray vs State and others, and TA No. 6584/2021 (SWP No. 2001/2015 titled John Mohammad Wani and others vs State

and others, whereby the Tribunal has, while allowing the TAs of the respondents, held that the respondents are entitled to the benefit of the Old Pension Scheme and issued a direction to the petitioners herein to consider the case of the respondents for assigning seniority and other service benefits on a par with selectees of Advertisement Notification No.DIPK 3837 dated 19<sup>th</sup> July 2008, as per the statutory rules and settled law.

2           The impugned judgment is assailed by the petitioners on multiple grounds. However, before adverting to the grounds of challenge urged by Mr. Mohsin Qadri, learned Sr. AAG, appearing for the petitioners, it would be appropriate to briefly notice few background facts leading to the present litigation.

3           PHQ J&K vide Advertisement Notification dated 19.07.2008 invited applications for the posts of Constables in the Executive Police for Kashmir Zone. Upon conclusion of the selection process, and in terms of order No. 569/2009 dated 27.09.2009, the respondents along with several other candidates were provisionally selected as Constables. The DIG SKR, Anantnag, accordingly, directed all SSPs of south Kashmir Range to issue formal appointment orders in respect of the selected candidates after fulfilling all the requisite formalities. The respondents, being residents of District Shopian, were directed to report to the SSP Shopian for issuance of formal orders of appointment. Upon receipt of the provisional select list containing the names of the respondents, the SSP Shopian took up the matter with the concerned Departments/Agencies for verification of their documents and character antecedents. After receipt of the requisite verification

reports, the formal orders of appointment in favour of the respondents were issued by the SSP Shopian vide his orders No.03/2010, 05/2010, 06/2010, 08/2010, 09/2010 and 13/2010, all dated 06.01.2010.

4 It is not in dispute that some of the selected candidates from the aforesaid recruitment, on completion of the requisite formalities, came to be appointed prior to 31.12.2009. They were thus placed under the Old Defined Pension Scheme. The respondents, who were appointed after the cut-off date prescribed under SRO 400 of 2009 dated 24.12.2009 were, however, treated under the New Pension Scheme (NPS). The said SRO fixed 01.01.2010 as the cut-off date for applicability of the New Pension Scheme.

5 Feeling aggrieved by their non-consideration under the Old Defined Pension Scheme, earlier eleven similarly situated candidates who were selected in terms of another Advertisement Notification dated 07.02.2009 filed SWP No. 210 of 2016 titled Neelofar Mehraj vs State and others and 1712/2017 titled Sajad Ahmad Lone and SWP No. 1712 of 2017 Sajjad Ahmed Lone vs State and others. The aforesaid writ petitions were disposed of by a Single Bench of this Court vide judgments dated 26.09/2016 and 25.08.2017 respectively, with a direction to the petitioners herein that the case of the writ petitioners in the aforesaid two writ petitions would be governed by the Pension Rules as were applicable up to 31.12.2009. The judgments passed in the aforesaid writ petitions were complied with, and the benefit of the Old Pension Scheme was extended to the petitioners therein.

6 Taking cue from the aforesaid judgments passed in the aforesaid two writ petitions, some of the respondents herein also approached this Court by way of SWP No. 2161 of 2018 which, upon transfer to the Tribunal after the enactment of the Jammu and Kashmir Reorganization Act, 2019 and constitution of the Tribunal, came to be registered as TA No. 1591 of 2021. The said TA, along with TAs No. 6533/2021, 3629/2021 and 6584/2021 filed by the respondents, was disposed by the Tribunal in terms of a common judgment dated 24.08.2023, which is impugned in these writ petitions.

7 In the backdrop of the aforementioned factual matrix, the petitioners seek to challenge the impugned judgment on the ground that the Tribunal has not appreciated the legal and factual aspects of the case in their right perspective. It is submitted that the respondents were brought under the New Pension Scheme, along with other similarly situated candidates, solely for the reason that their appointments to Government service were made after 01.01.2010. It is argued that the Tribunal conveniently ignored the mandate of SRO 400 of 2009, whereby Article 167 of the J&K CSR was amended to unequivocally provide that the existing Pension Rules (the Old Defined Pension Scheme) would not be applicable to Government employees appointed or brought on regular establishment on or after 01.01.2010.

8 Mr Mohsin Qadri, learned Sr. AAG appearing for the petitioners would further argue that the Tribunal has also failed to appreciate that mere inclusion of a candidate's name in the provisional selection list does not confer any vested right to appointment from the date of such selection and that an appointment becomes effective only

upon issuance of a formal order of appointment by the competent authority after completion of all the requisite formalities. Learned counsel appearing for the petitioners also refuted the observation of the Tribunal that the delay in issuance of formal appointment orders was attributable to the petitioners, thereby pushing the appointments of the respondents beyond 01.01.2010.

9           *Per contra*, leaned counsel appearing for the respondents would submit that the judgment passed by the Tribunal is both legally and factually correct. The Tribunal has taken note of the fact that many candidates selected pursuant to the same Advertisement notification dated 19<sup>th</sup> July 2008 were appointed prior to 01.01.2010, and it was only in the case of some, including the respondents, that the issuance of appointments orders was delayed due to administrative laxity or indolence on the part of the petitioners. He would, therefore, argue that, on the analogy of similarly situated persons, and keeping in view that the respondents cannot be penalized for the delay in their appointments caused by the petitioners, the respondents are entitled to the parity of treatment and to the benefit of the Old Pension Scheme, treating them as having been appointed prior to 01.01.2010

10           Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out the relevant amendment carried in Article 167 of the J&K CSR in terms of SRO 400 of 2009, which reads as under:

- i) In Article 167 dealing with Pension Rules under the caption 'SECTION I – EXTENT OF APPLICATION' after exception 5, the following shall be added as exception (6):-

(6)(i) "The State Government Employees appointed on or after 01.01.2010 shall be governed by "New Pension Scheme" as per Article 249-M(B) added after 249-M(A) and accordingly, the existing Pension Rules shall not be applicable to Government Employees appointed or brought on regular establishment on, or after, 01.01.2010".

(ii).....

(iii).....”

11 From a perusal of Clause 6 reproduced hereinabove, it is evident that the State Government employees appointed on or after 01.01.2010 shall be governed by the “New Pension Scheme” as per Article 249-M(B), added after 249-M(A) and, accordingly, the existing pension rules shall not be applicable to Government employees appointed or brought on regular establishment on or after 01.01.2010. The language of exception (6) appended to Article 167 of J&K CSR is quite clear, unequivocal and does not admit of two interpretations. All the Government employees who are either appointed or brought on regular establishment on or after 01.01.2010 would be governed by the “New Pension Scheme”.

12 There is no dispute with regard to the fact that though the selection process for appointment of Constables in the instant case was initiated vide Advertisement Notification dated 19<sup>th</sup> July 2008 and even the selection process culminated into issuance of provisional select list on 27.09.2009, yet the formal orders of appointment on completion of mandatory formalities were issued in favour of the respondents after 01.01.1020, to be exact on 06.01.2010. Going by the plain language of SRO 400 of 2009 dated 24.12.2009, which was of course not the subject matter of challenge in the petitions filed before the Tribunal, the respondents would be governed by the New Pension Scheme. However

the grievance of the respondents as was projected by them in their petitions, is that the inordinate delay committed by the petitioners in issuing the formal orders of appointment in their favour in terms of the selection process initiated on 19<sup>th</sup> July 2008 cannot inure to the benefit of the petitioners and work to their prejudice. It has also been fairly conceded by the petitioners that some of the candidates, though selected in other Districts in terms of the same Advertisement notification dated 19<sup>th</sup> July 2008, were fortunate enough to get the appointment before 01.01.2010, for the reason that in their Districts, the offices of SSPs were quick to ensure the completion of requisite formalities. The petitioners also do not deny that completion of requisite formalities, including the verification of documents and the character antecedents of the selected candidates including the respondents, was purely within the domain of the petitioners and the administrative delay, if any, caused was not attributable to the respondents.

13            There is no dispute with regard to the fact that the benefit of Old Pension Scheme is available only to the Government employees who are appointed to the service before 01.01.2010. However, as is concluded by the Tribunal and also, having regard to the fact that pension is a welfare measure for the benefit of an employee and that the Old Pension Scheme is admittedly to his advantage, the appointment of the respondents should be treated to have been made before 01.01.2010 for the following reasons:

- (i) That the process of selection initiated vide Advertisement notification dated 19<sup>th</sup> July 2008 ought to have been completed and taken to its logical end within a reasonable



period. The time taken by the petitioners to conclude the selection process which is more than a year, cannot, by any stretch of reasoning, be treated as reasonable. Had the petitioners proceeded with the selection process with requisite promptitude, there was every possibility of all the respondents having been appointed much before 01.01.2010;

(ii) That the delay in completing the selection process within a reasonable time and issuance of formal orders of appointment after completing requisite formalities like verification of documents and character antecedents is wholly and entirely attributable to the petitioners and therefore cannot work to the prejudice and disadvantage of the respondent;

(iii) That many candidates selected pursuant to the process of selection initiated vide advertisement notification dated 19<sup>th</sup> July 2008 were fortunate enough to get the formal orders of their appointment before 01.01.2010 for the reason that theirs SSPs were prompt enough to complete the formalities like verification of documents and character antecedents in time. The respondents herein and such candidates who got appointment orders before 01.01.2010, for the aforesaid reasons, cannot be treated differently, more particularly when both sets of employees were the beneficiaries of the same selection process. Such position, if allowed to persist, would be arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India; and,

(iii) That the pension schemes are in the nature of welfare measures adopted by the Government to the advantage of its employees. Indisputably, the Old Pension Scheme is more beneficial than the New Pension Scheme and, therefore, depriving the respondents of the benefit of the Old Pension Scheme is to their prejudice. In such situation, the Courts ought to adopt a liberal approach and lean in favour of the



employees seeking the benefit of a particular pension scheme beneficial to them;

14           There is no dispute with regard to the proposition that a candidate figuring in a select list, provisional or otherwise, is not entitled to selection and appointment as a matter of right. The Government or the employer, as the case may be, is well within its power not to act upon the selection and issue appointment orders if it has good and justifiable reasons to do so. In the instant case, the selection has been acted upon and the formal orders of appointment have been issued. The only grievance of the respondents is that they ought to have been appointed along with their similarly situated colleagues selected under the same Advertisement notification i.e., prior to 01.01.2010 so as to enable them to seek the benefit of Old Defined Pension Scheme.

15           The Tribunal has, on facts, found that the formal orders of appointment in case of the respondents were delayed because of administrative reasons etc., which the respondents were neither responsible nor accountable for. We concur with the aforesaid finding of fact returned by the Tribunal.

16           In the instant case, the provisional selection/select list stood issued on 27.09.2009 and a period of three months was good enough to verify the documents and character antecedents of the selected candidates, i.e, the respondents herein. It needs to be emphasized that the provisional selection list which was issued on 27.09.2009 was not to be followed by any formal final select list, but the same was to be accepted as a final select list in respect of enlisted

candidates subject to verification of qualification and character antecedents of such candidates.

17           At this stage, we deem it appropriate to deal with the plea raised by the petitioners that the writ petitions filed by the respondents were barred by delay and laches. The said plea cannot be accepted. The right to seek pension constitutes a recurring cause of action, which, in the present case, would, in fact, accrue only upon the retirement of the respondents. Apart from this, when similarly situated persons, who were fortunate enough to have been appointed prior to 01.01.2010 though selected in the same selection process, are enjoying the benefit of the Old Pension Scheme, denial of the same benefit to the respondents, who are identically placed, amounts to discrimination. Thus, any delay in approaching the Court by the respondents is inconsequential and deserves to be ignored. In a nutshell, we are of the considered opinion that in the instant case the cause of action to approach the Court is a recurring one, accruing to the respondents each day they find themselves discriminated against vis-à-vis their similarly situated counterparts in the matter of entitlement to be governed by the Old Pension Scheme.

18           In the view which we have taken, we are supported by the Division Bench judgment of the Delhi High Court in **Inspector Rajendra Singh and others v. Union of India & Others** (W.P.(C)) No. 2810 of 2016, decided on 27.03.2017). Paragraphs (31), (37), (38) and (39), being relevant to the context, are reproduced hereunder:

*“31. In our considered opinion, there can also be no discrimination between batchmates, only because some*

36. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under [Article 226](#) of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay”.

19           The aforesaid judgment of the Delhi High Court is fully attracted to the facts of the present case, leaving no scope for further debate on the issue. The Hon'ble Supreme Court in **State of Uttar Pradesh v. Arvind Kumar Srivastava and Others, (2015) 1 SCC 347**, after surveying the case law on the subject, has held that those

persons who did not challenge the wrongful action in their cases and acquiesced into the same, and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in point of time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches or delays and/or the acquiescence would be valid grounds to dismiss their claim. However, this exception may not apply in those cases where the judgment pronounced by the Court was a judgment in rem with the intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement, the obligation is cast upon the authorities to extend the benefit thereof to all similarly situated persons. Such a situation can arise when the subject matter of the decision touches upon policy matters, like a scheme of regularisation or the like.

20           The aforesaid dictum of the Supreme Court, when read with the Delhi High Court judgment in the case of **Inspector Rajendra Singh** (supra), strengthens the position that the plea of delay and laches cannot stand in the way of the respondents, who are similarly situated to their counterparts already receiving the benefit of the Old Pension Scheme.

21           Viewed from any angle, and in particular for the reasons stated above, we are on all fours with the Tribunal that the respondents too should be treated to have been appointed prior to 01.01.2010 and held entitled to the benefit of the Pension Rules as were applicable prior to 01.01.2010.

22 For all these reasons, these petitions are disposed of by providing as under:

- (i) The respondents herein shall be deemed to have been appointed as Constables in J&K Police (Executive) in their respective Districts prior to 01.01.2010 and, therefore, they shall be held entitled to the benefit of the Pension Rules as were existing and applicable to the Government employees prior to 01.01.2010;
- (ii) The date of appointment of the respondents is preponed only for enabling them to take the benefit of Old Pension Scheme and for no other purpose; and,
- (iii) The requisite steps for complying with this judgment and setting the record straight by issuing a formal order shall be taken by the petitioners within a period of three months from the date of the judgment.

23 Accordingly, the judgment of the Tribunal impugned in these petitions is modified to the aforesaid extent.

Registry shall place a copy of this judgment in each of the files.

(SANJAY PARIHAR)  
JUDGE

(SANJEEV KUMAR)  
JUDGE

**Jammu**  
30.08.2025  
*Sanjeev*

*Whether the order is speaking: Yes*  
*Whether the order is reportable: Yes*