

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

...

**LPASW No. 6/2015 c/w
LPASW No. 18/2015**

*Reserved on: 15-05-2025
Pronounced on: 23.05.2025*

1. Anwar Hussain Wani, (42 years)
S/o Mohammed Shafi Wani
R/o Mattan Anantnag,
2. Gulshan Ahmad Magray (37 years)
S/o Ab. Ahmad Magray
R/o Hudipora, Baramulla;
3. Mohammad Iqbal Wani (34 years)
S/o Wali Mohammad Wani
R/o Harapora, Anantnag;
4. Fayaz Ahmed Mir (39 years)
S/o Gh. Rasool Mir
R/o Akingam, Anantnag;
5. Muzaffer Ahmad Kohli (34 years)
S/o Ali Mohammed Kohli
R/o Kootihair, Anantnag;
6. Nazir Ahmad Wani (38 years)
S/o Ab. Ahad Wani
R/o Pathan, Anantnag;
7. Ashish Bhat (31 years)
S/o Shiri Baskar Nath Bhat
R/o Mattan, Anantnag;
8. Mohammad Shafi Mir (32 years)
S/o Gh. Mohammed Mir
R/o Srinagar;
9. Zahoor Ahmad Bhat (Aged 30 years)
S/o Gh. Mohammad Bhat
R/o Vezirbagh, Baramulla;
10. Haroon Rashid (Aged 32 years)
S/o Ab. Rashid Shah
R/o Seer Hamdan, Anantnag;

.....Appellants(s)

Through: Mr. Tasaduq H. Khawja, Advocate with
Mr. Abdul Muizz, Advocate

VERSUS

1. State of Jammu and Kashmir through Commissioner Cum Secretary to
Government, General Administration Department, Civil Secretariat,
Srinagar/Jammu;

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2. Principal Secretary to Government, Education Department, Civil Secretariat, Srinagar/Jammu;
3. Director School Education, Kashmir, Srinagar;
4. Mohammad Saleem Rather, General Secretary Jammu & Kashmir Rehbar-e-Taleem Teacher's Forum;
5. Assadu-ul-lah Wani, Secretary Jammu & Kashmir Rehbar-e-Taleem Teacher's Forum;

.....Respondents

6. Mohammad Akram (Age 32 years)
S/o Ab. Rashid Akhoon
R/o Walraman, Baramulla;

.....Proforma Respondents

Through: Mr. Hakim Aman Ali Dy. AG
Mr. Z.A. Shah, Sr. Advocate with
Mr. A. Hanan, Advocate

CORAM:

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

JUDGMENT**Sanjeev Kumar J:**

01. Impugned in these two intra-court appeals is an order and judgment dated 31.12.2014, passed by the learned Single Judge of this Court [“the writ Court”] in SWP No. 1388/2014, titled “*Anwar Hussain Wani and Ors. Vs. State of J&K and Ors.*”, whereby the writ Court has dismissed the writ petition filed by the appellants herein challenging Government Order No. 469-Edu of 2014 dated 25.06.2014.

02. Before we advert to the grounds of challenge urged by Mr. T.H. Khawaja, learned counsel appearing for the appellants, we deem it necessary to set out the background facts leading to filing of this appeal.

03. Vide Government Order No. 396-Edu dated 28.04.2000, the Government of Jammu & Kashmir launched a scheme known by the name of

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Rehbar-e-Taleem Scheme [“ReT Scheme”] which provided for engagement of Rehbar-e-Taleem/Teaching Guide, [“ReT for short”], to perform the teaching duties in the schools facing deficiency of teaching staff. The ReT was to be engaged initially for a period of two years which was extendable for a period of further three years subject to satisfactory performance etc of the ReT. The ReT was entitled to a monthly honorarium of Rs. 1500/- for the first two years and Rs. 2000/- per month from the third year onwards. There was also a stipulation in the aforesaid Government order with regard to regularization. It was provided that on satisfactory completion of five years as ReT on honorarium basis, the candidate would be eligible for appointment as General Line Teacher in the School Education Department. While considering the case of ReT for his/her regular appointment as General Line Teacher, the Competent Authority was to evaluate his/her performance, his/her achievements and conduct etc. The zone of consideration for appointment as ReT was restricted to the village where the school with identified deficiency of staff as assessed by the Village Level Committee.

04. Under the aforesaid Scheme, thousands of ReTs in different schools all over the State of Jammu and Kashmir came to be engaged. Most of them were, on completion of five years satisfactory service, considered and appointed as General Line Teachers in the School Education Department.

05. It was argued by the respondents that the constitutionality of the Scheme aforesaid was challenged before this Court and a Division Bench of this Court upheld the constitutionality of the Scheme vide its order and judgment dated 16-04-2013. The SLP (C) No. 20531 of 2013 preferred against the Division Bench judgment of this Court already stands dismissed,

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thereby upholding the decision of this Court with regard to the constitutional validity of the Scheme.

06. That, in the year 2014, a policy decision was taken by the Government which is spelt out in Cabinet decision No. 115/09/2014, dated 19.06.2014. In that, it was decided to add a proviso to the last para captioned “regularization” of the ReT Scheme to provide that, five years service rendered by the ReT before his/her regularization shall count for the purposes of fixing seniority and pensionary benefits. It was further provided that the services of the ReTs shall be transferable after regularization within the District to which they belong. This proviso was added to the Scheme vide Government Order No. 469-Edu of 2014 dated 25.06.2014. The impugned proviso added to the Scheme in terms of Government Order 469 of 2014 impacted the seniority of the General Line Teachers appointed in the School Education Department on the recommendations of the Jammu & Kashmir Service Selection Board (JKSSB) on different dates. The appellants are such General Line Teachers who came to be impacted by the provision aforesaid and filed SWP No. 1388/2014 seeking a writ of certiorari for quashing Government Order No. 469-Edu of 2014 dated 25.06.2014 read with Cabinet Decision No. 115/09/2014 dated 19.06.2014.

07. The Government order of 2014 along with the Cabinet Decision was assailed before the writ Court by the appellants primarily on the followings grounds:

(i). That the impugned Government order was violative of Rule 12 (1) of the Jammu & Kashmir Educational Subordinate Services Recruitment Rules, 1979, [“the Rules of 1979”] and Rule 24 of the

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Jammu & Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956 [“the Rules of 1956”].

(ii). That the seniority of an employee born on the permanent establishment of the Government is to be reckoned from the date he/she becomes member of service and that the retrospective seniority to an employee given from a date interior to his/her actual appointment to service is antithetic to the established service jurisprudence.

(iii). That the impugned Government order is totally irrational, arbitrary and, therefore, violative of Article 14 & 16 of the Constitution of India.

08. The writ petition was contested by the respondent No. 4 and 5 herein, who were later impleaded as party respondents by the writ Court vide its order dated 03.07.2014. In the reply affidavit filed by the respondents Nos. 1 to 3, the impugned order was sought to be justified on the ground that the same was issued by the Government pursuant to a policy decision taken by the Cabinet. The policy decision, it was pleaded, ought not to be readily interfered with in the exercise of writ jurisdiction. The plea that the Cabinet decision and the impugned Government order were violative of Statutory rules was also refuted. In the reply affidavit filed by the respondents 4 & 5, it was pleaded that, notwithstanding the nomenclature, an ReT discharges his/her duties as General Line Teacher and, therefore, would be entitled to have his/her service rendered as ReT, counted for the purposes of seniority and pension. The respondents No. 4 & 5 also pleaded that challenge to the validity of the scheme, which was upheld by this Court, stands accepted by the Hon’ble Supreme Court by dismissing SLP(C) No. 2053 of 2013.

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09. The writ Court, having considered rival contentions and gone through the material on record, came to the conclusion that there was nothing wrong in the Government taking a policy decision to confer the benefit of seniority upon the ReTs on their regularization with effect from the date they were initially engaged as ReT. The view of the writ Court is based on the rationale that the qualification prescribed and the nature of duties to be performed by the ReT, are the same as that of a General Line Teacher and also that for many purposes, like grant of casual leave and maternity leave etc., the ReTs have been treated on a par with the General Line Teachers. On the aforesaid premise and also for various other reasons, the writ Court has found challenge to the impugned Government order lacking substance and dismissed the writ petition.

10. The appellants are aggrieved of and have challenged the impugned judgment of the writ Court, *inter alia*, on the following grounds:

- i. That an ReT becomes a member of the service constituted by the Rules of 1979 only when he/she is considered and appointed as General Line Teacher after five years of successful performance as ReT and, therefore, cannot be given seniority from the date anterior to becoming the member of the service. The writ Court has not appreciated this aspect of the matter;*
- ii. That the Government order impugned before the writ Court, has the effect of the giving seniority to an ReT retrospectively from the date he/she was not born on the cadre of service and, therefore, was contrary to and de-hors Rule 24 of the Rules of 1956. The issue was,*

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though agitated, has not been considered by the writ Court in its right perspective.

11. Mr. Tasaduq H. Khawja, learned counsel appearing for the appellants would fashion his arguments around the grounds of challenge urged by him. Besides placing reliance on J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and the J&K Jammu and Kashmir Educational (Subordinate) Service Recruitment Rules, 1979, he has also placed reliance on the following judgments in support of his submissions:-

1. 2015 (1) JKJ 606,
2. AIR 2020 SC 2270
3. 2006 (6) SCC 558
4. AIR 2024 SC 4637
5. 2013 (8) SCC 693
6. 2019 (16) SCC 28

12. *Per contra*, Mr. Z.A. Shah, learned senior counsel appearing for the private respondents would support the judgment of the writ Court on all fours. He would argue that the writ Court has taken note of all the relevant factors, in particular, the decisions of the Government of Jammu & Kashmir taken from time to time to bring the ReTs on a par with the General Line Teachers. He would argue that once the qualification prescribed and duties to be performed by the ReT are similar to those prescribed for General Line Teachers, there is no reason to discriminate the ReTs vis-a-vis the General Line Teachers in the matter of conferring service benefits. He would submit that the impugned Government Order being a policy decision of the Government is immune from challenge before this Court under Article 226 of the Constitution of India.

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13. Having heard learned counsel for the parties and perused the material of record, we are of the considered opinion that the judgment passed by the writ Court suffers from serious errors of fact and law and, therefore, cannot be upheld. The approach adopted and the view taken by the writ Court is patently erroneous and, therefore, cannot be countenanced.

14. The ReT Scheme was promulgated by the Government vide its order bearing No. 396-Edu of 2000 dated 28.04.2000, for achieving the following objectives:

- a). Promoting the decentralized management of elementary education with the community participation and involvement.*
- b). To ensure accountability and responsiveness through a strong backup and supervision through the community.*
- c). To operationalize effectively the schooling system at the grass roots level.*

15. The concept of ReT, as envisaged under the ReT Scheme, is to provide a person to make up the deficiency of the staff at the elementary level of education. Since the Scheme envisaged the community participation and involvement, as such, it was provided that a person to be appointed as ReT should be drawn from the local community so that he/she is in a better position to have constant interface and interaction with the community to secure universal enrolment and to check the incidents of dropouts. The selection of a person to be appointed as ReT was provided to be made by the Village Level Committee conceptualized under circular No. Edu/Plan-184/2000 dated 27.02.2000, with some modifications to the extent of associating ZEO in place of Headmaster as the Convener of the Committee.

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As per para 2 of the Scheme captioned “**Role of Village Level Committee**”, it is the Village Level Committee concerned which shall assess the requirement of teachers in the Primary/Middle Schools within the area of their operation having due regard to the approved staffing and the roll of the students. The scheme did not provide for engagement of ReTs in lieu of General Line Teachers. The ReTs were engaged only in the Primary and Middle Schools where there was assessed deficiency of teachers.

16. It is thus evident that the selection of ReTs, unlike the selection of General Line Teachers which is a statutory Recruiting Agency like JKSSB, was entrusted to a Village Level Committee with the ZEO of the area as Convener and the zone of selection was the village where there was assessed deficiency of staff. It is only where no eligible candidate in the village concerned was available, the zone of selection of ReT could be extended to the adjoining village. The zone of consideration is, in some cases, even reduced to habitation conceptualized in Government Order No. 288-Edu of 2009 dated 08.04.2009. The engagement of ReT was not necessarily against any substantive available post and the remuneration, which was payable under the Scheme, was in the shape of honorarium of Rs. 1500/- per month for first two years and, thereafter, Rs. 2000/- per month. The engagement was initially for a period of two years, extendable by further three years subject to satisfactory performance as to the enrolment drive, mitigation of dropout rates and performance level of the students to be evaluated and assessed by the VLC and the ZEO. The ReT Scheme also contained a provision for regularization of the services of the ReT. The last para of the Scheme captioned as “regularization” needs to be referred and same is set out below:

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“Regularization:

On the satisfactory completion of five years as “Rehbar-e-Taleem” on honorarium basis, the candidate shall be eligible for appointment as General Line Teacher in the Education Department. For this purpose, VLC shall have to furnish a certificate about the satisfactory performance of the teacher and highlighting the specific achievements and his/her overall conduct. At the time of consideration for formal appointment in the Government, if a teacher is found not to fulfill age qualification, then his/her employment would be on contractual basis for future.”

17. From plain reading of the above para, it clearly transpires that the ReT cannot claim his/her appointment as General Line Teacher in the School Education Department as a matter of right. The scheme only declares the ReT eligible for appointment as General Line Teacher subject to evaluation and assessment of his/her performance and achievement during his/her working as ReT. The right given to the ReT to be appointed as General Line Teacher is only a right of consideration. There is, thus, no unequivocal promise extended to the ReTs that they would be necessarily appointed as General Line Teachers on completion of five years service as ReT. As a matter of fact, the engagement of the ReT is initially for a period of two years only and further extension is subject to satisfactory performance in respect of the laid down parameters and the performance level of the students. The performance of the ReT on these parameters has to be evaluated and assessed by the VLC and the ZEO concerned. That being the nature of Scheme, it cannot even be remotely contended that the ReT having completed five years of service, as such, is entitled, as a matter of right, to be appointed as a General Line Teacher.

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18. The ReT Scheme is essentially an exception to the general principle of law that the appointment to an office under the Government can only be made through advertisement notice and proper mode of selection, ensuring participation of all eligible candidates irrespective of their caste, creed, color or place of residence. We have gone through the Division Bench judgment of this Court as upheld by Hon'ble Supreme Court by dismissing the SLP but could not persuade us to accede to the submission of Mr. Shah that ReT Scheme has been declared Constitutional or that its validity has been upheld.

19. Be that as it may, so far as post of General Line Teacher is concerned, the same is born on the service constituted by the Rule of 1979 and the post is a district cadre post and is required to be filled up on the basis of recommendations of the selected candidates made by the JKSSB after conducting a due process of selection in consonance with Article 14 & 16 of the Constitution of India. The zone of consideration in that selection is the entire District. The candidates selected and appointed as General Line Teachers are the most meritorious candidates available in the District, therefore, there would be no match between the quality of teachers appointed by way of ReT Scheme and those appointed as General Line Teachers in pursuance of the regular selection process conducted by the JKSSB by competition at the District Level. That apart, it is evident from the ReT Scheme that ReT does not hold any civil post under the State/UT. Notwithstanding that the Government has extended some welfare provisions like, casual leave, maternity leave, etc. to the cadre of ReT, but simply, because the ReTs have been extended the benefit of casual leave, maternity leave as also the benefit of counting their ReT services towards making good

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the shortfall of qualifying service for pension, does not *ipso facto* make ReTs as Government employees to be treated on a par with General Line Teachers.

Rule 3 of the Rules of 1979 defines the constitution of service to mean:-

“3. Organisation: The service shall comprise the posts, classes, categories and grades as are indicated in the Schedule”

Rule 12 (1) of the Rules of 1979 clearly prescribes that seniority of a member of services in various posts and categories shall be determined in accordance with the provisions of Rules of 1956 and the Civil Services (Decentralization Recruitment of Non-Gazetted Cadres) Rules 1969. For ready reference, rule 12(1) is reproduced herein below:-

“12(1) Seniority of members of the service in various classes and categories shall be determined in accordance with the provisions of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 and the Jammu and Kashmir Civil Services (Decentralization of and Recruitment to Non-Gazetted Cadres) Rules, 1969.”

20. Indisputably, the General Line Teacher is a post indicated in the Schedule and, therefore, a person appointed as General Line Teacher is a member of service constituted by the Rules of 1979. The ReT does not figure in the Schedule of Rules of 1979, and, therefore, cannot be said to be member of said service. The ReT becomes member of service constituted by the Rules of the 1979 only when, upon completion of five years satisfactory service as ReT, he/she is appointed as General Line Teacher. Reference to the Rule 24 (1) of the Rules 1956, is necessary, which, for facility of reference, is set out below-

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“The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or the grade as the case may be.”

21. From plain reading of Rule 24 (1), it is abundantly clear that the seniority of a person who is subject to the Rules of 1956 has reference to service, class, category and grade, with reference to which the question has arisen and such seniority shall be determined by the date of his/her first appointment to such service, category or grade, as the case may be.

22. Viewed from any angle, it is crystal clear that a person shall take his/her seniority only from the date he/she is appointed to the service, class, category or grade, as the case may be. There is not an iota of doubt that a ReT becomes member of service constituted by Rules of 1979 only when he/she is appointed as General Line Teacher upon completion of satisfactory service of five years as ReT. He/she is, therefore, entitled to reckon his/her seniority from that date and not from any date anterior thereto. The Government Order No. 469 of 2014 dated 25.06.2014, whereby following proviso was added to the last para of the ReT Scheme captioned ‘regularization’ reads thus:

“Provided that the five years service rendered by Rehbar-e-Taleem teachers before regularization shall count for the purpose of fixing their seniority and counting such service, notionally, for pensionary and other retirement benefits, wherever applicable. The services of Rehbar-e-Taleem teachers shall be transferable after regularization within the district to which they belong.”

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23. Obviously, the appellants are not aggrieved of the entire proviso. Their grievance is only restricted to the proviso added to the ReT Scheme to count the service rendered by an ReT for the purposes of fixing seniority.

24. From perusal of the proviso, in particular, to the extent it is assailed, it transpires beyond any doubt that the proviso makes a provision for giving seniority to the ReTs appointed as General Line Teachers upon completion of five years from the date of their initial engagement as ReT i.e. five years prior to becoming the member of service constituted by the Rules of 1979. In turn Rule 24(1) of Rules of 1956 is a statutory provision providing that fixation of seniority of an employee would be reckoned with effect from the date he becomes the member of a service. The proviso to the ReT Scheme, on the face of it, is *de-hors* Rule 24(1) of the Rules of 1956 and also against the settled canons of service jurisprudence. There is ample authority on the proposition that no employee can be given seniority from the date he is not borne on the service, class, category, or grade as the case may be. ReT becomes member of service only when there is formal order of appointment issued after evaluation and assessment of his/her performance on completion of five years as ReT. The government, acting in ignorance of the settled legal position, took the policy decision to confer the benefit of seniority on ReT with effect from the date they were initially engaged, notwithstanding the fact that on said date they were not borne on the cadre of service constituted by the Rule of 1979. The Government also did not take into consideration the fact that by adding the impugned proviso in the ReT, they had acted to the serious prejudice of the General Line Teachers who were appointed prior to the regularization of various ReTs. The appellants rightly claim that they

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were General Line Teachers when many ReTs were yet to be regularized, however, on their regularization and by the aid of impugned proviso they were given seniority from the date of their initial engagement, rendering all of them senior to the appellants. The policy decision taken by the Cabinet, which ultimately resulted in issuance of impugned Government order, was not only to the serious prejudice of the appellants but was also in conflict with the statutory provisions like Rules of 1979 and, in particular, Rule 24 of the Rules of 1956.

25. The ReTs may have been extended various benefits like casual leave/maternity leave and even the benefit of counting their service for making good shortfall of qualifying service for pension but that itself does elevate the status of ReTs. Such provisions are even made in respect of factory workers and those working in industrial establishments covered by the Factories Act and the Industrial Disputes Act, etc. The writ Court appears to have been greatly swayed by extension of certain welfare provisions to the ReTs from time to time and has erroneously concluded that the Government itself had been treating the ReTs on a par with the General Line Teachers.

26. For the foregoing reasons, we regret our inability to persuade ourselves to concur with the reasoning given by the Writ Court.

27. Lastly, Mr. Z. A. Shah, learned senior counsel, relied upon the Division Bench judgment of this Court in Amit Padha v. State of J&K and ors, reported as 2015 SCC Online J&K 55, to contend that the proviso added by way of Government Order has already been up-held by a Co-ordinate Bench, and, therefore, the issue raised by the appellants is no longer *res integra*.

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28. We have gone through the judgment relied upon by Mr. Shah and find the same *per incuriam*. The Division Bench, which decided the LPA, has relied upon the order of Hon'ble the Supreme Court passed in SLP (c) No. 20531 of 2013 purportedly upholding the scheme as was promulgated vide Government Order of 2000. However, it was not brought to the notice of the Division Bench that the proviso added subsequently vide Government Order No. 469-Edu of 2014 dated 25-06-2014 was not subject matter of challenge in those proceedings. As a matter of fact, ReT Scheme has not been upheld by the Supreme Court in the said SLP.

29. In view of the aforesaid discussion, we find merit in this these appeals. Both the appeals are allowed and the impugned judgment passed by the writ Court is set aside. As a consequence, the writ petition is allowed and the impugned proviso, to the extent it provides that 'the five years service rendered by Rehbar-e-Taleem teachers before regularization shall count for the purpose of fixing their seniority' is set aside.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

23.05.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes