

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP (C) 1942/2020 c/w CCP (S) no. 54/2021

Pronounced on: 23.07.2025

(Through Virtual mode)

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| <ol style="list-style-type: none"> 1. Parvez Ahmad Padroo Age 28 Years S/o
Ghulam Nabi Padroo Resident of Bellow
Dergund, Pulwama. 2. Manzoor Ahmad Pandit Age 24 Years S/o
Mohd Yousuf Pandit R/o Uthoora,
Pulwama. 3. Faiq Mushtaq Zargar Age 24 Years S/o
Mushtaq Ahmad Zargar R/o Pinglena
Pulwama | <p>...Petitioner(s)</p> |
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**Through: Mr.M.Y Bhat sr. Adv with
Mr. Sajid Ahmad, adv. & Mr. Prince Hamza, adv.**

Vs

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| <ol style="list-style-type: none"> 1. J&K Bank Limited, through its Chairman,
Corporate Headquarters M. A. Road,
Srinagar, Kashmir. 2. Human Resources Development Division
Corporate Headquarters, M. A. Road,
Srinagar, Kashmir. 3. Nodal Officer, JK Bank Rural Self
Employment Training Institute Society,
Corporate Headquarters, M. A. Road,
Srinagar. | <p>....Respondents.</p> |
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Through : Mr. Shafaqat Nazir, Adv.

CORAM: Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.

JUDGMENT

1. Through the medium of the instant petition, filed under the provisions of Article 226 of the Constitution of India, the petitioners have sought the issuance of a direction upon the respondents in the nature of mandamus for commanding them to offer/issue the

necessary appointment orders in their (petitioners') favour in terms of "Policy of Absorption" of the Bank so that being figuring at serial numbers 5, 12, & 22 in the select list, are treated at par with the other selectees similarly situated.

2. The case of the petitioners is that they are the permanent residents of the erstwhile J&K State (now UT) and the bonafide citizens of the country, as such have a right to move this court - invoking its writ jurisdiction for vindication of their constitutional and other statutory rights. That they have not filed any other writ petition before any other court of law in respect of the subject matter involved in this petition and have also no other alternate or efficacious remedy available for redressal of their grievances. That they came to be engaged by respondent-bank in its various branches as casual workers (sweepers) long back. That the petitioner No.1 was engaged directly by respondent-bank in RSTI, Pulwama on 11.07.2011 and continued to serve directly under the command of the respondent-bank till December 2012, subsequent to which his services were utilized by the respondent-bank through its outsourcing Agency. That likewise petitioner No.2 was also engaged by respondents on 28.02.2014 as a casual worker at its Muran Ada Branch whose services also came to be utilized by Bank through its outsourcing Agency w.e.f 01.03.2015. That likewise petitioner No.3 was also engaged directly by Bank on 26.12.2012, who also came to serve the Respondent-Bank through its outsourcing Agency with effect from 30.07.2014. That the Respondent-Bank conceived an "Absorption Policy" and decided to

offer contractual engagements to its casual workers engaged before 30.09.2017, with the regularization of those among them who have put in their 10 years continuous service as such. That in furtherance of the directions of the Corporate office of the Bank, information regarding casual labourers working all across the branches of the Bank came to be prepared and consolidated at the Zonal Head Quarter levels of the Bank for taking necessary action in terms of the policy. That the information was required to be submitted to the Corporate Head Quarter also in the form of individual certificates on a prescribed format duly attested by three senior most officers of the concerned branch/section. That accordingly, the particulars of all the petitioners came to be prepared and certificates on prescribed format issued in their favour after due verification and enquiry alongwith hundreds of similarly situated casual workers engaged prior to 30.09.2017. That their cases were not forwarded in time to the competent authority due to non-availability of officers concerned owing to which fact their cases got delayed. That other candidates similarly situated whose names were forwarded in time got interviewed when the petitioners were kept waiting in a queue. That after the concerned officers became available, the cases of the petitioners were also forwarded to higher authorities, whereafter they were interviewed and do figure in the select list of the candidates eligible for contractual engagements. That subsequently the respondents issued contractual engagement orders in favour of other candidates excepting the petitioners. That even the candidates who were engaged subsequent to the petitioners came to be issued

the contractual engagement orders to the discrimination of the petitioners. That they have spent all their life serving the Respondent-Bank as Sweepers and now they are not being treated at par in respect of benefit of the Bank's "absorption policy". That they have submitted all the original documents before the respondents as per the directions, besides furnishing their police verification reports. That they are running from pillar to post in the Bank for the last so many years and they are being ensured that their cases are in progress and the necessary orders will be issued very soon. That the action of the Respondent-Bank in withholding the engagement orders in favour of the petitioners tantamounts to the violation of their fundamental rights guaranteed to them under Article 14, 16 and 21 of the Constitution of India.

3. The Respondent-Bank through the medium of the reply-affidavit while acknowledging the floating of the banks "absorption scheme" for regularization/contractual appointments of casual workers working at various business Units/Offices and issuance of engagement orders among a number of the eligible candidates after scrutiny of their documents, however resisted the claim of the petitioners on the grounds that they are among those 200 casual workers/gardeners who are awaiting orders of regularization/contractual appointments. That the premises of the head office of the Respondent-Bank was raided on 08.06.2019 by Anti Corruption Bureau, Srinagar and all the records, including the process file of the relevant "Scheme" under which the regularization/contractual appointments of the casual workers was

taken up, came also be seized. That subsequently, as per the Resolution No. 38 dated 15.06.2019 of the Board of Directors, any further recruitment has been made subject to the approval of the Board. That pursuant to the registration of FIR numbers 10 of 2019 and 1 of 2020 by Anti Corruption Bureau, Srinagar against the Bank Authorities and other alleged beneficiaries, no final view was taken by the Respondent-Bank as to the regularization or otherwise of the remaining 200 casual workers/gardeners. That it was also decided that the report of Anti Corruption Bureau will have to be considered at the institutional level. That appointments in the Respondent-Bank from year 2011 to 2019 pertaining to casual workers, as Banking Attendants, Assistant Banking Associates etc., are under scrutiny before Anti Corruption Bureau, Srinagar in the cases registered with the Bureau. That the case FIR No. 10 of 2019 has also culminated into the filing of the final report/charge sheet which is pending trial before the court of Special Judge Anti Corruption. That validity or otherwise of the regularization of 529 casual workers in accordance with the bank's "absorption scheme" is also subject matter of charge in the criminal case. That respondent-bank in view of the said circumstances is unable to take any definite stand as the appointments already made in the respondent-bank are under scrutiny. That the writ petitioners cannot claim regularization of their services as a matter of right as they cannot plead discrimination because the regularization of 529 casual workers is under scrutiny. That no public duty statutory or otherwise is on the respondent-bank to necessarily regularize the writ petitioners or

other similarly situated persons.

4. The petitioners in their supplementary affidavit dated 31.08.2022 have *inter alia* pleaded that they filed RTI application dated 30.06.2022 before the Corporate Office of the Respondent-Bank seeking some vital information regarding the appointments/engagements of banking associates/attendants in terms of the policy of the Bank which came to be replied without providing the valid information cum documents sought, which fact deserves a serious consideration. That in order to clear their position they submit that their selection/engagement as banking attendants/associates is not the subject matter of investigation before any State Authority on the basis of any alleged illegality and instead engagements/appointments, if any, having been made illegally by the respondent-bank can be under investigation of the Anti Corruption Bureau. That the Respondent-Bank by withholding their formal engagement orders without any justification have caused serious prejudice to them despite a clear direction having been passed in the instant petition. That they have competed selection process through proper channel after initiation of the same, by the respondents under the subject Policy during which process they have been interviewed but their formal orders are not being issued by the Respondent-Bank till date which is unjust and unwarranted under law. That the Respondent-bank despite the order dated 10.12.2020 passed in this petition did not treat them with equality.

5. The petitioners also filed their rejoinder, and reiterated their cases already put-forth in the main petition and supplementary affidavit. It was further pleaded by the petitioners through their rejoinder that they have placed on record the order dated 16.03.2022 by virtue of which one Showket Ali Mir having completed ten years of contractual period has been appointed as banking attendant subsequent to alleged seizure of relevant record and imposition of bar on such type of appointments, and no response was given by respondents to the said fact. It was further pleaded that as per record the Respondent-bank issued engagement/appointment orders in favour of so many candidates much after the raid of Anti Corruption Bureau and registration of FIRs/seizure of record. That the registration of the case FIRs and pendency of criminal case is no bar for the Respondent-bank to treat the petitioners equally with other similarly situated persons even with those, who came to be engaged subsequent to them.

6. The respondents also filed supplementary affidavit dated 07.12.2023 in aid of original pleading and resisted the cases of the petitioners in addition to the pleas already taken on the grounds that petitioners are among 200 casual engagees as regards whom orders for appointments were not issued specifically for the reason of non production of requisite documents in time. That the said requisite documents included proof of Wages, PRC and DOB certificates. That the Corporate Head Quarter of the Respondent-bank was raided on 08.06.2019 and that the records including the process file of Scheme under which appointment of casual workers was taken

up, was seized by the Anti Corruption Bureau, Srinagar and FIR 10 of 2019 was registered for the allegations of appointments having been made through the means other than permissible under law. That the writ petitioners thereafter discontinued their engagement with the bank and are not on the rolls of the bank at present. That the petitioners have made false averments in the writ petition with regard to their status in the Respondent-bank.

7. In its response dated 06.03.2024 filed as regards the supplementary affidavit of the respondents, petitioners proceeded to *inter alia* plead that the Respondent-bank has maintained before the Court that the petitioners are not named as accused or otherwise involved in the case FIR 10 of 2019 of the Anti Corruption Bureau. That petitioner diligently submitted all the requisite original documents including proof of Wages, PRC & DOB certificates adhering to the authorities directives. That such documents remained on the record in the Respondent-bank. That it is very pertinent to plead that at the time of the filing of the writ petition, petitioners were eligible to be engaged as contractual banking attendant having not completed the requisite ten years period until 01.01.2018 necessary for appointment/regularization as a banking attendant. That however, with the passage of time, they have now completed ten years tenure and are as such entitled to be appointed/regularized as banking attendants/associates.

8. I have heard learned counsel for the parties who reiterated their respective stands already taken in their pleadings.

9. The learned counsel for the petitioners Mr. M.Y. Bhat, Sr. Advocate during his arguments *inter alia* contended that the respondents in their pleadings i.e reply, counter affidavit and supplementary affidavit have fully acknowledged the case of the petitioners but have made an attempt to unjustifiably, arbitrarily and unreasonably avoid their legal obligation **under the pretext of petitioners** failure to furnish the required documents in time during which alleged delay Corporate Office of the Respondent-bank was raided by the Anti Corruption Bureau, Srinagar resulting into the seizure of huge records of the Bank including that pertaining to the relevant Policy under which the absorption of the long serving casual workers and gardeners was initiated and the consequent resolution of the Board of Directors of the Bank barring any further engagement or appointment. He submitted that the petitioners do figure in the final select list of the eligible candidates at serial Nos. 5, 12, & 22. That petitioners also furnished all the requisite documents to the authorities but they were discriminated in comparison to the other similarly situated persons.

The learned counsel further contended that petitioners are not arrayed as accused in the FIR registered with the Anti Corruption Bureau Srinagar and the pendency of the criminal investigation/trial in respect of the allegations of illegal engagements/appointments by the Respondent-bank is no bar for the finalization of the cases of the petitioners for their regularization as Banking Associates as they have already rendered the service of more than 10 years. The learned counsel further contended that the Respondent-bank even

after alleged seizure of the record by Anti Corruption Bureau, Srinagar, issued appointment orders in favour of so many persons while discriminating the petitioners.

10. The learned counsel in support of his arguments placed reliance on a judgment of this court passed in **SWP No. 577/2019 titled *Ab. Rehman Pandit & Ors v. SKUST, through its Registrar and anr***, and contended that the facts of the referred cases fully resemble with the case of the petitioners and a similar stand was taken by the Respondent-University by stating that the University could not proceed because of investigation of the case registered by a Crime Branch Kashmir for investigating the genuineness of the recommendations made by the University. He contended that this Court in the relied upon judgment under similar circumstances directed the respondents to consider the case of the petitioners for regularization in tune with the mandate of the scheme notified in terms of the relevant notification. That the respondents in the said case were directed to accord consideration and to take decision within two months from the date a certified copy of the order is furnished to them.

11. The learned senior counsel Mr. M.Y Bhat, submitted that inaction on the part of Respondent-bank is highly violative of principles of natural justice and the constitutional guarantees under Article 14, 15 & 21. He prayed that respondents be commanded to issue the necessary appointment orders in favour of the petitioners against the positions of banking associates as per the norms and the

scheme.

12. Per contra, the learned counsel for the respondents Mr. Shafqat Nazir, Advocate during his arguments *inter alia* contended that although, the writ petitioners came to be engaged as sweepers/casual workers in the Respondent-bank during the years 2011, 2014 & 2012 respectively, yet they by their own admission in para-3 of the writ petition state that their services were later on utilized through the outsourcing Agency. That the writ petitioners admittedly are not on the rolls of the Respondent-bank. He further contended that Respondent-bank granted one time exemption for absorption of casual workers who were on the rolls of the Bank on the basis of criteria laid down under the scheme. That writ petitioners were not on the rolls of the Respondent-bank and thus, did not fulfill the requisite criterion laid down under the Board approved scheme and thus the question of their figuring in any select list does not arise. That 'Documents Scrutiny Committee' cleared 529 casual engages and the left out 200 casual engages were not cleared by the Committee. That petitioners admittedly fall under the aforesaid category of 200 candidates who were not cleared by the Documents Scrutiny Committee. That petitioners were also not considered on account of their failure to produce their requisite documents including proof of Wages, PRC and DOB etc before the Documents Scrutiny Committee. He further contended that petitioners did not challenge the aforesaid process whereby they were not considered by the Documents Scrutiny Committee on account of which prayer for their appointment in the Respondent-

bank deserves no consideration. That none of the aforesaid 200 candidates except the petitioners have called in question their non consideration. That petitioners cannot even claim parity as they are at different footing. The learned counsel further contended that the absorption scheme/policy was completed by the Respondent-bank in four phases. That in the fourth and final phase orders for regularization/contractual appointments were issued in favour of 71 casual workers/gardeners on 04.06.2019. That petitioners did not agitate their non-consideration till the fourth and final phase was also concluded. He further contended that meanwhile the head office of the Respondent-bank was raided on 08.06.2019 by Anti Corruption Bureau, Srinagar, pursuant to allegations of appointment/engagement under the scheme/policy having been made through means other than those permissible under law. That two FIRs were registered by Police Station Anti Corruption Bureau U/s 5(1) (d) of Prevention of Corruption Act and all those casual engagees/contractual appointees who availed the benefit under the scheme and were offered contractual appointment or regularization were arrayed as accused in the case when the investigation was completed and charge sheets filed before the competent court at Srinagar. He further contended that the policy of absorption has lived its life and petitioners thus failed within time to avail the benefit under the Scheme. He further contended that it is a settled legal proposition that an employer cannot be forced to engage surplus workers when he is not in requirement of their services, more so when the workers themselves discontinued. Learned

counsel further stated that the petitioners have placed on record one order issued by the respondents dated 16.03.2022 whereunder one Showket Ali Mir has been regularized. That the said candidate was not covered under the relevant scheme, the benefit under which is sought by the petitioners. That once absorption scheme has been already been closed down, petitioners cannot seek benefit thereunder without challenging the decision of the withdrawal of the Scheme.

Learned counsel for the respondents in support of his arguments placed reliance on judgment(s) cited as :

Devender Bhati vs. Chander Kanta, dated 21.12.2015, RSA 4/2015; *M/s Shekhar Resorts vs. Union of India & Ors*, Civil Appeal No. 8957/2022, DoD 5.01.2023; *Suresh Khan vs. The State of Jharkhand*, dated 19.11.2028, WP(C) ;1845/2018; WP(C) No. 1259/2021 titled *Mushtaq Ahmad Khan & Ors vs Union Territory of J&K & Ors*; 2023 SLJ 398 titled *Ruksana Jabeen & Ors v/s State of J&K & Ors*.

13. I have gone through the pleadings of both the parties and the copies of the documents placed on the same as annexure thereto.

14. I have also accorded my in-depth consideration to the rival arguments advanced on both the sides.

15. Having regard to the pleadings of the Respondents, this court is of the opinion that they have almost acknowledged the case of the petitioners as pleaded by them through the medium of the instant petition, supplemented by successive counter and supplementary affidavits. The Respondent-bank pursuant to the formulation of the relevant absorption policy initiated the process thereunder by collecting the required information and the documents from all the

eligible candidates. The petitioners along with other similarly situated eligible persons came to be enlisted and interviewed also. The Respondent-bank has repeatedly admitted in its pleadings that petitioners are among the 200 candidates whose engagement/appointment orders could not be yet issued.

16. Astonishingly the respondents through their pleadings have taken contradictory stands in respect of the material particulars of the case. The respondents through successive pleadings have taken a U turn and unmindfully introduced new pleas. The court has thoroughly perused the copies of documents enclosed with the petition which reveals that the concerned banking-officers at the branch/office level also issued requisite certificates in respect of the petitioners. It is the case of the Respondent-bank that the petitioners after serving directly under the Respondent-bank were subsequently made to serve it through the outsourcing agency itself hired by the Bank. The other similarly situated persons including those who came to be engaged subsequent to the petitioners were also directed to serve through the outsourcing agency as the said arrangement was designed by Respondent-bank itself for its convenience. The petitioners have averred in the petition that they are continuously working on their positions as casual workers and even this court during pendency of this writ petition passed interim order of status quo as also the orders upon the respondents to treat the petitioners at par with other similarly situated persons. The contention raised by the respondents in subsequent pleadings to the effect that the relevant scheme of absorption was closed and that

the petitioners are not on the rolls of the bank appears to be after thought, and an attempt to usurp the rights of the petitioners having already accrued to them.

17. It has been brought on the record that the petitioners are not arrayed as accused in the case FIR/charge sheet. Some of the candidates who have been given the benefit of absorption scheme are arrayed as accused, however, without prejudice to their ongoing service.

18. The respondents cannot deny, equal treatment to the petitioners merely on the pretext of registration of case FIRs, seizure of relevant record and the presentation of the charge sheet before the court. The investigating agency and the courts are required under law to establish through its findings any illegality having been committed in the process of engagement/appointment and the consequent commission of the offences alleged, but they cannot undo the things that have come into being in a legal way or bar the doing of the legal things.

19. The pendency of the case FIRs and the criminal cases/charge sheets is no bar for the respondent-bank to actively consider the cases of petitioners within the ambit of the relevant scheme, so that they do not stand discriminated in comparison to their other companions, similarly situated.

20. The petitioners are entitled to be considered for their engagement/appointment as banking attendants/associates as per the scheme at par with the other similarly situated persons

notwithstanding the alleged closure of the policy.

21. This court in its opinion is fortified with the judgment of a co-ordinate bench of this court passed under similar circumstances, titled as (SWP 577/19) **“Ab. Rehman Pandit and ors vs. SKUAST through Registrar and anr”** decided on 20.05.2019, also relied upon by the learned counsel for the petitioner in which this court directed consideration of the case of the petitioners for their regularization in tune with the mandate of the scheme notified in terms of the relevant notification, with the further direction for effecting the consideration and taking the decision within a period of two months from the date certified copy of the said order is furnished to the respondents.

It is profitable to reproduce the para-6 of the judgment for the sake of convenience:

“Admittedly, the petitioners are working as Daily Wagers in Respondent-University for about two decades and though their cases for regularization were initiated in terms of SRO 64 of 1994 of the Government of Jammu & Kashmir, but the same remained pending due to registration of case in the Crime Branch Kashmir investigating the genuineness of the recommendations made for regularization of DRWs/CSLWs and deferred cases including the case of petitioners. During pendency of consideration of the claim of petitioners, the Respondent-University has adopted a Scheme for regularization of the DRWs/CSLWs notified in terms of Notification No. 3 of 2018 dated 20.07.2018 which authorizes the regularization of eligible DRWs/CSLWs. Being eligible the petitioners fall in the zone of consideration for the benefit in the light of the Scheme notified vide the notification *supra*.”

22. This court in its opinion stands also fortified with the law laid down by the Hon’ble Apex Court in case titled **“Union of India and ors vs. Anil Kumar Sarkar”**, 2013 AIR SC 1661, the ratio whereof is fully applicable in the instant case. The Respondent Anil Kumar

Sarkar, in the said case had joined the Northern Railways as a Junior Clerk on November 4th 1977. His name was considered for promotion to NF Railway in 2001-2002 and he was placed in the extended select panel. However, the respondent was not promoted to Group A (Junior Scale) allegedly due to certain charges against him.

The High Court, in an order dated April 27th, 2010, allowed the respondent's petition, set aside the Tribunal's order, and directed the Railways to issue an appropriate promotion order to the respondent with all consequential benefits. The Union of India filed an appeal challenging said order.

The Hon'ble Supreme dismissed the appeal filed by the Union of India. The Hon'ble Court held that the High Court was justified in considering the conditions prescribed in Para 2 of the memorandum and in directing the Railways to consider the respondent for promotion. The Hon'ble Court noted that none of the conditions mentioned in Para 2 or Para 7 of the Office Memorandum dated September 14, 1992, were fulfilled as of April 21, 2003. The Hon'ble Court found that the decision in R.S Sharma was not helpful to the appellant's case and that the decision in Jankiraman case was applicable to the present case. Therefore, the Hon'ble Court agreed with the High Court's decision to dismiss the appeal.

However, in the instant case, the petitioners are not involved/arrayed as accused in the case FIR's of the Anti corruption

Bureau, Srinagar.

23. The learned counsel for the petitioners during his arguments also submitted that the observations made by the Hon'ble Apex Court in *Secretary, State of Karnataka & Ors vs. Umadevi & Ors*, 2006 SCC (L&S) 753 which are meant to be obeyed have been passed as regards general regularization or permanent continuance of temporary, casual, daily wage or *ad hoc* employees appointed/recruited and continued for long in public employment *dehors* the Constitutional Scheme of public employment. He submitted that the Respondent-bank which qualifies as "State" for the purpose of Article 12 of the Constitution of India has made discrimination in relation to petitioners in comparison of similarly situated persons and the petitioners' case is not of the general regularization.

24. The claims of similarly situated persons as against the State cannot be allowed to be frustrated/axed down, merely on the ground that while their being in queue for conferment of benefit under a Govt order/policy, some criminal cases came to be registered on the allegations of "Misconduct" in relation to the pressing into service of said order/policy/scheme, leading to seizure of records and closure of the scheme/policy. The cases of left over persons are meant to be accorded the same final treatment, so that *birds of same feather will flock together*. Discrimination among like persons offends the constitutional guarantees under Articles 14, 16, & 21, besides being violative of the principles of natural justice. The

claim of the petitioners is not of general regularization but they seek the protection under an “Absorption Policy” of the Respondent-Bank, without any discrimination.

25. This court has also perused the Xerox copy of the final reports arising out of case FIR No. 10 of 2019 and 1 of 2020 registered with Police Station VOK/ACB, Srinagar, respectively dated 08.06.2019 and 10.01.2020, which reveal that petitioners are not arrayed as accused in the case.

26. In the backdrop of the aforementioned discussion, the instant writ petition is disposed of with the direction to the respondents to immediately accord active consideration to the case of the petitioners for their regularization as per the Bank’s “Absorption Scheme” notwithstanding the pendency of the criminal cases culminating from case FIR 10/19 Police Station VOK, Srinagar dated 08.06.2019 and 01/20 of P/S ACB Srinagar dated 10.01.2020 and the alleged closure if any of the said scheme.

27. The consideration should be accorded and a formal decision taken in respect of the case of the petitioners within a period of two months from the date a certified copy of the order is left at the office of the respondents. However, the petitioners upon being extended the benefit under the relevant Scheme shall meet the same fate of similarly situated beneficiaries of the Policy, at any subsequent stage, pursuant to and in the light of the final outcome of the pending cases (civil and criminal) if any.

28. The respondent-Bank is at liberty to seek scanned/Xerox copies

of the seized documents, pertaining to the scheme, if required from the learned trial court (Special/Additional Judge Anti-Corruption Srinagar) in connection with the consideration of the case of petitioners as directed.

29. The contempt petition bearing No. 54/2021 which was filed as regards an interim order is not now needed to be pursued by the petitioners in view of this final judgment.

30. Disposed of along with contempt petition.

Jammu:
23.07.2025
"Ayaz"

- i) Whether the order/judgment is reportable ? **Yes.**
- ii) Whether the order/judgment is speaking ? **Yes.**

