

(2025) 12 J&K CK 0071
Jammu And Kashmir HC
Case No: LPA No.31 Of 2023

Union Territory of J&K

APPELLANT

Vs

Pankaj Jasrotia and others

RESPONDENT

Date of Decision: Dec. 4, 2025

Hon'ble Judges: Arun Palli, CJ; Rajnesh Oswal, J

Bench: Division Bench

Advocate: Raman Sharma, Abhinav Sharma, Mazher Ali Khan, Liaqat Ali, Mudassir
Maqbool

Final Decision: Dismissed

Judgement

Rajnesh Oswal, J

1. Before we proceed to adjudicate these intra-court appeals, it is apposite to observe that while consistency in judicial decisions constitutes the bedrock of any legal system, parallelly, consistency in State action is indispensable, serving to guarantee fairness, non-arbitrariness, and predictability in governance. Action by the State which fails to exhibit uniformity across similar circumstances shall be deemed vitiated and bad in law on the ground of discrimination.

2. The subject matter of all these intra-court appeals is the judgment dated 31.08.2007, whereby the writ petitions preferred by the private respondents were allowed, and the proforma respondent-J&K Service Selection Board (for short 'the J&K SSB') was directed to treat the aforesaid respondents as eligible for the post of Dental Assistants and consider for selection and appointment strictly in accordance with the merit obtained by them in the selection process initiated pursuant to Advertisement Notice No. 10 of 2013 dated 10.10.2023.

3. The facts relevant for disposal of these appeals are extracted from the lead case, LPA No. 31/2023, titled, 'U. T of J&K vs. Pankaj Jasrotia and others'. An Advertisement Notice (supra) came to be issued by the J&K SSB for conducting the selection of Dental Assistant/Junior Dental Technician for the Health and Medical Education Department. Upon conclusion of selection process, J&K SSB forwarded the select list to the Director, Health Services, Jammu for issuance of formal appointment orders in favour of the selected candidates. The private respondents were not considered by the J&K SSB on the premise of not being in possession of requisite qualification prescribed in the said notification, as they were holding Diploma in Dental Hygienist Training Course.

4. Aggrieved thereof, the private respondents, who had participated in the selection process, preferred various writ petitions bearing SWP Nos. 2357/2015, 2457/2015, 565/2016, 3089/2015, 2371/2015, 2428/2015 and 2429/2015 and the learned Writ Court vide judgment dated 31.08.2017 disposed of the said writ petitions preferred by the private respondents with the aforesaid directions.

5. Thereafter, the J&K SSB issued revised selection list vide order bearing No. 165-SSB of 2018 dated 22.03.2018 and after examining the same, the appellant-department found that some of the candidates, who had been earlier selected before the revision of the selection list, were not figuring in the revised select list and accordingly, the matter was taken with the Finance Department for their concurrence to the creation of seven number of posts of Junior Dental Technicians on supernumerary basis. Thereafter, the matter was also taken up with the General Administrative Department and pursuant to the advice of the General Administrative Department, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs, whereafter a decision was arrived at to prefer Letters Patent Appeals against the judgment impugned.

6. The appellant, in these appeals, has challenged the judgment dated 31.08.2017 primarily on the grounds that the learned Writ Court failed to take into consideration two key factors. First, the candidates selected by the J&K SSB have already joined, and granting eligibility to the respondents would precipitate a multiplicity of litigation. Second, it is contended that a selected candidate possesses no indefeasible right to appointment.

7. Mr. Raman Sharma, learned AAG representing the appellant, has submitted that faced with the contempt proceedings for non-compliance of the judgment impugned in these appeals, the matter has been taken up with the competent authority for compliance of the judgment impugned and he has placed on record the communication dated 07.10.2025. He has admitted that the judgment relied upon by the learned writ court while disposing of the writ petitions preferred by the private respondents stands already implemented.

8. Mr. Abhinav Sharma, learned Senior Counsel appearing for some of the private respondents, has submitted that the learned Single Judge, while passing the judgment impugned, has relied upon the judgment dated 19.09.2016 passed in SWP No. 2112/2015, whereby the respondents therein were directed to take steps in terms of communication dated 19.11.2015, whereby the Under Secretary, Health and Medical Education, Jammu had informed the J&K SSB that the candidates possessing Diploma in Dental Hygienist were eligible to be appointed as Dental Assistant/Junior Dental Technician and the judgment *ibid* stands already implemented.

9. Heard and perused the record.

10. The central issue in the writ petitions filed by the private respondents concerned to the eligibility of candidates possessing a Diploma in Dental Hygienist for the post of Dental Assistant/Junior Dental Technician. While the Advertisement Notice stipulated a diploma in the relevant subject as a requisite qualification for the abovementioned post, the appellant contends that candidates holding the Dental Hygienist Diploma did not meet the qualification prescribed in the notice.

11. The controversy regarding the eligibility of candidates possessing a Diploma in Dental Hygienist for the post of Dental Assistant/Junior Dental Technician was resolved by the Medical Education Department. Specifically, the Under Secretary, vide communication dated 19.11.2015, informed the J&K SSB that candidates holding the Dental Hygienist Diploma were eligible for appointment to the said post.

12. Learned AAG has admitted that judgment dated 19.09.2016 passed in SWP No. 2112/2015 stands complied with. The appellant has failed to demonstrate any distinguishing feature that segregates the case of the private respondents from that of the petitioners in SWP No. 2112/2015. Surprisingly, the judgment dated 19.09.2016 passed in SWP No. 2112/2015 was implemented, whereas the judgment impugned, based on judgment dated 19.09.2016, has been impugned by the appellant. In “Shivappa etc. v. the Chief Engineer and others”, 2023 Live Law (SC) 312, the Hon’ble Supreme Court of India has held that “The State or its instrumentalities cannot be permitted to adopt an attitude of pick and choose. If the State has accepted the award of the Reference Court in respect of some of the claimants, it cannot be permitted to adopt a different treatment to the other claimants. Such an attitude smacks of patent discrimination”.

13. We have no hesitation in stating that the appellant has engaged in selective implementation of the court directions. A perusal of the instant intra-court appeal would reveal that the appellant’s

sole endeavor is to protect the appointments of those candidates who do not figure in the revised selection list, as they were lower in merit.

14. We have observed numerous instances, where the Government has treated similarly situated persons disparately. However, the instant case stands as a classic example where the appellant-the Union Territory of J&K has adopted a policy of 'pick and choose' even in implementing court judgments. Furthermore, it is astonishing that the concerned authorities chose to assail the impugned judgment after the J&K SSB had already prepared a revised selection list. This action is particularly confounding given that the appellant-employer, had itself advised the J&K SSB, via communication dated 19.11.2015 that candidates possessing a Diploma in Dental Hygienist were eligible for appointment as Dental Assistant/Junior Dental Technician.

15. After examining the memo of appeal, we find that it is not only devoid of merit but constitutes a classic example of the abuse of the process of law. The appellant has shown a regrettable disregard for the fate of the successful candidates in the revised select list, who have been deprived of their rightful appointment for seven to eight years. Instead of rectifying this delay, the appellant chose to challenge the judgment dated 31.08.2017 after 6 long years, solely to protect the appointment of ousted candidates in the revised select list. This challenge is particularly untenable given that the appellant had accepted and not challenged the prior judgment dated 19.09.2015 passed in SWP No. 2112/2015.

16. In view of the foregoing discussion, this is a fit case where the cost is required to be imposed. Accordingly, these appeals are dismissed with costs of ■10,000/-, payable to each of the private respondents, who figure in the revised select list issued vide order No. 165-SSB of 2018 dated 22.03.2018.