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

Reserved on: 08.10.2026
Pronounced on: 23.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

SWP No.588/2017

MOHAMMAD MAQBOOL BHAT

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. S. A. Makroo, Sr. Advocate, with
Mr. Rahil Noor, Advocate.

Vs.

THE NEW INDIA ASSURANCE CO. LTD. & ORS.

...RESPONDENT(S)

Through: - Ms. Muzamil Jabeen, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner came to be engaged as Part-Time Sweeper with the respondents on 17.04.1989 along with one Mr. Mohammad Jamal Dar. The respondents issued a communication dated 07.02.1992 read with communication dated 27.02.1992, wherein a decision was taken regarding regularization of Part-Time Sweepers and also granting them age relaxation. The respondents regularized the service of Mohammad Jamal Dar in the year 1992, but the petitioner was not regularized, which compelled him to approach this Court through the medium of SWP No.891/2004, which was

disposed of by this Court vide order dated 11.03.2005. Thereafter, the petitioner was regularized as Full-Time Sweeper vide order dated 28.02.2013 and was finally confirmed against the post of Sub-Staff (other category - Full-Time Sweeper) vide order dated 04.12.2013. The confirmation of the petitioner's service was given prospective effect with effect from 25.09.2013.

2) The petitioner submitted a representation to the respondents seeking the benefit of his 24 years of service and requesting that his case be brought under the Old Pension Scheme. A copy of the representation dated 07.04.2016 has been placed on record. As the petitioner's grievance was not redressed, he served a legal notice upon the respondents calling upon them to bring his case under the Old Pension Scheme and to count his 24 years of service for seniority, promotion, pension, and monetary benefits, on the analogy of *Mohammad Jamal Dar*.

3) The grievance of the petitioner in the present writ petition is that his services ought to have been regularized with effect from the year 1995, at par with *Mohammad Jamal Dar*, and that the respondents have acted arbitrarily and discriminatorily against him. Consequently, the petitioner prays for quashing Order dated 04.12.2013 to the extent it

grants prospective confirmation to his services with effect from 25.09.2013, and seeks a direction upon the respondents to regularize his services as Sub-Staff retrospectively from 1995, on the analogy of *Mohammad Jamal Dar*.

4) In their reply, the respondents state that during the pendency of SWP No. 891/2004, the petitioner filed another writ petition, SWP No. 1169/2005. Vide order dated 05.02.2013 passed in the latter petition, the Court directed the respondents to consider his representation dated 26.03.2012. Pursuant thereto, the petitioner's representation was acted upon, and he was adjusted into permanent employment as a Full-Time Sweeper based on his seniority and management policy. The petitioner accepted the terms and conditions of his appointment by signing on 21.03.2013 and subsequently joined duty in the office of the Divisional Manager on 25.03.2013. The respondents further state that although the petitioner had appeared for an interview in 1996, he failed to qualify, leaving no scope for his regular appointment at that stage. His case was subsequently reconsidered in light of his seniority and length of service as a Part-Time Sweeper. Having accepted his regular appointment as a Full-Time Sweeper, it is not

open to the petitioner to seek regularization retrospectively from the date of his initial part-time engagement. Furthermore, the petitioner cannot claim parity with *Mohammad Jamal Dar*, who qualified through a selection process/interview.

5) The respondents also filed a supplementary affidavit stating that upon the filing of the petition by the petitioner in 2004, this Court, vide order dated 11.03.2005, directed that the petitioner's representation for appointment as an FTS be considered subject to rules and eligibility. Pursuant to the order dated 11.03.2005, the petitioner's case was duly considered; however, due to the non-availability of a vacancy, the appointment could not be made. The petitioner was informed of this decision via communication/order dated 09.06.2005.

6) The petitioner subsequently challenged the said order in SWP No. 1169/2005, seeking, *inter alia*, its quashing. While the writ petition remained pending, the petitioner filed MP No. 2715/2012 seeking appointment against a clear FTS vacancy at the Residency Road Office in Srinagar. The Court passed a consideration order. In compliance with the said order, and upon consideration of the application alongside the petitioner's representation, the petitioner was appointed

as an FTS in 2013. Consequently, SWP No. 1169/2005 was disposed of vide order dated 07.11.2016 in view of the appointment already made. Therefore, it is no longer open to the petitioner to re-agitate the same issue.

7) The petitioner has filed his response to the supplementary affidavit stating therein that the contention of the respondents about the availability of vacancies is belied by office order of 1992, as the posts of sub-staff, against which the petitioner was to be considered was available and it is in this perspective, the service of Mohammad Jamal Dar, the colleague of the petitioner, was confirmed in July 1992. However, no such consideration was accorded to the petitioner's case for his confirmation in terms of the aforementioned office order.

8) Learned senior counsel for the petitioner has argued that the petitioner has been discriminated against by the respondents, inasmuch as his colleague, Mohammad Jamal Dar, was regularized while the petitioner was completely overlooked. He further submitted that the petitioner is entitled to the same benefits as those granted to Mohammad Jamal Dar.

9) *Per contra*, learned counsel appearing for the respondents that the order dated 07.02.1992 provided only

for relaxation of age, while all other eligibility criteria were still required to be met. She vehemently argued that the petitioner has suppressed material facts from this Court, as there is no mention that subsequent to filing SWP No. 891/2004, the petitioner filed another writ petition, SWP No. 1169/2005, which was disposed of in November 2016. In that petition, the respondents had taken a specific stand that no vacancy was available.

10) Heard and perused the record.

11) There is force in the contention raised by learned counsel appearing for the respondents that the petitioner has concealed the factum of filing of writ petition bearing SWP No.1169/2005. The record of the said writ petition has been tagged with the instant petition. In the said petition, the petitioner had sought the following reliefs:

a) Mandamus commanding the respondents to bring the petitioner to regular establishment as Full-Time Sweeper from Part Time Sweeper in pursuance of the General Policy Decision taken by all the subsidiaries including the respondent company.

b) Mandamus commanding the respondents to give the same benefit to the petitioner as the other subsidiaries have given to their employees similarly situated to the petitioner.

c) Certiorari quashing the impugned office order dated 09.06.2005.

12) The said writ petition came to be disposed of in terms of order dated 07.11.2016 with the direction to respondents to re-consider the claim of the petitioner in the present context based on the Board decision for regularization of Part-Time Sweepers as Full-Time Sweepers.

13) It appears that it was not brought to the notice of the Court either by the petitioner or by the respondents, that the services of the petitioner were confirmed with effect from 25.09.2013 in terms of order dated 04.12.2013. Though in paragraph (10) of the order dated 07.11.2016, it is stated that the main reason for non-consideration of petitioner's claim is non-availability of vacancy of sub-staff in Kashmir Valley, but due to efflux of time, the respondents state that there is a possibility of posts or new posts created becoming vacant. Thus, it is evident that right from the very beginning, it is the stand of the respondents that there was no vacancy of sub-staff in the Kashmir Valley, and that is why the claim of the petitioner was rejected in 2005.

14) Be that as it may, the petitioner stands regularized with effect from September 2013, and he cannot be permitted to file multiple petitions for the same relief. The respondents have categorically stated that although the petitioner appeared for an interview in 1996, he failed to qualify.

Thereafter, no vacancy was available, a fact duly communicated to him vide order/letter dated 09.06.2005, which he subsequently challenged in SWP No. 1169/2005.

15) Not only was there a lack of vacancies, but the petitioner also suppressed material fact regarding his challenge to the order dated 09.06.2005. While the petition deserves dismissal on this ground alone, this Court has nonetheless examined the petitioner's case on merits as well.

16) The petitioner cannot claim parity with Mohammad Jamal Dar, as the latter qualified the interview, whereas the petitioner participated in the selection process in the year 1996 but failed to qualify.

17) In view of the above, this petition is found to be without any merit and the same is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

(Rajnesh Oswal)
Judge

Srinagar,
23.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **No**