

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 780/2026

CM No. 1978/2026

Reserved on: 22.09.2026

Pronounced on: 25.09.2026

Uploaded on: _____

Operative part or full judgment: Full

Dr. Saima Kabir

D/O Abdul Kabir Lone

R/O Sogam,

District Kupwara.

...Petitioner(s)

Through: Adv. Ishfaq Bashir.

Vs.

1. Union Territory of J&K

through Commissioner Secretary,
Health Department,
Kashmir, Srinagar.

2. Director, Health Services,
Kashmir, Srinagar.

3. Director, Sher-i-Kashmir
Institute of Medical Sciences (SKIMS),
Soura, Srinagar.

4. Medical Superintendent, Sher-i-Kashmir
Institute of Medical Sciences (SKIMS),
Soura, Srinagar.

5. Head of the Department (HOD), Anesthesia,
Sher-i-Kashmir Institute of Medical Sciences
(SKIMS), Soura, Srinagar.

6. Financial Advisor/ Chief Accounts Officer,
Sher-i-Kashmir Institute of Medical Sciences
(SKIMS), Soura, Srinagar.

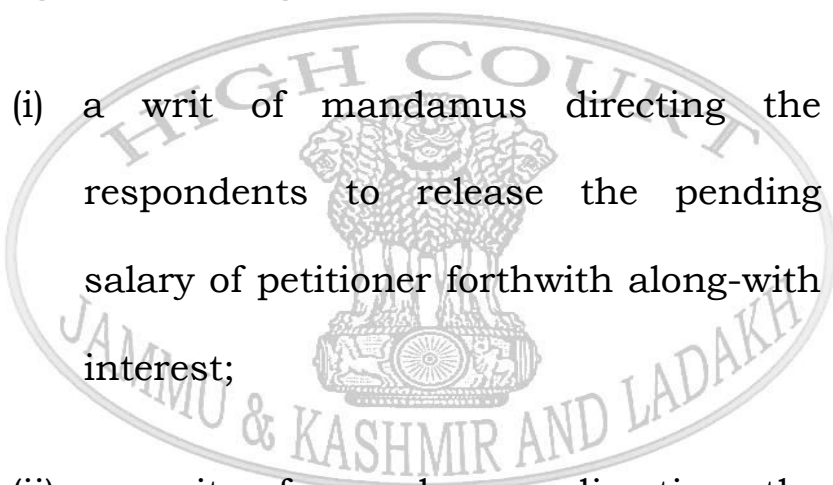
...Respondent(s)

Through: GA Faheem Nisar Shah.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the following reliefs:

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- (i) a writ of mandamus directing the respondents to release the pending salary of petitioner forthwith along-with interest;
- (ii) a writ of mandamus directing the respondents to issue experience certificate to the petitioner for the work performed by her; and
- (iii) a writ of mandamus directing the respondents to release the security deposit amount of Rs.55,000/- which were deposited by the petitioner at the time of joining her duties with the respondent department.

2. The case of the petitioner, as projected in the petition, is that she was provisionally engaged by the respondents as Stipendiary Senior Resident in the

department of Anesthesia at Sher-i-Kashmir Institute of Medical Sciences (SKIMS) Soura Srinagar, vide Government Order No. **SIMS/ACAD/538 of 2023** dated **31.09.2023** for a period of one year and, pursuant thereto she discharged her duties; that the contractual term of the petitioner was not extended by the respondents beyond one year as has been done in the case of other similarly situated doctors; that the petitioner was paid salary/wages only for one month on 04.04.2024 amounting to Rs. 1,27,772/- which was deposited into her Bank account; that the balance amount for eleven months has been illegally withheld by the respondents without any reason and justification; that an amount of Rs.55,000/-, as security, deposited by the petitioner at the time of joining her duties, is still lying with the respondents, despite completing her tenure.

- 3.** Respondents' stand is that the engagement order of the petitioner was a conditional appointment; that the petitioner was provisionally engaged for a period of one year subject to the terms and conditions incorporated in the order of engagement; that one of the important condition stipulated is that in the event an adverse report regarding her character/antecedents was received from the CID department, she would not claim any right to

engagement and the engagement would be deemed to have been cancelled *ab initio*; that the petitioner while accepting the terms of the engagement order, furnished an Affidavit, whereby she expressly undertook that in case an adverse report regarding her character/antecedents was received, she would not claim any right to engagement; that an adverse report was received and on the basis thereof, the respondents passed Order **No.SIMS/ACAD/35 of 2025** dated **17.07.2025**, whereby the petitioner's engagement was cancelled *ab initio*; that the said order has not been challenged by the petitioner in the present petition.

4. Heard learned counsel for the parties, perused the material available on file and considered the matter.
5. Learned counsel appearing for the petitioner vehemently argued that irrespective of the adverse report regarding character/antecedents of the petitioner, she had actually discharged her duties for a whole year and, therefore, the respondents cannot withhold the salary/wages for the services actually rendered by her; that the petitioner had submitted a written application before the respondents requesting for release of salary/wages but the same has not been considered by them; that the petitioner had worked and performed her duties with honesty and the

respondents are legally bound to pay the pending salary/wages of the petitioner; that the petitioner is also entitled to an experience certificate and refund of the security deposit of Rs.55,000/-.

6. Learned counsel appearing for the respondents, ex-adverso, contends that the petitioner's engagement was purely provisional and conditional; that the petitioner had consciously accepted the condition that an adverse CID report would result in cancellation of her engagement *ab initio* and had filed an affidavit undertaking not to claim engagement in such eventuality; that the claim of the petitioner having deposited an amount of Rs.55,000/- as security deposit with the respondents, there is no documentary evidence, whatsoever, evidencing such alleged deposit; that the order dated 17.07.2025 cancelling the engagement of the petitioner has not been assailed, therefore, the petitioner cannot, indirectly, seek to nullify its consequences through the present petition.

7. The first question which arises for consideration is as to the nature of the petitioner's engagement. The material placed before the Court makes it clear that the petitioner was not engaged unconditionally for a fixed period. Her engagement was expressly provisional and was subject to the condition that in

case an adverse report regarding her character/antecedents was received from the CID department, she would have no claim to such engagement and the engagement would stand cancelled *ab initio*. The petitioner was fully conscious of the said condition. She did not merely accept the engagement order but also furnished an affidavit undertaking that in case an adverse character report was received, she would not claim engagement.

8. A person who accepts an engagement/appointment subject to specified conditions cannot ordinarily seek enforcement of the engagement/appointment contrary to those very conditions. The Supreme Court has repeatedly held that contractual/temporary engagements/appointments are governed by the terms on which the engagement/appointment is made and that a person engaged/appointed for a limited or specified tenure does not acquire a right to continuation contrary to the governing conditions. The Supreme Court has also recognized the relevance of the terms of engagement/appointment in matters concerning character verification and cancellation of appointment on account of adverse antecedents. In ***Kerala State Electricity Board v. Kurien E. Kalathil*** reported as (2000) 6 SCC 293, the Supreme Court emphasised that where a dispute

arises out of contractual terms, the rights of the parties have to be determined with reference to the contract and the Court cannot rewrite its terms. Likewise, in ***State of U.P. v. Neeraj Awasthi*** reported as **(2006) 1 SCC 667**, the Supreme Court reiterated that a temporary/adhoc appointee has no indefeasible right to continue in service contrary to the terms and conditions governing the appointment.

9. In the present case, the petitioner's own affidavit assumes considerable significance. Having expressly undertaken that she would not claim engagement in the event of receipt of an adverse character report, as such, in the absence of a challenge to the foundational condition itself, she cannot seek a direction which would have the effect of continuing or recognising her engagement. It is also significant that the respondents subsequently passed order dated 17.07.2025 cancelling the petitioner's engagement *ab initio*. The said order has not been challenged by the petitioner in the present petition. Therefore, the validity of the said order is not directly in issue before this Court. The Court, as such, cannot grant a relief which would, in substance, nullify the effect of the order dated 17.07.2025, without the said order itself having been questioned. The Supreme Court has consistently maintained that where the relationship is

governed by contractual terms, the Court ordinarily cannot rewrite the contract or substitute terms different from those accepted by the parties.

- 10.** The claim for unpaid salary, however, requires consideration. The fact that the engagement was subsequently cancelled does not, by itself, answer the question whether salary had accrued in respect of services actually rendered before the cancellation. The contention, on behalf of the respondents that the engagement order, after receipt of adverse CID report, having been cancelled *ab initio*, and without being challenged by the petitioner, she is not entitled to any of the reliefs prayed for, is not tenable, to the extent of payment of wages/salary. Withholding and denial of payment of the remuneration for the period the petitioner had worked, would be violative of Article 23 of the Constitution of India. The condition in the engagement order which disentitles an appointee to wages/salary for the period for which she has worked, is in teeth of Article 23 of the Constitution and even on filing of an undertaking, cannot be enforced. In this backdrop of the matter, the respondents cannot deny wages/salary to the petitioner, for the period, for which she has actually worked with them. This Court finds support to take this view, in view of the judgment passed by a co-

ordinate Bench in **WP(C) No.2769/2025**, having identical factual background. Accordingly, without disturbing the cancellation order dated 17.07.2025, the respondents are required to be directed to consider/verify the petitioner's claim for unpaid salary for the period during which she actually discharged duties and for release the amount, in accordance with the terms of engagement.

11. The next relief sought is for issuance of an experience certificate. An experience certificate is essentially a certification of the factum and period of service rendered by a person. However, in the present case, the petitioner's engagement was expressly conditional and has subsequently been cancelled *ab initio* in terms of the conditions accepted by her. The petitioner cannot seek through a direction for issuance of an experience certificate, which in essence will declare that she was validly engaged, notwithstanding the cancellation order dated 17.07.2025. Nevertheless, if the official record establishes that the petitioner actually discharged duties for a particular period, there appears to be no justification for the respondents from issuing a factual certificate recording the period for which she actually rendered services.

12. The petitioner has also sought release of the security deposit of Rs.55,000/- through the medium of this petition. Learned counsel for the petitioner, under instructions, however, would urge that in absence of any documentary proof and not being admitted by the otherside, petitioner does not wish to press this relief of refund of security deposit, if any.
13. For the foregoing reasons and the discussions made hereinabove, this petition is, thus, partially **allowed** and the respondents are directed to release the legitimately unpaid earned wages/salary in favour of the petitioner for the period she had actually worked with the respondents, preferably within a period of eight weeks from the date a copy of this order is served upon them, however in default the petitioner shall be entitled to receive the amount along-with simple interest @ 6% per annum on the outstanding wages/salary from the date of filing of this petition i.e. 15.04.2026 till the amount is realized. Furthermore, the respondents shall also consider issuance of a factual certificate recording the period for which the petitioner actually rendered her services in the respondent department, without certifying any period subsequent to the cancellation order dated 17.07.2025.

14. Disposed of, in terms of the above, along-with the pending application(s).

(M. A. CHOWDHARY)
JUDGE

Srinagar
25.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No

