

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

Reserved on: 24.10.2024

Pronounced on: 22.11.2024

LPA No.266/2023

c/w

LPA No.283/2023

NADEEM-UR-REHMAN & ANR.

...APPELLANT(S)

Through: - Mr. Faisal Qadri, Sr. Advocate. With
Mr. Syed Mansoor, Advocate.

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

Through:- Mr. Abdul Rashid Malik, Sr. AAG, with
Mr. Mohammad Younis Hafiz, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

Per Sanjeev Kumar 'J'

1) These two appeals, one by Nadeem-ur-Rehman and another and other by Union Territory of J&K, under Clause 12 of the Letters Patent arise out of an order and judgment dated 8th November, 2023 passed by learned Single Judge of this Court ["the Writ Court"] in WP(C) No.2233/2023 titled "***Nadeem-ur-Rehman and Ors. Vs. UT of J&K & Ors.***" whereby the Writ Court has, while allowing the writ petition, directed the appellants in LPA No.283/2023 (respondents before the Writ Court) as under:

- (I) Petitioner No.9 is held entitled to admission in MS Ortho in GMC, Srinagar, petitioner No.10 is held entitled to admission in MD Psychiatry in SKIMS, Srinagar, petitioner No.11 is held entitled to admission in MS General Surgery in GMC, Jammu and petitioner No.12 is held entitled to admission in MS Orthopedics in GMC, Jammu.
- (II) The respondents are directed to keep one seat each in the aforesaid disciplines in the aforesaid institutions reserve in the next session and the petitioners No.9 to 12 shall be entitled to admission against these seats/disciplines in accordance with their entitlement determined hereinbefore. The respondent-Board shall not put the aforesaid seats/disciplines for selection for admission to PG Course, 2024.
- (III) Additionally, the respondents shall pay compensation in the amount of Rs 2.00 lacs (rupees two lacs) to each of the petitioner Nos. 9 to 12 for having denied to these petitioners their rightful claims.
- 2) The appellants in LPA No.266/2023 are aggrieved and have challenged the judgment impugned dated 08.11.2023 to the extent the Writ Court has declined to grant them any benefit of the judgment. They have also called in question an order dated 29th November, 2023 passed by the Writ Court, whereby the review petition filed by the appellants aforesaid has been dismissed.
- 3) So far as the appeal filed by the Union Territory of J&K i.e. LPA No.283/2023 is concerned, the same is

directed against the entire order and judgment dated 8th November, 2023 passed by the Writ Court. Since in both the appeals, the impugned judgment dated 8th November, 2023, is subject matter of challenge, therefore, both the appeals are being taken up for final disposal together.

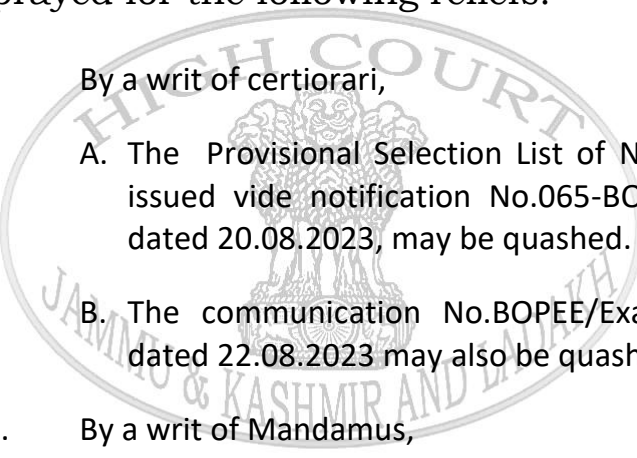
FACTUAL MATRIX:

4) Prior to the year 2010, the J&K Board of Professional Entrance Examination [“J&K BOPEE”] constituted under Section 3 of the J&K Board of Professional Entrance Examination Act, 2002, was responsible for conduct of entrance test and selection of the candidates for admission to various professional institutions in the State. However, in the year 2010, the Medical Council of India (now Indian Medical Council), in order to provide for uniform entrance tests for undergraduate/postgraduate courses, notified a single platform for entrance examination, namely, National Eligibility cum Entrance Test [NEET]. At present, the entrance test i.e. NEET for undergraduate/postgraduate courses is being conducted by the National Board of Examinations [NBE], though counselling for the said

courses is to be conducted by the concerned competent authority of the State/UT Government strictly in accordance with the applicable laws and rules. Undoubtedly, the J&K BOPEE is the competent authority in so far as the Union Territory of Jammu and Kashmir is concerned.

5) In accordance with the procedure established, the NEET for admission to PG/MD/MS/PGD&MDS-23 was conducted by NBE, the result whereof was declared on 10th March, 2023 and 14th March, 2023 respectively. Accordingly, upon receipt of result by the Government of UT of J&K, online registration of the candidates was carried and the provisional UT merit list was notified vide notification No.44-BOPEE of 2023 dated 25th July, 2023 and vide notification No.65-BOPEE of 2023 dated 20.08.2023. The J&K BOPEE also notified the provisional select list of the candidates for admission to MD/MS/PG/Diploma and MDS courses-2023 in accordance with the J&K Reservation Act, 2004 and the Rules framed thereunder, regard being had to the merit-cum-preference exercised by the eligible participating candidates.

6) There were a total of 297 candidates for MDS/MS and 2 for Diploma seats. The seats were, accordingly, allocated to the eligible candidates in accordance with the rules governing the field including the J&K Reservation Rules, 2005 as amended from time to time. It seems that subsequent to the publication of provisional list and allocation of seats, the appellants in LPA No.266/2023 along with other candidates filed a writ petition (WP(C) No.2233/2023) before the Writ Court and prayed for the following reliefs:

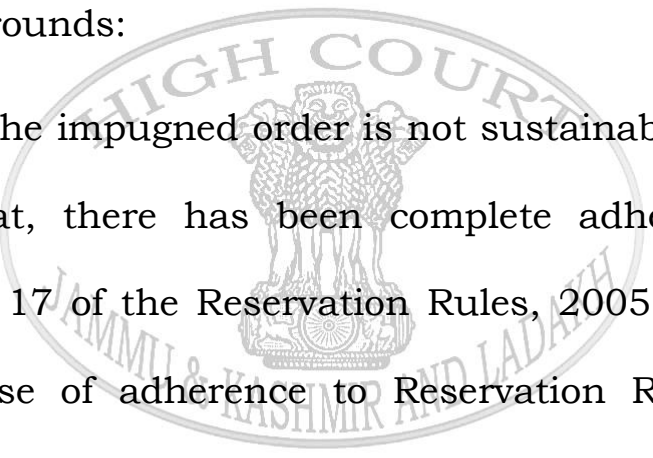
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- I. By a writ of certiorari,
 - A. The Provisional Selection List of NEET PG 2023 issued vide notification No.065-BOPEE of 2023 dated 20.08.2023, may be quashed.
 - B. The communication No.BOPEE/Exam/ 10/2023 dated 22.08.2023 may also be quashed.
 - II. By a writ of Mandamus,
 - A. The respondents be directed to adhere to be mandate of Rule 17 of Reservation Rules, 2005 and allot the preferred disciplines/seats to the petitioners respectively in accordance to the merit cum preference.
 - B. Respondent No.2 be directed to pay a compensation of Rupees Ten Lakhs (Rs.10,00,000) to each petitioner.

7) The appellants in LPA No.283/2023 contested the writ petition by filing detailed objections. It was contended by the appellants that Rule 17 of the

Reservation Rules, 2005, was adhered to in letter and spirit and the provisional select list was prepared on the basis of merit and preference.

8) The Writ Court, having considered the case set up by the parties and the arguments addressed at bar, allowed the writ petition with the reliefs which have been already reproduced hereinabove.

9) The appellants in LPA No.283/2023 are aggrieved and have challenged the impugned judgment on the following grounds:

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- (I) That the impugned order is not sustainable in law, in that, there has been complete adherence to Rule 17 of the Reservation Rules, 2005 and it is because of adherence to Reservation Rules, the respondents (writ petitioners before the Writ Court) have been given admission in the disciplines they deserved.
- (II) That the Writ Court did not appreciate that Rule 17 of the Reservation Rules could not have been applied in the case of respondents (petitioner No.4 to 12) as they were not MRC's.

(III) That the Writ Court also did not appreciate another important aspect that proviso to Rule 15 provides that all the reserved categories are to be provided chance representation and that without doing so, the object and purpose of the reservation would be lost. The reservation cannot be interpreted or applied in a manner to give undue benefit to one Reserved Category over the other. It is contended that the manner in which Rule 15 and 17 of the Reservation Rules have been understood and applied by the Single Bench, the reserved category of RBA has only been benefited, that too, at the cost of other categories.

10) So far as LPA No.266/2023 is concerned, the impugned judgment is challenged to the limited extent and on the grounds that the Writ Court, having returned a finding that the appellants were meritorious reserved category candidates (MRCs), has not granted them the relief prayed for. It is contended that the appellants despite having more merit than other candidates have not been allotted the disciplines to which they were entitled by the strict application of

Rule 17 of the Reservation Rules. The impugned judgment is also challenged on the ground that once the merit position as well as non-implementation of Rule 17 stood accepted by the Writ Court, then the necessary fall out of the same ought to have been to correct the illegalities committed by the J&K BOPEE. The Writ Court, however, erred in law in refusing the relief prayed for by the appellants. It is argued by the counsel for the appellants that the appellants cannot be penalized for an act which is purely attributable to the respondents (appellants in LPA No.283/2023) or to the circumstances beyond their control. It is submitted that the appellants were vigilant and approached the Writ Court without wasting any time for protection of their constitutional as well as statutory rights. The impugned provisional list was issued on 20.08.2023 and the same was objected to by the appellants on 21.08.2023. The writ petition was filed by the appellants on 24th August, 2023 and the interim order in the same was passed on 25.08.2023. It is, thus, submitted that the admission to the appellants in the discipline they deserve cannot be denied on the ground of delay, if any. Lastly, it is argued

that the judgment, to the extent it is impugned by the appellants, deserves to be set aside for the reason that the entire exercise which was undertaken by the J&K BOPEE during the pendency of the writ petition was provisional in nature and would not bestow any right upon any candidate. The appellants, having joined in the disciplines allocated to them pursuant to order dated 22.08.2023 passed in the writ petition, cannot be termed as accepting the allotment nor can the same operate as an estoppel against them.

11) Having heard learned counsel for the parties and perused the material on record, we are of the opinion that the controversy raised in these appeals turns on the interpretation of Rule 15 and Rule 17 of the J&K Reservation Rules, 2005. It is, therefore, necessary to set out Rules 15 and 17 herein below:

15. Distribution of seats. - For the post-graduate courses in MD/MS/M.Tech, Engineering and Agricultural Sciences and similar other postgraduate courses, the seats shall be distributed as follows with the condition that the selection of candidates from the reserved categories for different streams shall be made strictly on the basis of their inter-se merit, treating them as a single class for purpose of allotment of streams:-

(i)	Open Merit Category	57%
(ii)	Reserved Categories	
	(a) Scheduled Caste	8%

	(b) Scheduled Tribe	10%
	(c) Socially and Educationally Backward Classes	
	(i) Residents of Backward Areas	10%
	(ii) Residents of Area Adjoining Actual Line of Control/international border	4%
	(iii) Weak and Under Privileged Classes (Social Castes)	4%
	(iv) Pahari Ethnic People	4%
	(d) Children of Defence Personnel/ Paramilitary Forces and State Police Personnel	2%
	(e) Candidates possessing Outstanding Proficiency in Sports	1%
	(F) Economically Weaker Section (EWSs)	10%

Provided that the benefit of reservation under Economically Weaker Section category shall be available only in respect of those institution where the intake capacity has been increased over and above its annual permitted strength in each branch of study and faculty by the Competent Authority, so that the number of seats available, excluding those reserved for the persons belonging to the EWSs are not less than the total seats available in the immediately preceding academic session.

Provided further in case sufficient number of reserved seats are not available to accommodate all the reserved categories in a selection process, the available reserved seats shall be rotated in such manner that all reserved categories get their due share in a phased manner. For the said purpose, the following running roster of 30 seats shall be maintained and followed till the same gets exhausted:-

1.	Backward Area
2.	Scheduled Caste
3.	Scheduled Tribe
4.	Economically Weaker Section (EWSs)
5.	Line of Actual Control/International Border
6.	Pahari Ethnic People
7.	Social Caste
8.	Children of Defence Personnel/State Police
9.	Backward Area
10.	Schedule Caste
11.	Scheduled Tribe
12.	Economically Weaker Section
13.	Backward Area
14.	Scheduled Caste
15.	Scheduled Tribe
16.	Pahari Ethnic People
17.	Line of Actual Control/International Border

18.	Backward Area
19.	Scheduled Caste
20.	Scheduled Tribe
21.	Economically Weaker Section
22.	Social Caste
23.	Backward Area
24.	Scheduled Caste
25.	Candidates possessing outstanding proficiency in Sports
26.	Scheduled Tribe
27.	Economically Weaker Section
28.	Backward Area
29.	Scheduled Tribe
30.	Economically Weaker Section

Explanation: The reservation to children of Defence personnel under this rule shall be governed by inter-se priority as may be notified by the Department of Ex. Servicemen Welfare, Ministry of Defence, Government of India from time to time.

17. Allotment of discipline etc. A reserved category candidate, if selected against the open merit seat may be considered for allotment of discipline/stream/college allocable to him in his respective category on the basis of his merit and preference. The left-over disciplines/stream/college in the open merit category shall be allotted to the reserved category candidates who get selected consequent upon the reserved category candidates getting selected in the open merit category.

Explanation:-The left-over disciplines/stream/college shall mean such number of disciplines/streams/colleges becoming available after allotment of seat to the last OM candidate as allocable under rules:

Provided that in respect of undergraduate courses the left-over seats/colleges shall be added to such categories where shortfall has taken place due to application of Rule 17 and allotment shall be made in terms of Rule 13 on the basis merit cum preference from the respective categories.

Provided further that in respect of PG Course the left-over disciplines/stream/colleges shall be added to the pool of reserved category candidates in terms of Rule-15 and allotted on the basis of merit cum preference.

Provided also that Rule-17 shall be applicable only during the first round of counselling both in respect of UG and PG Courses. Unfilled seats due to non-joining, resignation etc. during the first round of counselling shall be filled up from amongst the eligible candidates from the respective categories where a seat

has become available i.e. seat left by the SC candidate in the first round shall be allotted to the eligible candidates from the SC category during the second round of counselling only etc. so that the quota allocable to different categories is maintained.

The unfilled category seats, if any, shall be filled up from OM candidates in accordance with Section 9 of the Jammu and Kashmir Reservation Act, 2004.

Note 1:-In case the last OM candidate belongs to any reserved category, but Rule 17 cannot be applied in his case, he shall be considered first in OM and allotted a discipline/stream/college of his choice/preference, if available. However, in case discipline/ stream/college of his choice/ preference is not available in the OM, he may be considered for allotment of discipline/ stream/college in his respective category on the basis of merit cum preference in accordance with Rule 13 or 15 as may be applicable in his case.

Note 2:-The prescribed Counselling Authority may, for the reasons to be recorded, address any other unforeseen situation arising during application of Rule 17 in such a manner that it does not put any meritorious category candidate to hardship viz-a-viz. preference for allotment of discipline/stream/course/college as the case may be.

12) From a reading of Rule 15 (supra) it would clearly transpire that first part of the said Rule deals with allocation of seats in post-graduate courses of MD/MS/M. Tech. Engineering and Agricultural Sciences etc. to different categories. However, the second part makes a provision that the distribution of seats between different categories shall be subject to the condition that the selection of candidates from reserved categories for different streams shall be made strictly on the basis of *inter se* merit treating all the reserved categories as a single class for the purpose of allotment of streams.

However, in the seat matrix issued by the J&K BOPEE for the purposes of first round of online counselling, it is evident that various disciplines in MD/MS and PG diploma courses, as per the availability of seats in the Medical Colleges, have been allocated to the open merit category, EWS and reserved category. The seat matrix does not indicate that any discipline or stream in a particular medical college has been earmarked for the candidates belonging to a particular category. It is, thus, a foregone conclusion that all disciplines/streams of the post-graduate courses are to be taken as a single class for their allotment to the candidates belonging to the reserved categories on the basis of their *inter se merit*.

13) We now turn to Rule 17, which has been interpreted by this Court several times. The Writ Court has very clearly caught the essence of Rule 17. Indisputably, Rule 17 will come into play only if MRC i.e. reserved category candidate selected against the open merit, decides not to accept the allotment of discipline as per his merit-cum-choice in the open merit but would like to make the choice of discipline being treated as reserved category candidate. In such a

situation Rule 17 provides that MRC may be considered for allotment of discipline/stream/college allocable to him in his respective category on the basis of his merit and preference. The term “respective category” mentioned in Rule 17 again creates confusion, in that, there are no separate disciplines allocated to different reserved categories, at least the seat matrix does not indicate any such thing. In the absence of such provision made by the J&K BOPEE allocating discipline/stream/college separately for each category, the discipline/stream/colleges allocable to the categories would only form one class i.e. class of reserved categories. We, however, fail to understand as to how and why the J&K BOPEE has not treated EWS as a ‘reserved category’ and has allocated the discipline/stream/college separately for the aforesaid category and created mess in the process. At this juncture, we would like to refer to the definition of ‘reserved category’ given in Section 2(l) of the Jammu and Kashmir Reservation Act, 2004, according to which, “reserved categories” means the categories for which reservation is to be made under the Act. The EWS

category, for which a provision is made in the Reservation Rules, 2005, is nonetheless a reserved category.

14) Be that as it may, in the instant case, as is the case set up by the BOPEE, three candidates, namely, Pandit Abrar Ahmad, Mir Aamir Fayaz and Shams-ul-Haq, all belonging to Sports Category, having UT rank 61, 67 and 113, got selected in the open merit category. Since the said candidates were not getting the disciplines of their choice in the open merit category, as such, Rule 17 was applied and they were allowed, as per their merit-cum-choice, to pick up the disciplines from the reserved category pool. This is how MD Dermatology, Venereology and Leprosy in SKIMS, General Medicine in SKIMS and General Medicine in GMC, Srinagar, came to be allotted to the aforesaid three persons respectively. The appellants in LPA No.266/2023, who were writ petitioner No.1 and 3 before the Writ Court, were also candidates belonging to Sports Category and had made it to the select list under the open merit. Rule 17 was not applied by the J&K BOPEE on the ground that there were only three seats to be allotted to the Sports

Category forgetting that there is certain distinction between allotment of seats and allotment of discipline/stream/college. No doubt, these three persons, who were candidates from the reserved category of Sports persons, had made it to the select list in the open merit because of their higher merit, yet by securing higher merit and getting place in the select list in the open merit, they cannot be said to have lost their status of 'Reserved Category'. In terms of Rule 15, they were the candidates belonging to the reserved category of Sports persons and ought to have been considered for the purpose of allotment of discipline/stream/college from the pool allocated to the reserved categories. The Writ Court has already explained that the pool of reserved categories would include the post which become available after the application of Rule 17. From a conjoint reading of Rule 15 along with Rule 17, it clearly comes out that if a candidate selected in the open merit belongs to any reserved category and Rule 17 cannot be applied to his case, he would be considered first in the open merit and allotted a discipline/stream/college of his choice/preference if available.

However, if such discipline/stream/college/choice/preference is not available in the open merit, he may be considered for allotment of discipline/stream/college from the pool of reserved category candidates in terms of Rule 15 of the Reservation Rules of 2005. Note-1 of Rule 17 reproduced hereinabove is suggestive of a procedure that could be applied to the MRCs who are not in a position to make their choice in the open merit and wish to take the benefit of pool of reserved categories created for the purposes of allocation of streams/disciplines.

15) Undoubtedly, there are three seats in postgraduate courses reserved for Sports Category and the first three MRCs in the Sports category have made their choice from the pool of reserved categories. However, that does not mean that if more than three candidates in the Sports category make it to the open, they will lose their status as Sports category/reserved category candidates. If we were to uphold the contention of J&K BOPEE, it would mean that a person with higher merit is required to be condemned. In this way the three candidates in the Sports Category who came to be selected in their category because of first three meritorious Sports

category candidates making it to the select list in the open category will be put in a an advantageous position vis-à-vis three other candidates in the same category who made it to open merit and selected because of their higher merit. Such situation cannot be countenanced by law.

16) Viewed from any angle and also for the reasoning given by the Writ Court, we find the judgment impugned well-reasoned and sound in law. We, however, would like to modify the impugned judgment in so far as grant of relief to the writ petitioners (appellants in LPA No.266/2023) is concerned.

17) We are in full agreement with the Writ Court that the writ petitioners 1 and 3 to 8, having joined their disciplines allocated to them, are not entitled to any relief as permitting them to join new disciplines/streams at this stage would lead to wastage of seats against which they have already been admitted and are pursuing their course. Petitioner No.2, after taking admission, is stated to have resigned and, therefore, there is an issue with regard to his eligibility for

admission in the next sessions. So far as petitioners 9 to 12 are concerned, the Writ Court has held them entitled to admission in MS Ortho in GMC, Srinagar, MD Psychiatry in SKIMS, Srinagar, MS General Surgery in GMC, Jammu and MS Orthopedics in GMC, Jammu, respectively. So far so good but what we intend to modify in the judgment of the Writ Court is that the Writ Court has directed the respondents to keep one seat each in the aforesaid disciplines in the aforesaid institutions reserved in the next sessions so that writ petitioners 9 to 12 could be accommodated. The Writ Court has extensively reproduced the judgment passed by the Supreme Court in the case of **S. Krishna Sradha vs. State of A. P. and Ors**, (2020) 17 SCC 465. A careful perusal of the judgment aforesaid makes it abundantly clear that no candidate can be granted admission in the next academic session by reserving seats from the intake capacity of the colleges/institutions concerned. Para 13.3 of the aforesaid judgment clearly lays down that in case the Court is of the opinion that no relief of admission can be granted to a successful candidate in the very academic

year and wherever it finds that the action of the authorities has been arbitrary and in breach of rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the Court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions for increase in the number of seats as may be considered appropriate in the case. However, in a case where management is found at fault and has wrongly denied admission to a meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year so as to accommodate the candidates having succeeded in establishing their right to seek admission. The direction No.(II) of the Writ Court, therefore, runs counter to what is held by the Supreme Court in Para 13.3 of the aforesaid judgment which is fully attracted in the case on hand. We wish to say that the Writ Court has rightly found that because of wrong application of Rule 15 and 17 by the J&K

BOPEE, the writ petitioners were denied admission in the year 2023-24 and that they had approached the Court in time but it took some time for the Court to decide the matter and by that time the admission year had considerably progressed. We do not find the writ petitioners anyway responsible in causing any delay in the matter. The Writ Court has correctly held them entitled to admission in the next academic session but this admission could not be against the seats/streams as referred to in Para (II) of the directions of the Writ Court. However, the writ petitioners 9 to 12 shall be accommodated only by a temporary increase in number of seats for the next academic session.

18) While upholding the judgment passed by the Writ Court with aforesaid modification, we direct the appellants in LPA No.283/2023 (respondents before the Writ Court) to take up the matter with Indian Medical Council for increasing the number of seats i.e. one seat each in MS Ortho in GMC, Srinagar, MD Psychiatry in SKIMS, MS General Surgery in GMC, Jammu and MS Orthopedics in GMC, Jammu, for the next academic session so that in compliance with the judgment of the

Writ Court, writ petitioners 9 to 12 are given admission. The aforesaid process shall be initiated by the appellants in LPA No.283/2023 (respondents before the Writ Court) well in time so that the admission of writ petitioners 9 to 12 are made along with others in the next academic session. The J&K BOPEE shall do well to take up the matter immediately with the Indian Medical Council or any other competent authority, as may be required under rules, within a period of one week from the date a copy of this judgment is served upon it and we direct the Indian Medical Council to immediately respond to the request of the J&K BOPEE as the same is with a view to comply with the judgment passed by this Court.

19) With the modification of direction No.(II) of the impugned judgment in the aforesaid manner, the judgment passed by the Writ Court is upheld and consequently both the appeals are disposed of.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
22.11.2024
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**

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