

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 26.04.2023

Pronounced on: 12.05.2023

**LPA No. 49/2023
CM No. 2337/2023**

**UT of J&K through Commissioner/
Secretary Home Department, Civil
Secretariat, Jammu/ Srinagar and
others.**

.....Appellant(s)

Through: Mrs. Monika Kohli, Sr. AAG

Vs

Madan Lal and others

.....Respondent(s)

Through: Mr. P. N. Raina, Sr. Advocate
Mr. Gagan Basotra, Sr. Advocate
Mr. Tarum Shanna, Advocate and
Mr. J. A. Hamal, Advocate
Mr. Mohinder Kumar, Advocate
Mr. Asheesh Singh Kotwal, Advocate
Mr. N. D. Qazi, Advocate
Mr. D. S. Saini, Advocate
Mr. M. A. Bhat, Advocate

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

O R D E R

(N. Kotiswar Singh, CJ)

1. The appellants are assailing through this Letters Patent Appeal a common judgment dated 06.04.2023 passed by the learned Single Judge adjudicating thereby writ petition WP(C) No. 2883 of 2022 alongwith connected 19 writ petitions involving 2396 writ petitioners. The appellants, who were the respondents in the said matters, are seeking stay of operation of the impugned judgment pending final adjudication of the present Letters Patent Appeal. The plea for interim relief of suspension of the impugned judgment has met an expected stiff resistance from the caveators-respondents' end availing stretched

submissions with very inviting persuasions from both sides.

2. The contestation in the case is sourced to Government framed two schemes i.e., Scheme of 1995 for creation of village defence groups which came to be superseded by Scheme of 2022 for creation of village defence guards. The respondents who are sourced to the Scheme of 1995 in terms of their status came to question the legality and validity of Scheme of 2022 in their writ petition WP(C) No. 2883 of 2022 reckoning it as undermining their purported vested status.

3. The very relief granted by the learned Single Judge through the impugned judgment self-reflects the stakes found involved of and from both sides attending the interim suspension of the operation of said judgment. The relief so granted reads as follows:

"26. In the premises, I find merit in these petitions and the same are disposed of by providing as under:-

- (i) The Village Defence Group Scheme-2022 issued by the respondents vide Government Order No. 287-Home of 2022 dated 14.08.2022, in so far as it has the effect of denuding the petitioners (heads of Village Defence Groups) of their status as SPOs and the power and privileges conferred on them by the Village Defence Group Scheme- 1995 issued by the Government vide Government Order No. Home-293 of 1995 dated 30.09.1995, is set aside and quashed.*
- (ii) Writ of mandamus issued to the respondents to treat the petitioners as SPOs having been so appointed under the Village Defence Group Scheme of 1995 with all powers and privileges, in particular, in respect of payment of wages/honorarium. They shall continue to receive remuneration as is being paid to their counterparts working in the J&K Police Department.*
- (iii) The right of the members of the Village Defence Group, who have been held entitled to a monthly honorarium of Rs.4000- under the Village Defence Group Scheme-2022, shall remain unaffected. "*

4. Before we come to examine the rival and competing claims & contentions addressed before us, we need to advert

in brief to the operating factual background of the case as well as the relevant excerpts of the impugned judgment.

5. Terrorism, the modern-day scourge, has afflicted and affected the World at large with an un-imaginable human distress, societal disturbance and polity devastation, directly or indirectly in and to all the countries; major/minor, of the World. Our country India has, in fact, borne the front brunt of the menace which, perhaps, no other country has faced and suffered that too without any period of reprieve.

6. The erstwhile State of Jammu and Kashmir (now two Union Territories), which otherwise was and is still having nature bestowed peace and serenity, as being a border state has faced furnace of terrorism and militancy, nurtured and accentuated by pro-active encouragement by and participation of inimical and enemy forces across the India's border.

7. The civil administration, law and order enforcing agencies and the security forces have all along been at peak of their mental and physical resources in carrying out routine administration and governance of the region, doing life risking task and rendering unabated vigil to deal with the menace of terrorism and have very successfully thwarted the abominable designs to disturb the peace and progress of the Indian nation through its crown territory in the form of Jammu & Kashmir.

8. In the erstwhile State of Jammu & Kashmir, especially during active and announced hostilities from Pakistan in 1965 and 1971, the local population in the bordering districts of the State had helped secure vital installations and prevent infiltration by forming Village Defence Groups thereby setting up a model to follow for future contingency of like nature least expecting that war against India will

come disguised in the form of armed militancy and terrorism.

9. With the increase and spread of terrorist activities and large-scale infiltration of terrorists across border during the 1990s, need at internal security policy level was felt to revive the Village Defence Groups with an aimed strategy to organise small groups of physically fit resident volunteers of the frontline and affected villages combating and confronting the acts and incidents of terrorism, to confront and provide first hand repellency to any act/attempt of terrorism thus bolstering the security apparatus and prevent the acts of sabotage more particularly in the border districts of Jammu and Kashmir.

10. It is in this security oriented policy framing that the Government of J&K had, in exercise of its executive authority, vide a Govt. Order no. Home-293 of 1995 dated 30/09/1995 sanctioned a scheme for creation of the Village Defence Groups brought into force from 01.10.1995, hereinafter to be referred in short as the Scheme 1995.

11. In order to better appreciate the operative scope and role of the Village Defence Groups under the Scheme 1995, it may be apposite to reproduce the relevant and salient portions of the said Scheme as follows:

"AIM

3. *The aim of the Village Defence Group Scheme is to organise a small group of volunteer armed civilians, in the identified villages along the borders as well as in depth areas of Jammu division. This is being done with a view to ensure the safety and security of such villages, infrastructural installations in and around them and to check the trans-border movement.*

METHODOLOGY

4. General. *The scheme will cover Kathua, Jammu, Udhampur*

and Doda districts of Jammu Division in the first phase. Later, it would be extended to the remaining two districts of Jammu Division, viz., Rajouri and Poonch as well as Kashmir Valley. The district wise number of villages, as identified by the Deputy Commissioners and the Superintendents of Police, is given below:

(a) KATHUA DISTRICT. There are 587 villages in Kathua district out of these, 130 border villages and 30 interior villages are required to be given weapons.

(b) JAMMU DISTRICT. Out of 1224 villagers 350 border villages would be covered under the scheme.

(c) UDHAMPUR DISTRICT. 50 villagers in the interior areas of Dudu-Basant-Garh, Gool Gulab Garh and Sungri-Chasana areas would be brought under this scheme.

(d) DODA DISTRICT. JOO villages due to peculiar and complex situation in Doda district general provision in Doda district has been made without actual identification. Areas to be covered under the scheme will be identified by the Deputy Commissioner, Doda, Deputy Inspector General of Police, Jammu, Udhampur - Doda and Senior Supdt. Of Police, Doda, in consultation with the Delta Force Commander.

The total number of villages, which are being covered under the scheme is 660.

5. Composition. Core of the scheme would comprise of a group of **15 armed civilians** in each village, consisting of the following categories:

a) Those to whom weapons have been provided by the state police. At an average volunteers in one village would be given five (.303) rifles with JOO rounds each, through District Superintendent of Police. The volunteers and number of such weapons to be allotted in a particular village would be determined by the District Magistrate/Senior Superintendent of Police concerned, keeping in view the credential of the volunteers, population of the village, its location and the security requirement,

b) Persons possessing weapons with valid licenses and,

c) Persons willing to purchase weapons on their own and found eligible to be given licenses by the respective Magistrates.

6. The members of this group would work on voluntary basis and selection would be made carefully by the district administration from amongst the ex servicemen available in the village and able bodied young man who have proficiency in handling of weapons and are prepared to contribute their might towards the welfare of the community and security of the village. Each of the village defence group would be headed by a retired officer of the army/CPMF/state police. He would be issued with the higher category of weapon and would also be appointed, and given powers of Special Police Officer (SPO). These SPOs would be paid an honorarium of Rs. 1500 per month.

7. Command and Control. As already mentioned, in the village Defence Groups would function under the supervision of SPOs. Village Chowkidar and Lumberdar would be instructed to assist the SPO and his volunteers in carrying out their duties. Each SPO would conduct night and day patrolling in a systemic manner. For this purpose, they may also seek their assistance of the local villagers who would be, duty bound to provide assistance to help the SPOs. The district minister should invoke the necessary legal provisions in this regard the village defence groups are also charged with the responsibility of protecting community installations and infrastructure facilities within the defined areas of their villages.

8. The SPOs would function under the overall supervision of respective Tehsildars and SHOs. Instructions in this behalf would be issued by the respective District Magistrates and Superintendents of Police. The SPOs are also authorised to make use of the police wireless facilities for passing and receiving messages having a bearing on their charter of duties.

9. The District Magistrates would be responsible for dovetailing the Village Defence Groups with the existing deployment of the security forces both on the border as well as in the depth areas in consultation with the Security Force Commanders. This would ensure utilization of manpower and the weapons.

10. Selection of Villages. The border villages of Jammu and Kathua District stand already identified. The selection of depth

villages in Kathua Udhampur and Doda districts would be made carefully taking into consideration, the threat of militants, location of the security forces in the nearby vicinity as well as the capacity and the willingness of the villagers to organise themselves against the militants. It may be fruitful if the identified villagers are not isolated and instead, a group of such villages is taken as a unit, which would be in a position to support each other at the time of need and convert the entire segment into a defended locality. Such defended localities should preferably be near as security forces unit.

CONCLUSION

11. *The best form of defence is self-defence. The Village Defence Group Scheme is not only meant to be an exercise in calculating an attitude of self help in security matters amongst the local population. The aim is also to supplement the ongoing efforts to the security forces in dealing with the militancy, acts of subversion and trans-border movements. Above all it is a manifestation of the will of the people to actively participate in the efforts to thwart the threat being posed to the national security and integrity. The identification of the men comprising these groups, support to them and the level of their motivation would be of utmost importance. In the ultimate analysis, the success of the Scheme would depend on the quality of men who would form these groups and the will behind these men."*

Highlighted excerpts are the ones which are in centre of the controversy.

12. The writ petitioners, who are the private respondents herein, are some of those persons who came to be engaged and deputed to be head of the respective Village Defence Groups, and designated and empowered as SPOs under the Scheme 1995.

13. During the course of implementation and running of the Scheme 1995, some management natured issues had cropped up leading to a state of litigation coming to this court's indulgence. In order to bear a perspective of the reliefs granted by the learned Single Judge in its impugned common judgment, it may be very apt and relevant to refer to what generated the situation leading to the writ petitions which

came to be filed by the SPOs in this court under the operation of the Scheme 1995.

14. As per the old Scheme 1995, the heads of the VDG i.e. SPOs, initially, were used to be paid an honorarium of Rs.1,500/- per month which in the course of time got periodically revised and raised with last increase to be at Rs.18,000/- which the SPOs were getting till the time of coming into picture of the New Scheme of 2022. As per the Government's take, the said monthly honorarium was being shared by the SPOs with other group members of his VDG though no provision provided for payment/sharing of honorarium with the other members of the SPO headed VDG under the Scheme 1995. This honorarium sharing related claim and denial led to filing of writ petitions by the SPOs and Non-SPOs, one contending that the government of the time was pressurising them to share the honorarium with Non SPO members of the Village Defence Group whereas the Non SPO members staking their claim for honorarium on parity basis.

15. Non SPO members of the Village Defence Groups under the Scheme of 1995 had approached this High Court with a writ petition for seeking payment of honorarium at par with the SPOs or at least Rs. 4500 per month, and in this regard **OWP No. 236 of 2005 titled Arjun Singh and others versus State of J & K and others** was disposed of by a judgment dated 11/09/2008 on the following terms:

".....Mr. S C.Gupta, learned Additional Advocate General appearing for the State respondents submits the amount payable to the petitioners for their Village Defense Committees could not be so paid in the absence of its sanction by the Central Government which according to Mr. Gupta was the authority which had to pursue the amount payable to the petitioners. Learned counsel submits that the State respondents shall initiate action

which a period of four weeks in requesting the Central Government to accord requisite action for payment of money to the petitioners and their Village Defence Committees.

Mr. Magoo, learned ASGI appearing for Union of India submits that on receipt of papers from the State Government, Union of India would consider the case of the petitioners and pass requisite orders for sanction of amount payable to them. Mr. Magoo assures the Court that requisite action shall be taken by Union of India within a period of six weeks of its receiving papers in this regard by the State Government. The statements made by learned counsel appearing for the respondents satisfies petitioners, who prayed for disposal of this writ petition on the basis of the statements of counsel for the State and Union. In view of the statements made by learned counsel for the parties, nothing more remains to be adjudicated upon in this petition, which is, accordingly, disposed of as settled in terms of the statements made by learned counsel for the respondents. State respondents and Union of India are directed to proceed accordingly.”

16. WP(C) No. 3262 of 2019 titled *Kewal Kumar and others versus State of J & K and others*, was a writ petition in the counter context which came to be dealt with and disposed of by the Writ Court vide its judgment dated 01/06/2022 with the following directions:

"10. A perusal of the record reveals that as per Scheme, the members of the Village Defence Group are required to work on voluntarily basis and the Village Defence Group is to be headed by retired officer of Army/ CPMF/ State Police. The said officer would be issued with a higher category of weapon and would also be appointed and given powers of Special Police Officer (SPO). As per the Scheme, SPOs are required to be paid honorarium. More so, it is stated by the respondents that they have not pressurized the petitioners to share honorarium with the other members

a/ Village Defence Committee.

11. In view of the stand of the respondents, nothing remains for adjudication by this Court, as such, the present petitions are disposed of with a direction to the respondents not to pressurize the petitioners who are working as SPOs of Village Defence Group to share the honorarium with other members of Village Defence Committee/Group.

12. So far as prayer of the petitioners for framing the policy for regularization of petitioners as SPOs in the Police Department of the UT is concerned, that is the prerogative of the respondents to frame such policy and no such directions can be issued.

Disposed of . "

17. In the backdrop of the aforesaid litigation scenario and end situation thereof, the new Scheme of 2022 came to be introduced by superseding the earlier Scheme 1995. It is relevant to bear in mind that with effect from October 2019 onwards from the appointed day, the State of Jammu & Kashmir came to be transformed into two Union Territories which being the Union Territory of J&K and other Union Territory of Ladakh thereby bringing Central Govt. to be in direct saddle of the governance and administration of the two UTs. New Scheme of 2022 is thus a policy product of the administrative/ legal/security dispensation of the Union Territory of J&K.

18. While the core policy purpose founding the new Scheme of 2022, by all implication and inferences, stayed same as that of the Scheme 1995 but certain structural and operational amends/alterations with respect to Village Defence Groups (VDG) have been brought into play. While in the old Scheme of 1995 a Village Defence Group comprised and consisted of SPO and other

members bearing strength of 15 in each group, whereas under the new Scheme of 2022, the Village Defence Group is envisaged to comprise of Village Defence Guards, 15 maximum intake number, bracketed in two category as follow:

"(a) V1 Category: The persons who shall be heading/ leading/ coordinating the village defence guards in the more vulnerable areas who shall be paid ₹4500 per month.

(b) V2 Category: The persons who are members of the Village Defence group on voluntary basis who shall be paid uniform rate of ₹4000 per month."

19. The salient feature of the new Scheme of 2022 is that the concept of SPO designation and deputation does not find mention in the Scheme of 2022. The mention of SPO is conspicuously absent in the entire Scheme of 2022. The Village Defence Groups which used to be headed by the SPOs under the Scheme 1995 are now intended to be headed by Village Defence Guard of V1 Category. Under the new Scheme of 2022, persons under V1 category are to be assigned the role of heading/leading/ coordinating the Village Defence Group but without being given any responsibility and role of SPOs as was in the earlier Scheme 1995. Further, under the Scheme of 1995 the monthly remuneration was mentioned only in respect of the SPOs, but under the new Scheme of 2022, remuneration has been meant to be given to all the members of the Village Defence Group, who are now categorized as V1 and V2 as mentioned above.

20. From the above, it is very clear that with the new Scheme of 2022, the Government has taken a studied decision to dispense with the tag of SPO to the head/ leader of the Village Defence Group and further not to assign any power and authority of an SPO to such leader of the Group whose identification is now to be as a V I Category

member to be given remuneration of Rs.4500/- per month, and at the same time remuneration also to be given to all the other members of the Village Defence Group at the rate of Rs. 4000/- per month. Obviously, there is financial rationalization which has gone into weaving of the new Scheme of 2022 with higher financial stakes as under the new Scheme 14 volunteers of the Group are to get Rs. 4000/- per month and one head Rs. 4500/- per month meaning thereby Rs. 64,500/- overhead expenses for per group for every month of its working whereas under the Scheme 1995 as against one head getting Rs. 18000/- per month while rest of the group of 14 members used to get not even a penny.

21. **The said Scheme 1995** was revised by the Government with a new scheme known as "Village Defence Guards Scheme (VDGS)-2022"(hereinafter referred to as the Scheme of 2022) which was notified by the Government on 14.08.2022, and which came into operation with effect from 15.08.2022, which was the subject matter of challenge before the Writ Court in WP(C) No. 2883 of 2022 and a batch of writ petitions.

The Writ Court allowed the writ petitions by a common judgment and order dated 06.04.2023 by setting aside and quashing the aforesaid Scheme of 2022 and directing the authorities to treat the SPOs as having appointed under the Village Defence Group of 1995 with all powers and privileges of SPOs appointed under the Police Act, and also directing for payment of Rs.4000/- to the other members of the Village Defence Group.

22. As with new Scheme of 2022 coming into play by bringing to closure the Scheme 1995, the dispensation under Scheme of 1995 also came to be wound up in particular the entity of SPO as Clause 3 of the new Scheme of 2022 states that arrangements made pursuant to the

earlier scheme to be henceforth governed by the new Scheme. It is this transition which left disturbed the writ petitioners who were otherwise deputed as SPOs and reckoned themselves as quasi permanent SPOs whose claim to be so held and reckoned was to overreach the Scheme 1995. This led to the filing of the writ petitions in series as mentioned in opening para herein challenging the legality of the new Scheme of 2022. Writ Petition WP (C) No. 2883 of 2022 came to be lead case to be disposed of vide the common impugned judgment. The reliefs claimed in the said writ petition were as follows:

"i) CERTIORARI; thereby quashing the revised scheme of Village Defence Committees as was communicated (Annexure 1) by the respondent no. 1 to respondent no. 2.

ii) MANDAMUS; by directing the respondents not to disturb the present status of the petitioners as SPOs and pay them the honorarium at the same rate as being paid to the other SPOs of the Police Department.

iii) MANDAMUS; by commanding the respondents not to disarm the petitioners

iv) MANDAMUS; by commanding the respondents not to disarm the petitioners

v) MANDAMUS ; by commanding the respondents to frame a policy of regulation of petitioners as SPOs in the Police Department of the State.

An additional relief may be also considered in favour of the petitioners. "

23. In the light of the aforesaid position obtaining, and after considering the rival contentions of the parties, the Ld. Single Judge granted the reliefs as reproduced afore, and while doing so the Ld. Single Judge has structured the observations and conclusions as gatherable from para 19 onwards of the impugned judgment. Salient observations as found in para 20, 21, 22 may be summarized as follows:

(i) Though, the head of the Village Defence Group is not now designated as SPO nor the powers of SPO have been specifically conferred on him, yet the duties and responsibilities put on his shoulders are same as were envisaged in the Scheme of 1995.

(ii) He continues to have authority to use police wireless messages for passing and receiving messages having a bearing on his charter of duties.

(iii) The aim, object and purpose sought to be achieved by the new Scheme of 2022 appears to be twofold:-

a) To grant the benefit of remuneration to the other members of the Village Defence Group, who have been clamouring for adequate remuneration for the services they were rendering for the defence of the village and have supplemented the efforts of the security agencies;

b) To clip the wings of the petitioners, who, by being heads of the Village Defence Groups, have been enjoying the status of SPOs and powers and privileges attached with such office.

(iv) The Scheme of 2022 does not envisage any change or alteration in the policy of the Government. The policy of the Government continues to remain the same as was envisaged under the Scheme of 1995 i.e., to set up Village Defence Groups to supplement the efforts of the Security agencies in protecting the life and liberty of the citizens from the violent attacks by the militants and nefarious activities of the anti-national elements.

(v) The entire effort seems to have been made by the appellants to somehow denude the petitioners of their status as SPOs and bring down their remuneration from Rs. 18000/- to a fixed amount of Rs. 4500/-.

(vi) While the action of the appellants to provide Rs. 4000/- per month to each of the members of the Village Defence Group was appreciated, the Court found it difficult to countenance the action of the appellants in bringing down the status of the petitioners only with an aim to denude them of their legitimate dues. Thus, according to the writ court,

the action, to the extent it was challenged in these petitions, was on the face of it *mala fide*, arbitrary and utterly misconceived.

(vii) The Ld. Single Judge, however, was not fully convinced that under the Scheme of 1995, the petitioners had a vested right either to continue as SPOs indefinitely or to have unaltered terms and conditions of their engagement. The writ court observed that the appointment of the petitioners made under the Scheme of 1995 was governed by the terms and conditions laid down in the said Scheme. The writ court also observed that the Scheme of 1995 was issued in the exercise of executive powers of the State and this the appellants were well within their power to withdraw, modify or alter the Scheme.

(viii) The Ld. Single Judge also observed that if the appellants, for good reasons, decide to withdraw the Scheme and dispense with the arrangement made thereunder, the Court may not find any fault with such a decision and the appellants may also be well within their right to alter the terms and conditions of appointment of the petitioners even if such alteration or modification of the terms and conditions adversely affects the petitioners.

(ix) The Ld. Single Judge also observed that policy decisions of the Government, this Court are not to be readily interfered with unless such decisions are found to be *mala fide*, arbitrary and violative of Article 14 of the Constitution of India and the appellants, being a model employer, are expected to act in a fair, just and transparent manner when it deals with the rights and privileges of its citizens guaranteed by Constitution of India.

(x) The Ld. Single Judge found that the Scheme, insofar as it denudes the petitioners of their status as SPOs and consequently reduced their remuneration/honorarium from Rs. 18000/- per month, which was being received by them on par with the SPOs working in the Police Stations and Special Operation Groups of the J&K Police, to a sum of Rs. 4500/- per month, was not only an arbitrary and colourable exercise of powers but is actuated by *mala fide* considerations.

(xi) The Ld. Single Judge accordingly was of the view that it was not necessary to delve into rival contentions of the parties as to whether the petitioners had a vested and accrued right to continue with their appointment as SPOs and power and privileges attached with such appointment.

BROADER CONTENTIONS OF THE APPELLANTS:

24. It has been submitted that, *first of all*, since the new Scheme of 2022 is an embodiment of a policy of the State, in absence of arbitrariness or *malafide found* writ large, a policy decision of the State could not have been interfered with by the Writ Court by setting aside/quashing the same in exercise of the writ jurisdiction under Article 226 of the Constitution of India. Accordingly, nullification of the scheme by the impugned judgment cannot be justified. On this count alone, the impugned judgment is liable to be suspended.

25. *Secondly*, it has been also submitted that while the Ld. Single Judge has set aside and quashed the Scheme of 2022, and by a judicial command retained the posts of SPOs when these posts do not find place any longer in the new Scheme of 2022. Further, by a judicial order, the writ petitioners are directed to be retained as SPOs by giving Rs.18000/- per month, though, there is no such provision for SPOs under the new Scheme for payment of any remuneration of Rs.18000/- to any member of the Village Defence Group.

26. It has been contended that while the Ld. Single Judge quashed the old Scheme of 1995, yet directed the Government to implement parts of it as far as the retention of the writ petitioners as SPOs, and payment of monthly remuneration at the rate of Rs.18000/- to them, are concerned.

27. It has been also contended that by the impugned judgment, part of the new Scheme of 2022, which was quashed, was directed to be implemented for payment of remuneration to other members of the Village Defence Group at the rate of Rs.4000/- fixed there under.

28. Accordingly, it has been submitted that by the impugned judgment the Ld. Single Judge is seeking the appellants to have admixture of portions of the old Scheme of 1995 with provisions of the new Scheme of 2022 which is not permissible at all as it would amount to judicial legislation.

29. *Thirdly*, it has been submitted that the crux of the new Scheme of 2022 pertains to maintenance of the security of the State and as such a constitutional Court should be very slow and circumspect in intruding and interfering much less quashing the same. It has been submitted that by quashing the Scheme of 2022, the security of the State may be compromised and become casualty and such the impugned judgment should be stayed.

30. *Fourthly*, it has been submitted that the new Scheme of 2022 is essentially voluntary in nature as participation or being a member of the Village Defence Guard is essentially by way of voluntary act/option and there is no conscription or compulsion which would obligate the State to provide remuneration as demanded by the respondents. Thus, in absence of any obligation on the part of the State to provide minimum wages for the services rendered by the respondents under the Scheme, any direction by the Court to the State to pay remuneration as demanded by the respondents would not be permissible.

31. *Lastly*, it has been submitted that the respondents under the Scheme 1995 were never appointed as SPOs but were merely given

the power of SPOs and by that identification cannot claim parity with the SPOs appointed under the Police Act so as to demand the remuneration given to them.

32. Ms Monika Kohli, Ld. Sr. AAG in support of her contentions referred to the decision of the Hon'ble Supreme Court in **BALCO Employees Union (Regd.) vs. Union of India and Ors., (2002) 2 SCC 333, State of NCT Vs. Sanjeev (2005)5 SCC 181 and Bharat Sanchar Nigam Ltd. and Others Vs. Tata Communications Ltd.etc., 2022 SCC Online 1280.**

BROADER CONTENTIONS OF THE RESPONDENTS (WRIT PETITIONERS):

33. Per contra, it has been submitted by the Ld. Senior Counsel Mr. P. N. Raina, appearing for the respondents that the impugned judgment does not call for any interference, much less suspending the same during dependence of this appeal.

34. It has been submitted that the Ld. Single Judge has rightly quashed the new Scheme of 2022 since the same was not in consonance with earlier judgments rendered in the writ petitions filed by the respondents/ writ petitioners.

35. It has been further submitted that even if it is a policy decision, as contended by the appellants, yet this is a policy decision taken by way of executive action which could not have the effect of taking away accrued rights and that too with retrospective effect.

36. It has been submitted that policy decisions can certainly be taken by way of legislative action with retrospective effect. However, when any policy decision is taken by way of an executive action, it cannot be taken with retrospective effect. It has been submitted that while the

impugned Scheme of 2022 was notified on 14.08.2022 which came to operation w.e.f. 15.08.2022, it had the effect of taking away with retrospective effect the rights accrued to the writ petitioners by virtue of the order dated 01.06.2022 passed in WP(C) No. 3262 of 2019.

37. It has been submitted that the SPOs had been functioning for the last more than two decades having been appointed as such and were getting a salary of ₹18,000 per month as revised from time to time, having thus vested a settled status in them and as such it cannot be said at this stage that they were not appointed as SPOs.

38. It has been submitted that the new Scheme of 2022 is patently arbitrary, mala fide, and also discriminatory. It is arbitrary to deny the the respondents the benefits which they were enjoying for the last more than two decades in running. It is also mala fide, as the new Scheme was made contrary to the directions of the Writ Court to the appellants not to pressurise the SPOs to share their honorarium, thus allowing them to enjoy the monthly honorarium of ₹18000/- . According to the respondents, the new Scheme of 2022 is discriminatory as writ petitioners though still continue to discharge similar duties and functions as the SPOs appointed under the Police Act, but remained deprived of similar status and remuneration given to those appointed in the Police Department. Hence, it is submitted that quashing of the new Scheme of 2022 by the impugned judgment does not warrant any interference from this Court.

39. In support of the submissions of the respondents, the following decisions have been relied upon.

1. ***State of NCT of Delhi v. Sanjeev, (2005) 5 SCC 181.***
2. ***BSNL and Ors. v. Tata Communications ltd. etc., 2022 SCC Online SC 1280.***

OUR VIEW:

40. We now proceed to examine the prayer for interim suspension of the impugned judgment by keeping in mind the principles governing grant of temporary/interim stage relief, which are prima facie case, balance of convenience, and irreparable injury. We also consider the element of public interest involved and by keeping in mind the limitations of the judicial review jurisdiction in matters of public policy, that too involving high sensitive security scenario of the State.

41. As noted above, the Ld. Single Judge has literally derailed by setting aside the entire Scheme of 2022 at the asking of one who used to be just the head of 15 member Village Defence Group enjoying the status of SPO. It is an admitted position on all sides including at the end of the learned Single Judge that the new Scheme of 2022 is a product of a policy decision taken to replace the Scheme 1995 to carry forward the mechanism to combat terrorism and strengthen the security of the country. From the words used in the Notification dated 14.08.2022 in supersession of the earlier Government Order No.Home-293 of 1995, formulating Scheme of 1995, it is quite evident that the Scheme 1995 has been taken off with coming of new Scheme of 2022, and it is not that the Scheme 1995 was just modified or altered prejudicially to the position of the respondents.

42. Ordinarily, as also observed by the Ld. Single Judge, the scope of judicial review of policy matters is very limited.

In **DDA v. Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672**, it is observed by the Hon'ble Supreme Court as follows:

"65. Broadly, a policy decision is subject to judicial review on the following grounds:

(a) *if it is unconstitutional;*

- (b) *if it is de hors the provisions of the Act and the regulations;*
- (c) *if the delegatee has acted beyond its power of delegation;*
- (d) *if the executive policy is contrary to the statutory or a larger policy ."*

Thus, it is now well settled that the scope of judicial review is very limited, and it is only when a particular policy decision is found to be against a statute or offends any of the provisions of the Constitution or is manifestly arbitrary, capricious or mala fide that a Court would interfere with such policy decisions (See also **Federation Haj PTOS of India v. Union of India, (2020) 18 SCC 527**).

The Courts also have taken view that when examining decisions related to academic, contractual, or economic matters, the Courts should be very circumspect. (See **Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 87; Reepak Kanwal v. Union of India, (2021) 9 SCC 251 et al.**)

The Supreme Court in **State of Maharashtra v. Bhagwan, (2022) 4 SCC 193** also observed that the Courts should refrain from interfering with the policy decisions, which might have a cascading effect having financial implications.

When it comes to any policy, having a bearing on national security, we stay better advised to bear in attention the cautionary observation of the Hon'ble Supreme Court that "Courts are indeed conscious of the limitations which issues of national security and policy impose on the judicial evolution of doctrine in matters relating to the Armed forces".(See **Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469**).

43. It is strenuously argued by the appellants that since the new Scheme of 2022 directly relates to a policy decision involving security

related with attending financial aspect of the State, the Court obviously should be well on its guard in interfering with the same just by force of its own perception which may howsoever be well meaning but can not partake the position of expertise which goes into formulation of the particular policy at the end of the Government who is the best at its duty and domain. We are also of the view that the impugned judgment would be required to be examined very carefully from that perspective as it involves matters directly related to the security and integrity of the nation.

44. We would be also required to examine the contention of the appellants that the Scheme does not suffer from any arbitrariness, mala-fide, discrimination nor involves any violation of Constitutional or statutory provision and as such it does not warrant interference from the court contrary to the finding of the Ld. Single Judge to that effect.

45. We have taken note of the strenuous bolstering argument advanced by the learned senior counsel for the respondents that the Scheme of 2022 is mala fide and arbitrary, as held by the learned Single Judge for the reason that it was actually carried out to nullify the effect of the judicial pronouncements made earlier and to deprive the SPOs of their entitlements in terms of remuneration and status, powers and privileges. This submission, however, has to be examined in the light of the corresponding observations made by the Ld. Single Judge that the SPOs have no vested right. We have noticed that while the Ld. Single Judge had set aside and quashed the Scheme of 2022 holding that it had the effect of denuding the writ petitioners as heads of the Village Defence Groups of their status as SPOs and the power and privileges earlier conferred on them by the Scheme 1995, the Ld. Single Judge has directed the appellants to treat the respondents as SPOs having been so appointed under the Village Defence Group Scheme of 1995

with all powers and privileges, in particular, in respect of payment of wages/honorarium and that they shall continue to receive remuneration as is being paid to their counterparts working in the J&K Police Department, though there is no more any reference to SPOs under the new Scheme of 2022. According to the appellants, this direction virtually amounts to revival of the position of SPOs which are no more in existence under the new Scheme of 2022. This is a very important issue which requires to be examined.

46. Further, the Ld. Single Judge has directed the appellants to provide remuneration to other members of the Village Defence Group in terms of the Scheme of 2022, after quashing it, which according to the appellant is a contradiction in itself. It has been submitted by the appellants that this direction virtually amounts to judicial legislation by fixing the remuneration and directing payment thereof, in absence of any such decision by the authority after such executive decision in the form of the Scheme of 2022 has been quashed by the Ld. Single Judge. It has been thus, submitted that the by the impugned order, the Ld. Single Judge has edited and blended parts of the two schemes, one which has been superseded and another which has been quashed by the Court, for issuing certain directions for payment of honorarium which otherwise falls within the domain of the executive. Whether, by a judicial order a policy decision could be refashioned is an aspect which will require our serious examination and consideration.

47. There is another very important aspect to be considered. To what extent a Court can go in judicial review of a policy matter which directly pertains to security of the State as in the present case, is a matter which requires careful consideration in the light of the submissions advanced by the appellants.

48. We are of the opinion that the contentions of the appellants are not undeserving of a detailed consideration of this Court in Letters Patent Appeal and as such we are of the view that the appellants have been able to make out a *prima facie* case for directing interim stay of the impugned judgment.

49. We have also considered the issue of grant of interim relief from the perspective of irreparable injury which may be caused to either of the parties. The appellants have contended that if the appellants are to hold the respondents as SPOs working and thus to pay them honorarium at the monthly rate of Rs.18000/- there would be huge strain on the exchequer as the new Scheme envisages the Government to pay the other members of the Village Defence Group as well and not only to the Heads who had been enjoying the remuneration earlier while the other equally placed and serving other members of the Village Defence Group were getting nothing. According to the appellants, if the Government is to pay Rs. 18000/- per month to all the respondents by deeming them to be SPOs and also Rs.4000/- to all the other members of the Village Defence Guards, it would have unworkable serious financial implications beyond the budgetary provisions and thus, cause failure of the Scheme of 2022.

50. This contention, however, is being countered by the respondents/ writ petitioners by submitting that the Government can certainly afford to pay the honorarium @ Rs. 18000/- and if the appellants are successful, these amounts can certainly be recovered from the respondents/ writ petitioners. Certainly, if the aforesaid amount of Rs.18000/- is now paid to the respondents, as directed by the Ld. Single Judge, making recovery from them in case the appellants succeed is a possibility, however, though it is a legally possible

recourse, yet in our opinion it would not be expedient, or desirable, to seek recovery from the respondents at a later stage, as seeking to recover from them once they are given the monthly honorarium of Rs. 4500/- will cause serious hardships. We are skeptical at our prudence's end that such a recovery can be effected after such honorarium has been used by the respondents. We wonder how they would be able to refund such extra amounts. It appears to be more of a theoretical proposition rather than a realistic one. On the other hand, the respondents/ writ petitioners can be certainly paid the higher honorarium along with arrears if they are ultimately successful in the litigation. Therefore, under the circumstances, the submission of the appellants that the Scheme of 2022 would suffer an irreparable adverse effect appears to be well meaning.

51. We may also consider what would be the consequences if the impugned judgment is not stayed in the meantime and comparative inconvenience and mischief that may be caused to the appellants. We have already discussed about the issue of irreparable loss and injury that may be caused to the appellants if the impugned judgment is not stayed. Since the respondents/writ petitioners can be duly compensated by paying the higher honorarium, in the event they are ultimately successful, we are of the view that as far as the comparative inconvenience is concerned, the appellants will suffer more from it, rather than the respondents/ writ petitioners and as such it can be said that the balance of convenience is tilted in favour of the appellants.

52. In this regard, we have taken note of the observation made by the Ld. Single Judge that the Ld. Single Judge was not fully convinced that under the Scheme 1995, the respondents had a vested right either to continue as SPOs indefinitely or to have an unaltered terms and conditions of their engagement. In that context the submission

of the appellants that if the Ld. Single Judge was of the view that the petitioners had no vested rights, how could a direction be issued by the writ court for continuing the status, powers, and privileges of SPOs to the respondents even after the position of SPOs does not find mention under the new Scheme of 2022, deserves serious consideration from us. The submission of the appellants that the Ld. Single Judge has not been consistent in his views and observations would be required to be examined in this appeal.

53. In assessing the balance of convenience, we have also kept in mind that the issues raised in the appeal in the context of UT of Jammu and Kashmir, which is still not out of woods in the context of its security issues and problems, have a direct bearing on Scheme of 2022 getting non starter and any uncertainty which may be caused in the implementation of the impugned judgment ought to be avoided. We are equally conscious that these issues ought to be resolved at an earliest, though we have been informed at the Bar that Letters Patent Appeal in respect of other connected writ petitions disposed of by the impugned common judgment have been filed, yet these are not likely to be disposed of very soon, as all the parties need to be notified and heard.

54. Thus, keeping in mind all the factors and circumstances and legal issues of seminal importance involved, in the context of a security sensitive part of the Country and weighing the rival contentions, we are of the opinion that interest of justice would be better served if the impugned judgment dated 06.04.2023 passed in W.P.(C) No. 2883 of 2022 and connected writ petitions therewith by the Ld. Single Judge, is stayed in terms of its operation during the pendency of this Letters Patent Appeal in as far as W.P.(C) No. 2883 of 2022 is concerned.

We, accordingly, order that the impugned judgment dated 06.04.2023 passed in W.P.(C) No. 2883 of 2022 and other connected petitions by the Ld. Single Judge, shall remain stayed till the final adjudication of this Letters Patent Appeal.

List the appeal again on 7th June, 2023 along with the record of the writ petition.

(RAHUL BHARTI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Srinagar
12.05.2023

Whether the order is reportable:

Yes / No

Whether the order is speaking :

Yes / No