

Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 1068/2021
(S.W.P. No.1240/2017)

Thursday, this the 22nd day of April, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

1. Ali Mohd. Lone, aged 55 years
s/o Ab. Ahad Lone
r/o Ushkars Baramulla
2. Mohd. Ashraf Sheikh, aged 45 years
s/o Mohammad Shaban Sheikh
r/o Heewan Baramulla

..Applicants

(Mr. R A Bhat, Advocate)

VERSUS

1. State of J&K through
Commissioner-cum-Secretary to Govt.
Higher Education Department,
Civil Secretariat, Srinagar/Jammu
2. Commissioner Secretary to Govt.
Administrative Department
Civil Secretariat, Srinagar/Jammu
3. Commissioner Secretary to Govt.
Finance Department,
Civil Secretariat, Srinagar/Jammu
4. Director Colleges Higher Education Department,
Srinagar
5. Principal Govt. Degree College, Baramulla

..Respondents

(Mr. Amit Gupta, Additional Advocate General)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:



The applicants were appointed in various posts in the Education Department on *ad hoc* or temporary basis. The Jammu & Kashmir Civil Services (Special Provisions) Act, 2010 (for short 'the Act') provides for regularization of such employees on completion of particular length of service. In case of the applicants, an order was passed on 24.10.2013 regularizing their services with effect from the date of the order. The relaxation as to the upper age limit was granted in their favour. They filed SWP No.1240/2017 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 24.10.2013. According to them, they were entitled to be extended the benefit of regularization from the date on which they completed seven years of *ad hoc* service, retrospectively, which, in their case, will be from 25.03.1991 and 01.04.1994 respectively. They have also challenged the 1st proviso of Section 5 of the Act as *ultra vires* and unconstitutional.

2. The applicants contend that the proviso, in so far as it mandates that the regularization shall be prospective, is illegal and arbitrary. They further contend that in his recommendations to the Department, the Principal, Government College for

Women, Baramulla has indicated the dates, with effect from which the regularization must be made and the same was not taken into account.



3. The respondents filed a detailed counter affidavit. They contend that the Act is beneficial in nature, and a conscious decision was taken by the legislature, to regularize the service with prospective effect. It is stated that no employee, appointed on *ad hoc* or contractual basis, has a vested right to be regularized and once the benefit is conferred by the Act, it has to be taken, together with the conditions incorporated therein.

4. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.1068/2021.

5. Today, we heard Mr. R A Bhat, learned counsel for applicants and Mr. Amit Gupta, learned Additional Advocate General.

6. The applicants were initially engaged on contractual or *ad hoc* basis, on different dates. The Act provides for regularization of the services of the employees so engaged. Section 5 thereof reads:



“5. Regularization of ad hoc or contractual or consolidated appointees.— Notwithstanding anything to the contrary contained in any law for the time being in force, or any judgment or order of any court or tribunal, the ad hoc or contractual or consolidated appointees referred to in Section 3 shall be regularised on fulfilment of the following conditions, namely:

- (i) that he has been appointed against a clear vacancy or post;
- (ii) that he continues as such on the appointed day;
- (iii) that he possessed the requisite qualifications and eligibility for the post on the date of his initial appointment on ad hoc, or contractual or consolidated basis as prescribed under the recruitment rules governing the service or the post;
- (iv) that no disciplinary or criminal proceedings are pending against him on the appointed day; and
- (v) that he has completed seven years of service as such on the appointed day

Provided that the regularization of the eligible ad hoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter, but before such regularization.

Provided further that any ad hoc or contractual or consolidated appointee who has not completed seven years service on the appointed day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act.”

7. From the perusal of the same, it is clear that the legislature has taken a conscious decision to extend the benefit of regularization prospectively. The challenge to the proviso was rejected by us in several cases. A citizen can get benefit under a beneficial legislation, with the conditions attached thereto. Many



a time, the benefit itself become untenable without the condition. In case, the *ad hoc* employees, were to have been regularized with effect from the date of their initial engagement, the legislature may not have thought it fit to provide for regularization at all from the point of view of financial implications and the inter se seniority with the regularly appointed employees. Added to that, the applicants are not able to cite any provisions of law or a binding precedent, which has the effect of nullifying the proviso under Section 5 of the Act.

8. What is more important in the instant case is that the regularization of the applicants was possible only on relaxation of the maximum age limit. It is rather startling that the relaxation was in the range of 13 to 16 years. For all practical purposes, the backdoor appointments, without following the prescribed provisions, that too, by granting the relaxation of age to the extent of more than a decade, are totally unimaginable. This, at a time, when thousands of qualified persons are languishing without any appointment.

9. The recommendations of the Principal, Government College for Women, Baramulla, can be only for the sake of information. It is not for him, to indicate the manner in which the regularization is to be done. It is for the concerned authority to pass orders in accordance with the relevant provisions of law.



10. Another contention of the applicant is that the respondents have delayed the process of regularization. Here again, it is not a case where the applicants were appointed with full qualifications against the cadre posts. They were over aged even when they were inducted into service. The Hon'ble Supreme Court in **Secretary, State of Karnataka & others v. Umadevi & others**, (2006) 4 SCC 1 has categorically held that the question of regularization would arise only when the candidate is otherwise qualified and eligible. The applicants were totally ineligible when they were inducted into service and it is only on granting the relaxation of more than a decade in some cases, that they became eligible.

11. Under these circumstances, it cannot be said that the applicants have any right for regularization with effect from any date, anterior to the one on which the impugned order was passed.

12. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 22, 2021
/sunil/rk/dsn/