HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

LPA(SW) D-31/2011

Rishi Kumar Barbwa & Others
Vs.
State of J&K and Ors

Coram:

Hon'ble Mr. Justice F. M. Ibrahim Kalifulla, Judge.
Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.

Appearing Counsel:

For Appellant(s) Mr. Rohit Kapoor, Advocate.
For Respondent (s) Mrs. Neeru Goswami, Dy. A. G.
Mr. S. K. Shukla, Advocate.

i) Whether to be reported in Press, Journal/Media : Yes/No
ii/ Whether to be reported in Digest/Journal : Yes/No

Per- Kalifulla-J

1. This appeal is directed against a common order of the learned Single Judge dated 04.11.2010 passed in SWP no. 193/2010 and SWP no. 2309/2009.

2. The appellant was the petitioner in SWP no. 193/2010 while as 7th respondent was the petitioner in SWP no. 2309/2009. The issue concerns the engagement of teaching guide under the scheme of Rehbar-e-Taleem in Middle School, Sajwal falling in educational zone Jourian. There was an advertisement in notification no. 1 dated 14.02.2009, calling for applications by the respondent-authorities for

engagement of teaching guide under the RET scheme. The petitioner and the 7th respondent are stated to have applied for said engagement. In the select panel prepared by the Village Level Committee concerned on 24.02.2009, the name of the 7th respondent figured at serial no. 1 and the appellant's name figured at serial no. 2. After the panel was prepared, the appellant is stated to have preferred SWP no. 900/2009 with a plea that the select panel was not made keeping in view the mandate of Government Order no. 288-Edu of 2009 dated 08.04.2009. Thereafter a fresh panel was prepared and, according to the appellant, his name was shown as selected but yet he was not allowed to join.

3. Be that as it may, the 7th respondent, who got impleaded in SWP no. 193/2010, contended that after the preparation of the first panel dated 24.02.2009, in which her name figured at serial no.1, when she approached the authorities for issuance of engagement order, they declined and that another panel came to be issued in which her name did not appear. The 7th respondent, therefore, contended that when the selection was made pursuant to the notification dated 14.02.2009,

the same cannot be altered, based on subsequent G.O. no. 288-Edu dated 08.04.2009.

4. The 7th respondent, therefore, contended that the subsequent panel prepared in violation of the prescription contained in notification no. 1 of 2009 dated 14.02.2009, was required to be set aside.

5. By the impugned order the learned Single Judge, by following the decisions of Hon'ble Supreme Court, reported in (1990) 3 SCC 157, *N. T. Devin Katti and ors vs. Karnataka Public Service Commission and ors* and AIR 1994 SC 55, *K. Narayana vs. State of Karnataka*, held that the amendment sought to be introduced in Government Order no. 288-Edu of 2009 dated 08.04.2009 to the prescription contained in notification no. 1 of 2009 dated 14.02.2009, cannot be allowed to operate and consequently the 7th respondent, who was considered along with other candidates on the basis of the eligibility criteria as specified in the notification dated 14.02.2009 and whose name was recommended at serial no. 1 in the select panel dated 24.02.2009 on merits, was entitled to succeed. Consequently learned Judge allowed SWP no. 2309/2009 and dismissed SWP no. 193/2010.

6. Assailing the order of learned Single Judge, Mr. Rohit Kapoor, learned counsel appearing for the appellant, fairly stated before us that the proposition laid down by the Hon'ble Supreme Court in the decision reported in (1990) 3 SCC 157 and AIR 1994 SC 55, to the effect that the consideration of a candidate for selection can be only in accordance with the terms and conditions contained in the advertisement, that a candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement as his rights gets crystallized on the date of publication of the advertisement, unless there was any retrospective amendment to the rules itself during the pendancy of the selection, only in which event the selection can be held in accordance with the amended rules. The Hon'ble Supreme Court made it clear that a candidate, on making application for a post pursuant to an advertisement, does not acquire any vested right of appointment but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms and conditions in the advertisement, he does acquire a vested right of being considered in accordance with the

rules, as they existed on the date of advertisement. The learned counsel, therefore, preface his submission by stating that, accepting the above position in law, his only submission before this Court was that since the very advertisement dated 14.02.2009, or for that matter the subsequent G.O. no. 288 dated 08.04.2009, were not based on any statutory rule or regulation, there was no applicable enforceable right either in the appellant or the 7th respondent to invoke the extra ordinary jurisdiction of this Court under Article 226 to seek for any relief. The learned counsel, therefore, contended that after there was total lack of jurisdiction for the writ Court to pass any orders, the relief, as granted by the learned Single Judge in the order impugned in this appeal, cannot be sustained. In support of his submissions learned counsel relied upon AIR 1954 SC 340, *Kiran Singh and Ors vs. Chaman Paswan and ors*, AIR 1967 SC 1753, *G. J. Fernandez vs. State of Mysore*, AIR 1959 SC 896, *R. Abdulla Rowther vs. State Transport Appellate Tribunal* and (1998) 9 SCC, 412, *Union of India and Ors vs. E. Merch (India)*.

7. As against the above submissions, Mrs. Neeru Goswami, the Deputy Advocate General and Mr. S. K. Shukla, Advocate, appearing for the respondents, contended that the claim of the 7th respondent was based on the constitutional right for engagement as teaching guide under RET Scheme, that when there was an attempt of infringement of the said right, which was violative of Article 14 of the Constitution, the 7th respondent was entitled to seek for protection of this Court by invoking Article 226 of the Constitution. The learned counsel contended that the scheme, which came in to vogue initially on 28.04.2000 at the insistence of the State Government, came to be subsequently replaced by Government Order no. 597 dated 02.06.2003 and then the scheme came to be implemented as part of the a welfare scheme under the Constitution, that the notification no. 1 of 2009 dated 14.02.2009 was only as part of implementation of the said scheme in the interest of public at large and while in the course of such implementation by the State administration when an infraction was noted, it was brought to the notice of this Court in order to set right the same, which this Court was

fully empowered to do and consequently the issuance of the writ, as prayed for by the 7th respondent in SWP no. 2309/2009, cannot be faulted.

8. Having heard respective counsel, at the very out set, we wish to note the submissions made before us by Mr. Rohit Kapoor, based on the above referred to decisions of the Hon'ble Supreme Court.

9. In AIR 1954 SC 340, the Hon'ble Supreme Court has held as under in paragraph 6:-

> "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

10. By relying on above statement of law of the Hon'ble Supreme Court, Mr. Kapoor would contend that though the point was not raised before the learned Single Judge but yet the appellant is entitled to focus the said issue before us.

11. The stand of the learned counsel cannot be questioned. We, therefore, proceed to examine the legal issue raised by the learned counsel.

12. In the decision reported in AIR 1967 SC 1753, *G. J. Fernandez vs. State of Mysore,* Hon'ble Supreme Court has dealt with a case where tenders were called for construction of the right bank masonry dam called " Hidkal Dam" by the Public Works Department, Irrigation Projects of the State of Mysore. The appellant before the Hon'ble Supreme Court challenged the grant of contract to respondent no.3 and prayed for quashing the resolution on the grounds (1) that the rules in the Public Works Department Code were not followed, and (2) that there was unequal treatment between various tenderers, which was in violation of Article 14 of the Constitution.

13. As far as the first ground was concerned, the question arose whether the Mysore Public Works Department Code consisted of statutory rules or not. The High Court held that they were followed by way of administrative instructions for the guidance of the department by invoking the executive powers of the State. The Hon'ble Supreme Court, therefore, considered

the question and held that if it had no statutory force, it conferred no right on anybody and tenderer cannot claim any right based on those administrative instructions. The Hon'ble Supreme Court ultimately held that the Code was mere administrative instructions and the breach of which would not give any right to any one to seek for any relief on that basis.

14. In the decision reported in AIR 1959 SC 896, the Hon'ble Supreme Court dealt with a case where the appellant before it, an operator of stage carriages in the District of Ramnad in Madras State, who was granted the route permit along with another person. The respondent nos. 3 and 4 in the Civil Appeal, whose claim was rejected by the Regional Transport Officer, approached the State Transport Appellate Tribunal which allowed their appeal. The grant of such permit was considered by the Original authority as well as the Appellate Tribunal, based on G. O. no. 1298 issued by the Government of Madras on 28.04.1956. The said Government Order inter alia contained provisions for allotment of marks to the applicants for permits under several heads. The allotment of marks in favour of the appellant and the

other grantee as well as the respondent nos. 3 and 4 before the Supreme Court was based on said G.O. The Hon'ble Supreme Court, among other issues, dealt with the question whether the directions contained in GO are executive or administrative orders and can be construed as statutory rules having the force of law and, and whether any violation of such directions contained in the GO would confer any legally enforceable right for a person to seek for redressal of such a grievance in the Court of law by way of writ petition. The Hon'ble Supreme Court held that the directions contained in the GO were merely executive instructions for the guidance of the transport authorities and that the said instructions are not in the nature of statutory rules, having any force of law and, consequently, there was no scope for issuance of writ of certiorari for violation of any stipulations contained therein.

15. In the decision reported in (1998) 9 SCC 412, *Union of India and ors vs. E. Merck (India)*, the Hon'ble Supreme Court has held as under in paragraph no. 2 and 3:-

> 2. We have indicated the only basis on which the claim for payment of interest was made in the writ petition filed under Article 226 of the Constitution, and on which the writ of mandamus was issued by the High Court. The question, therefore, is whether there was a foundation laid in the writ petition for issuance of a writ of mandamus.
>
> 3. Admittedly, there is no statutory basis for the claim of interest made by the respondent in its writ petition inasmuch as there is no provision in the statute imposing an obligation on the Revenue to pay interest on the amount refunded. The respondent's claim for interest was also not based on any other statutory provision."

16. From the principles laid down in the above referred to decisions relied upon by learned counsel, the position that emerges is that, mere executive instructions have no force of law and since they are non-statutory, violation of any such rule will not give any right to a person to seek for remedy by invoking the writ jurisdiction of this Court.

17. Keeping the above principles in mind, when we examine the other rulings of the Hon'ble Supreme Court, reported in AIR 1987 SC, 1353, *Collector Land Acquisition Anantnag and anr vs. Mst. Katiji and ors*, the Hon'ble Supreme Court, while dealing with a condonation

of delay application of a State, stated as under in paragraph no. 3(4) and 3(6):-

> "3(*4)*. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
>
> *3(6)*. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

18. In the decision reported in (2008) 12 SCC 481, *K. D. Sharma vs. Steel Authority of India and ors*, the Hon'ble Supreme Court explained the scope of jurisdiction of this Court under Article 226 by holding as under in paragraph no. 34:-

> **"34.** The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice……."

19. In (1999) 7 SCC 89, *Style (Dress Land) vs. Union Territory Chandigarh and anr*, the Hon'ble Supreme Court held as under in paragraph nos. 10, 11 and 12:-

> **10.** In the absence of the rules, the action of the respondents regarding imposition of the

terms and conditions of the lease including the enhancement of rent is required to be fair and reasonable and not actuated by considerations which could be termed as arbitrary or discriminatory. The Government cannot act like a private individual in imposing the conditions solely with the object of extracting profits from its lessees. Governmental actions are required to be based on standards which are not arbitrary or unauthorised.

11. Even the administrative orders and not (*sic* only) quasi-judicial are required to be made in a manner in consonance with the rules of natural justice, when they affect the rights of the citizens to the property or the attributes of the property. While exercising the powers of judicial review the court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous. The courts are more concerned with the decision-making process than the decision itself.

12. This Court in *Shrilekha Vidyarthi (Kumari)* v. *State of U.P.*[4] held that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rules of law, the system which governs us, arbitrariness being the negation of the rule of law. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of

> the State and 100exercise of all powers must be for public good instead of being an abuse of power. Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field. The State action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action as being arbitrary."

20. In Constitutional Bench decision (seven Judges) reported in (2002) 5 SCC 111, *Pardeep Kumar Biswas vs. Indian Institute of Chemical Biology and ors*, the Hon'ble Supreme Court has highlighted the range and scope of Article 14 and 16 and the extent to which the Court can interfere when it finds arbitrary or irrational act of the State. Paragraph nos. 9 and 10 are relevant for our purpose, which reads as under:-

> **"9.** The range and scope of Article 14 and consequently Article 16 have been widened by a process of judicial interpretation so that the right to equality now not only means the right not to be discriminated against but also protection against any arbitrary or irrational act of the State. It has been said that: (SCC p. 38, para 85)
>
> "Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."4

> **10.** Keeping pace with this broad approach to the concept of equality under Articles 14 and 16, courts have whenever possible, sought to curb an arbitrary exercise of power against individuals by "centres of power", and there was correspondingly an expansion in the judicial definition of "State" in Article 12."

21. In AIR 1987 SC 537, *The Comptroller and Auditor General of India and anr vs. K. S. Jagannathan and anr*, equivalent (1986) 2 SCC, 679, the Hon'ble Supreme Court has again explained the extent and width of the powers of this Court under Article 226 as under, in paragraph nos. 18, 19 and 20:-

> **"18.** The first contention urged by learned counsel for the appellants was that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. There is a basic fallacy underlying this submission—both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus. A writ of mandamus was the relief prayed for by the respondents in their writ petition. What the Division Bench did was to issue directions to the appellants in the exercise of its jurisdiction under Article 226 of the Constitution. Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government, throughout the territories in

relation to which it exercises jurisdiction, directions, orders, or writs including writs in the nature of *habeas corpus, mandamus, quo warranto* and *certiorari* or any of them, for the enforcement of the Fundamental Rights conferred by Part III of the Constitution or for any other purpose. In *Dwarkanath* v. *ITO*[2] this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "*to mould the reliefs to meet the peculiar and complicated requirements of this country.*" In *Hochtief Gammon* v. *State of Orissa*[3] this Court held that the powers of the courts in England as regards the control which the Judiciary has over the Executive indicate *the minimum limit* to which the courts in this country would be prepared to go in considering the validity of orders passed by the government or its officers.

19. Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions. Almost a hundred and thirty years ago, Martin, B., in *Mayor of Rochester* v. *Regina*[4] said:

"But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's

Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute: *Comyn's Digest,* Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable."

The principle enunciated in the above case was approved and followed in *King* v. *Revising Barrister for the Borough of Hanley*[5]. In *Hochtief Gammon case*[3] this Court pointed out (at p. 675 of Reports: SCC p. 656) that the powers of the courts in relation to the orders of the government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In *Padfield* v. *Minister of Agriculture, Fisheries and Food*[6] the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be

used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In *Halsbury's Laws of England,* 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus "is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring

> such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

22. In a very recent decision of the Hon'ble Supreme Court, reported in (2010) 6 SCC, 373, *Secretary, Cannanore District Muslim Educational Association vs. State of Kerala and ors*, the Hon'ble Supreme Court has made a detailed reference to the power of the writ Court in issuing writ of mandamus and the Supreme Court, while following the earlier decision reported in AIR 1987 SC 537 has held as under in paragraph nos. 31, 39 and 40:-

> **"31.** The exact observations of Lord Mansfield about this writ have been quoted in *Wade's Administrative Law*, 10th Edn. and those observations are

381still relevant in understanding the scope of mandamus. Those observations are quoted below:

"It was introduced, to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one.... The value of the matter, or the degree of its importance to the public police, is not scrupulously weighed. If there be a right, and no other specific remedy, this should not be denied. Writs of mandamus have been granted, to admit lecturers, clerks, sextons, and scavengers & c., to restore an alderman to precedency, an attorney to practice in an inferior court, & c." (H.W.R. Wade & C.F. Forsyth: *Administrative Law*, 10th Edn., pp. 522-23.)

39. This Court has also taken a very broad view of the writ of mandamus in several decisions. In *Comptroller and Auditor General of India* v. *K.S. Jagannathan*[10] a three-Judge Bench of this Court referred to *Halsbury's Laws of England*, 4th Edn., Vol. I, para 89 to illustrate the range of this remedy and quoted with approval the following passage from *Halsbury* about the efficacy of mandamus:

383"89. *Nature of mandamus*.— ... is to remedy defects of justice; and accordingly it will issue, to the end that

justice may be done, in all cases where there is a specific legal right and no specific legal remedy, for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual." (See SCC p. 692, para 19 of the report)

In SCC para 20, in the same page of the report, this Court further held: (*K.S. Jagannathan case*[10], p. 693)

"*20*. ... and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

40. In a subsequent judgment also in *Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*[11] this Court examined the development of the law of mandamus and held as under: (SCC p. 701, para 22)

"*22*. ... mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by

> charter, common law, custom or even contract.' (*Judicial Review of Administrative Action*, 4th Edn., p. 540). *We share this view*. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition." (emphasis supplied) (See AIR p. 1613, para 21.)"

23. Therefore, as the law has developed considerably and the recent decision of the Hon'ble Supreme Court have made the position clear that where, in relation to an action of the State in public employment, as it cries for justice for alleged arbitrariness or unreasonableness in implementing the scheme formulated by the State, it would be appropriate for this Court to set right any such arbitrary action by issuing writ as called for.

24. As against the decisions relied upon by the learned counsel for the appellant, which all related to mere

executive instructions issued by way of guidelines for its authorities to follow, in case where a welfare scheme formulated by the State in implementing of the said scheme, when action is being taken and the same runs counter to the scheme provisions and thereby arbitrariness is writ large, the writ Court cannot remain a silent spectator.

25. In the case on hand, the first scheme which was introduced on 28.02.2000, namely, Rehbar-e-Taleem Scheme, for promoting the decentralized management of elementary education, the object of which was to make up the deficiency of the staff at the elementary level of education, by engaging the services of Rehbar-e-Taleem as catalyst for quality education and to ensure the over all development of the personality of the children. As part of this, teachers were drawn from the local community, who would be able to provide immediate and constant interaction with the community to secure universal enrolment and to end the incidence of drop outs. As part of the scheme the eligibility criteria inter alia contained a stipulation that Rehbar-e-Taleem should be a permanent resident of the State and should belong to the village

where deficiency of staff is and in exceptional circumstances provided for drawing a person from an adjoining area. It also provided for payment of honorarium and a process of regularization. The said scheme was replaced by a subsequent Government Order no. 597 dated 02.06.2003. It is pursuant to part of implementation of the said scheme, the notification no. 1 of 2009 dated 14.02.2009 came to be issued, based on which the 7th respondent was considered and found as a meritorious, by placing her in serial no. 1 of the panel dated 24.02.2009. When the selection of 7th respondent came to be thus made, based on notification dated 14.02.2009, the question of consideration was whether the stipulation contained ion notification no. 1 of 2009 dated 14.02.2009 can be altered by issuing a subsequent Government Order, in G.O. no. 288-Edu of 2009 dated 08.04.2009, inasmuch as, the legal principle laid down by the Hon'ble Supreme Court, relied upon by the learned Single Judge in the decisions reported in (1990) 3 SCC 157 and AIR 1994 SC 55, cannot be fully applied to the facts and circumstances of the case. There will be no scope for finding fault with the conclusion of the learned

Single Judge in applying the ratio of above rulings while allowing SWP no. 2309/2009, preferred by the 7th respondent and dismissing SWP no. 193/2010 preferred by the appellant.

26. We, therefore, do not find any merit in the writ appeal. The writ appeal fails and same is dismissed.

No costs.

(***Mohammad Yaqoob Mir)*** **(F. M. Ibrahim Kalifulla)**
Judge **Judge**

JAMMU:
.03.2011
Anil Raina, Secy.