

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

SWP No. 2729/2014, CMA No. 4015/2013

c/w

SWP No. 1760/2014

SWP No. 1211/2014,

SWP No. 498/2014

SWP No. 174/2014,

SWP No. 14/2014

SWP No. 2846/2013 &

COA(S) No. 80/2014

Date of decision: 14.10.2014

Rajeev Singh Kotwal and ors.

vs.

State and ors.

a/w connected matters.

Coram:

***HON'BLE MR. JUSTICE JANAK RAJ KOTWAL-JUDGE***

**Appearing counsel:**

For petitioner (s):      Mr. M. K. Bhardwaj, Sr. Advocate, Mr. R. K. Jain, Advocate,  
Mr. M. A. Bhat, Advocate, Mr. N. D. Qazi, Advocate  
Mr. M. I. Sherkhan, Adv., Ms. Mumtaz Choudhary, Adv.  
Mr. Rahul Pant, Advocate and Mr. F. A. Natnoo, Advocate

For respondent(s):      Mr. H.A. Siddiqui, AAG, Mr. Arun Kumar, Advocate  
Mr. Nitin Bhasin, Advocate & Mr. Rajesh Bhushan,  
Advocate

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

1. In the year, 2007, State Government engaged all the unemployed Agriculture Graduates in the State as Rehbar-e-Zirat (for short ReZs). The Government has now formulated a policy for their regularization as Village Agriculture Extension Assistants. Dispute

involved in these seven writ petitions arises from the process of regularization.

2. All these writ petitions, as they involve same subject matter, have been clubbed and heard together and are being disposed of by this common judgment. I will first state the facts giving rise to these writ petitions, shorn of unessential.

- 2.1. Petitioners are Agriculture Graduates (B.Sc. Agriculture). They had completed their graduation in different years up to the year, 2006 and like many others were unemployed. In the year, 2006, State Government vide Cabinet decision No. 248/14 dated 23.10.2006 (for short Cabinet Decision dated 23.10.2006) took a decision to engage all the Agriculture Graduates unemployed as on October, 2006 under the Rehbar-e-Zirat Scheme and pursuant to this decision Principal Secretary to Government, Agriculture Production Department, issued Government Order No. 20-Agri of 2007 dated 06.02.2007 (for short Government Order dated 06.02.2007). This order in its substance reads:

**“Government Order No. 20-Agri of 2007  
Dated 06.02.2007**

Sanction is hereby accorded to the engagement of all Agriculture Graduates who were un-employed as on October, 2006 under the Rehbar-i-Zireat Scheme at a monthly stipend of

Rs. 1500/-. This scheme shall be effective from April, 2007 on the following terms and conditions:

1. All the unemployed Agriculture Graduates will register themselves with the Chief Agriculture Officers of their concerned district.
2. Candidates shall execute an agreement with Chief Agriculture Officer stating that they are not performing any government service whether on contract basis or ad hoc.
3. **This engagement shall not confer any right to claim a regular appointment.**

(Emphasis added)

It is further ordered that-

1. All Chief Agriculture Officers will send their list of such registered candidates and verified testimonials to their respective Directors. This process is to be completed by or before 28<sup>th</sup> of February, 2007. The Directors would have to clarify that the applicants have received their degrees from Institutions recognized by the ICAR.
2. The Directors Agriculture, Jammu/Kashmir shall thereafter forward these compiled lists to the Administrative Department by the end of 1<sup>st</sup> week of March 2007.

By order of Government of Jammu and Kashmir.

Sd/-

**Principal Secretary to Government  
Agriculture Production Department"**

2.2. In regard to the engagement under Rehbar-e-Zirat Scheme an officers' meeting was held on 15.03.2007 under the Chairmanship of the Principal Secretary, Agriculture Production Department. A copy of the Record Note of this meeting, issued vide No. Agri/NG/53/2002-Genl dated 20.03.2007, has been produced by the petitioners, which is not disputed. In

this meeting *inter alia* the Deputy Director (Central) Agriculture, Jammu informed that 1809 applications have been received in the Jammu Division and 1331 applications in the Kashmir Division. He also informed that some of the candidates have already attained the upper age limit of 37 years provided for normal mode of recruitment to a Government service. The Deputy Director also informed that there were 1200 Panchyat Halqas in Jammu Division and 1470 Panchyat Halqas in Kashmir Division. I may reproduce one of the items of the Record Note, which is relevant for consideration in these writ petitions:

“In case these candidates at some stages would come to be regularized in the Government service, the year of obtaining degrees would be considered and seniority maintained accordingly.”

- 2.3. Pursuant to and in furtherance of the Cabinet decision and the Government Order dated 06.02.2007, Government, after completion of the formalities, issued Agriculture Order No. 34/E of 2007 dated 24.03.2007, thereby engaging all the unemployed Agriculture Graduates as ReZs at a monthly stipend of Rs. 1500/. With the passage of time, the stipend was enhanced to Rs. 3000/, followed by Rs. 4500/ and finally to Rs. 10,000/ per month.

2.4. In the year, 2011, the Agriculture Production Department formulated a policy for the regularization of all the 2642 ReZs available with the Government to be designated as Village Agriculture Extension Assistants against the equal number of posts to be created for this purpose. State Government accorded its approval to this policy in Cabinet decision No. 139/18/2011 dated 04.08.2011 (for short Cabinet decision dated 04.08.2011) and pursuant to the Cabinet's approval Government Order No. 235-Agri of 2011 dated 10.08.2011 (for short Government Order dated 10.08.2011) was issued. This order in substance reads:

**“Government Order No. 235-Agri of 2011  
Dated 10.08.2011**

Sanction is accorded to the:

(i) Adoption of the policy formulated by the Agriculture Production Department for the regularization of 'Rehbar-e-Zirat' candidates, **placed as annexure to this Government Order;**

(Emphasis added)

(ii) Creation of 2642 posts of Village Agriculture Extension Assistance by the Agriculture Production Department in the pay band of Rs. 9300-34800, with the applicable grade pay of Rs. 4200, 881 in the first phase, 881 in the second and 880 in the third and final phase. However, these posts shall be utilized for the regularization of the eligible/ selected 'Rehbar-e-Zerat' candidates with effect from 1<sup>st</sup> April, 2014 (phase-I), 1<sup>st</sup> April, 2015 (phase-II) and 1<sup>st</sup> April, 2016 (phase-III).

The regularization process shall be implemented only after proper physical verification of the 'Rehbar-e-Zirat' candidates, presently engaged in the department. This

would also include the verification of their degree certificates obtained from various universities/institutions.

The Planning & Development Department shall provide funds for the initial two years in respect of each phase of regularization to meet the expenditure on account of salaries.

By order of Government of Jammu and Kashmir

Sd/-

**Principal Secretary to Government  
Agriculture Production Department"**

- 2.5. It may be underlined that the Regularization Scheme envisages that the 2642 ReZs working in the Agriculture Production Department shall be engaged in three phases; 881 candidates each with effect from 01.04.2014 and 01.04.2015 and the third batch of 880 candidates with effect from 01.04.2016.
- 2.6. The scheme formulated by Agriculture Production Department, which was approved by the State Cabinet and made part of the Government order dated 10.8. 2011 as its annexure, *inter alia* lays down 'Mode of Regularization' in its Clause 4 and 'Eligibility' in Clause 5. Clause 5 lays down the selection process and constitution of selection committees for making selection of suitable candidates restricted to the registered ReZs candidates only on the basis of provisions spelt out in the scheme and to make recommendation to the Government. Clause 5.4. is relevant for consideration in these writ petitions and

to read it in context of the scheme, I may reproduce  
Clauses 5.1 to 5.4 as under:

**“5. Eligibility:**

1. The registered ‘Rehbar-e-Zirat’ candidates would be regularized on the basis of a selection process restricted to the registered ‘Rehbar-e-Zirat’ candidates only.

2. The Selection Committees shall be constituted by the Government for this purpose, which will make selection of the suitable candidates, on the basis of provisions spelt out in the scheme and make recommendations to the Government on the basis of selection process.

3. The Selection Committee shall examine the cases of the registered ‘Rehbar-e-Zirat’ candidates for regularization with reference to the following:

(i) That the candidates were registered as ‘Rehbar-e-Zirat’ in terms of the Cabinet decision No. 248/14 dated 23.10.2006 before the cut off date prescribed for the purpose;

(ii) That the ‘Rehbar-e-Zirat’ candidates have rendered satisfactory and continuous service of seven years from the date of registration to be certified in writing by the Chief Agriculture Officer under whose charge these ‘Rehbar-e-Zirat’ are presently deployed.

(iii) That the ‘Rehbar-e-Zirat’ candidates continue to work as such without any break; and

(iv) That no disciplinary or criminal proceedings are pending against the appointees.

**4. The selection committee shall evaluate the candidates on the basis of qualifications for which weightage restricted to 100 points, as indicated below shall be given:**

(Emphasis added)

a)	B. Sc. Agriculture	75 points
b)	Post Graduation	15 points
c)	Super Specialization	10 Points

In the event the more than the desired number of candidates obtaining the same points, the candidate higher in age would be preferred.”

2.7. Before the Selection Committees were constituted and the selection process commenced, the Agriculture Production Department seems to have sought advice of Department of Law and Justice and Parliamentary Affairs *inter alia* on the point of giving weightage to higher qualification on pro rata basis and the Law Department vide its UO No. LD (Ser) 2013/76-Agri dated 13.09.2013 had given its opinion, which I may reproduce:

(1) “Possibility be explored for giving some advantage and preferential treatment to the candidates having passed the qualifying examination earlier comparing the candidates having passed it at a later stage by either determining the merit inter-se a particular batch or awarding certain weightage points to the said candidates depending upon the year of passing the qualifying examination.”

2.8. Ultimately came to be issued the Government order No. 378-Agri of 2013 dated 28.11.2013 (for short Government Order dated 28.11.2013) which, besides constituting the Divisional Level Selection Committees for finalizing the lists of ReZs to be regularized in three phases, lays down the terms of reference to these committees. **The terms of reference are:**



“1. The lists shall be prepared on the basis of **weightage to qualification obtained on or before cutoff date i.e. 31.10.2006** on pro rata basis in the descending order of merit of the Rehbar-e-Ziraat’s who have seven years of continuous and satisfactory service from the date of registration, which is to be certified in writing by the concerned CAO’s under whose charge these Rehbar-i-Ziraats are presently deployed with, due attestation of Director concerned.

(Emphasis added)

- 2 The period spent on study/project shall not be counted while arriving at 7 years of service to make the candidates eligible for regularization irrespective of nature of permission in this regard.
- 3 The committee shall verify the Rehbar-i-Ziraats’ degree certificate obtained from various universities/institution, along with their recognition status.
- 4 The committees shall furnish the final list within one month.”

3. Petitioners, as said above, are simple Graduates (B.Sc. Agriculture). They do not possess any higher qualification, Post Graduation or Super Specialization. They feel aggrieved by the selection process to the extent it provides for giving weightage to the higher qualification on pro rata basis. All of them, therefore, seek identical reliefs of:

- (i) Issue of appropriate writ, order or direction in the nature of **Certiorari** to quash Government order dated 28.11.2013 to the extent of the item-1 of the terms of reference, which provides for giving weightage to the qualification;

- (ii) Issue of appropriate writ, order or direction in the nature of **mandamus** directing the respondents to comply with the decision taken in the meeting of the officers held on 15.03.2007 and make regularization on the basis of the year of obtaining degrees and to accord consideration to regularization of the petitioners on the basis of the year of obtaining B.Sc Agriculture degree;
- (iii) Besides, in SWP No. 498/2014, petitioners also seek quashing of Government order dated 10.08.2011 to the extent of the clause 5. 4. of the eligibility clause in its Annexure that lays down the eligibility criteria. Petitioners also seek quashing of the merit list prepared on the basis of giving weightage to higher qualification published on 06.02.2014.

- 4. I have heard learned counsel for the parties.
- 5. Common ground of petitioners in all the writ petitions is that giving weightage to the qualification on pro rata basis for the purpose of regularization is contrary to the condition incorporated in the Record Note dated 20.03.2007 that laid down that in the event of regularization of ReZs in Government service, the year of obtaining degree would be considered and seniority maintained accordingly. Reliance has been placed on the clause of the Record Note reproduced in para 4

(supra). It is contended that the impugned item No. 1 of the terms of reference incorporated in Government dated 28.11.2013, which provides for giving weightage to the qualification on pro rata basis, is in breach of the Cabinet Decisions taken from time to time and is, therefore, illegal. It is further contended that item No. 1 (supra) is illegal for being in total disregard to the opinion rendered by the Department of Law and Justice vide its UO No. LD (Ser) 2013/76-Agri dated 13.09.2013. It is also contended that giving weightage to higher qualification, besides being violative of Cabinet decisions, is arbitrary and detrimental to the interest of the petitioners because petitioners have obtained graduation prior to many other graduates, they are about to cross their upper age limit and by drawing select list on the basis of higher qualification obtained by the other candidates at later stages the petitioners shall be relegated down in the list and they may lose the chance of regularization.

6. Learned counsel for the petitioners in their submission, besides reiterating the averments contained in the petitions, sought to demonstrate that giving weightage to qualification including the higher qualification is hit by *doctrine of promissory estoppel* and *doctrine of legitimate expectation*. It was submitted that respondents at the time of formulating the

Rehbar-e-Zirat Scheme pursuant to Cabinet decision 23.10.2006 and issuing Government Order dated 06.02.2007 had promised and made it known to the petitioners and all the candidates that at the time of their regularization in future the year of obtaining of the degree, that is, the eligibility qualification of B.Sc. Agriculture, would be considered and seniority maintained accordingly. This promise, it is contended, gave a reasonable expectation to the petitioners that with the passage of time, they shall be absorbed in regular government service and having obtained graduation degree earlier than many other candidates they will steal march over them. The respondents, therefore, cannot resile from the promise so made to the detriment of the petitioners. Mr. M. K. Bhardwaj, learned Senior Advocate, submitted that the *doctrine of promissory estoppel* and the *doctrine of legitimate expectation* have obtained legal reorganization in the Administrative law in this country and any order/decision of the government, which violates these doctrines, cannot sustain and is liable to be quashed. Mr. Bhardwaj relied upon M/s Motilal Padampat Sugar Mills Co. Ltd. v. State of UP and ors, (1979) 2 SCC 409, National Buildings Construction Corporation v. S. Raghunathan and ors. (1998) 7 SCC 66 and Punjab Communications Ltd. v. Union of India and ors. (1999) 4 SCC 727. Mr. R. K. Jain, in addition,

passed on copy of office memorandum No. 1-28015/01/2009-Admn.IV (LA) dated 03.09.2009 issued by Government of India Ministry of Law and Justice emphasizing the importance of acting on advice of department of legal affairs on legal matter and interpretation of laws.

7. What appears to be the central line and common thread in the petitioners' case is that giving weightage to the qualification on pro rat basis is in breach of Cabinet decisions taken from time to time contemplating the regularization on the basis of year of obtaining the eligibility qualification, that is, degree in B.Sc Agriculture. Common contention also is that weightage on the basis of higher qualification is contrary to the condition incorporated in Record Note dated 20.03.2007 of the meeting of the officers held on 15.03.2007 and the opinion of the Law Department suggesting some advantage and preferential treatment to the candidates having passed the qualifying examination earlier comparing the candidates having passed it at a later stage.
8. These two contentions indeed are the basis of seeking the applicability of the *doctrine of promissory estoppel* and *the doctrine of legitimate expectation* as sought by the petitioners. Respondents' contention in this regard is that there never had been any Cabinet

decision in regard to according consideration to the year of obtaining the eligibility qualification only and ignoring the higher qualification and that the regularization policy approved by the State Cabinet as Cabinet decision dated 04.08.2011 clearly provides that evaluation of the candidates shall be made by giving weightage to the qualification including the higher qualification on pro rata basis.

9. Referring to the two Cabinet Decisions relevant in the matter, Mr. Siddiqui, learned AAG, vehemently submitted that the petitioners have taken incorrect plea by contending that State Cabinet had ever decided that regularization shall be made on the basis of year of obtaining eligible qualification, that is, B.Sc Agriculture only. As regards the condition incorporated in Record Note dated 30.03.2007, Mr. Siddiqui submitted that this was just an observation made in the meeting of the Officers held after the first Cabinet Decision dated 23.10.2006, which has no legal value, cannot be equated with a Cabinet decision and was beyond the scope of that Cabin decision. Mr. Siddiqui pointed out that the first Cabinet Decision was limited to engagement of unemployed Agriculture Graduates as ReZs and question as regards their regularization was nowhere in picture. Mr. Siddiqui referred to the Jammu and Kashmir Government Business Rules and

submitted that creation of posts in pay band of Rs. 9300-34800/ and laying down conditions for appointment to these posts is within the sole jurisdiction of the State Cabinet, State Cabinet in its decision dated 04.08.2011 has approved the Regularization policy that *inter alia* provides that weightage shall be given to qualification on pro rata basis so an observation made in the meeting of the officers cannot prevail upon the Cabinet decision or make out a case for applicability of the *doctrine of promissory estoppel* and the *doctrine of legitimate expectation*. Mr. Siddiqui submitted that question of considering the application of these two doctrines can arise only if the alleged promise is made by an authority competent to make such a promise.

10. Having accorded consideration to the respective contentions and submissions at bar, I could not find any substance in petitioners' contention that State Cabinet had ever decided that regularization of the ReZs shall be made only on the basis of the year of their obtaining the eligibility qualification, that is, B. Sc. Agriculture and no weightage can be given to the higher qualification of a candidate. Two Cabinet decisions are relevant in these cases. First is the decision dated 23.10.2006 when the State Cabinet took a decision to engage all the Agriculture Graduates

unemployed as on October, 2006 under Rehbar-e-Zirat Scheme as ReZs pursuant to which the Government Order dated 06.02.2007 was issued and process of engagement was commenced. The Government Order so issued does not indicate, much less show, that the Cabinet had also taken any decision as regards or relating to regularization of the candidates to be engaged as ReZs. Cabinet decision and the Government order were restricted only to engagement of unemployed Agriculture Graduates as ReZs. Government order dated 06.02.2007 rather laid down an explicit condition that their engagement as ReZs shall not confer any right to claim a regular appointment. It is thus clear and indisputable that in the Government order dated 06.02.2007 issued pursuant to the first Cabinet Decision dated 23. 10. 2006 it was made clear that ReZs to be engaged pursuant to the said Cabinet decision and Government order were not entitled to regularization in future on the basis of such engagement.

11. Then came the Cabinet Decision dated 4.8.2011, which was followed by Government Order dated 10.08.2011. Pursuant to this Cabinet Decision, State Government accorded its sanction to adoption of the Regularization Policy formulated by Agriculture Production Department for regularization of the ReZs



appointed pursuant to the Cabinet Decision dated 23.10.2006. Besides, the Government also accorded sanction to the creation of 2642 posts of Village Agriculture Extension Assistants by the Agriculture Production Department to be utilized for regularization of eligible/selected ReZs. The policy formulated by the Agriculture Production Department is placed as annexure to the Government Order dated 10.08.2011. The policy approved by the State Cabinet nowhere provides that regularization shall be made on the basis of year of obtaining the eligibility qualification, that is, B.Sc Agriculture. The policy rather, as said above, *inter alia* provides for constitution of Selection Committees for making selection of suitable candidates though restricted to the registered ReZs only and also provides for evaluation of the candidates on the basis of weightage to qualification including the higher qualification on pro rata basis. This has been incorporated in clause 5.4 of the policy quoted above, though I may quote the relevant again here.

4. "The selection committee shall evaluate the candidates on the basis of qualifications for which weightage restricted to 100 points, as indicated below shall be given:

a)	B. Sc. Agriculture	75 points
b)	Post Graduation	15 points
c)	Super Specialization	10 Points

In the event the more than the desired number of candidates obtaining the same points, the candidate higher in age would be preferred.”

12. Petitioners, therefore, are not correct in contending that the State Cabinet had ever decided that regularization of ReZs shall be made only on the basis of year of obtaining degree in eligibility qualification, that is, B.Sc. Agriculture or that the higher qualification of a candidate will be of no value. Fact of the matter is that the earlier Cabinet decision dated 23.10.2006 had in a way ruled out the possibility of regularization on the basis of engagement as ReZs and in the Government Order dated 06.02.2007 issued pursuant to that decision the candidates were explicitly informed that their engagement as ReZs shall not vest them with a right of regularization, whereas in the regularization policy approved in the Cabinet decision dated 04.08.2011 it is clearly laid down that in the process of regularization weightage to the higher qualification shall be given on pro rata basis. Eligibility condition No. 5.4 incorporated in the Annexure to the Government order dated 10.08.2011 and similarly reflected in Government order No. 378-Agri of 2013 dated 28.11.2013, therefore, cannot be said to be in breach or violation of any Cabinet decision in this regard.

13. Correct it, however, is that in the Record Note dated 20.3.2007 (supra) that was issued after the meeting of the officers held under the chairmanship of Principal Secretary to Agriculture Production Department on 15.03.2007, it is incorporated that in the event of regularization of ReZs, the year of obtaining degree would be considered and seniority maintained accordingly and somewhat similar opinion was rendered by the Law Department on 13.09.2013. They stand quoted in para 2.2 & para 2.7 respectively hereinabove. However, incorporation of such a condition in the Record Note or opinion of the Law Department cannot be given any legal value or weight. As pointed out above, this was a meeting of the officers held after and pursuant to the Cabinet decision dated 23.10.2006 and Government order dated 06.02.2007. Incorporation of a condition in the Record Note relating to regularization at that stage was nothing more than an overdoing on the part of the officers including a senior officer of the level of Principal Secretary to Government. Likewise, seeking any opinion from the Law Department after Cabinet decision dated 04.08.2011 was uncalled for and overdoing by the department. Both these acts were contrary to and in violation of the procedure of transacting Government business. Once it was clearly set out in the Government Order dated 06.02.2007

and made known to the concerned that engagement as ReZ shall not confer any right on a candidate to claim any regular appointment, it is not understandable as to what made the officers to give indication of regularization in future and to observe or resolve that in that eventuality year of obtaining of degree shall be considered. In any case, whatever said or resolved by the officers in their meeting neither has a status of the Cabinet decision nor can even be equated with the Government decision. Likewise, once Cabinet approval to regularization policy *inter alia* providing for giving weightage to higher qualification was given, there was no point in seeking Law Department's opinion in this regard without first seeking approval of the Cabinet.

14. Mr. Siddiqui has aptly and rightly drawn attention of the Court to Government Business Rules. The Government of Jammu and Kashmir in exercise of powers conferred by section 43 and sub section (2) of section 45 of the State Constitution has made rules for convenient transaction of business of the Government. Reading of these rules in entirety would make it indisputably clear that no modification or improvement to and deviation from a decision taken in the State Cabinet can be made at any other level in administrative hierarchy. No decision taken or

observation made at the level of a Minister, bureaucracy or a department of the Government can prevail upon the decision taken by the Cabinet. Any deviation from a Cabinet Decision, if necessitated, shall have to be submitted for approval of the Cabinet. No benefit, whatsoever, on the basis of the Record Note dated 20.03.2007 of the meeting of the officers or the Law Department's opinion, therefore, can be made available to the petitioners.

15. It having been found that there is no Cabinet decision to the effect that year of obtaining degree, that is, B.Sc. Agriculture, alone shall be made the basis of regularization, doctrine of *promissory estoppel* is not attracted. Mr. Bhardwaj, learned Senior Advocate, painstakingly demonstrated the concept of the doctrines of *promissory estoppel* and *legitimate expectation*, citing number of case law. To attract the *doctrine of promissory estoppel*, firstly, there must be a promise by one party to the other knowing that the other party will act upon that promise and secondly, the other party must have changed his or her position substantially either by acting or forbearing from acting in reliance upon said promise. If these two conditions are fulfilled, then that other party can enforce the promise although the essential elements of a contract are not present. In other words it can be said that

where Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee.

16. In these cases, as said above, neither it was ever decided by the Cabinet nor was made known to the candidates that at the time of their regularization, the year of obtaining eligibility qualification alone shall be made the basis and higher qualification of a candidate shall have no value or role. Rather, pursuant to the first Cabinet decision, it was made clear to the candidates vide Government order dated 6.2.2007 that engagement as ReZs shall not confer any claim for regularization. No candidate, therefore, can be said to have altered his position, that is, to have accepted the engagement as ReZ under an impression that year of obtaining B.Sc Agriculture degree by him shall be the sole basis of his regularization. The regularization policy, which obtained cabinet sanction vide Cabinet decision dated 4.8.2011, clearly lays down that qualification shall be given weightage on pro rata basis. Order No, 378-Agri dated 18.11.2013 is nothing more but implementation of the regularization policy and

does not lay down any condition of its own. No right accrues to the petitioners to challenge the Cabinet decision or the Government order(s) issued pursuant thereto.

17. The *doctrine of legitimate expectation*, briefly, means that a policy decision making representation that benefits of substantive nature will be granted creates legitimate expectation which is substantive in nature and is normally binding on the decision maker. Change of policy by the Government should not violate the substantive legitimate expectation of a person and if it does so it must be as the change which is necessary and not irrational or perverse. It means that said actions have to be in conformity of Article 14 of the Constitution, of which non-arbitrariness is a second facet. Change in policy defeating substantive legitimate expectation must satisfy the test of reasonableness. The Courts can interfere on being satisfied that change in policy is irrational or perverse.
18. Besides, *doctrine of legitimate expectation* is a principle of administrative fairness, a component of natural justice. The doctrine in essence imposes a duty on public authority to act fairly taking into consideration all relevant factors before effecting a change in its policies which would affect a person who had been beneficiary of continuing policy. In

considering whether something has gone wrong, the court has to determine whether what has happened has resulted in real injustice. If it has, the court must intervene in appropriate manners.

19. It had never been the policy nor it was decided that in the event of regularization of ReZs, basis of preparing the merit list or drawing seniority will be the year of obtaining eligibility qualification of B.Sc. Agriculture. Cabinet rather took a decision to regularize all the ReZs in three phases to be completed in three years and directed preparation of select list giving weightage to higher qualification on pro rata basis. No change of policy can be said to have been made. *Doctrine of legitimate expectation* on this score is not attracted.
20. Arbitrariness or unfairness in giving weightage to higher qualification neither is apparent nor can be found. Petitioners' contention in this regard is not tenable. It needs to be pointed out in this relation that as per the Government Order dated 28.11.2013 issued pursuant to Cabinet decision dated 04.08.2011 read with the Government Order dated 10.08.2011 weightage is to be given to the qualification obtained on or before 31.10.2006, that is, the date of first Cabinet decision, whereby decision to engage ReZs was taken. Giving weightage to higher qualification in



a recruitment process is well recognized and cannot be said to be arbitrary. Question can be posed to the petitioners how it would have been arbitrary and unfair had all the candidates been appointed on regular basis in the year, 2007, that is, at the time of their engagements as ReZs and higher qualification of the eligible candidates would have been given weightage? That would have not been arbitrary or unfair. Giving weightage to higher qualification obtained on or before the date of initial engagement is no way arbitrary or unfair. Question might have arisen if weightage was to be given to the higher qualification acquired by some candidates after their engagement as ReZs.

21. It, however, needs to be noted that respondents have not addressed petitioners' apprehension that some of them are about to cross the upper age limit and they may be relegated down if selection list is prepared by giving weightage to higher qualification and may thereby be deprived of the fruit under the regularization policy. This apprehension has specifically been made in ground (ii) in SWP no. 498/2014. Respondents have said nothing in their reply in this regard. This apprehension, however, is bit misconceived and farfetched for the reason that regularization policy has to apply to all the candidates

engaged as ReZs for which equal number of posts have been created. Neither the policy nor Government orders dated 10.8.2011 & 28.11.2013 provide or even indicate that a candidate having crossed the maximum age prescribed for entry into Government service shall not be regularized.

22. For all that said and discussed above, these writ petitions have no merit and are, therefore, dismissed. Interim directions, whatsoever, stand vacated.
23. In view of the above, COA(S) No. 80/2014 does not survive and the same shall also stand dismissed.

**(Janak Raj Kotwal)**  
**Judge**

Jammu  
14.10.2014  
Karam Chand