

# HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.1506/2016 & MP No.01/2016

Date of order : 27.07.2016

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Renuka Devi & anr.

Vs.

State & ors.

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Coram:

***Hon'ble Mr. Justice B. S. Walia, Judge***

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Appearing counsel:

For petitioner (s) : Mr. Ashish Sharma, Advocate.

For respondent(s) : Mr. Ajay Sharma, AAG.

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| i)  | Whether to be reported in Press / Media    | : | Yes/No. |
| ii) | Whether to be reported in Digest / Journal | : | Yes.    |
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## Oral :

1. Instant writ petition has been filed seeking issuance of :-

“a) A writ, order or direction including one in the nature of mandamus, declaring the Clause (b) of Section (3) of the J&K Civil Services (Special Provisions) Act, 2010 as ultravires to the constitution of India so far as the same excludes the petitioners of the benefits of regularization under the said Act with a further appropriate command striking down the said impugned Clause (b) of Section (3) of the Act to the above extent.

b) A writ, order to direction including one in the nature of Mandamus, commanding upon the respondents to regularize the services of the petitioners in the respective posts held by them on the terms of the J&K Civil Services (Special Provisions) Act, 2010.

c) A writ, order or direction including one in the nature of Mandamus commanding upon the respondents to allow the petitioners to continue in

service till they are regularized against their respective posts.”

2. **Admit.** Issue post-admission notice. Mr. Ajay Sharma, learned AAG accepts notice on behalf of the respondents and waives right to file reply by stating that the matter in issue is covered by the decision of this Court in SWP No.1594/2012 in case titled Dr. Renu Gupta Vs. State of J&K & ors. as also SWP No.1525/2013 in case titled Rajani Kumari Vs. State of J&K & ors beside other connected petitions decided on 14.07.2016. Aforementioned stand is disputed by counsel for the petitioners.

3. Brief facts of the case leading to the filing of the instant writ petition are that petitioner No.1 was appointed as Master in Tourism/Lecturer, Government Polytechnic, Jammu vide appointment letter, Annexure-A, dated 07.10.2015 while petitioner No.2 was appointed as Lecturer, B. Tech. Civil Engineering vide appointment letter Annexure-A dated 07.10.2015 on academic arrangement basis for the academic session 2015-16. As per Clause-2 of the appointment letter, the assignment was purely on academic arrangement basis for one academic year and was to cease automatically on 31.07.2016 while as per Clause-3 the appointee did not have any right to continue in any capacity beyond the period of assignment for which an affidavit duly authenticated by 1<sup>st</sup> Class Magistrate was to be submitted in token of acceptance of the terms and conditions and also that the appointee would not make any preferential claim for continuation / reassignment / permanent absorption / appointment in the department on the basis of the academic arrangement.

4. That Section 3 and 5 of the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010, reads as under :-

*“3. Application of the Act. – The provisions of this Act shall apply to such posts under the Government as are held by any person having been appointed on ad hoc or contractual basis including those appointed on consolidated pay provided that such appointments have been made against the clear vacancies, but shall not apply to :--*

*(a) persons appointed in terms of Government Order No.125- GAD of 2001 dated 01-02- 2001, on contract basis in the personal sections of the Ministers or other authorities enjoying the status of a Minister;*

*(b) persons appointed on tenure posts co-terminus with the life of the Project or Scheme of the State or Central Government, as the case may be, and those appointed on academic arrangement for a fixed term in any Government Department;*

*(c) non-governmental agencies or autonomous bodies or public sector undertakings or corporations or government companies or societies or other local authorities which have their own rules and regulations governing their functioning; and*

*(d) part-time or seasonal employees including those whose wages are paid from out of the local funds or contingent grants.”*

*“5. Regularization of ad hoc or contractual or consolidated appointees.- Notwithstanding anything anything to the contrary contained in any law for the time being in force or by judgment order of any court or tribunal, the ad hoc or contractual or consolidated appointees referred to in section 3 shall be regularized on fulfillment 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 8 qualification 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 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."*

5. That a perusal of Section 3 (b) read with Section 5 of the Act (ibid) reveals that the same provides for application of the provisions of the Act to post's held under the Government on adhoc or contractual basis including those on consolidated pay provided that the appointments have been made against clear vacancies but not in the case of appointments on academic arrangement basis for fixed terms in any Government department. Accordingly, while taking note of the provisions providing for regularization of adhoc / contractual

/ consolidated pay appointees in terms of the provisions of the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010, the learned Single Bench in the case of Dr. Renu Gupta (Supra) held that the Court was not inclined to read the language of Section 3(b) in any other way except of the aforesaid provision excluding claim for regularisation in case of appointments on academic arrangement on a fixed term and since appointment in the said case had been made on academic arrangement basis for a fixed terms with break, therefore, Section 5 of the Act *ibid* was not attracted qua the claim of the petitioners therein for regularization. In the aforementioned background, the learned writ court rejected the prayer for regularization.

6. Learned AAG has referred to paragraph Nos.3, 5, 6, 10, 12, 13 & 23 of the judgment in SWP No.1594/2012 i.e. Dr. Renu Gupta's case (Supra). Relevant extract of the judgment is reproduced hereunder :-

**“3.** *The pith and substance of the argument of the learned counsel for the petitioner is that the appointments made earlier to coming into force of the Act whether on ad hoc basis or on contractual basis and subsequently on consolidated pay after coming into effect the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010, are denied regularization. The Government by design applying the Act is excluding petitioner on the ground that the petitioner's appointment is made on academic arrangement basis for a fixed term in a Government Department. This devious method deprives the petitioner of her right to be regularized. Whereas contract, ad-hoc and consolidated pay appointees are benefitted. The said provision is, therefore, arbitrary, illegal and constitutionally invalid. The petitioner's appointment is akin to that of appointment made on ad-hoc, consolidated pay or contract basis. Equals are treated unequally. The exclusion is discriminatory and malafide.*

5. *Per contra*, Mr. Ajay Sharma, learned AAG appearing for the Government states that after coming into force the Act on 29th April, 2010, an Advertisement Notice was issued and pursuant thereto the petitioner was appointed on academic arrangement basis for the fixed term and she was working as such. She participated in the selection pursuant to the Advertisement and got appointment on academic arrangement basis only. Her appointment is not on contract, ad-hoc or consolidated basis to a specific post or a clear vacancy. There is marked difference in so far as appointment on academic arrangement for a fixed term. This is not relatable to specific post or a clear vacancy. It is a purely temporary arrangement for specific department and that is need based. In any event, he pleaded that since there is a distinction between appointment made on ad-hoc basis, contractual basis or on consolidated pay basis with that of the appointment made on academic arrangement basis for fixed term in a department, the petitioner has no right to challenge on the plea of arbitrariness or discrimination. There is no constitutional violation.
6. It is a separate and an independent method or manner by which appointment is made in a Government Department. Government in its wisdom has excluded the category of appointment made on academic arrangement basis for fixed term. The petitioner has no locus to challenge the wisdom of the Government in enacting such a provision. The language of Section 3 clearly provides that regularization will apply in respect of posts in the Government for which appointments are made on adhoc of contractual or consolidated pay. Therefore, it is referable to a particular post of a clear vacancy, whereas in this case, petitioner has been appointed in Higher Education Department on fixed term on an academic arrangement basis. So, both cannot be equated on same terms. There is no arbitrariness in that as alleged. In any event, he implored upon the Court not to accept the interpretation as propounded by the petitioner. Mr. Sharma relied upon the judgment rendered by Hon'ble Supreme Court in case titled *Union of India and Another Vs. Deoki Nandan Aggarwal* reported in AIR 1992 SC 96, which was relied upon in a subsequent decision of the Hon'ble Supreme Court in case titled *Satheedevi Vs 11 Prasanna and Anr.*, reported in AIR 2010 SC 2777.

10. *I have considered the scope of the provisions of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, in particular the provisions Section and Section 3(b). It is evident that the regularization of ad-hoc or contractual or consolidated pay appointees is provided under the above stated provision of the Act with exclusion under Section 3(b).*
12. *Certificates issued by the authority reflect that the appointment was made on academic arrangement for a fixed term with break. Therefore, the ingredients of Section 5 do not get attracted to the petitioner. The provisions of Section 3(b) exclude appointments on academic arrangement for fixed term. That appears to be the intention of the legislature. This Court is not inclined to read the language of Section 3(b) in any 15 other way. The Hon'ble Supreme Court in the two decisions (Union of India and Another Vs. Deoki Nandan Aggarwal AND Satheedevi Vs Prasanna and Anr.), referred to above, has deprecated Courts from rewriting, recasting or reframing terms or the words in the legislation. Appointment by way of academic arrangement made is not covered under Section 3 the Act. The petitioner is, therefore, not entitled to seek regularization under the Act.*
13. *Legislature has clearly indicated that only three categories, namely, appointments on ad-hoc, contractual and consolidated pay basis, are eligible to be considered for regularization subject to their satisfying the requirement or prescription of Section 5 of the Act. It does not apply to the case of appointment on academic arrangement. The Court finds no illegality or arbitrariness in the distinction made by the legislature. The Plain meaning of the words in Section 3 does not lead to any doubt. No other interpretation is plausible and the petitioner's attempt and interpretation is not convincing. There is no arbitrariness or malice as alleged. Accordingly, the challenge to the provisions of Section 3(b) is rejected.*
23. *This Court hastens to hold that academic arrangement teachers/lecturers cannot seek to hold on to their post for ever. If they are found not to be up to the mark or efficient then their continuation will be a question mark. It is for the authorities to decide the best course of action in a non-arbitrary manner. If academic arrangement teachers/lecturers seek extension then they have to make a representation for considering the extension of service, which can be considered on its own merits."*

7. Learned AAG contends that in view of the aforementioned decision, not only is prayer (A), even prayers (B) & (C) in the writ petition which are consequential to prayer (A) are also bereft of merit.
8. Submission of learned AAG also stands fortified by the finding recorded by the learned Single Judge in paragraph No.16 of the judgment of this Court in SWP No.1525/2013 in case titled as Rajani Kumari (Supra). Paragraph No.16 of the aforementioned decision is reproduced hereunder:

*‘16. It is the case of respondents that they are not resorting to such a procedure of replacing contract teachers/lecturers by another set of contract teachers/lecturers. The engagement is need based. In any event, the lecturers on contract or engaged on academic arrangement cannot seek to restrain the government from engaging lecturers on contract engagement or academic arrangement as they themselves are beneficiary of such procedure. This issue becomes academic because petitioners are appointed on academic arrangement.’*

9. Obviously, once a person is not entitled to seek regularization under the provisions of the Act *ibid* in view of the exclusion of the appointment on academic arrangement from the purview of the Act, then in that eventuality, a person appointed on academic arrangement basis cannot seek the issuance of a writ of Mandamus to direct the authorities to allow him to continue in service till his regularization.
10. Plea of an appointee on academic arrangement basis for regularization *dehors* the Act has been dealt with and rejected in paragraph No.23 of the decision in SWP No.1525/2013. Paragraph No. 23 is reproduced hereunder :



*‘23. In the light of the above, petitioners appointed on academic arrangement have no legal right to seek regularization dehors the Act.’*

11. As regards the prayer of the petitioners, for being continued in service, suffice it to mention that the same has been dealt with in paragraph Nos.23 & 31 of the decision of this Court in SWP No.1594/2012 wherein it has been held that an appointee on academic arrangement basis cannot hold on to the post for ever and it is for the authority to decide the claim in respect thereof in which case such appointee would have to make a representation for extension of service which would be considered and decided by the concerned authority in accordance with law. Paragraph Nos.23 & 31 are reproduced hereunder :-

*‘23. This Court hastens to hold that academic arrangement teachers/lecturers cannot seek to hold on to their post for ever. If they are found not to be up to the mark or efficient then their continuation will be a question mark. It is for the authorities to decide the best course of action in a non-arbitrary manner. If academic arrangement teachers/lecturers seek extension then they have to make a representation for considering the extension of service, which can be considered on its own merits.’*

*‘31. The factual aspect of the petitioner’s case differs by the terms of the appointment. The petitioner will have to approach authority and establish her claim. It is for the petitioner to approach the Authority concerned by way of a representation in this behalf. The same may be considered having regard to the facts and circumstances of the petitioner’s case within a reasonable period.’*

12. In the light of the position as noted above, prayer (A) (B) & (C) i.e. prayer for regularization etc is dismissed. However, liberty

is granted to the petitioners to make a comprehensive representation to respondent No.3, who would decide the same in accordance with the rules and regulations applicable as well as judgments of this Court referred to above.

13. Writ petition along with MP stands **disposed of** in aforementioned terms.

**(B. S. Walia)**  
Judge

Jammu  
27.07.2016  
*Ram Murti*