

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

LPA (SW) Nos. 29/2017, 94/2016, 40/2016,
95/2015, 96/2015, 31/2016, 32/2016, 34/2016 &
41/2016

Date of decision 28.02.2017

Rash Pal Singh and ors.	Vs.	Kamal Kishore and ors.
State and anr.	Vs.	Kuldeep Raj and ors.
JKPSC	vs.	Kamal Kishore Verma and ors
State and ors.	vs.	Kamal Kishore Verma and ors
State and ors.	Vs.	Neha Sambyal and ors.
JKPSC	vs.	Kuldeep Raj and ors.
JKPSC	vs.	Bhavnish and ors.
JKPSC	vs.	Divya Sharma and ors.
JKPSC	vs.	Neha Sambyal and ors.

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Alok Aradhe, Judge

Appearing counsel:

For the appellant (s):	Mr. Prag Sharma, Advocate Mr. Meharban Singh Advocate Mr.D. C. Raina, Sr. Advocate with Mr. F. A. Natno, Advocate Mr. Jahangir Iqbal Ganai, Advocate General Mr. Chandan Sharma, GA
For the respondent(s) :	Mr. K.S.Johal, Sr Advocate with Mr. J. I. Balwan, Advocate & Ms. Damini Singh Chauhan, Advocate. Mr. D.S. Chauhan, Advocate with Mr. Sajid Majeed Advocate & Ms. Sheeba Sethi, Advocate Ms. Shalla Rafiqui, Advocate Mr. Rajesh Pal Samotra, Advocate Mr. S. Mandeep Singh, Advocate Mr. P. N. Bhat, Advocate Mr. Jagpaal Singh, Advocate

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

Per Alok Aradhe-J

In this bunch of appeals, the appellants in
LPA(SW) No. 23/2016, LPA(SW) No. 40/2016,
LPA(SW) No. 41/2016, LPA(SW) No. 94/2016 and

LPA(SW) No. 95/2015 have assailed the validity of judgment dated 11.06.2015 passed in SWP No. 1539/2014, whereas the appellants in LPA(SW) No. 31/2015, LPA(SW) No. 32/2015 and LPA(SW) No. 34/2015, have assailed the validity of judgment dated 30.12.2015 passed in SWP No. 1650/2014 and SWP No. 1651/2014, which have been allowed in view of judgment dated 11.06.2015 passed in SWP No. 1539/2014. Since common questions of law and fact arise for consideration in this bunch of appeals, they were heard analogously and are being decided by this common judgment.

2. Recruitment to the post of Assistant Professor in various Government Degree Colleges of the State is governed by the Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2008 (hereinafter referred to as the Rules of 2008), which have been notified vide SRO 423 of 2008 dated 23.12.2008, in terms whereof a candidate with M. Phil would be eligible for the post, even if, he/she had not qualified the National Eligible Test/State Level Eligible Test/State Eligible Test conducted by the University Grants Commission/CSIR/Association of Indian University (AIU) University of Jammu/Kashmir. An Advertisement Notification dated 23.05.2013 was issued, by which applications were invited for selection of

1289 posts of Assistant Professor in various disciplines in the Government Degree Colleges of the State. As per the Advertisement Notification, the prescribed qualification was Master Degree in the subject concerned with at least 55% marks (50% marks in case of Scheduled Caste/Scheduled Tribe and Physically and Visually Handicapped candidates) or its equivalent grade of "B" in the seven point scale from an Indian University or an equivalent course/degree from an Indian/Foreign University with NET/SLET conducted by the UGC/CSIR/ Association of Indian University (AIU) University of Kashmir/Jammu or Ph.D. In the note appended to the Advertisement Notification, the selection process was required to be undertaken strictly in accordance with the terms of SRO 423 of 2008 dated 23.12.2008 read with Government order Nos. 252-HE of 2012 dated 30.05.2012, 254-HE of 2013 dated 21.05.2013 and Communication No. Edu. Coll/Cord/774/2013 dated 22.03.2013. In view of Government order dated 21.05.2013, the candidates with M. Phil degree were not eligible for consideration in pursuance of the Advertisement Notification dated 23.05.2013.

3. The respondents 1 to 5 and 31, who are appellants in LPA(SW) No. 95/2015, approached

this Court by filing writ petitions, namely, SWP No. 1288/2013 and SWP No. 1400/2013 and challenged the note appended to Advertisement Notification dated 23.05.2013 and order dated 21.05.2013. The writ petitions were allowed by a Bench of this Court vide order dated 03.10.2013 and it was held that the respondents in the aforesaid writ petitions could not have prescribed the qualification, which was contrary to the Rules of 2008 and the same could not have been amended by way of an executive order. Accordingly, the writ petitions were disposed of with the following directions:

" For the reasons mentioned above, the impugned orders bearing No. 254-HE of 2013 dated 21.05.2013 and the note introduced in the advertisement notification No. 9-PSC of 2013 dated 23.05.2013 are quashed. The petitioners are held entitled to consideration for appointment on the basis of the M.Phil degree possessed by them in accordance with the Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2008"

4. In exercise of the powers conferred under section 26 of the University Grants Commission Act, 1956, the University Grants Commission has framed the regulations, namely, University Grants Commission (minimum qualification for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in Higher Education) Regulations, 2010 (hereinafter

referred to as the regulations of 2010). The regulations of 2010 came into force on 30.06.2010. In view of the fact that Rules of 2008 were not amended as per law and with a view to bring the rules in tune with the qualification prescribed for the post of Assistant Professors, the rules were amended by SRO 124 of 2014 dated 21.04.2014, by which Schedule-I and Schedule-II appended to the Rules of 2008 were substituted. The amended provision is reproduced below for the facility of reference:

“In exercise of the powers conferred by the proviso to section 124 of the Constitution of Jammu and Kashmir, the Governor is pleased to direct that Schedule I and Schedule II appended to the Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2008 issued vide notification SRO 423 of 2008 dated 23.12.2008 (Refer 2008 (7) JKS JK-221) shall be **substituted** by Schedule I and Schedule II annexed to this Notification:

.....

V	A	Assistant Professor (All Discipline except those mentioned hereinafter	Rs. 15600-39,100+6000	1. Good Academic record as defined by the concerned university with at least 55% marks (50% including any grace marks, in case of Scheduled Caste/ Scheduled Tribe/ Differently-abled (Physically and Visually differently -abled) Categories/PH.D degree holders who have	By direct recruitment
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			<p>obtained their Master's Degree prior to 19th September, 1991) or an equivalent grade in a point scale wherever grading system is followed at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from any accredited foreign University.</p> <p>2. The candidates must have cleared NET/SLET/SET conducted by the UGC, CSR/AIU.</p> <p>3. The candidates who are or have been awarded a PH.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for award of Ph.D degree regulations) 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET.</p> <p>4. NET/SLET/SET shall also not be required for such Master's Programmes in disciplines for which NET/SLET/SET is not conducted.</p>	
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5. After issuance of SRO 124 of 2014 dated 21.04.2014, the Advertisement Notification, by which 1651 posts of Assistant Professors were referred to the Public Service Commission in different subjects was withdrawn and by communication dated 19.05.2014, the Public Service Commission was requested to fill up 1651 posts of Assistant Professors in the different disciplines in the Government Degree Colleges in terms of SRO 124 of 2014 dated 21.04.2014. The Public Service Commission there upon issued Advertisement Notification dated 29.05.2014.
6. Ineligible candidates thereupon including the petitioners of SWP No. 1288/2013 filed writ petition, namely, SWP No. 1539/2014, in which writ in the nature of mandamus was sought declaring the SRO 124 of 2014 dated 21.04.2014 to the extent it deletes the qualification of M.Phil for under-graduate teaching prescribed under SRO 423/2008 dated 23.12.2008, as null and void. A writ of mandamus was also sought directing the appellants herein to treat the candidates having M. Phil degree eligible and to hold the selection in terms of judgment dated 03.10.2013 passed in SWP No. 1288/2013 and SWP No. 1400/2013.
7. Some of the candidates filed writ petition, namely, SWP No. 1295/2014 before the Srinagar

Wing of this Court, which was dismissed by learned Single Judge vide judgment dated 31.03.2015. Learned Single Judge in Jammu Wing of this Court while taking note of the judgment dated 31.03.2015 passed by the Srinagar Wing of this Court, vide judgment dated 11.06.2015 passed in SWP No. 1539/2014 allowed the writ petition and inter alia held that the candidates, who had in their credit M. Phil degree prior to the coming into force of the amended Rules of 2008, are eligible to be considered for appointment as Assistant Professor and in terms of Rules of 2008 notified vide SRO 423/2008 dated 23.12.2008. It was further held that the vacancies which have arisen prior to the coming into force the amendment Rules of 2008 be filled up in terms of SRO 423 of 2008 dated 23.12.2008, whereas the vacancies that have occurred thereafter be filled up under the amended Rules of 2008 in terms of SRO 124 dated 21.04.2014. In the aforesaid factual background, the appellants have filed these Intra Court Appeals.

8. Learned Advocate General for appellants in LPA (SW) No. 94/2015, LPA(SW) No. 95/2015 and LPA (SW) No. 96/2016 submitted that the State has power to withdraw the Advertisement Notification and the candidates do not have vested right until and unless in pursuance of the

Advertisement Notification they are appointed. It is further submitted that the Advertisement Notification was withdrawn and thereafter Rules were amended so as to bring them inconformity with the Regulations of 2010. Learned Advocate General has drawn the distinction between the vested right, existing right and right for consideration of the candidates in context of Advertisement Notification. It is also pointed out that in any case the earlier judgment dated 03.10.2013 passed in SWP No. 1288/2013 and SWP No. 1400/2013 was confined to the petitioners therein. It is also submitted that the process of selection of Physical Training Instructor was never completed and the Advertisement Notification issued in this regard would be withdrawn. It is further submitted that vide SRO 124 dated 21.04.2014, Rules of 2008 have been substituted, therefore, same would have retrospective operation. In support of the aforesaid submissions, learned Advocate General has placed reliance on the decision of the Supreme Court in the cases of **N. T. Devin Katti and others vs. Karnataka Public Service Commission and others**, (1990) 3 SCC 157, **Jai Singh Dalal and others vs. State of Haryana and anr**, (1993) Suppl. 2 SCC 600, **State of MP and others vs. Raghuveer Singh Yadav and others**, (1994) 6 SCC 151, **B. L. Gutpa and anr**.

vs. MCD, (1998) 9 SCC 223, Union of India and anr. vs. Arulmozhi Iniarasu and others, (2011) 7 SCC 397 and P Suseela vs. University Grants Commission (2015) 8 SCC 129.

9. Mr. D. C. Raina, learned senior counsel for the appellants in LPA (SW) No. 32/2016, LPA (SW) No. 34/2016, LPA (SW) No. 40/2016, LPA(SW) No. 41/2016 and LPA(SW) No. 43/2016 submitted that by SRO 124 dated 21.04.2014, Schedule -1 & II appended to the Rules of 2008 have been substituted and distinction between the substitution and deletion is well settled. It is further submitted that the judgment dated 31.03.2015 passed in SWP No. 1295/2014 by the Srinagar Wing of this Court, though was taken note of by the learned Single Judge, yet instead of referring the matter to the larger Bench, contrary learned Single Judge of the Jammu Wing ought to have followed the judgment rendered by the Srinagar Wing of this Court, which otherwise is binding on him and in case of difference of opinion, the matter ought to have referred for consideration by a larger Bench. Learned senior counsel for the appellants in the aforesaid submission has taken us through the paragraphs 12, 15, 16, 18 and 27 of the judgment rendered by the learned Single Judge of the Srinagar Wing of this Court. Reference has been made to the decisions of the Supreme Court in the cases of **P.**

Suseela vs. University Grants Commission, AIR 2015 SC 1976 and Cheviti Venkanna Yadav vs. State of Telegana and others 2016 (7) Supreme 372.

10. On the other hand, Mr. K. S. Johal, learned senior counsel for the respondents has submitted that the judgment of the learned Single Judge dated 03.10.2013 passed in SWP No. 1288/2013 and SWP No. 1400/2013 created a right in favour of the petitioners of the said writ petitions and the aforesaid judgment has attained finality. It is further submitted that legislature cannot directly overrule the judgment passed by the Court. It is also submitted that by way of amendment in Rules of 2008, qualification with regard to M. Phil has been deleted, therefore, it is a case of deletion and as such, SRO 124 dated 21.04.2014 is prospective in nature. It is argued that the judgment in SWP No. 1295/2014 dated 31.03.2015 rendered by the Srinagar Wing of this Court is per incuriam and there is no adaptation of the Regulations framed by the University Grants Commission in the State of Jammu and Kashmir. It is also argued that the respondents herein were not parties to the judgment rendered by the Srinagar Wing of this Court. Therefore, the same is not binding on them. Lastly, it is argued that two sets of writ petitions involving the similar issue were pending before the two wings

of this Court, therefore, same should have been tagged and should have been heard analogously. In support of the aforesaid submissions, reliance has been placed on the decision of the Supreme Court in the case of **State of Gujarat and anr. vs. The Asarva Mills ltd. Ahmedabad and anr (1974) 4 SCC 656, The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Girish Kumar Navalakha and ors. (1975) 4 SCC 754, Bhagat Ram vs. Union of India, AIR 1988 SC 740, N. T. Devin Katti and others vs. Karnataka Public Service Commission and others, (1990) 3 SCC 157, Indian Aluminium Co. and others vs. State of Kerala and others, (1996) 7 SCC 637, S. S. Bola and ors. vs. B. D. Sardana and ors., (1997) 2 SCC 522, S. T. Sadiq v. State of Kerala, AIR 2015 SCW 1538, P Suseela vs. University Grants Commission, (2015) 8 SCC 129, Cheviti Venkanna Yadav vs. State of Telegana and others (2016) 7 Supreme 372.**

11. By way of rejoinder reply, learned Advocate General has invited attention of this Court to Clause 1.2 of the Regulations framed by the UGC and has submitted that the aforesaid regulation applies to the University established even under the State Act and therefore, Regulations of 2010 apply to the State of Jammu and Kashmir as

well. Mr. D. C. Raina, learned Senior counsel appearing for the appellants in LPA(SW) No. 32/2016, LPA(SW) No. 34/2016, LPA(SW) No. 40/2016, LPA(SW) No. 41/2016 and LPA(SW) No. 43/2016 has submitted that no factual foundation has been laid down in the writ petition for challenging the order of the withdrawal of the Advertisement Notification and in the writ petition pending in the Srinagar Wing of this Court, validity of SRO 124 dated 21.04.2014 was also under challenge and the challenge to the same has been repelled by the Srinagar Wing of this Court. It is also argued that the question of vested right of a candidate would arise only if he/she is appointed to the post in question in pursuance of the Advertisement Notification.

12. We have considered the rival submissions made at the bar and have perused the record. The cardinal issues, which emerge for our consideration in the instant appeals, are as under:

- (a) Whether the State Government has the right to withdraw the Notification dated 23.03.2013?
- (b) Whether the candidates have any vested right for consideration for appointment to the post of Assistant Professor in terms of

Advertisement Notification dated
23.05.2013?

- (c) Whether the amendment in the Rules of 2008 is retrospective or prospective in nature?
- (d) Whether the State Legislature in the instant case by amending the Rules of 2008 vide SRO 124 dated 21.04.2014 has directly overruled the judgment of this Court dated 03.10.2013 passed in SWP No. 1288/2013 and SWP No. 1400/2013?
- (e) Whether in the Regulations of 2010 framed by the U.G.C apply to the State of Jammu and Kashmir?
- (f) Whether judgment dated 31.01.2015 passed by the learned Single Judge in SWP No. 1295/2014 passed by the Srinagar Wing of this Court is per incuriam?

13. We shall now proceed to deal with the issues ad seriatum.

Issue No. (a)

In the instant case, appellants had issued an Advertisement Notification dated 23.05.2013, which was subsequently withdrawn and a fresh Advertisement Notification was issued on 29.05.2014, in which qualification was prescribed which was in accordance with qualification

prescribed in Regulations of 2010 framed by the U.G.C. It is well settled legal proposition that the authority doing an act has the power to undo the same. In **P. K. Jaiswal (Dr.) vs. Debi Mukharjee and ors, 1992 (2) SCC 148**, it has been held by the Supreme Court that the right to be considered for selection crystallizes only if the candidate is called for interview after advertisement. It has been held that where the Government withdrew the requisition for selection, with a view to amend the rules so as to make appointment by promotion instead of resorting the direct recruitment, the candidates called for interview by the Commission in pursuance of the Advertisement Notification acquire no vested right to be considered for selection. Similar view has been taken by the Supreme Court in the case of State of **M.P. vs. Rakesh Nigam (2005) 12 SCC 380**. In **M. I. Kunjukunju vs. State of Kerla (2015) II SCC 440**, it has once again been held that a candidate on making an application for a post in pursuance to an Advertisement Notification does not acquire any vested right of selection, in the absence of any benefit being derived under previous Advertisement Notification and the Advertisement Notification can be withdrawn by the State Government. In **Kulwinder Pal Singh and Another vs. State of Punjab and Others, (2016)**

6 SCC 532, it has been held that even if name of a candidate finds place in the select list, it does not give indefeasible right to appointment and it is always open to the Government not to fill up the vacancies. However, the aforesaid decision has to be reasonable and not arbitrary.

In view of the aforesaid enunciation of law by the Supreme Court as well as taking into the fact that the writ petitioners have not challenged the communication dated 16.05.2014, by which the Government withdrew the 1651 posts of Assistant Professor advertised vide Advertisement Notification dated 23.05.2013, it is not necessary for us to dilate further on the issue in question in view of the law laid down in **Manbhar Devi Agarwal vs. State of Rajasthan and others (2017) 2 SCC 82**. Accordingly, the aforesaid issue is answered in the affirmative.

Issue No. (b)

In **P. K. Jaiswal** supra, the Supreme Court has held that the right to be considered for selection crystallizes only after the candidate is called for interview in pursuance of the advertisement notice. The Supreme Court in **Vijay Kumar Mishra vs. High Court Judicature at Patna, (2016) 9 SCC 313** has held that the recruitment is the initial process, which may reach to eventual appointment and appointment means

actual act of posting a person to a particular office. It has further been held that empanelment of candidates at the best is a condition of eligibility for the process of appointment but the same by itself does not amount to selection or create any vested right for appointment. In the instant case, the candidates had merely responded to the Advertisement Notification dated 23.05.2013 and they were neither selected nor were empanelled. Therefore, the question of accrual of any vested right in the candidates in the fact situation of the case does not arise. Besides that, it is pertinent to reiterate that no challenge to the communication dated 16.05.2014 has been made by the candidates by which 1651 posts of Assistant Professor, which were advertised vide Advertisement Notification dated 29.05.2013, were withdrawn. For the aforesaid reasons, second issue is answered in the negative.

Issue No. (c)

Admittedly, the Rules of 2008 were amended by SRO 124 dated 21.04.2014 and Schedule-I and II were substituted by which qualification of M. Phil was deleted for the post of Assistant Professor. **In Attorney-General (WA) vs. Marquet (2003) 78 ALJR 105**, it has been held that central meaning of ‘amend’ is to alter the legal meaning of an Act

or provision, short of entirely rescinding it and the central meaning of 'repeal' is to rescind the Act or provision in question. The cases, however, reveal that the words can be used in ways in which there appears to be overlapping in their meanings. Thus, if a section is deleted it can be said that it has been repealed whilst the statute itself has been amended. At this stage we deem it appropriate to reproduce the relevant extract from principles of statutory interpretation, 13th Edition by Justice G. P. Singh for the facility of reference.

" the use of words 'shall' ceased to have effect is also not uncommon, when object is to repeal only the portion of an Act words 'shall be omitted' are normally used ^{81*}. The legislative practice in India shows that 'omission' of a provision is treated as amendment ^{82*}, which signifies deletion of that provision and is not different from repeal ^{83*}.

^{81*} **See Halsbury's Laws of England, 4th Edition Vol. 44, P.604 (f.n.4). In Royala Corporation vs. Director of Enforcement, AIR 1970 SC 494, 9.403 (15): (1969) 2 SCC 412, which was followed in Kolhapur Canesugar Works ltd. Vs. Union of India, AIR 2000 SC 811, pp 819 820: (2000) 2 SCC 536, and Shiv Shakti Co op. Housing Society Nagpur Swaraj Developer, AIR 2003 SC 2434 p. 2443 : (2003) 6 SCC 659; there are observations that omission of a provision is different from repeal. It**

is submitted that this view is not correct and needs reconsideration on this point. See. Further, pp. 709/710.

82*. For example see sections 6 (a), 13, 22 (a), 52, 71, 72, 77 of the Finance Act, 1999 and section 6-A of the General Clauses Act, 1897.

83*. Bhagat Ram Sharma vs. Union of India, AIR 1988 SC 740, p. 746: (1988) Supp. SCC 30.

In view of the aforesaid legal position, it is evident that amendment in Schedule-I and II of the Rules of 2008 vide SRO 124 dated 21.04.2014 has been done by way of substitution even though qualification prescribed i.e. M. Phil for the post of Assistant Professor has been deleted. In **CIT vs. Venkateshwara Hatcharies (1999) 3 SCC 632**, it has been held that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision, which substantially covers the field occupied by the repealed provision with certain modification, in that event such enactment is regarded having force continuously and the modification or changes are treated as amended coming into force with effect from date of enactment of re-enacted provision. Thus, the amendment in Rules of 2008 vide SRO dated 124 shall operate with effect from 21.04.2014.

For yet another reason, we are inclined to hold that Rules 2008 are prospective in nature and do

not relate back to date of enactment of the original Rules, as amendment in Rules 2008 vide SRO 124 dated 21-04-2014 was made in the light of qualification prescribed in regulations of 2010, which came into force w.e.f. 30-06-2010 and thereafter the amendment in the Rules was made so as to bring the requirement of qualification in tune with requirement of qualification prescribed in regulations of 2010. Therefore, for this reason also, the Rules are prospective in nature.

The aforesaid issue is answered accordingly.

Issue No. (d)

It is well settled legal proposition that the legislature can render the judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered. **See Goa Glass Fiber limited vs. State of Goa 2010(6) SCC 499.** Similar view has been taken by the Supreme Court in the case of **Cheviti Venkanna Yadav** (supra) and it has been held that the legislature cannot by way of an enactment, declare a decision of the Court as erroneous or a nullity. It can rectify, through an amendment, a defect in law notice noticed in the enactment and even highlighted in the decision of the court. It will have a curative and neutralizing effect. Its

purpose is not to overrule the decision of the Court or encroach upon the judicial turf, but simply enact a fresh law with retrospective effect to alter the foundation and meaning of the legislation and to remove the base on which the judgment is founded.

In view of the aforesaid well settled legal position, the facts of the case may be seen. From the careful scrutiny of the judgment dated 03.10.2013 passed in SWP No. 1288/2013 and SWP No. 1400/2013, it is evident that the foundation of aforesaid decision was that Rules of 2008 could not have been amended by way of an executive order. Relevant extract of the aforesaid judgment is reproduced for the facility of reference:

"The settled legal position, thus, being clear, that the respondents could not have by virtue of Govt. Order No. 254-HE of 2013 dated 21.05.2013 issued by the Principal Secretary to Govt. Higher Education Department issued orders regarding deletion of M.Phil could have been deleted only by way of an amendment in the rules of 2008 itself and not by way of an executive order passed in purported exercise of section 5 of the Constitution of Jammu and Kashmir, analogous to Article 162 of the Constitution of India.

" For the reasons mentioned above, the impugned orders bearing No. 254-HE of 2013 dated 21.05.2013 and the note introduced in the advertisement notification No. 9-PSC of 2013 dated 23.05.2013 are quashed. The petitioners are held entitled to consideration for appointment on the basis of the M.Phil degree possessed by them in accordance with

the Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2008"

Thereafter, the State Legislature amended the Rules of 2008 and withdrew the Advertisement Notification dated 23.05.2013 and a fresh notification was issued on 29.05.2014. The State Government, therefore, in fact situation of the case has removed the basis on which judgment in SWP No. 1288/2013 and SWP No. 1400/2013 was founded as it has amended the rules itself and, therefore, it cannot be said that legislature has directly overruled the judgment. Accordingly the aforesaid issue is answered.

Issue No. (e)

The relevant extract of Regulations of 2010 dated 30.06.2010 reads as under:

"1.2 They shall apply to every University established or incorporated by or under a central Act. Provincial Act or a State Act every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under section 3 of the said Act.

1.3 they shall come into force with immediate effect."

From the conjoint reading of aforesaid clauses of the notification, it is evident that the same apply to the State of Jammu and Kashmir with effect from 30.06.2010. In view of the clause

1.2 of the notification, the same shall apply to the University established under the State Act as well. Accordingly, the aforesaid issue is answered.

Issue No. (f)

In order to examine the submission made by learned Senior Counsel for respondents that judgment rendered by Srinagar Wing of this Court is per incurium, we have carefully gone through the judgment dated 31.03.2015 in SWP No. 1295/2014 passed by the Srinagar Wing of this Court. Learned Single Judge after meticulous appreciation of material available on record has arrived at the following conclusions:

- (i) The Advertisement Notice does not confer any right on the candidates and to ask for finalization of the selection process.
- (ii) The competent authority would be well within its right to change the eligibility criteria after Advertisement Notification is issued and withdraw the previous Advertisement Notification.
- (iii) That the amendment in the rules of 2008 is prospective.
- iv) The Government has power to change the rules and to make the selection in accordance with the changed rules.
- v) The challenge to SRO 124 of 2014 dated 21.04.2014 is misconceived.

For the aforesaid reasons, we are unable to persuade ourselves to agree with the submissions made by the learned senior counsel for the respondents that judgment by learned Single Judge of the Srinagar Wing passed in SWP No. 1295/2014 dated 31.03.2015 is per incuriam.

14. At this stage, we may advert to the decisions referred by learned senior counsel for the respondents. **State of Gujarat and anr. vs. The Asarva Mills Ltd. Ahmedabad and anr.** (supra), is an authority for the proposition that if law takes away or abridges the fundamental rights of a citizen under Article 19, then it would not be void and non-est as respects non-citizens. Therefore, the aforesaid decision has no application to the fact situation of the case. Similarly, reference to the decision of the Supreme Court in the case of **The Superintendent and Remembrancer of Legal Affairs, West Bengal (supra)** is of no assistance to the respondents as the same *inter alia* deals with the presumption of constitutionality of the statutes and concept of classification under Article 14 of the Constitution of India. So far as reliance placed by the learned Senior Counsel for the respondents in the case of **Bhagat Ram Sharma** (supra) is concerned, the same is the authority for proposition which relates to distinction between 'repeal' and 'an amendment',

with which we have already dealt while dealing with the issue No. (c).

15. The reference to the decision in the case of **N. T. Devin Katti and others (supra)** is of no assistance to the respondents as in the aforesaid case, it has been held that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection. In the instant case, it has been already stated that the advertisement notification was withdrawn, therefore, the aforesaid decision is of no assistance to the respondents. The decision referred to in the case of **S. S. Bola and others (supra)** is an authority for the proposition that an Act should have retrospective effect without affecting any fundamental right or vested or accrued right. In the instant case, it has been already held that the respondents have no vested right, therefore, the aforesaid decision has no application to the obtaining factual matrix of the case. The decision referred to in the case of **P. Suseela and others (supra)** is an authority for the proposition that right to be considered for appointment is not a vested right and this right is always subject to minimum eligibility conditions,

and till such time as an appointment is made, no vested right arises. Therefore, the aforesaid decision also does not apply to the fact situation of the case. While dealing with the issue No. (d), it has already been held that the Legislature in the instant case has not directly overruled the judgment, therefore the decision referred to in the case of **S.T. Sadiq (supra)** does not apply to the obtaining factual matrix of the case.

16. In any case, even if other view of the matter is taken then also impugned judgments cannot be sustained in the eyes of law for yet another reason, namely law of precedent. It is trite law that judgment of the coordinate Bench is binding on the subsequent Bench of the same High Court and in case of disagreement the subsequent Bench is liable to refer the matter for examination by a larger Bench by recording reasons for disagreement. **See State of Jharkhan vs. State of Bihar, (2015) 2 SCC 231 and P Suseela and others supra.** In the instant case even though in the impugned judgments reference has been made to the judgment delivered in Srinagar Wing of this Court, which admittedly was delivered prior to point of time, yet instead of referring the same to larger Bench by recording reasons of disagreement, contrary view has been taken which is not permissible in law. On this ground

also, the impugned judgments cannot be sustained in the eye of law.

17. In view of the preceding analysis, impugned judgment dated 11.06.2015 passed in SWP No. 1539/2014 and judgment dated 30.12.2015 passed in SWP No. 1650/2014 and SWP No. 1651/2014, are hereby quashed. The appellants are directed to conclude the process of selection expeditiously in accordance with law. In the result appeals are allowed. However, there shall be no orders as to costs.

(Alok Aradhe)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
28.02.2017
Karam chand