

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(@ SLP (C) NO. 8720 OF 2021)

STATE OF JAMMU AND KASHMIR & ORS.

...Appellant(s)

Vs.

MOHAMMAD SYED PARREY & ORS.

...Respondent(s)

WITH

CIVIL APPEAL NO(S). OF 2024
(@ SLP (C) NO. 4286 OF 2021)

CIVIL APPEAL NO(S). OF 2024
(@ SLP (C) NO. 4047 OF 2021)

CIVIL APPEAL NO(S). OF 2024
(@ SLP (C) NO. 15419 OF 2021)

CIVIL APPEAL NO(S). OF 2024
(@ SLP (C) NO. OF 2021)
(@ D.NO. 14130 OF 2024)

O R D E R

1. Delay condoned.
2. Leave granted.
3. These appeals arise out of different judgments and orders passed by the Division Bench of the Jammu and Kashmir High Court at Srinagar affirming the orders passed by the Learned Single Judge

allowing the writ petitions and directing regularisation of the respondents as per the provisions of the J&K (Special Provisions Act), 2010.

4. The short facts necessary for disposal of these appeals are as follows. As of 2003, by virtue of SRO 255 J&K Contractual Appointment Rules, a Selection Committee was constituted for making certain contractual appointments. The committee invited applications and the respondents were appointed as per the process contemplated in the Rules. Appointments were made to posts of teachers and junior engineers. Though the appointments were for a period of one year, the respondents continued in service for a long period, and in due course, the Cabinet constituted a special Committee to make recommendations for regularising these employees.

5. The final recommendation of the Cabinet led to the passing of the J&K Civil Services (Special Provisions) Act 2010. Two provisions of the said Act are important, of which Section 5 relates to regularisation of adhoc employees, and Section 10 lays down the procedure for regularising the services, interpretation of which led to an earlier decision of the Jammu and Kashmir High Court in the case of *Rabia Shah v. State of Jammu and Kashmir*, which happened to be a lead matter. Section 5 is as under.

"5. Regularization of ad hoc or contractual or consolidated appointees- Notwithstanding anything to be contrary contained in any law for the time being in force or any judgment or order of any court or tribunal the ad hoc or contractual or consolidated appointees referred to in section 3 shall be 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 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."

6. It is evident from the above statutory provisions that condition no. (v) specifically prescribes that the ad-hoc/contractual or consolidated employees must have inter-alia completed seven years of service as of the appointed date. Section 2(c) of the Act describes the appointed date to be the date of commencement of the Act being 29.04.2010.

7. The first and second proviso are relevant for our purposes. The first proviso declares that regularisation shall have effect only on the date of such regularization irrespective of the fact that the appointees have completed more than 7 years of service on the appointed date or thereafter but before such regularisation. The Second proviso was not the subject matter of the proceedings either in *Rabia Shah* (supra) nor was it invoked by the State in the

present proceedings. Its operation becomes important as Mr. Shailesh Madiyal learned senior counsel appearing for the State of Jammu and Kashmir submitted that many of the respondents would have completed seven years of their contractual appointment much after the appointed date.

8. Be that as it may, the fact situation in the present proceeding is recorded by the learned single judge in the order dated 11.07.2018 which is as under;

"18. It is submitted that it is not also in dispute that the writ petitioners having been found to have completed the prescribed seven years' service much before the appointed day and fulfilling all the conditions stipulated in Section 5 of the 2010 Act, its provisions cannot be read in a manner as to confer an unbridled discretion on the concerned functionaries to order regularization of such employees as and when they wish at their whims and caprice. Petitioners further submit that there are and can be instances where such appointees completed the seven years' service much after the appointed day and have been immediately regularized and there may be instances where the appointees had completed such period of service prior to the appointed day but were regularized, like petitioners, after considerable delays, or not at all. Petitioners submitted that the Government has failed to maintain nay such standard with the result that a yawning gap has been left for commission of discrimination amongst similarly placed appointees."

9. Specifically referring to the employment position of the respondents in Civil Appeal arising out of SLP No (c) No. 8720 of 2021 and batch in *State of Jammu and Kashmir v. Mohd. Syed Parsey & Ors*, the Learned single Judge returned the following finding;

"22. In light of the above, all these petitions are allowed and the respondents are directed to give the benefit of regularization to the services of petitioners by applying the principle as detailed out in the Division Bench Judgment of this Court passed on 07.09.2016 in COD No.

159/2016 C/w Review petition No. 25/2016 and Cont: No, 13/2016 titled Ms, Rabia Shah Vs. State and Ors., and Ms. Rabia Shah Vs. Mr. B. R. Sharma and Ors., from the appointed day, i.e., around 26/27.09.2010. Respondents are further directed to modify the orders of regularization made in favour of the petitioners and give them benefit from 26.09.2010. The consequential benefits shall be in favour of the petitioners within a period of four months from the date certified copy of the order is served upon them."

10. The above referred paragraph is identical to the decision arrived in the case of Rabia Shah except that the same sentence in paragraph 22 in that case. The Division Bench while confirming the findings and reasoning of the Learned Single Judge and also by following *Rabia Shah* (supra), rejected the contention of the Government. The Submission made on behalf of the State was rejected by the Division Bench by holding as under;

"11) We have carefully gone through the judgment of the Writ Court and do not find any illegality or infirmity therein. We also feel bound by the judgment rendered by the Division Bench of this Court in the case of Rabia Shah. Despite great persuasion of Mr. Chashoo, AAG, we could not persuade ourselves to give a re-look to the judgment rendered in the case of Rabia Shah nor could we find any distinctive features in the appeals in hand. It may be noteworthy that if the arguments of Mr. Chashoo based on his understanding of Section 5 were to be accepted, the first Proviso to Section 5 of the Act of 2010 would be rendered ultra vires the Constitution for it would concede arbitrary and unbridled power to the competent authority to order regularization of an eligible ad hoc/contractual/ consolidated appointee at its whims and on the date of its choosing. But as is well settled, there is a presumption in the Constitutionality of an Act of Legislature and the provisions thereof and the Courts are loath to declare them unconstitutional unless a cast iron case for such declaration is made out. In the case of Rabia Shah, the Division Bench acted on such presumption and interpreted Section 5 in a manner that would save it from being assailed as unconstitutional. Para 12 of the

judgment in Rabia Shah's case deserves to be noticed at this stage and the same reads thus:

"12. A conjoint reading of the various provisions of the 2010 Act, especially the two above quoted provisos appended to Section 5 and Section 10 thereof, makes it unambiguously manifest that such appointees could be regularized only subject to the fulfillment of conditions stipulated in Section 5 and in accordance with the procedure prescribed in Section 10, and that such regularization could be made effective only from a date posterior to the appointed day. The 2010 Act did not have any retrospective application. It is specifically provided in the first proviso appended to Section 5, as quoted above, that the regularization of such appointees under the 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 day or thereafter, but before such regularization, meaning thereby the regularization could not be ordered from a date anterior to the appointed day. The requirement of possession and completion of seven years' service as such, as provided in Section 5(v) of the Act, is one of the conditions of eligibility, qualifying and entitling such an appointee for regularization on or after the appointed day, not anterior thereto."

11. If there are instances, where the seven years period is completed by the employee beyond the appointed date, they would be governed by the Second Proviso to Section 5. Apart from this clarification, there is nothing which requires to be considered in the appeal filed by the State. In this view of the matter, Civil Appeals are dismissed.

12. Ms. Firdouse Qutb Wani, learned counsel for the respondents, requested an expeditious conclusion of the process of

regularization as the delay is adversely affecting the pensionary benefits of some of the respondents. In this view of the matter, we direct the appellant State of Jammu and Kashmir to complete the process within a period of three months from the date of this order.

13. Pending application(s), if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[MANOJ MISRA]

NEW DELHI;
DECEMBER 04, 2024

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 8720/2021

[Arising out of impugned final judgment and order dated 27-11-2020 in LPA No. 148/2020 passed by the High Court of Jammu & Kashmir and Ladakh at Srinagar]

STATE OF JAMMU AND KASHMIR & ORS.

Petitioner(s)

VERSUS

MOHAMMAD SYED PARREY & ORS.

Respondent(s)

IA No. 158008/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 22535/2022 - EXEMPTION FROM FILING AFFIDAVIT)

WITH

SLP(C) No. 4286/2021 (XII-A)

IA No. 158005/2022 - APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 4047/2021 (XII-A)

IA No. 158017/2022 - APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 15419/2021 (XII-A)

IA No. 158012/2022 - APPROPRIATE ORDERS/DIRECTIONS)

Diary No(s). 14130/2024 (XII-A)

Date : 04-12-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Shailesh Madiyal, Sr. Adv.
Mr. Parth Awasthi, Adv.
Mr. Pashupathi Nath Razdan, AOR

For Respondent(s) Ms. Firdouse Qutb Wani, AOR
Mr. Mdzaryab Jamal Rizvi, Adv.
Mr. Md Zaryab Jamal Rizvi, Adv.
Mr. Sajjad Qutb Wani, Adv.
Mr. Anuj Handa, Adv.
Mr. Rajinder Pal, Adv.
Ms. Subia Naaz, Adv.

Ms. Taruna Ardhendumauli Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. Leave granted.
3. The Civil Appeals are dismissed in terms of the Signed Order.
4. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

(Signed Order is placed on the file)