

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

(Video conferencing)

SWP no.2127/2016

CM no.3588/2019

Reserved on :03.05.2020

Pronounced: on 04.06.2020

Suhail Maqbool Dar

...Petitioner

Through:

Mir Majid Bashir, Advocate.

v.

State of J&K & ors.

...Respondent(s)

Through:

Mr. B. A. Dar, Sr. AAG, for no.1; &

Mr. N. A. Beigh, Advocate, for nos. 2 to 4.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Whether approved for reporting:

Yes

JUDGMENT

DATE OF DECISION: 04.06.2020

Magrey-J:

1. Essentially, the principal claim and prayer of the petitioner in this writ petition is to give effect to his regularization as Junior Assistant from the date he was initially appointed on *ad hoc* basis on 21.08.2003 vide High Court order no.365 dated 21.08.2003, and to declare him entitled to consequential service benefits.

2. From a bare perusal of the aforesaid High Court order, it becomes axiomatic that his initial appointment on *ad hoc* basis, without any doubt, was de hors the Rules and a backdoor appointment; therefore, in terms of the law as it existed, he was not entitled to, and could not have dreamt of, regularisation on the post. However, the then State of Jammu and Kashmir passed a legislative enactment, namely, the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 [Act No.XIV of 2010], which came into force with effect from 28.04.2010, providing for regularization of the employees appointed on *ad hoc*, contractual or consolidated basis, subject to the conditions prescribed therein, especially in Section 5 thereof. Notwithstanding the law, as it existed, the petitioner in this petition, apart from seeking other reliefs, has challenged the very provision contained in the aforesaid

enactment, i.e. the first proviso to Section 5 thereof, as enabled the competent authority to regularise him. Thus, the petitioner is seeking to sever the very perch he has been given a legal right to securely settle on.

3. The facts are that vide High Court order no.365 dated 21.08.2003, the petitioner was appointed as a Junior Assistant on *ad hoc* basis till the post was filled up by regular selection under rules. It is his case that pursuant to his representations made in that behalf, his services were regularised by Order no.795 dated 01.02.2011 from the date of issue of the order. He filed representations for accord of retrospective effect to his regularisation from the date he was initially appointed on *ad hoc* basis, seeking analogy with some eleven employees who, according to the petitioner, were regularised from retrospective dates in terms of High Court order no.475 dated 27.08.2001 and no.282 dated 23.07.2003, i.e., prior to the engagement of the petitioner on *ad hoc* basis. However, according to the petitioner, his representations were not decided. He filed writ petition, SWP no.2445/2013, which was disposed of by the learned Writ Court vide order dated 12.12.2013 without issuing notice, with direction to the High Court to accord consideration to his representation for giving effect to his regularisation from the date of initial appointment at par with those who were similarly placed and were accorded benefit of regularization from the date of initial appointment. However, according to the petitioner, his representations were not decided. He filed contempt petition no.258/2015 wherein the respondents, responding to the notice, stated that his representation had been rejected as being devoid of any merit and against the provisions of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, (hereinafter, the Special Provisions Act) especially sub-section (v) of Section 5 thereof etc. The petitioner, thereafter, challenged the order of rejection of his representations in SWP no.1506/2016, but withdrew the same on 28.09.2016 with liberty to file a fresh writ petition to challenge Section 5 of the Special Provisions Act. It is in the backdrop of the above facts that the petitioner has filed the present writ petition with the following prayers:

“It is, therefore prayed that in view of the above submissions, Hon’ble Court may be pleased to:

- i. Issue writ, direction or order in the nature of certiorari for quashing the order no.795 dated 01.02.2011 issued by Principal Secretary to Hon’ble Chief Justice of J&K High Court to the extent of regularizing the services of the petitioner as Junior Assistant on prospective basis, i.e. from the date of order of regularization.

- ii. Issue writ, direction or order in the nature of certiorari for quashing communication no.18819/NG dated 01.01.2015 of answering respondent rejecting the claim of petitioner for regularization of service with retrospective effect, *vis-à-vis* treating the *ad hoc* period into regular service for the purpose of seniority and other service cum pensionary benefits, including qualifying service etc.
- iii. Issue writ, direction or order in the nature of declaration, declaring proviso appended to sub-section (v) of Section 5 of the J&K Civil Services (Special Provisions) Act, 2010, which reads as (sic) “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’ unconstitutional, ineffective and inoperative.
- iv. Issue writ, direction or order in the nature of mandamus commanding the respondents to give effect to the regularization of services of the petitioner as Junior Assistant retrospectively, i.e., from the date of initial appointment.
- v. Issue writ, direction or order in the nature of mandamus commanding the respondents to place the petitioner at an appropriate place in the senior list of Junior Assistants and consequent thereto grant all consequential benefits to the petitioner to which he is entitled.
- vi. By issuance of writ of mandamus it be declared that the service of the petitioner is not governed by SRO 400 of 2009 dated 24.11.2009 and the services of the petitioner in the matter of pension are governed by the Pension Rules as applicable prior to issuance of SRO 400 of 2009 dated 24.12.2009.
- vii. Any other writ, direction or order which this Hon’ble Court may deem fit and proper in the fact and circumstances of the case may also be passed in favour of the petitioner and against he respondents along with the cost of litigation.”

4. The respondents have contested the petitioner’s claim.

5. We heard the learned counsel for the parties, perused the pleadings and record and considered the matter.

6. Admittedly, the petitioner herein was appointed on *ad hoc* basis on 21.08.2003. What Rules were prevalent then and what did they provide for is not even remotely spoken about in the present writ petition. Instead judgments from other corners of the country were cited before us without letting us know which Rules governed the appointment of the petitioner on *ad hoc* basis.

7. However, we may observe here that the history of *ad hocism* in the erstwhile State of Jammu and Kashmir has been aptly traced in the Single Bench judgment of this Court in *Thomas Masih v State of J&K*, 2004(I) S.L.J. 2, and this judgment was conveniently neither mentioned nor cited at the Bar. The first few paragraphs of that judgment are relevant in context of the controversy raised in this petition. We quote the same hereunder:

“1. The practice of appointing persons on ad hoc basis on posts ranging from Class IV to Gazetted nomenclature and the evil of continuing these arrangements either with or without formal extensions de hors the Rules, beyond the prescribed period of nine months and/or against the terms of initial orders of such appointment, seems to have been followed unabatedly by the Government and its various functionaries since long. It appears that there was a ban imposed by the Government on such appointments for some period with effect from 29th December, 1988 to 28th July, 1989. However, record reveals that even during the period of ban various functionaries of the Government made ad hoc appointments. Ultimately, in terms of Government order No.1220-GAD of 1989 dated 11th September, 1989, it was ordered that all ad hoc appointees to non-gazetted posts recruited from time to time till 29th December, 1988 and who were continuing as on the date of issue of the aforesaid Government order, i.e., 11th September, 1989, be treated to have been appointed on regular basis on probation or trial, as the case may be, with effect from the date of issue of the Government order, dispensing with reference of posts held by them to the Service Selection Board or the District Level Committees in the case of Class IV posts. In respect of those of the appointees who had been appointed during the period of ban, it was ordered that their cases should be submitted to the Chief Minister through General Administration Department for orders. However, in respect of Gazettes Officers, it was ordered that these posts should immediately be referred to the Public Service Commission for selection. The Government order also envisaged relaxation of qualification and age bars. It may be relevant to notice here that appointment on ad hoc basis to Government service is permitted by Rule 14 of the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 (hereinafter referred to as the Classification, Control and Appeal Rules, 1956). This Rule was amended on 28th July, 1989 by the Government in terms of SRO 291 reference to which shall be made at appropriate place in this judgment. It would be suffice to mention here that the aforesaid Rule though permits appointment on ad hoc basis but unambiguously bars continuation of such arrangements beyond the total period of nine months. Record reveals that after 28th July, 1989, the Government and its various functionaries have made further ad hoc appointments. They have been continued mostly without formal extensions by the concerned authorities. Subsequently, the Government issued order No.1285-GAD of 2001 dated 6.11.2001 based on Cabinet Decision No.135/11(B) dated 10.09.2001. It was, inter alia, ordered that all ad hoc appointees to non-gazetted posts recruited from time to time beyond 29.12.1988 till the date of issue of the order, who were still in service, be considered for regularization after completing seven years

of continuous service from the date of appointment, dispensing with reference of posts held by them to Service Selection Board subject to certain conditions prescribed in the Government order. This Government order was purportedly issued consequent upon judgment dated 12th February, 1998 passed by one of the learned Single Judges of this Court in SWP No.283/94 titled Uttam Singh v State of J&K holding that an adhocce cannot be worse than a daily rated worker and that the petitioner therein would be entitled to regularization under SRO 64 of 1994 providing for regularization of daily rated workers after completion of seven years' continuous service. In terms of the Government order, the orders of regularization were required to be issued by the respective Administrative Departments. Before this process could be completed, noticing the correct position of law, as enunciated by the Apex Court and various other Benches of this Court as also the statutory law in force in the State, the Government decided to do away with these ad hoc appointments. As a sequel to achieving this objective, the first step taken by the Government was the issuance of Government order No.1018-GAD of 2003 dated 5th August, 2003 based on Cabinet Decision No.136/9 dated 23.7.2003 adopting the policy of contractual appointments to certain categories of posts mentioned therein and such other posts as may be notified by the Government from time to time. The aforesaid Government order dated 5th August, 2003 may be quoted below. It reads thus:

‘Government of Jammu and Kashmir
General Administration Department

Sub.: Contractual appointments.

Ref.: Cabinet decision No.136/9 dated 23.7.2003.

Govt. Order No.1018-GAD of 2003
Dated 05-08-2003.

1. In the public interest, Government have approved the policy of contractual appointment to the following posts:

- i. Assistant Surgeons;
- ii. Veterinary Surgeons;
- iii. Junior Engineer Civil in the Public Works Department and the Rural Development Department;
- iv. Junior Engineer, Mechanical;
- v. Junior Agriculture Assistant; and
- vi. Physical Education Teachers;

and such other posts as may be notified by the Government from time to time.

2. Contractual appointments referred to in para 1 above shall be made in accordance with the rules to be notified separately.

3. Pursuant to this policy, sanction is accorded to the constitution of the Committees comprising:

- (i) Deputy Commissioner of the concerned District;

(ii) The Head of the concerned Deptt at the District level for selecting candidates for these posts.

4. Appointment orders shall be issued by the competent authority.

By order of the Government of Jammu and Kashmir.

Sd/- (S.L. Bhat)

Principal Secretary to Government.'

2. By virtue of the aforesaid order, it was also provided that, as a matter of policy, the contractual appointments be made in accordance with Rules to be notified separately. Simultaneous with the issue of the aforesaid order, Government issued Notification SRO 255 dated 5th August, 2003 promulgating the Jammu and Kashmir Contractual Appointment Rules, 2003 (hereinafter referred to as the Contractual Appointment Rules, 2003). These Rules were made applicable to the posts notified vide Government order No.1018-GAD of 2003 dated 5th August, 2003 and to such other posts as may be notified from time to time in the General Administration Department by Government order. These Rules, inter alia, provide that the appointee under the Rules shall be paid a consolidated monthly salary equivalent to the minimum of the pay scale of the post to which he may be appointed and that he shall not be entitled to any other allowances or monetary benefits, whatsoever. Subsequent to the promulgation of aforesaid Rules, the Government, in supersession of earlier Government order No.1285-GAD of 2001 dated 6.11.1001, issued order No.168-GAD of 2004 dated 9.02.2004 read with the two Government orders both bearing one and the same No. and date, i.e., 237-GAD of 2004 dated 20.2.2004, under the caption 'policy relating to ad hoc appointments'. By virtue of the aforesaid Government Order, it has been, inter alia, ordered that all ad hoc appointments made after 28.07.1989 and continued in service till the date of issue of the aforesaid order and also those adhocces, who were appointed by the General Administration Department or with approval from the General Administration Department and continued in service till August 2002 or thereafter, shall be converted into contractual appointments with effect from 1st February, 2004, and these contractual appointments shall subsist till 31st December, 2004 or till selections against these posts are made by the concerned selection agencies, whichever be earlier. It has been further ordered that the contractual appointees shall be required to execute an agreement in accordance with the format appended to the Jammu and Kashmir Contractual Appointment Rules with the concerned Drawing and Disbursing Officer upto 25th February, 2004 and that if any adhocce / contractual appointee failed to execute the agreement, he shall cease to be in the employment of the Government. The posts held by the adhocces were required to be referred by the concerned Administrative Departments to the competent selection agencies by or before 29th February, 2004, if such posts had not already been referred to the selection agencies, for selection in accordance with the rules.

3. Numerous petitions have been filed before this Court by adhocces, challenging the Government order converting their ad hoc appointments into contractual appointments and the direction contained therein that such contractual appointees shall be paid a consolidated salary equal to the minimum of the scale attached to the posts held by them with effect from 1st February, 2004. They have sought for

quashment of Government order dated 9th February, 2004 together with the corrigendum dated 20th February, 2004 and prayed for a direction to the concerned authorities to regularize their services on their respective posts. Few of these writ petitions, as delineated above, are the subject matter of decision herein.

4. The petitioners herein have been appointed on ad hoc basis either to different non-gazetted or class IV posts. They have given particulars of their respective orders of appointment, the authorities who issued these orders and the allied statement of facts. The fact that some of the adhoccees are continuing since the dates just around 28th July, 1989 and some have been appointed thereafter or even after August 2002 is rather clearly admitted in the impugned order itself. Therefore, I need not narrate these facts in this judgment to indicate that the petitioners had, in fact, been appointed on ad hoc basis and are continuing ever since their respective dates of appointment. However, there are certain aspects pleaded in these petitions, which may have to be referred to and dealt with at appropriate place in this judgment. When these petitions came up for hearing on admission, the learned Advocate General appeared and opted not to file any counter-affidavit. He submitted that out-come of these petitions hinged only on certain settled legal propositions; therefore, he opted to argue the cases without filing any counter-affidavit. The learned counsel appearing on behalf of the petitioners did not object to that course. By this common judgment, therefore, I propose to dispose of finally all the above-mentioned petitions.”

8. As seen from a perusal of the above quoted paras of the judgment, the Government issued order No.1285-GAD of 2001 dated 06.11.2001 based on Cabinet Decision No.135 / 11(B) dated 10.09.2001, whereby it was, *inter alia*, ordered that all *ad hoc* appointees to non-gazetted posts recruited from time to time beyond 29.12.1988 till the date of issue of the said order, i.e., 10.09.2001 who were still in service, be considered for regularization after completing seven years of continuous service from the date of appointment, dispensing with reference of posts held by them to Service Selection Board, subject to certain conditions prescribed in the Government order. This Government order was purportedly issued consequent upon judgment dated 12th February, 1998 passed by one of the learned Single Judges of this Court in SWP No.283/94, *Uttam Singh v State of J&K*, holding that an adhoccee cannot be worse than a daily rated worker and that the petitioner therein would be entitled to regularization under SRO 64 of 1994 providing for regularization of daily rated workers after completion of seven years' continuous service.

9. As mentioned above, the petitioner is stated to have been appointed on 21.08.2003. Since the aforesaid Government order no. 1285-GAD of 2001 dated 6.11.2001 was relatable to those *ad hoc* appointees recruited from time to time beyond 29.12.1988 till the date of issue of the said order, i.e., 10.09.2001, the petitioner would not be entitled to the benefit of the said Government order, nor can

he seek parity with those employees in the matter of employment. It may be mentioned here that pursuant to the aforesaid Government order, the services of a large number of employees had been regularised. This is one thing.

10. Subsequently, in 2004 the Government, in supersession of the aforesaid Government order No.1285-GAD of 2001 dated 06.11.2001, issued order No.168-GAD of 2004 dated 9th February, 2004 read with two other Government orders both bearing one and the same No. and date, i.e., 237-GAD of 2004 dated 20.2.2004, under the caption 'policy relating to *ad-hoc* appointments'. By virtue of the aforesaid Government Orders, it was, *inter alia*, ordered that all *ad hoc* appointments made after 28.07.1989 and continued in service till the date of issue of the aforesaid order, i.e., 20.02.2004, and also those *ad hoc*ees, who were appointed by the General Administration Department or with approval from the General Administration Department and continued in service till August 2002 or thereafter, were ordered to be converted into contractual appointments with effect from 01.02.2004, and these contractual appointments were to subsist till 31.12.2004 or till selections against these posts were made by the concerned selection agencies, whichever would be earlier.

11. In light of above, since the petitioner had been appointed on ad hoc basis on 21.08.2003, his such appointment was covered and would be governed by the terms of the 'policy relating to *ad-hoc* appointments' thus promulgated by the Government under aforesaid Government order no. 168-GAD of 2004 dated 9th February, 2004 read with the two Government orders both bearing one and the same No. and date, i.e., 237-GAD of 2004 dated 20.2.2004. In other words, the petitioner's ad hoc appointment would get converted into contractual appointment and would last till 31.12.2004 only.

12. Numerous writ petitions were filed in the High Court challenging the aforesaid Government order dated 09.02.2004 and the said policy. It is not known whether the petitioner had challenged the said order, or he accepted it in its toto. The averments made in the petition do not speak even a word about it. The inference is that he had accepted it in its entirety. If that act of the petitioner be taken by its strict consequence, the petitioner would be deemed to have allowed conversion of his *ad hoc* appointment into a contractual appointment and come to an end on 31.12.2004 and, consequently, the post held by him was to be filled in by a candidate after proper selection. That, however, seems not to have been done and the petitioner continued to hold the post on *ad hoc* basis. Be that as it may, the aforesaid writ petitions were

decided by a common judgment in *Thomas Masih v State of J&K* (supra). The learned Single Judge vide its judgment dated 05.04.2004, while upholding the aforesaid policy promulgated by the Government, *inter alia*, directed that the selection process for the posts held by the *ad hoc*ees be restricted to only *ad hoc*ees.

13. It may be mentioned here that the decision in *Thomas Masih v State of J&K* (supra), was upheld by a Division Bench of the Court in LPA(SW) no.104/2004, *Shafiq Begum v. State of J&K*, and analogous appeals vide judgment dated 19.07.2004. There was another batch of LPAs arising out of some judgments rendered by another learned Single Judge of the High Court, namely, Mr. Justice R. C. Gandhi. The Division Bench hearing those LPAs was of the view that some of the points raised therein had not been taken in LPA no.104/2004 and the connected LPAs. Therefore, the Division Bench referred the matter to the Full Bench. The matter remained pending before the Full Bench for a pretty long time.

14. Meanwhile, the erstwhile State of Jammu and Kashmir enacted the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 which came into effect from 20.4.2010. The object of the said Act was to provide for regularisation of the employees appointed on *ad hoc*, contractual or consolidated basis.

15. The Reference made to the Full Bench was ultimately disposed of without answer by order dated 18.05.2016 with the following operative part thereof:

“In light of the enactment of the Act, namely, the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, the Reference made by the Division Bench to answer the issue by Full Bench no longer survives. Hence, we are of the view that no answer need to be given to the said Reference. However, in all those appeals, where the appellants are still continuing but their services have not been regularised under the aforesaid Act, their regularization claim shall be considered and decided by the concerned official respondents in terms of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, within eight weeks and if any of the appellant is aggrieved of the date of regularization, it is open to him to seek further remedy by filing separate writ petition, if there is any legal ground available. Such of those appellants who have already filed separate writ petitions are permitted to raise all grounds raised before the Writ Court as this Full Bench has not decided any issue.

All the appeals are, accordingly, disposed of.”

16. It is reiterated that the appointment of the petitioner herein was governed by ‘policy relating to *ad-hoc* appointments’ promulgated by the Government vide Government order no. 168-GAD of 2004 dated 09.02.2004 read with the two Government orders both bearing one and the same No. and date, i.e., 237-GAD of

2004 dated 20.2.2004. Therefore, his appointment was to come to an end on 31.12.2004 and the post held by him was to be put to regular selection. But that was not to be, perhaps, because there was an inconsistency in decisions by different Benches of the Court. Consequently, the petitioner continued to hold the post on *ad hoc* basis. However, above being the policy of the Government, the petitioner was not entitled to regularization and could not be regularised.

17, Learned counsel for the petitioner referred to certain instances where some *ad hoc* employees working in the High Court were regularised prior to the date of appointment of the petitioner on *ad hoc* basis, and sought parity of the petitioner with them. Admittedly, those employees had been appointed and were regularised prior to the date of engagement of the petitioner; therefore, the petitioner cannot, by any standards, seek parity with those employees, the two being forming two different and distinct classes.

18, There were numerous employees, like the petitioner, working on *ad hoc*, contractual and consolidated basis in the erstwhile State, in almost all the departments. With a view to providing for their regularization, the State legislature enacted the Special Provisions Act. So, basically, this was an enabling enactment containing special provisions to facilitate the Government to regularize the services of such employees on the terms and conditions mentioned in its relevant provisions.

19. The petitioner, as mentioned earlier, has challenged proviso to Clause (v) of Section 5 of the Special Provisions Act in this petition. Section 5 is quoted hereunder. It reads thus:

“5. Regularization of ad hoc or contractual or consolidated appointees.— Notwithstanding anything to the 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 regularised on fulfilment 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 qualifications 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 the 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.”

As it becomes axiomatic from a bare perusal of the aforesaid provision, it simply is an enabling provision whereby it was made possible and permissible for the Government to regularise the services of the *ad hoc*, contractual and consolidated employees, who otherwise had no right to continue on the posts in question in terms of the Policy promulgated in 2004, not to speak of regularization on the posts. However, by the legislative enactment, this permissibility was made subject to certain terms and conditions contained in various clauses of Section 5 itself. The impugned proviso qualifies the main Section and limits the privilege granted by the provision of law as a whole to such qualification. In other words, fulfilment of the qualifying condition contained in the proviso is *sine qua non* to the consideration of an employee for such regularization. As already mentioned earlier, the petitioner is seeking to sever the very perch he has been resting on. He wants his sheet-anchor to be removed underneath his feet. If that is done, he would fall a mass of broken bones, and torn in smithereens.

20. The prayer of the petitioner in reality is that his *ad hoc* appointment should be included in his regular service for the purposes of service benefits. In other words, he seeks a regular appointment from the initial date of his *ad hoc* appointment. It is not comprehensible, how can a backdoor entrant have the cheek to claim regularization from the date of his initial appointment on *ad hoc* basis invoking the mandate of Articles 14 and 16 of the Constitution, especially so when the Rules and policy of the government then prevalent did not provide for such a treatment. The petitioner did not have and cannot claim any such right de hors the law. Consequently, he cannot also not claim any relief subordinate to and in consequence of such a prayer.

21. The contention of the learned counsel for the petitioner is that the first proviso to Section 5 of the Special Provisions Act is violative of the rights of the petitioner guaranteed to him under Articles 14 and 16 of the Constitution. It may be mentioned here that in context of interpretation of statute or a statutory provision, the cardinal principle is when a legislative enactment is challenged as not conforming to the

constitutional mandate the Court has only one duty, i.e., to lay the Article of the Constitution which is invoked beside the Statute or the relevant provision which is challenged and to decide whether the latter squares with the former. Applying the said test to the instant case, the petitioner wants that his backdoor appointment on *ad hoc* basis should be treated as regular appointment *ab initio*, ignoring the fact that when he was appointed as a backdoor entrant, the rights of all those candidates who could have then been eligible and desirous of competing for the post had been violated to the hilt. Articles 14 and 16 of the Constitution are and were not meant for the petitioner alone. It is to meet a special circumstance that Section 5 with all its above quoted Clauses and the provisos was enacted to confer a right on the petitioner and other employees like him in lieu of a minimum of seven years continuous service on the post. These conditions contained in Section 5 of the Special Provisions Act, including the provisos appended thereto, are mandatory in nature; unless they are fulfilled, no right would accrue to such an employee for regularization of his services.

22. Viewed thus, placing Articles 14 and 16 of the Constitution beside the first proviso to Section 5 of the Special Provisions Act, we are of the considered view that the latter squares with the former. Apart from that the State Legislature had ample powers under Section 5 of the Constitution of the erstwhile State of J&K to make the law of the kind it actually enacted. It is, therefore, held to be *intra vires* the Constitution.

23. Learned counsel for the petitioner also sought to refer to Regulation 177-A of the Jammu and Kashmir Civil Service Regulations to contend that the impugned proviso was *dehors*, rather *ultra vires* the said Regulation. It is unfortunate, the learned counsel seems to be labouring under a misconception that the Special Provisions Act has been enacted by the State Legislature under the aforesaid Regulations. Regulation 177-A relates to a different class of employees whose regularization is governed by a different set of Rules providing for, *inter alia*, a minimum of seven years continuous service.

24. It is settled law that a legislation passed by a Parliament, herein it is Legislative Assembly, can be challenged only on constitutionally recognized grounds. Ordinarily, the grounds of attack of legislation are whether the legislature has the legislative competence and whether the legislation is *ultra vires* the provisions of the Constitution. We have already held above that the State Legislature had the competence to pass the enactment and that it is not *ultra vires* the provisions

of the Constitution; it rather is *intra vires* thereto. Therefore, there is no merit in the claims of the writ petitioner and, consequently, in this writ petition.

25. During the course of arguments, the learned counsel for the petitioner cited and relied upon the following judgments in support of his contentions:

- i) Rabia Shah v State of J&K, 2017 (1) JKJ 490[HC];
- ii) State of J&K v. Karmo Devi, 2014 (1) JKJ 209{HC};
- iii) Latief Hussain Khan v State of J&K, SWP no.1463/2016 decided on 04.10.2016.

We have considered these judgments. These judgments are wholly distinguishable on facts; therefore, are of no help to the petitioner.

26 For all what has been discussed above, this petition, being without any merit, is dismissed together with the connected CMP, Interim direction, if any subsisting, shall stand vacated.

27 No order as to costs.

28. Registry shall return the Original records produced by the learned counsel for the High Court to Registrar General.

(Dhiraj Singh Thakur) (Ali Mohammad Magrey)
Judge Judge

Srinagar,
04.06.2020
Syed Ayaz, Secretary

- i) whether the judgment is speaking : Yes/No.
- ii) whether the judgment is non-speaking: Yes/No.