

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

SWP No. 924/2013  
IA No. 1299/2013

**Pronounced on : 29 .05.2020**

Neeru Pandita .... Petitioner(s)

Through:- Mr. P. N. Bhat, Advocate

V/s

State of J&K & ors. .....Respondent(s)

Through:- Mr. Ayjaz Lone, Dy.A.G.

**Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

01. Petitioner was appointed as Junior Assistant on *ad hoc* basis and posted in the office of Deputy Director, Forest Protection Force, Jammu on 22.11.1997 and in terms of the order dated 23.09.1998, she worked on *ad hoc* basis on the same post by drawing the salary in the regular scale of Rs.3050-4590 with effect from 01.10.1998 and thereafter, the petitioner worked on various posts.
02. Grievance of the petitioner is that after rendering more than seven years of service from 1997, she was eligible to be regularized on substantive basis against the post, as she was working in the department since 1997. She has completed seven years of service in 2004, therefore, she was entitled to regularization of her service from 2004. A representation was also made to the respondents for the same, but they have not considered the same.
03. Respondents vide order No. 406-FST of 2012 dated 16.10.2012 regularized the services of the petitioner on substantive basis in terms of

Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 (hereinafter to be referred to as 'the Act of 2010') enacted by the Government on 28.04.2010. Petitioner, however, aggrieved of her regularization with effect from 16.10.2012 and seeks a direction to the respondents to regularize her services from the year 2004 and, thus, seeks quashing of order No. 406-FST of 2012 dated 16.10.2012 to the extent her regularization from 2012.

04. Her submission is that her regularization order came to be passed after her services were brought under the purview of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 ignoring the past services rendered by her from 1997. Since she was working against clear vacancy and her tenure came to be extended from time to time against the same post, therefore, she seeks her regularization to the said post from the date, she had completed seven years of services. Thus, regularization of her services from 2012 is arbitrary, illegal and requires to be set aside.
05. In their objections, respondents submit that the petitioner was temporarily engaged as Junior Assistant in the department on *ad hoc* basis, vide order No. 103 of 1997 dated 27.11.1997 and subsequently, vide Order No. 235 of 1998 dated 23.09.1998, she was allowed to draw salary in the regular scale of Rs. 3050-4590 with effect from 16<sup>th</sup> October, 2012 subject to producing certificate of 10+2 exam. Her services were subsequently regularized vide order No. 406-FST of 2012 dated 16.10.2012 in terms of the Section 5 of the Act of 2010. Section 5 of the Act of 2010 is reproduced hereunder for facility of reference :-

**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 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.

06. Since in terms of the proviso, her services could only be regularized from the date such appointee has completed more than seven years of service on the appointed date. The appointed day in terms of the definition of Section 2(c) of the Act of 2010, would mean, the date of commencement of this Act.
07. In **Rabia Shah vs. State of J&K & ors., 2017 1 JKJ 490**, the Division Bench of this Court while considering the provisions of Jammu and Kashmir Civil Services (Special Provisions) Act, held as under:-

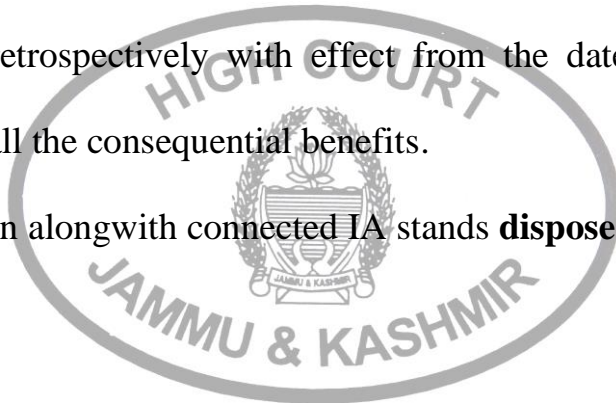
“11. A conjoint reading of the various provisions of the 2010 Act. especially the two above quoted provisos appended to Section 5 and Section 10 thereof. makes it unambiguously manifest that such appointees could be regularized only subject to the fulfillment of conditions stipulated in Section 5

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 an 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.”

08. It was further held in Para19 of the aforesaid judgment, as under:

“19. Now, since the petitioner had completed the prescribed seven years' service on ad hoc basis much prior to the appointed day, her case for regularization would have to be considered immediately after the appointed day in terms of Section 10 of the 2010 Act. As held above, the period of accord of such consideration could not be unreasonably stretched beyond 75 days to complete the process under sub-sections (2) and (3) of Section 10 of the Act of 2010 and then a maximum of further equal period would be required for completion of the remaining part of the processes under Sub-sections (4) and (5) of the said Section. In that view, the writ petitioner would be entitled to regularization from a date, say, at best, 150 days posterior to the appointed day, which would fall somewhere towards the end of September, 2010, to be precise 26/27.09.2010”.

09. In view of the aforesaid judgment, petitioner would be entitled to regularization from the date of commencement of the Act, at best 150 days posterior to the appointed day.
10. Similarly, petitioner has submitted that she has completed 7 years of ad hoc service much prior to the appointed day, therefore, her case for regularization has also to be considered immediately after appointed day in terms of Section 10 of the 2010 Act.
11. In view of the aforesaid discussion, the petitioner is held entitled to regularization from a date, 150 days posterior to the appointed day. Therefore, petitioner is entitled to her regularization from 26/27.09.2010. Respondents are, accordingly, directed to regularize the services of the petitioner retrospectively with effect from the date determined above alongwith all the consequential benefits.
12. Writ petition alongwith connected IA stands **disposed of** accordingly.



(Sindhu Sharma)  
Judge

JAMMU  
29.05.2020  
Ram Murti

Whether the order is reportable : Yes  
Whether the order is speaking : Yes/No