

**CENTRAL ADMINISTRATIVE TRIBUNAL
SRINAGAR BENCH**

No. OA 1077 of 2022

**Present: Hon'ble Mr. D.S.Mahra, Member (J)
Hon'ble Mr. Prasant Kumar, Member (A)**

1. Mushtaq Ahmad Reshi, age 56 years, S/o Ghulam RasoolRewshi, R/o Dialgam Anantnag, Pin Code – 192210.
2. Parvaise Ahmad Bhat, age 49 years, S/o GhilamNabi Bhat, R/o Baramulla, Pin Code – 193101.
3. Delair Singh, age 54 years, S/o Mohinder Singh, R/o Kanlibagh, Baramulla, Pin Code – 193101.
4. Nisar Ahmad Sofi, age 52 years, S/o Late Haji Mohd. Khalil Sofi, R/o Sangri Colony, Baraulla, Pin Code – 193101.
5. Mushtaq Ahmad Shah, age 52 years, S/o Late Ghulam Mohiudin Shah, R/o RohamaRafiabad, Baramulla, Pin Code – 193301.
6. Adfar Ahmad Tibetbakal, age 50 years, S/o Ghulam RasoolTibetbakal. R/o NagbalGanderbal, Pin Code – 191021.

.....Applicants

VERSUS

1. Union Territory of Jammu and Kashmir through Commissioner/ Secretary to Govt. Skill Development Department, Civil Sectt., Srinagar/Jammu, Email ID – jksdd@gmail.com, Pin Code – 190001.
2. Director, Skill Development Department, Kashmir, Srinagar, Email ID dsdd@nic.in, Pin Code – 190001.

.....Respondents

For the applicants: Mr.BhatFayaz Ahmad, counsel

For the respondents: Mr. Waseem Gul, GA

Heard & reserved on : 4.4.2024

Order on : 15.4.2024

O R D E R**Per Hon'ble Mr. D.S.Mahra, J.M.**

Applicant No.1, Mushtaq Ahmad Reshi, appointed against the available vacancy of Junior Instructor on 18.8.2006. The services of the applicant No.1 were regularized w.e.f. 27.3.2018.

Applicant No.2, Parvaise Ahmad Bhat was appointed against the available vacancy on 18.8.2006. The services of the applicant No.2 were regularized w.e.f. 27.12.2017.

Applicant No.3, Delair Singh was appointed initially against the available vacancy on 18.8.2006. His services were regularized w.e.f. 27.3.2018.

Applicant No.4, Nisar Ahmad Sofi was initially engaged on 2.8.2006 and subsequently was appointed against available vacancy of Jr. Instructor Radio & Television on 18.8.2006 and his services were regularized w.e.f. 27.3.2018.

Applicant No.5, Mustaq Ahmad Shah was initially appointed as Jr. Instructor on 2.8.2006 and was posted against available vacancy on 18.8.2006 and his services were regularized w.e.f. 17.12.2017.

Applicant No.6, Adfar Ahmad Tibetbakal was initially engaged on 2.8.2006 and subsequently was appointed against available vacancy of Jr. Instructor on 18.8.2006 and his services were regularized w.e.f. 27.3.2018.

2. Learned counsel for the applicants submit that the services of the applicants were regularized vide orders dated 27.12.2017 and 27.3.2018.

The applicants completed 07 years after their first appointment prior to 2017 and 2018. Learned counsel for the applicant submits that the services of the applicants should have been regularized in terms of the J&K Civil Services (Special Provisions) Act, 2010 (hereinafter referred as Special Provisions Act, 2010) immediately after completion of 07 years in service. He further submits that the regularization of the service w.e.f. 2017 and 2018 is contrary to the provisions of Special Provisions Act, 2010 and the said decision is arbitrary and against the law laid down by the Hon'ble High Court on the issue in the matter of Rabiq Shah -vs- State of J&K [2017 (1) JKJ 490].

3. Per contra, learned counsel for the respondents submits that the regularization of the service of the applicants is in accordance with the Special Provisions Act, 2010 specially Section 5 of the said Act which provides that regularization of the eligible ad hoc, contractual or consolidated appointees shall have effect only from the date of such regularization irrespective of the fact that the employees have completed more than 07 years of service.

4. Heard learned counsel for both the parties.

5. The State legislature enacted the J&K Civil Services (Special Provisions) Act, 2010 with a view to regularize the service of the employees appointed on ad hoc contractual and consolidated basis. Such regularization of the service of the employees is further subject to the fulfillment of certain conditions laid down under Section 5 of the said Act. Section 5 of the Special Provisions Act, 2010 reads as follows :

“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.”

The Special Provisions Act, 2010 further provides that such regularization shall be subject to the final scrutiny by the empowered committee constituted under Section 10 of the said Act. Section 10 of the Act provides as follows :

10. Empowered Committee. - (1) There shall be an Empowered Committee consisting of -

- (i) Administrative Secretary, Finance : Convener
Department
- (ii) Administrative Secretary, General : Member
Administration Department
- (iii) Administrative Secretary of the : Member
concerned Department
- (iv) Director, General Accounts and : Member
Treasuries
- (v) Director, Codes, Finance : Member-
Department Secretary

(2) The Department shall within [upto 31st January, 2011], refer all the cases of *ad hoc* or contractual or consolidated appointees eligible for regularization under section 5 to the Member-Secretary for being placed before the Empowered Committee for scrutiny and verification with regard to their entitlement to regularization under this Act.

[(2A) The Empowered Committee shall not entertain any case of *ad hoc*, contractual or consolidated appointee after the expiry of period specified in the sub-section (2)]

(3) The Empowered Committee shall-examine such cases and notify the names of such *ad hoc*/contractual/consolidated employees who have been found eligible for regularization under said section 5 in respect of each Department within fifteen days period for filing of objections before the Committee.

(4) The Empowered Committee shall thereafter examine the complainants, if any, received and make appropriate recommendation(s) to the concerned administrative department with regard to regularization in respect of each case on fulfillment of the conditions specified under section 5 or rejection of the case.

(5) The concerned Administrative Department shall issue orders of regularization after seeking the approval of the Chief Minister through the Chief Secretary, in coordination.

6. The combined reading of the above two provisions provides that the appointees shall be regularized subject to the fulfillment of the conditions provided under Section 5 and to give effect to such regularization the procedure has been provided under Section 10 of the said Act. It is clear from the above two provisions of the said Act that the regularization shall be made effective only after the appointed date i.e. the date on which the Act came into force i.e. 28.4.2010. Section 10(2) of the Special Provisions Act, 2010 provides that the empowered committee shall scrutinize and verify the cases of *ad hoc*, contractual or consolidated employees eligible for regularization under Section 5 of the Act immediately after the appointed date which will be referred to empowered committee by the concerned department upto 31.1.2011. In other words the Section 10(2) is applicable to those cases/employees who have completed 07 years or more on appointed date and are fulfilling all the requirements of Section 5. Section 2A of Special Provisions Act, 2010 further provides that empowered committee

shall not entertain any case for regularization after the cut off date. The empowered committee shall take a final decision with regard to those cases. After scrutinizing and verifying the cases of employees falling under Section 10(2) the administrative department shall issue order of regularization under Section 10(5) of the Act.

7. Those employees who have not completed 07 years on the appointed date i.e. the date on which the Act came into force, their cases shall not be scrutinized by the empowered committee till they complete 07 years of service and their cases will be taken up by the empowered committee after they complete 07 years of service and they will be entitled for regularization thereafter.

8. Second proviso of Section 5 of the Special Provisions Act, 2010 provides as under :

“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.”

It is revealed from the record and the documents available, that all the applicants were appointed against the available vacancies on different dates in 2006. Therefore applying the second proviso of Section 5 they completed 07 years in 2013.

9. The Act provides for two categories/types of cases to be scrutinized and verified by the empowered committee. The first category of employees to be scrutinized by the empowered committee are those appointees/employees mentioned under first proviso to Section 5 of the Act, who had completed 07 years or more on the appointed date i.e. 28.4.2010, the date on which the

Act came into force. Those cases are to be referred under Section 10(2) of the Act by the administrative department immediately and not later than 31.1.2011 to the empowered committee for scrutiny and verification. Section 10(2A) provides that the empowered committee shall not entertain any case for regularization after such cut off date. Second category/type of cases are referred in second proviso to Section 5 of the Act which provides that any ad hoc, contractual or consolidated appointees who have not completed 07 years on the appointed day shall continue as such till they complete 07 years and their cases shall be scrutinized and verified by the empowered committee after completion of 07 years for regularization. There is no period within which the empowered committee is to scrutinize and verify the second category of employees. Obviously their claim for regularization shall be considered only after completion of 07 years of continuous service and subject to fulfilment of other requirements/conditions mentioned under Section 5 of the Act. Since there is a valid classification with regard to the two types of employees the procedure prescribed under Section 10(2) and (3) is applicable to those employees who have completed 07 years or more on appointed day and the administrative department was under an obligation to refer all such cases up to 31.1.2011 to the empowered committee who are eligible for regularization under Section 5 and in turn the empowered committee is under an obligation to scrutinize and verify their cases for regularization. Sub-Section 2(A) of Section 10 provides that empowered committee shall not entertain any such cases after expiry of period specified under Sub-Section (2) of Section 10 i.e. beyond 31.1.2011.

10. Learned counsel for the applicants has submitted that the case of the applicants is covered by the judgment in order passed by the Division Bench of Hon'ble High Court of J&K in ***Rabia Shah -vs- State of J&K [2017 (1) JKJ 490]***. After going through the said judgment this Tribunal is of the opinion that the case of the applicants is not covered by the same for the reason that the applicant in the said case had completed 07 years or more on the appointed date. The administrative department as well as the empowered committee were under a statutory obligation to complete the regularization process within a specified time mentioned under Sub-Section (2) to (5) of Section 10. The Hon'ble High Court in para 19 of the said judgment had held as follows :

“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.”

10.1 The finding and law laid down by the Hon'ble High Court in the said judgment covers those applicants who had completed more than 07 years on the appointed date, whereas the applicants in the present case have not completed 07 years on the appointed date. Therefore, the case of the applicants is not covered by the said judgment. In other words the applicants in the case of Rabia Shah (supra) were covered by the first proviso whereas the applicants in the present case fall under second proviso

of the Section 5 of the Act, where there is no time prescribed for completion of the process of regularization which is to commence only after completion of 07 years. Therefore, the judgment and order passed by Hon'ble High Court in Rabia Shah's case as above is distinguishable and the case of the applicants is not covered by the said judgment.

11. The second category of cases who have not completed 07 years or more on the appointed day, shall continue as such till completion of 07 years and only after completion of 07 years their cases will be taken up for regularization subject to the condition that they fulfill all the requirements mentioned under Section 5 of the Special Provisions Act, 2010. It is relevant to mention here that there is no time limit prescribed to take up their cases after completion of 07 years but their cases certainly should be considered immediately after completion of 07 years of continuous service.

12. Coming back to the case in hand the applicants were initially engaged and appointed against the available vacancies on different dates in the year 2006. They are entitled for benefit of regularization under Special Provisions Act, 2010 after completion of 07 years in service. Applicants are covered by the second proviso to Section 5 of the Act. Since the applicants were appointed against the available vacancies on different dates in 2006, their claim for regularization will start in 2013 when they completed 07 years of continuous service. The case of the applicants fall under second proviso to Section 5 of the Special Provisions Act, 2010. Since there is no time prescribed to consider their cases by the empowered committee, the claim of the applicants for regularization was considered by the empowered committee in the year 2017 and 2018 and their claim for regularization was

recommended and subsequently the administrative department issued the regularization orders which have been impugned by the applicants in the present OA.

13. The case of the applicants falls under the second proviso to Section 5 of the Act. The claim of the applicants was scrutinized and verified by the empowered committee after completion of 07 years. Since there was no time limit prescribed for scrutinizing and verifying their cases by empowered committee their claim was considered and recommended and finally the regularization orders were passed by the respondents in 2017-18. The regularization order is as per provisions of Special Provisions Act, 2010.

14. The OA is dismissed with no order as to costs.

(PRASANT KUMAR)
MEMBER (A)

(D.S.MAHRA)
MEMBER (J)