



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR.

2025:JKLHC-SGR:244-DB

WP(C) No. 416/2024
&
Connected matters.

Reserved on:31.07.2025
Pronounced on: 30 .08.2025

WP(C) No. 416/2024

Syed Tariq Ahmad & ors vs. UT of J&K and ors

WP(C) No. 417/2024

Tariq Ahmad & ors vs. UT of J&K and ors

WP(C) No. 448/2024

Tahir Hussain & ors vs. UT of J&K and ors

WP(C) No. 1096/2024

Shamim Ahmed & ors vs. UT of J&K and ors

WP(C) No. 1177/2024

Mukhtar Ahmad Shah & ors vs. UT of J&K and ors

WP(C) No. 1250/2024

Mohd Iqbal Mir and ors vs. UT of J&K and ors

WP(C) No. 1255/2024

Saba Tahir and ors vs. UT of J&K and ors

WP(C) No. 1261/2024

Mudasir Ahmad Wani & ors vs. UT of J&K and ors

WP(C) No. 1262/2024

Muzamil Ahmad Kakroo and ors vs. UT of J&K and ors

WP(C) No. 1263/2024

Asiya Farooq Mir and ors vs. UT of J&K and ors

WP(C) No. 1550/2024

Dr. Farhat Abbas and ors vs. UT of J&K and ors

WP(C) No. 1580/2024

Arshad Hussain Bhat and ors vs. UT of J&K and ors



WP(C) No. 3314/2023

Dr. Ahsan Ul Haq and ors vs. UT of J&K and ors

WP(C) No. 3376/2023

Fayaz Ahmad Wani and ors vs. State of J&K and ors

WP(C) No. 3378/2023

Wahid Ud Din Kar and ors vs. State of J&K and ors

WP(C) No. 3379/2023

Manzoor Ahmad Shah and anr vs. State and ors

WP(C) No. 3380/2023

Mushtaq Ahmad Pandit and ors vs. State and ors

WP(C) No.3460/2023

Mohd Yousuf Nengroo and ors vs. UT and ors

For petitioners:

Mr. N.A.Beigh Sr. Advocate with

Mr. Mohd Murshid Advocate.

MKr. Bhat Fayaz Advocate

Ms Nighat Amin Advocate

Mr. Arif Sikander Mir Advocate

Ms. Syed Shabana Advocate

Mr. Mir Majid Bashir Advocate.

For Respondents:

Mr. Ilyas Nazir Laway G.A.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR,JUDGE**
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE

JUDGMENT

Sanjeev Kumar J

1 By this common judgment, above numbered writ petitions raising similar issues are proposed to be disposed of.



2 Being aggrieved by and with a view to assailing a common judgment dated 13.10.2023 passed by the Central Administrative Tribunal, Srinagar Bench, Srinagar [“the Tribunal”] in TA No. 297/2021 and connected matters, the petitioners have, in these petitions, invoked the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India.

3 The petitioners claim that they have been working in the Higher Education Department as contractual lecturers in different disciplines having been engaged on an academic arrangement basis. Some of the petitioners claim that they have been continuously working since 2003, while others claim to have been working as such since the year 2006, against clear vacancies.

4 On the apprehension that they may be replaced by similar arrangements as also for seeking their regularization under the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 [“the Act of 2010”], the petitioners approached a Single Bench of this Court by way of WP(C) No. 2572/2019 and other connected matters, seeking, *inter alia*, the following reliefs:

- (i) That Section 3(b) of the Act of 2010, to the extent it excludes the persons appointed on academic arrangement from the applicability of the Act, be declared *ultra vires* the Constitution, and that Section 10(2) and Section 10(2A) of the Act be also struck down;
- (ii) A writ in the nature of mandamus commanding upon the respondents to regularize the services of the petitioners in terms of the Act of 2010; and
- (iii) A writ of mandamus commanding upon the respondents not to replace the petitioners by engaging other candidates on academic arrangement basis.



5 WP(C) No. 2572/2019 and other connected matters were contested by the respondents by filing their objections. Apart from taking preliminary objection regarding the maintainability of the writ petitions on the grounds of delay and laches, the respondents pleaded that Section 3(b) of the Act of 2010 disentitles persons appointed/engaged, *inter alia*, on academic arrangement basis for a fixed term in any Government Department from the benefit of regularization. It was pleaded that the engagement of the writ petitioners on a contractual basis for a particular academic session was purely need-based, being dependent upon the enrolment of students in a particular subject in a particular college. It was the plea taken by the respondents that the policy of the Government in the Higher Education Department permits any student having passed 10+2 examination to seek admission in the college of his/her choice to pursue as degree-level course in any subject of his/her choice. This, according to the respondents, is unlike other States in the Country where the Government colleges have a fixed subject-wise intake capacity of students. It was, thus, pleaded that the number of students to be admitted in a college in a particular subject becomes known only after the process of admission to the degree- level courses is completed in a given year. The number of students admitted in a particular subject determines the requirement of teaching faculty, thereby necessitating academic arrangements to meet the increased strength of students in such subject/faculty. With a view to meeting such exigency, the Government creates a pool of lecturers engaged on academic arrangement basis, who are then deployed to different colleges depending upon the enrolment of students in a particular



subject. It was submitted that at the start of every academic session, applications are invited for making contractual engagements only for one academic session year. It is unequivocally stipulated in the Advertisement Notification(s) that the engagement is purely for one academic session or till the post is filled up by posting a regular faculty member or by transfer, whichever occurs earlier. The selected candidates are called upon to submit an undertaking on affidavit that they will abide by the terms and conditions of their engagement and shall not claim any preferential right for regularization or confirmation of their services.

6 It was pointed out that during the past five years, the Government in the Higher Education Department had referred more than 600 posts of Lecturers in different disciplines/subjects to the J&K Public Service Commission for making selections. In many cases, the appointments have been made, whereas in some cases the selection matters are pending adjudication before this Court/Tribunal. It was further averred by the respondents in their reply affidavit that, in the beginning, academic arrangements used to be made for a period of 10 months excluding summer/winter vacations, and this practice continued till the academic session 2009-10. However, on the directions of the Court, the terms of academic arrangement were revisited, and the candidates engaged after the academic session 2009-10 were given the contractual term from 1st of March to the end of February for Kashmir Division, and from 1st of July to 30th June for Jammu Division. It was also pleaded that the candidates engaged under academic arrangement are not paid by the Government, but their remuneration is met out of the college fund. It was further submitted that in view of the



amendment carried out to the Jammu and Kashmir Education (Gazetted) Colleges Service Recruitment Rules, 2008, in terms of SRO 124 dated 21.04.2014, many of the candidates engaged on academic arrangement have been rendered ineligible and, therefore, cannot be regularized. Not much was said about the *vires* of Section 3 (b) of the Act of 2010.

7 WP(C) No. 2572/2019 and other connected matters were transferred to the Tribunal after the enactment of the J&K Reorganization Act, 2019 and the constitution of the Tribunal. The Tribunal clubbed all the petitions under the lead case ***TA No. 297/2021 titled Mukhtar Ahmed and others v. State and others.***

8 In light of the pleadings of the parties and having regard to the rival contentions, the Tribunal framed following two questions for consideration:

- (i) Whether the Tribunal has jurisdiction to decide the constitutional validity of Section 3 (b) of the Act of 2010 ?
- (ii) Whether Section 3 (b) of the Act, which denies the benefit of regularization to the applicants appointed on academic arrangement basis for a fixed term, is discriminatory, unjust, unreasonable, and violative of Articles 14 and 16 of the Constitution of India ?

9 With regard to question No. 1, the Tribunal, placing reliance on Constitution Bench Judgment of the Hon'ble Supreme Court in **L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261**, came to the conclusion that the Tribunal constituted under the Administrative Tribunals Act, 1985, a legislation enacted under Articles 323-A and 323-B of the Constitution of India, is competent to hear even those matters where the constitutional validity of statutory provisions is challenged. The Tribunal, however, cannot adjudicate



upon the constitutional validity of the very legislation under which it has been constituted. Regarding question No.(ii), the Tribunal, after referring to the case law on Article 14 of the Constitution of India, came to the conclusion that the persons appointed on ad hoc, contractual and consolidated basis against clear vacancies, and those appointed purely on academic arrangement basis for a fixed term, form two distinct classes; and that such classification has a rational nexus with the object sought to be achieved by the Act of 2010, namely, to provide regularization to ad hoc, contractual and consolidated employees working against clear vacancies for a period of seven years and more. It is in these premises that the challenge to the *vires* of Section 3 (b) of the Act of 2010 was rejected by the Tribunal and, consequently, all the petitions, in terms of the common judgment impugned in these petitions, came to be dismissed.

10 The impugned judgment is challenged by the petitioners, *inter alia*, on the ground that the Tribunal has failed to appreciate that though the engagement of the petitioners was designated as ‘contractual’ on academic arrangement basis, but, in essence, it was an engagement on ad hoc basis and, therefore, the respondents could not have discriminated against them vis-à-vis those who were similarly appointed, and described as ‘contractual’, ‘ad hoc’ or ‘consolidated’. It is submitted that the Tribunal also failed to appreciate that the petitioners were similarly situate with those engaged on ad hoc, contractual and consolidated basis, and, therefore, formed a single class. Any further classification only on the basis of nomenclature was thus in direct conflict with the right of equality and equal protection of laws envisaged under Article 14 of the Constitution of India.



11 *Per contra*, the stand of the respondents, as taken in their objections and reiterated by Mr. Laway, Government Advocate, appearing for the respondents, is that not only the petitions filed by the petitioners before the Tribunal were hit by delay and laches, but also that the petitioners have failed to demonstrate a case for declaring Section 3 (b) of the Act of 10 *ultra vires* the Constitution of India. He would submit that the petitioners, having been engaged on academic arrangement basis to meet the exigency arising out of an increase in admissions in a particular subject in a particular college, and that too for a fixed term, cannot be equated with those engaged against clear vacancies on ad hoc, contractual or consolidated basis in various Departments and who have continued for years together. It is thus argued that the two categories form two distinct classes and, therefore, the plea of the petitioners that unequals should be treated equally is not in consonance with the spirit underlying the equality clause contained in Article 14 of the Constitution of India. Mr. Laway also adverted to the policy decisions taken by the Government from time to time for making academic arrangements in the Higher Education Department, and would submit that, having regard to the nature of such engagements and the object for which these were made, it is abundantly clear that engagements on academic arrangement basis constitute a separate class of their own and, therefore, fall outside the purview of the Act of 2010.

12 Having heard learned counsel for the parties and perused the material on record, the instant petitions throw up the following questions for determination:



(i) Whether Section 3(b), Section 10(2) and Section 10(2A) of the J&K Civil Services (Special Provisions) Act, 2010 are *ultra vires* the Constitution of India ?

(ii) What is, in essence, the nature of appointment/engagement of the petitioners, who as per the respondents, have been engaged on academic arrangement basis in different subjects in the Government Degree Colleges of the erstwhile State of Jammu and Kashmir and thereafter the UT of Jammu and Kashmir ?

(iii) Whether the engagement of the petitioners can be termed as contractual, or ad hoc or consolidated so as to bring them within the ambit of the Act of 2010 ?.

13 Learned counsel appearing on both sides, particularly for the respondents, have not agitated the issue with regard to the power of the Tribunal to hear matters involving challenge to the constitutional validity of a statute.

Question No. (i):

14 This Court has, time and again, observed that successive Governments in the erstwhile State of Jammu and Kashmir had been adopting different *modus operandi* to legalize and legitimize the backdoor appointments made by them from time to time to please the voters and supporters of the political dispensations. Prior to 1994, thousands of persons were brought into Government service by initially engaging them as daily wagers, casual workers, seasonal workers and daily-rated workers on the payment of wages fixed under the Minimum Wages Act. All such engagements were treated as need-based, required for meeting emergent situations. These engagements were made purely on the basis of 'pick and choose' method, and without adhering to any process of selection in consonance with Articles 14 and 16 of the Constitution of India.

15 Be that as it may, these engagements were continued for years together. With a view to giving them permanent appointments



and legitimizing such illegal and arbitrary engagements, the Government came up with a policy decision, which was spelled out in the Jammu and Kashmir Daily Wage/Work-Charge Employees (Regularization) Rules, 1994, issued vide SRO No. 64 of 1994. The said SRO paved the way for making thousands of appointments against Class IV vacancies. Many candidates were accommodated by creating fresh posts of Helpers and other class IV positions. Simultaneously with the engagement of daily wagers, the Government also appointed several candidates on *ad hoc* basis against clear vacancies, with a stipulation that their engagement would be for a period of 89 days or till the regular selection is made by the Recruitment Agencies i.e., J&K Service Selection Board or the Jammu and Kashmir Public Service Commission as the case may be. Right from the level of Orderlies to Gazetted Officers, appointments were made in such capacity. These appointments too were made arbitrarily, by adopting a pick and choose method, and without following any fair and transparent selection process in consonance with Articles 14 and 16 of the Constitution of India. These appointments were later on regularized by the Government in terms of Government Order No. 1220-GAD of 1989 dated 11.09.1989. The said Government order envisaged that the regularization of candidates appointed on *ad hoc* basis and having served in that capacity for more than seven years would be regularized as a one-time exception, with a clear stipulation that the Government would ensure that no such appointments were made in future. However, this stipulation was not adhered to, and the Government continued to make temporary appointments in the name of *ad hoc*, contractual and consolidated engagements, thereby avoiding its statutory obligation to



fill vacancies by resorting to the recruitment process envisaged under law, which would require inviting applications from all eligible candidates so as to provide them an opportunity to compete with others on the basis of merit.

16 With a view to legitimizing temporary recruitments made in violation of Articles 14 and 16 of the Constitution of India, and to lay down a framework for providing legal basis to such appointments in Government service, the then State of Jammu and Kashmir enacted the Act of 2010. As the Preamble of the Act indicates, it was enacted with the object of providing for regularization of employees appointed on ad hoc, contractual, or consolidated basis. The benefit of the Act of 2010, as is evident from the Preamble, was confined only to three categories of temporary appointments, namely (i) ad hoc appointees, (ii) consolidated appointees, and (iii) contractual appointees. The definitions of these three categories of appointments have been provided in clause (b), (e) and (f) of Section 2 of the Act of 2010, which for facility of reference, are set out below:

“2. Definitions:

In this Act, unless the context otherwise requires,-

- (a)
- (b) “ad hoc appointee” means a person who has been appointed on ad hoc basis against any post under the Government;
- (c)
- (d)
- (e) “consolidated appointee” means a person who has been appointed against any post under the Government on consolidated monthly salary/wages;
- (f) “contractual appointee” means a person who has been appointed on contract basis against any post under the Government;.....
- .
- (g)
- (h)



- (i)
- (j)
- (k)
- (l)

17 From a plain reading of the definitions of these three type of appointments, it is evident that, for an appointment to qualify as *ad hoc*, consolidated, or contractual, the appointment of a person against a civil post under the Government is a *sine qua non*. Section 3 of the Act of 2010 deals with the application of the Act, and reads thus:

3. Application of the Act-

The provisions of this Act shall apply to such posts under the Government as are held by any person having been appointed on ad hoc or contractual basis including those appointed on consolidated pay provided that such appointments have been made against the clear vacancies, but shall not apply to :--

(a) persons appointed in terms of Government Order No. 125-GAD of 2001 dated 01-02-2001, on contract basis in the personal sections of the Ministers or other authorities enjoying the status of a Minister;

(b) persons appointed on tenure posts co-terminus with the life of the Project or Scheme of the State or Central Government, as the case may be, and those appointed on academic arrangement for a fixed term in any Government Department;

(c) non-governmental agencies or autonomous bodies or public sector undertakings or corporations or government companies or societies or other local authorities which have their own rules and regulations governing their functioning; and

(d) part-time or seasonal employees including those whose wages are paid from out of the local funds or contingent grants.

18 A plain reading of Section 3 makes it clear that the provisions of the Act are applicable to such posts under the Government as are held by persons appointed on ad hoc, contractual, or consolidated basis, provided such appointments were



made against clear vacancies. All other temporary arrangements, other than ad hoc, contractual, or consolidated appointments, have been kept outside the purview of the Act of 2010. Section 3 further excludes the following categories of persons from the benefit of the Act of 2010:

- (i) the persons appointed on contract basis in the personal sections of Ministers or other authorities enjoying the status of a Minister in terms of Government order No. 125-GAD of 2001 dated 01.02.2001;
- (ii) persons appointed on tenure posts co-terminus with the life of the Project or Scheme of the State or Central Government, as the case may be, and those appointed on academic arrangement for a fixed term in any Government Department;
- (iii) Non-governmental agencies or autonomous bodies or public sector undertakings or corporations or government companies or societies or other local authorities which have their own rules and regulations governing their functioning; and
- (iv) Part-time or seasonal employees including those whose wages are paid from out of the local funds or contingent grants.

19 Section 5 of the Act of 2010 lays down certain conditions to be fulfilled by an ad hoc, contractual, or consolidated appointee referred to in Section 3 of the Act for the purpose of regularization of his services. Apart from other terms and conditions, an *ad hoc*, consolidated or contractual appointee claiming the benefit of regularization under the Act of 2010 must possess the requisite qualification and eligibility for the post, as prescribed under the Recruitment Rules governing the service or post, on the date of his initial appointment. Section 10(2) and Section 10(2A) of the Act of 2010 are the provisions enacted for giving effect to the regularization only of ad hoc, consolidated, or contractual appointees.



20 In order to appreciate whether the exclusion of ‘academic arrangements’ made for a fixed term from the purview of regularization envisaged under the Act of 2010 is arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution, we need to delve, to some extent, into the concept of temporary arrangements as are known to service jurisprudence. The definition of ‘ad hoc appointee’ given in Section 2(b) of the Act of 2010 is not conclusive of its nature, and, therefore, we may have to look for the concept elsewhere.

21 Rule 14 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 (“Rules of 1956”) is one such provision which explains the concept of “temporary appointment”, which, in essence, could be termed as an ‘ad hoc appointment’. Rule 14 reads as under:

14. Temporary appointment:

(1) Where it is necessary in the public interest owing to an emergency which has arisen and could not have been foreseen, to fill immediately a vacancy in a post borne, on the cadre of service, class or category and the making of an appointment to such vacancy in accordance with these rules would involve undue delay, excessive expenditure or administrative inconvenience, the appointing authority may appoint a person otherwise than in accordance with these rules temporarily with the prior approval of the Chief Minister to Coordination until a person is appointed. in accordance with these rules but such temporary appointment shall in no case exceed three months on. each occasion and not more than nine months in all;

(2) A person appointed under sub-rule (1) shall be replaced as soon as possible by a member of the service of a candidate qualified and considered fit to held the post under these rules; and,

(3) A person appointed under sub-rule (1) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service class or category.



22 It is thus evident that, with a view to meeting an emergency that has arisen and could not have been foreseen, so as to immediately fill a vacancy in a post born on the cadre of a service, class, or category, and where making of a regular appointment in accordance with the Rules would involve undue delay, excessive expenditure, or administrative inconvenience, the appointing authority, if it deems it necessary in public interest, may appoint a person temporarily, with the prior approval of Chief Minister, for a period not exceeding three months on each occasion and not more than nine months in all. Such person shall be replaced as soon as possible by a member of the service or by a candidate qualified and considered fit to hold the post under the Rules. Such person, as is provided in Rule 11 itself, is not entitled, by reason of such appointment to any preferential claim for future appointment to the service or category. If such a person is subsequently appointed in accordance with the Rules, his probation shall commence from the date of such subsequent appointment, and not from the earlier temporary appointment, unless otherwise determined by the Minister In-charge.

23 In the absence of any specific definition of “ad hoc appointment” the only provision that can be referred to for understanding the appointments made on ad hoc basis is Rule 14 of the Rules of 1956, reproduced above. There is, however, no specific definition of ad hoc or contractual appointees. A contractual appointment, as the term itself conveys, is an appointment for a fixed term governed by the terms and conditions of contract of engagement. Such appointment may or may not be against a vacant post. Similarly, a consolidated appointment, as the term suggests, is an appointment



where a fixed sum per month is paid to an employee engaged to perform the duties of a post. Such appointment too may or may not be against a vacant post. The clear object with which the Act of 2010 has been enacted is to confer the benefit of regularization on those who are engaged to perform the duties of a post held by them, either on ad hoc, contractual, or consolidated basis. The benefit of regularization is, therefore, envisaged only for those whose appointments were made against clear vacancies and who discharged the duties of the post in the capacity of ad hoc, contractual, or consolidated appointees and to none else. Appointments made on academic arrangement for a fixed term in any Government Department were kept outside the purview of the Act of 2010. The academic arrangements typically refer to temporary faculty positions or teaching roles in educational institutions, created to meet the specific requirements of a particular academic session. These arrangements are generally governed by the agreements entered into between the educational institutions and the candidates offering for such appointments.

24 The academic arrangements are made annually, keeping in view the requirements of the institutions arising out of admissions to various courses. The availability of substantive vacant post is not a *sine qua non* for such arrangements. It is in consonance with this concept of academic arrangement that the legislature, in its wisdom, excluded such fixed-term academic engagements from the purview of the act of 2010. Therefore, the appointments made by the Government from time to time against clear vacancies, whether on ad hoc, contractual, or consolidated basis, form a class apart from (i) the appointments which are made against tenure posts co- terminus with the life of a project or



scheme of the State and the Central Government, and (ii) the appointments made on academic arrangement for a fixed term in the Government Departments. As is rightly held by the Tribunal as also by a Single Bench of this Court in WP (c) No. 1797/2019, there is an intelligible differentia in the classification made between the aforesaid categories of appointments, and this classification made by the legislature has a nexus with the object sought to be achieved, i.e providing regular appointments only to those who are engaged against clear vacancies.

25 A Constitution Bench judgment of the Supreme Court rendered by seven Judges in **State of West Bengal v. Anwar Ali Sarkar, 1952 AIR 75**, is a *locus classicus* on the permissibility of reasonable classification under Article 14 of the Constitution of India. It was authoritatively held therein that although Article 14 does not permit class legislation, yet reasonable classification can be made by the State without offending the mandate of equality enshrined in Article 14. Relevant extracts of paragraph (54) are noteworthy and are set out hereinbelow for ready reference.

“54..... All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the



object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained. The doctrine, as expounded by this Court in the two cases I have mentioned, leaves a considerable latitude to the Court in the matter of the application of [Article 14](#) and consequently has the merit of flexibility”.

26 It is thus trite law that the constitutional validity of a legislation is required to be tested by applying the twin tests: (i) the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (ii) such differentia must have a rational nexus with the object sought to be achieved by the legislation.

27 The equality before law or equal protection of laws does not mean that the State should provide uniform treatment to everyone, even if they are not similarly situated. It emphasises the principle that equals must be treated equally, and that treating unequals as equals would itself offend the right to equality envisaged under Article 14 of the Constitution. With a view to achieve equality and equal protection of laws, equals must be treated alike, while unequals must be treated differently. The universal application of law to different classes of persons, who are differently situated, is essentially a denial of the right to equality envisaged under Article 14 of the Constitution.



28 Applying the twin tests to the legislation on hand, we find that persons appointed on ad hoc, contractual, or consolidated basis against clear vacancies are different from those who are engaged against tenure posts co-terminus with the life of a project or scheme, or under academic arrangements made for a fixed term, i.e., one academic session alone. This differentia between the two classes is rational, having regard to the object sought to be achieved by the Act of 2010, which provides for the regularization of only those who have been working on ad hoc, contractual, or consolidated basis against posts for more than seven years. Tenure appointments, or for that matter academic arrangement appointments, are not intended to continue beyond the tenure or academic session, and therefore constitute a class altogether different from ad hoc, contractual, or consolidated appointments.

29 Viewed from any angle, we find no reason or justification to take a view different from the one taken by the Tribunal, namely, that Section 3 (b), or for that matter Sections 10(2) and 10(2A) of the Act of 2010 violate Article 14 of the Constitution and are, therefore, ultra vires. Question No.(i) is answered accordingly.

30 Coming to Question No. 2, suffice it to say that what was initially envisaged by the Government in the year 1991 was to make academic arrangements for providing teaching faculty to various degree colleges of the erstwhile State of Jammu and Kashmir. The necessity to resort to such academic arrangements had apparently arisen for the following reasons: (i) the Department of Higher Education had decided not to fix any intake capacity of students across Government colleges in



Jammu and Kashmir, which resulted in a huge enrolment of students in the Government degree colleges; and (ii) the permanent teaching faculty required to meet the needs of such huge enrolments was not available.

31 With a view to meeting the exigency that arose due to opening of admissions to degree courses without fixing any intake capacity, a “pool fund” was created by adding a component to the fee structure, and this fund was utilised to make need-based academic arrangements for faculty to meet the fluctuating demand in each academic session. Although the Government has not been able to place on record any formal policy, yet we have no manner of doubt that the object of making such arrangements was nothing other than what has been indicated above. This is also apparent from the various documents on record, including the Government orders issued from time to time laying down guidelines for engagement of candidates on an academic arrangement basis. It also cannot be debated or disputed that some of the candidates came to be engaged on academic arrangement basis against available vacancies in a college, while others were engaged even without the availability of vacancies. The nature of such engagement was that it was to end with the expiry of the academic session and was to be repeated only if a need would arise in the subsequent session. Thus, the availability of a vacancy was not a sine qua non for making academic arrangements. However, it cannot be ignored that some of the petitioners who were engaged against available posts on contractual basis for a particular academic year were continued from year to year. Earlier, there used to be a break in their



service due to winter/summer vacations, but later, on the intervention of this Court/Tribunal, they were continued throughout the year and were also paid even for the vacation period. This rendered their engagements continuous in nature.

32 It is true that in some cases, the petitioners were allowed to continue in their engagements on the strength of interim directions passed in their favour by this Court or the Tribunal. Nonetheless, the basis of such indulgence was that, having regard to the perennial nature of duties entrusted to the academic arrangement appointees, it was not permissible to replace them by the similar arrangements. In short, this Court at least found a right vested in the petitioners to continue in their engagements till they were replaced by a candidate regularly appointed against the post, or till the post is otherwise filled through transfer or adjustment of permanent faculty. It also cannot be lost sight of that the process for adjustment of permanent faculty, either by direct recruitment or by transfer, was not resorted to for years together. It needs to be emphasized that it is not the nomenclature but the nature of the appointment and the terms and conditions subject to which it is made that determines whether the appointment qualifies to be an ad hoc, contractual, or consolidated. The appointments of the petitioners, having been made against sanctioned posts, would certainly qualify as appointments envisaged for the benefit of regularization under the Act of 2010. Their appointments are governed by the terms and conditions of their contracts of engagement, which are either contained in the guidelines issued by the Government from time to time or incorporated in the advertisement notifications. This would render



the appointments of the petitioners contractual in nature, though initially made only for one academic year.

33 Indisputably, the petitioners are paid a consolidated salary and not the salary in the pay scale of Lecturer/Assistant Professor. That makes the appointment against a post on a consolidated basis. Therefore, such appointments as have been made by the respondents from time to time prior to the commencement of the Act of 2010, against clear vacancies, and continued either by repeating such appointments every year by a **limited competitive process** or in compliance with interim directions passed by a competent court of jurisdiction, shall be treated as contractual appointments on a consolidated basis and would, therefore, definitely fall within the purview of the Act of 2010, the nomenclature of the appointment i.e “academic arrangement” notwithstanding.

34 This Court cannot lose sight of the fact that for more than two decades, the respondents have failed either to create additional posts or even to fill up the existing vacant positions of Lecturers/Assistant Professors in various degree colleges. The degree colleges are being run almost entirely on the basis of such academic arrangements made year after year to cater to the needs of students undergoing undergraduate courses. The reason is obvious and not too far to seek. These appointments are cost-effective and save the time that would otherwise be incurred in following the due process of selection in consonance with Articles 14 and 16 of the Constitution. By resorting to academic arrangements from time to time, and by picking up candidates solely on the basis of academic merit without subjecting



them to the arduous selection process conducted by the J&K Public Service Commission, the respondents have undoubtedly compromised both the quality of faculty and the standard of education imparted in the Government Degree Colleges of the State/UT of Jammu and Kashmir.

35 It is true that the selection of candidates for appointment as teaching faculty on an academic arrangement basis is not wholly arbitrary. An advertisement notification inviting applications is issued, and eligible candidates are allowed to participate and compete in the selection process. The object of the selection process is to ensure that candidates are picked up on the basis of their academic merit. However, since these arrangements are, by their very nature, temporary, as such many meritorious candidates with better and higher qualifications do not participate and instead feel satisfied with their appointments as Teachers/Lecturers in the School Education Department or in other lower positions in various Government Departments. Such candidates may be waiting for the Public Service Commission to issue an advertisement notification so that they can apply and compete with other eligible candidates for appointment as Assistant Professors in the Higher Education Department on a permanent basis. The process of making academic arrangements and thereafter regularizing the services of such appointees after a few years definitely deprives other meritorious candidates of their right to employment and thus violates Articles 14 and 16 of the Constitution. The Act of 2010, which aims at regularizing the services of temporary employees appointed on ad hoc, contractual, or consolidated basis, therefore strikes at the root of Articles 14 and 16 of the Constitution and is, on the face of it,



unconstitutional. However, in the absence of any challenge to the said Act, and in view of its subsequent repeal post reorganization of the State in terms of the J&K Reorganization Act, 2019, this question is rendered academic and does not otherwise arise for consideration in these petitions. Question No.2 is answered accordingly.

Question No.3

36 In view of the aforesaid discussion, we are of the considered opinion that the engagement of such petitioners, who were appointed against clear vacancies prior to the commencement of the Act of 2010 and whose services have been continued from time to time either by the act of the respondents or on the intervention of this Court or the Tribunal, on the principle that one temporary appointee cannot be replaced by another, do fall within the category of ad hoc, contractual, or consolidated appointments. Such engagements, therefore, cannot be excluded from the benefit of regularization envisaged under the Act of 2010. However, the engagements of those petitioners whose appointments are found to have been made over and above the sanctioned posts are definitely outside the purview of the Act, for, holding of a vacant post by a temporary appointee for more than seven years is *sine qua non* for claiming the benefit of regularization envisaged under the Act of 2010. An exercise in this regard is thus required to be conducted by the respondents to determine which of the petitioners engaged prior to the commencement of the Act of 2010 have been working continuously for more than seven years against substantive vacant posts created by the Government in the Department of Higher Education.



37 For the foregoing reasons, we find merit in these petitions,
and the same are allowed by providing as under:

(i) The respondents shall constitute a High-Level Committee headed by the Chief Secretary, with the Secretary to Government, Department of Higher Education; the Secretary to Government, General Administration Department; the Secretary to Government, Finance Department; and the Secretary to Government, Department of Law, as its members, within a period of one month;

(ii) The Committee shall, within a period of two months, embark upon an exercise to identify those candidates who were appointed as Assistant Professors/Librarians/PTIs prior to the commencement of the Act of 2010, against clear vacant posts; who were in position on the said date; and who have rendered continuous service for a period of seven years or more;

(iii) Such candidates who are found by the Committee to have been appointed against vacant posts prior to the commencement of the Act of 2010, and who satisfy the eligibility criteria, shall be considered for regularization under the Act of 2010 within one month thereafter;

(iv) The regularization of those found entitled under the Act shall be given retrospective effect from the date they are found eligible for such regularization i.e those who completed continuous service of seven years on or before the commencement of the Act of 2010 shall be regularized from the date of commencement of the Act, while those who completed seven years of service after the commencement of the Act shall be regularized from the date on which they actually completed seven years of continuous service.

(iv) No fresh academic arrangements shall be made by the Government against clear vacancies of Assistant Professors, Librarians, and PTIs borne on the Jammu and Kashmir Education Gazetted Colleges Service Recruitment Rules 2008 and efforts shall be made to immediately refer all such vacant posts to the Jammu and Kashmir Public Service Commission for selection. The Committee shall also examine the desirability of creating additional posts of teaching faculty, Librarians, and PTIs



in various degree colleges to meet the current and future demand of admissions and shall take requisite steps for creation of such additional posts, to be filled up only under the Jammu and Kashmir Education Gazetted Colleges Service Recruitment Rules 2008 Jammu and Kashmir Rules through a selection process conducted by the Public Service Commission; and,

(v) All academic arrangements made *de hors* the vacancies or outside the sanctioned strength of Assistant Professors, Librarians, and PTIs shall be dispensed with from the next academic session, unless such engagements are required to meet the exigency of the situation obtaining in the next academic year and thereafter. Any such engagements, if made, shall be treated as fresh engagements, purely contractual in nature, and shall not confer any right of regularization under any law in force or that may be framed by the Government in future.

(vi) These directions shall not be applicable to Teaching Associates engaged on contractual basis and their engagements shall be governed by the terms and conditions of their appointments.

Disposed of in the above terms.

The pending files which have been received from the Tribunal be sent back to the concerned Benches of the Tribunal.

Registry shall place a copy of this judgment in each of the files.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
30.08.2025
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes