

**CENTRAL ADMINISTRATIVE TRIBUNAL
SRINAGAR BENCH, SRINAGAR**

**T.A. No. 43 OF 2024
(SWP No. 1787/2022)**

Heard and Reserved on: 07-03-2025

Pronouncement of Order on:09-05-2025

C O R A M

**HON'BLE MR. D. S. MAHRA MEMBER (J)
HON'BLE MR. PRASANT KUMAR, MEMBER(A)**

Dr. Altaf Hussain Pandith(Age: 53 years)

S/o Ghulam Hassan Pandith

R/o Wadoora Bala Sopore

District Baramulla.

..... Applicant

By Advocate:
Mr. M Ashraf Wani

VERSUS

1. Union Territory of Jammu and Kashmir through Principal Secretary to Govt. General Administration Department, Civil Secretariat Jammu/Srinagar.

2. University of Kashmir, through its Vice Chancellor, Hazratbal, Srinagar.

3. University Council through its Vice Chancellor, Hazratbal, Srinagar.

.....Respondents

By Advocate :-
Mr. Waseem Gul, GA

Judgment delivered by
HON'BLE MR. D. S. MAHRA MEMBER (J)

(I) FACTS OF THE CASE:

- 01.** The instant T.A. No. 43/2024 was originally titled as SWP No. 1787/2022 before the Hon'ble High Court of Jammu & Kashmir. The same was transferred to the Central Administrative Tribunal, Srinagar pursuant to the Hon'ble High Court's order dated 08.08.2024.
- 02.** The applicant in this T.A. is aggrieved by his dismissal from service by the Lieutenant Governor of Jammu & Kashmir, invoking Clause (c) of the Second Proviso to Article 311(2) of the Constitution of India. Accordingly, the applicant prays for the following reliefs:

- a) Writ of Certiorari, thereby quashing the impugned order bearing no. 550-JK (GAD) of 2022 dated 13.05.2022, dismissing the petitioner from services as Professor, Department of Chemistry, University of Kashmir;*
- b) Writ of Mandamus, thereby commanding the*

respondents to allow the petitioner to perform his duties as Professor, in the Department of Chemistry, University of Kashmir and pay him salary and other emoluments continuously;

c) Writ of Mandamus, thereby commanding the respondents to pay damages to the petitioner for his wrongful dismissal as he has suffered loss/damages in his reputation both in the university as well as in the society; and

d) Any other writ, order or direction which this Hon'ble Court may deem just and proper under the facts and circumstances of the case be passed in favour of the petitioners and against the respondents.

03. The applicant was appointed as Assistant Professor (Reader) in the year 2012 by the University of Kashmir. Subsequently, the applicant was promoted to the position of Associate Professor and then as Professor. The applicant was an active member of the Kashmir University Teachers Association (KUTA) and was its Executive Member from 2010 to 2012. The applicant was elected as Vice President of KUTA from 2017 to 2020.

04. It is alleged that the applicant was involved in anti-national activities and was a member of the Jamaat-e-Islami (JeI) & Lashkar-e-Taiba (LeT). A high level

committee was constituted by the Lieutenant Governor of Jammu & Kashmir to scrutinize the material presented against the applicant. After scrutinising the material, the high level committee concluded and recommended that there was sufficient evidence/material against the applicant to take action under Article 311(2)(c) of the Constitution of India. Consequently, the Lieutenant Governor issued the impugned dismissal order on 13-05-2022, dismissing the applicant from service. The applicant challenged this dismissal order by filing SWP No. 1787 of 2022 before the Honourable High Court of Jammu & Kashmir, which was subsequently transferred to this Tribunal and renumbered as TA No. 43 of 2024.

(II) SUBMISSIONS OF THE PARTIES:

Submissions by the Learned Counsel for the applicant:

05. Learned Counsel for the applicant, Mr. M. Ashraf Wani, submitted as under:

(i) That the University of Kashmir has been

established under the Jammu and Kashmir University Act, 1969, and is a statutory body. He further contended that the Kashmir University is not a "State" under Article 12 of the Constitution as such respondents have no authority to take action against the applicant.

(ii) That the applicant does not hold a "civil post" under the Union Territory of Jammu and Kashmir. Being an employee of an autonomous institution i.e. Kashmir University, Article 311 of the Constitution is not applicable to him. He further contended that there exists no master-servant relationship between the Union Territory of Jammu and Kashmir and the applicant.

(iii) That the Lieutenant Governor is neither the President of India nor the Governor under the Constitution and therefore, he has no power and authority to invoke Article 311(2)(c) of the constitution and dismiss the applicant from service.

(iv) That sufficient material was not available with the high level Committee or the Lieutenant Governor to justify the action against the applicant under Article 311(2)(c) of the Constitution.

Submissions by Counsel for the respondents/UT of J&K:

06. Learned Counsel for the respondents, Mr. Waseem Gul, GA submitted as under:

(i) That the University of Kashmir was established under the J&K University Act, 1969, and is financially, functionally, and administratively controlled by the Government of Union Territory of J&K; therefore, it is a 'State' under Article 12 of the Constitution.

(ii) That the applicant, by holding a post in the University as Teacher/Professor his post falls within the definition of a 'civil post' and accordingly the applicant is an employee of the State; and hence, Article 311 of the Constitution is applicable to him.

(iii) That the Lieutenant Governor, appointed under Article 239(1) of the Constitution, acts as an administrator of the Union Territory of J&K and thus exercises powers equivalent to those of the Governor.

(iv) That there was sufficient material available against the applicant which was duly scrutinized by the high level Committee and only after that exercise

the dismissal of the applicant, in the interest of the security of the State, was recommended.

(III) Questions of Law & issues for consideration of this Tribunal:

- 1. Whether the University of Kashmir, established under the J&K University Act, 1969, is a State under Article 12 of the Constitution of India?*
- 2. Whether the applicant is holding a civil post in the Kashmir University and under the Union Territory of Jammu & Kashmir?*
- 3. Whether the Lieutenant Governor of UT of J&K is empowered to pass an order under Article 311(2)(c) of the Constitution of India?*
- 4. Whether there was sufficient material available with the High Level Committee for recommending dismissal of the applicant to the Lieutenant Governor of UT of J&K under Article 311(2)(c) of the Constitution of India?*

(IV) Relevant Statutory Provisions:

- 1. Constitution of India; Article 239, 309, 310 & 311*
- 2. Jammu & Kashmir Reorganization Act, 2019, Section 2 (h) & Section 14.*
- 3. Rule 33 and Rule 34 of the J&K Civil Services (CCA) Rules, 1956.*
- 4. J&K University Act 1969*

(V) ANALYSIS, REASONING & DISCUSSION:

Question of Law/Issue No. 1- Whether the University of Kashmir established under the J&K University Act, 1969 is a State under Article 12 of the Constitution of India?

07. Learned counsel for the applicant has submitted that the University of Kashmir has been established under the J&K University Act, 1969, is an Autonomous Institution and is not a 'State' under Article 12 of the Constitution.

08. Article 12 of the Constitution falls under Part III, of the Constitution of India which deals with Fundamental Rights. Whole object of Part 3 of the Constitution is to protect the Fundamental Rights mentioned therein against arbitrary action of the State.

Article 12 is reproduced here for ready reference:

Article 12:

"Definition of State: *In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and Legislature of each of the States and **all local or other authorities within the territory of India** or under the control of the Government of India."*

09.A bare perusal of the definition of "State" under Article 12 reveals that the authorities specified therein are (i) The Government and Parliament of India, (ii) The Government and Legislature of each State, (iii) Local authorities and Other authorities within the territory of India or under the control of the Government. The first two categories, which include the Legislative and Executive wings of the Union and the State, are quite specific. However, the other two categories, namely "local authorities" and "other authorities," within the territory of India, are not specific. The expression "local authorities" refers to bodies like Municipalities, District Boards, Panchayats, Improvement Port Trust, etc., which have been held to be "State" under Article 12 of the Constitution of India. As regards "other authorities," they have also not been specifically mentioned, however, through judicial pronouncements and interpretations, a large number of authorities have

been held to be State under Article 12 of the Constitution.

10. The Hon'ble Supreme Court, in the matter of **Rajasthan Electricity Board, Jaipur v. Mohan Lal, AIR 1967 SC 1857**, has held that "**other authorities**" would include all authorities created by the Constitution or by a statute upon whom powers are conferred by law. The Hon'ble Supreme Court further held that it is not necessary that such "other authorities" must be engaged in performing governmental or sovereign functions. Authorities engaged in the promotion of education, economic and commercial activities may also fall within the scope of "other authorities" under Article 12.

11. In the landmark judgment of **Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722**, the Hon'ble Supreme Court, through a Constitution Bench of five judges, has held that the Regional Engineering

College, Srinagar — established, administered, and managed by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898 — fell within the definition of “State” under Article 12 of the Constitution of India. The Hon’ble Supreme Court held that for determining the issue i.e. whether a Corporation or Body falls within the meaning of "State" under Article 12, the decisive test is **whether it functions as an instrumentality or agency of the State?** It is further clarified in the said judgment that it is immaterial whether the authority was created by a statute or under a statute. The real consideration is the degree of control and the nature of functions performed by the authority. The precise legal form or manner of creation of the juristic authority was held to be irrelevant.

12. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, a Constitution Bench of seven judges of the Hon'ble Supreme Court,

revisited and further developed the concept of "State" under Article 12. The Hon'ble Supreme Court has held as follows:

"The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found, then the body is a State within Article 12. On the other hand, when the control is merely regulatory, whether under statute or otherwise, it would not serve to make the body a State.

13. Thus, the Hon'ble Supreme Court crystallized the principle that deep and comprehensive control by the State — financially, functionally and administratively— is essential to bring an authority within the ambit of definition of "State" under Article 12 of the Constitution.

14. Coming back to the present case, the issue for determination is, whether the University of Kashmir qualifies the test laid down in **Pradeep Kumar Biswas'** (supra) case so as to bring it under Article 12

of the Constitution as a "State"? The answer to this issue will depend upon the degree of control exercised by the Government of Jammu & Kashmir over the Institution i.e. University of Kashmir.

15. Kashmir University has been established under Section 3 of the Jammu & Kashmir University Act, 1969 (hereinafter referred to as "the Act"). Section 9 of the Act provides for the constitution of various authorities and offices of the University, including, inter alia, the Chancellor, Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Deans of Faculties, Registrar, Finance Officer, Controller of Examinations etc.

16. Section 10 of the Act stipulates that the Lieutenant Governor shall be the Chancellor of the University and shall preside over the meetings of the University Council, and the Convocation of the University.

17. Section 11 of the Act provides that the Chief Minister

of UT of Jammu & Kashmir shall be the Pro-Chancellor of the University. The Pro-Chancellor is vested with the right to cause an inquiry into the affairs of the University and has the authority to monitor and examine its functioning. This provision provides the supervisory role of the Government in the day-to-day operations of the University. Thus, the Pro-Chancellor, is vested with the authority to intervene in the affairs of the University and monitor its effective functioning. The Pro-Chancellor, being the Chief Minister of Jammu & Kashmir, exercises significant control over the University's decisions. This gives the Pro-Chancellor not only an administrative role but also a financial influence, effectively dominating the day-to-day affairs of the University. Therefore, the Chief Minister exercises significant control over its functioning.

18. Section 12 of the Act provides that the Vice Chancellor shall be appointed by the chancellor i.e.

Lieutenant Governor of UT of J&K.

19. Section 16 of the Act provides that, the Financial Advisor of the University shall be the Secretary Finance to the Government of Jammu & Kashmir, Finance Department. It reads as under:

16- Financial Advisor.-(1) The Secretary to Government, Finance Department, or any other officer nominated by the Government of Jammu and Kashmir shall be the ex-officio Financial Adviser to both the Universities.

(2) The Financial Adviser shall exercise general supervision over the funds of each University and shall advise it as regards its financial policy.

(3) The Financial Advisor shall be an ex-officio member of the University Council and the Syndicate of both the Universities.

(4) The Financial Adviser shall-

(a) present annual estimates and the statements of accounts to the Syndicate and the University Council; and

(b) exercise such other powers and perform such other duties as may be prescribed by the Statutes and Regulations.

20. According to Section 16, the Financial Advisor will exercise general supervision over the financial affairs of the University. The Financial Advisor is responsible for advising the University on financial policy. He will present the annual budget estimates and will also

prepare the statement of accounts. He will exercise such other powers and duties as may be prescribed by the Government. Section 38 of the Act provides that accounts of the University shall be audited by auditors appointed by Government of UT of J&K and shall be published in the Official Budget. In view of the provisions of Section 16 & 38 of the Act, it is evident that there is substantial financial control and supervision by the Government UT of Jammu & Kashmir over the financial matters of the University.

21. Section 21 of the Act provides for the constitution of the University Council. It reads as under:

21. University Council-(1) There shall be a University Council in a University consisting of the following members, namely:

- (i) The Chancellor
- (ii) The Pro-Chancellor,
- (ii-a) The Education Minister;
- (iii) The Vice-Chancellor of the concerned University;
- (iv) The Vice-Chancellor of the other University established under the provisions of this Act;
- (v) The Pro-Vice-Chancellor of the University, if any;
- (vi) The Financial Adviser;
- (vii) The Educational Adviser to the Government, or the officer designated by the Government to be in charge of

Higher Education;

(viii) Two Deans of Faculties of the concerned University, nominated by the Chancellor by rotation;

(ix) One Principal of an affiliated or constituent college of the concerned University, nominated by the Chancellor by rotation;

(ix-a) Two members of the teaching staff, from either the University or its constituent/affiliated colleges, nominated by the Chancellor in consultation with the Pro-Chancellor;

(x) Two nominees of the Chancellor.

22. Section 21 of the Jammu & Kashmir University Act, 1969 reveals that in the functioning of the University, there is involvement of the State/UT functionaries at various levels who are also important and sufficiently high level officials of the State/UT. These functionaries participate in decision-making processes whenever the University Council undertakes its duties. The presence of State/UT officials in such decisions making process signifies a substantial administrative control of the State/UT over the functioning of the University. Section 21, therefore, establishes that there is sufficient administrative domination of the State/UT authorities over the University's operations and

working.

23. The combined reading of Sections 9, 10, 11, 12, 16, 21 and 38 of the Jammu & Kashmir University Act, 1969 makes it clear that the Chancellor is the Lieutenant Governor of the Union Territory of Jammu & Kashmir, the Pro-Chancellor is the Chief Minister of the Union Territory of Jammu & Kashmir, Education Minister is a Member of the University Council, Vice Chancellor is appointed by the Lt. Governor who is administrative head of the University, the Financial Advisor is the Secretary of the Finance Department of the Union Territory of Jammu & Kashmir, and the Education Advisor is the Secretary of the Higher Education Department of the Union Territory of Jammu & Kashmir. Additionally, two members of teaching staff of the University are nominated by the Chancellor in the University Council in consultation with the Pro-Chancellor. Two Members are nominated by the Chancellor alone in the University Council. It

shows a substantial functional and administrative control and domination of Government of UT of J&K in the affairs of Kashmir University.

24. Thus, these important and high-ranking State/UT Government officials are integral part of the University Council. As key functionaries of the State/UT, any decision taken by the University at various levels must be made in consonance with the views of the Government of UT of Jammu & Kashmir. If any decision is opposed by the Government of UT of Jammu & Kashmir or if an objection is raised for any valid reason, such decisions of the University cannot be implemented. Furthermore, if any decision of the University contradicts the policies adopted by the Government of UT of Jammu & Kashmir, it cannot be implemented. Therefore, it shows that Kashmir University cannot function independently without functional concurrence of Government of UT of J&K.

25. In view of the detailed analysis as above, it is concluded that the Kashmir University is not an autonomous institution in the sense as put forward by the Learned counsel for the applicant since for each and every decision, the consent and support of the State/UT functionaries—who are also part of the University Council—must be obtained. This has to be in consonance with the provisions outlined in various sections of the Act, specifically Sections 9, 10, 11, 12, 16, 21 and 38. The active involvement of the high level officials of the Government of UT of Jammu & Kashmir in the University Council indicates the substantial control of the State/UT Government over the functioning of the University.

26. Upon examination of the various sections of the Jammu and Kashmir University Act, 1969, we are of the considered view that the University of Kashmir is **financially controlled** by the Government of the Union Territory of Jammu and Kashmir functionally

dominated by senior officials, including the Lieutenant Governor and the Chief Minister of Jammu & Kashmir, and administratively supervised and controlled by high-ranking officials and functionaries of the Government of UT of Jammu & Kashmir. The control exercised by the Government of Jammu & Kashmir over the University is not merely regulatory but is mandatory, effective, pervasive, comprehensive, and extensive, as provided under various provisions of the Jammu & Kashmir University Act, 1969.

27. It will not be out of context to mention that the Hon'ble Supreme Court in the matter of ***Pradeep Kumar Biswas case (supra)*** has held and clarified that it is immaterial, whether the authority was created by a statute or under a statute. The University of Kashmir has been established under Section 3 of the J&K University Act 1969 and is financially, functionally, and administratively dominated, supervised and controlled by the Government of UT of Jammu &

Kashmir.

28. Learned counsel for the applicant has referred the judgment and the order passed by the Hon'ble SC in the matter of **Dr. Gurjeevan Grewal Vs. Dr. Sumitra Das reported in 2004 (5) SCC 263** contending that the Post Graduate Institute of Medical Education and Research (PGIMER) is not a State under Article 12 of the Constitution. He further contended that on the same analogy Kashmir University is also not a State under Article 12 of the Constitution.
29. We have perused the said judgment of the Hon'ble Supreme Court and we are of the view that PGIMER is constituted under an Act and is a body corporate having a perpetual succession and common seal with a power to frame rules and regulations. There is no control and domination of the Government over the functioning of PGIMER. However, the Kashmir University is established under Section 3 of J&K University Act, 1969 and is financially, functionally

and administratively under the control of the Government of UT of J&K. Therefore, the contention of the Learned counsel for the applicant that the Kashmir University is similar to PGIMER is without any substance hence not accepted.

30. The Division Bench of Hon'ble High Court of J&K and Ladakh in the matter of **University of Kashmir Vs. Sabiya Rashid, LPA no. 87 of 2023**, decided on 12-10-2023 has held that Kashmir University is not an autonomous institution in its functioning. However, the issue whether the Kashmir University is a State under Article 12 of the Constitution or not was not an issue nor it was determined by the Hon'ble High Court in the said case. The relevant paras 32 and 47 of the said judgment are reproduced for ready reference as follows:

***"32-** On examination of the provision of the Act of 1969, the Kashmir University appears to be a State University and thus, cannot be said to be wholly autonomous in its functioning. This is clearly evident from the fact that in the*

bodies which constitute the University, the presence of a large number of State officials is quite significant.”

“47- In our view, it would be more appropriate to say that there can be no absolute autonomy of the University of Kashmir viz-a-viz the State Administration, in the case of University seeks assistance from the Administration. While the Administration should ordinarily cooperate with the University in implementing the decisions of the University, as the key functionaries of the Administration are also important members of the University at various levels involved in the decision making process and, hence, privy to the decisions taken by the University, yet, there may be situations, where the State Administration through the Chancellor or the Pro-Chancellor for valid and germane reasons may not be able to support or co-operate with the University, which, however, will be exceptions, rather than the norm as otherwise, the functional autonomy of the University will be jeopardized and antithetical to the provisions of the Act of 1969.”

31. The Hon’ble Supreme Court in the matter of Ganapati National Middle School vs. M. Durai Kannan, (1996) 6 SCC 464; AIR 1996 SC 2803, has also held as follows:

“An educational institution established under an Act and receiving grant-in-aid from the State Government is an instrumentality or agency of the State.”

Full Bench of Hon'ble High Court of Patna in **Umesh Chandra Sinha vs. V.N. Singh AIR 1968 Patna 3**

has also held that:

15- The next question for consideration is whether the Patna University is a "State" as defined in Article 12 of the Constitution. That Article says that the word "State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

"17- The University of Patna is on identical footing with the Universities of Madras and the Punjab, and hence it must be held, following the aforesaid decision, that the Patna University is also a State for the purpose of Article 12. It is a public statutory body created by the appropriate Act of the Legislature and it has been empowered to make Statutes, Ordinances and Regulations by the Legislature. The laws made by the University in exercise of these powers will come within the definition of "law" as given in Article 13(3)(a) of the Constitution and consequently they must conform to the fundamental rights provided in Part III of the Constitution.

32. In view of the above, we hold that the University of Kashmir is a "**State**" under Article 12 of the Constitution of India. The contention of the learned counsel for the applicant, that the University of Kashmir is not a State under Article 12 of the Constitution, is found devoid of merit and is hereby

rejected.

Question of Law/Issue No. 2: Whether the applicant is holding a civil post in the Kashmir University and under the Union Territory of Jammu & Kashmir?

33. Learned counsel for the applicant has submitted that the applicant is not holding a civil post under the State and, therefore, the provisions of Article 311(2)(c) of the Constitution are not applicable to him.

34. While the Constitution of India does not provide a formal definition of a "civil post," it is understood that a "civil post" refers to a position in the civil service, which is distinct from military or defence-related service. A civil post is typically one which is part of civilian side of the administration, as opposed to post connected with defence. The expression "civil post" denotes an appointment or employment in the civil capacity, as distinct from military or defence service. In other words, a civil post refers to a position that is not related to defence or military services but pertains

to the general administration under the Union or State.

35. It is sine qua non that there must exist a relationship of master and servant, i.e., between the State and the person holding the post. The existence of this relationship is governed by the State's rules and regulations. The State has the authority to select, appoint, and control the holder of the post, including the right to regulate the manner and method in which the work is to be performed, as well as the payment of wages to the holder of the post.

36. In ascertaining the true import of the expression civil post, certain tests have to be applied. What is to be examined in each case is whether the essential attributes of such a post are present. The Division Bench of the Hon'ble High Court of Gujarat in the matter of **R.D. Patel Vs. Collector of Panchmahals** **AIR 1967 Gug. 92** has held as follows:

"Whether, there is a relationship of master and servant, or whether the post is under the control of the State, or

whether the functions which are assigned to the individual are functions which he is performing as an agent of the State, or whether the appointing authority is the State, or whether he receives his remuneration from the State." And only on a consideration of the totality of all such circumstances is the issue to be decided. But remuneration is not an essential condition for holding a civil post."

37. The Hon'ble Supreme Court has clarified the position

further and laid down a more tangible test in **State of**

Assam v. Kanak Chandra Dutta, AIR 1967 SC 884.

In this landmark judgment, the Constitution Bench, speaking through Bachawat, J., squarely propounded the test of the relationship of master and servant. The Court applied a clear and straightforward test in the following terms:

"There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances, and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

The Court went on to elaborate that:

"In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds 'office' during the pleasure of the Governor of the State, except as expressly provided by the Constitution. (see Article 310). [A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post.]

38. The test laid down in the above case has been consistently followed in subsequent decisions of the Hon'ble Supreme Court, particularly in **State of Gujarat v. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33**, wherein the Court reiterated the principles as follows:

"It is not possible to lay down any definite test to determine when a person may be said to hold a civil post under the Government. Service factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of work, the right to issue directions, and the right to determine

and the source from which wages or salary are paid, and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not."

39. In the context of Articles 309, 310, and 311 of the Constitution, a "post" denotes a position within the administration controlled by the State. The State has the power to create or abolish the post, regulate the conditions of service for the person so appointed to the post and exercise rights such as suspension, dismissal and removal from service etc. The relationship between master and servant can be established through the exercise of all or some of these powers by the State, which has the right to control the person holding the post.

40. The applicant was appointed as an Assistant Professor in 2012 in the University of Kashmir. Subsequently, the applicant was promoted to the position of Associate Professor and then as Professor in the

University. The appointment was made subsequent of recommendations by a Selection Committee constituted under Section 36 of the University Act, 1969. The Selection Committee includes amongst others: (i) Chairman of the Public Service Commission (PSC) of the UT of Jammu & Kashmir, (ii) a Member of the PSC nominated by him, and (iii) a Member nominated by the University Council. It is evident that the Government of Jammu & Kashmir (UT of J&K) has a vital role in the selection and appointment process of the applicant. Additionally, the applicant is paid wages from the funds provided by the Government of UT of J&K, with supervision and control exercised through the office of the Financial Advisor, i.e., the Finance Secretary to the Government of J&K.

41. As we have already held that the University of Kashmir is a State under Article 12 of the Constitution and a master and servant relationship exists between

the applicant and the Government of UT of Jammu & Kashmir through Kashmir University. The Applicant is holding a civil post under the Kashmir University of Government of UT of J&K. Furthermore, it is significant to note that the University of Kashmir has not framed any independent service rules for its employees till date. The University Council, vide its resolution dated 28.08.1972, clarified that the employees of the University of Kashmir would be governed by the Jammu and Kashmir Civil Services Regulations (CSR), 1956. The said resolution dated 28.08.1972 is reproduced as follows for ready reference:

The University of Kashmir, Srinagar
Order

"In exercise of the powers conferred upon me under Sub-section (4) of Section 15 of the Kashmir and Jammu Universities Act, 1969, I hereby order that, except as otherwise provided in the Act and the Statutes made thereunder, relating to the appointment of University teachers, the services of all employees (including Class IV employees) of the University shall be governed by the Jammu and Kashmir Civil Services Regulations, until such time as the existing University Service Regulations are

amended to align with the Jammu and Kashmir Civil Services Regulations and are duly adopted."

Noor-Ud-Din
Vice Chancellor

Dated-28-08-1972

42. In addition to the above resolution, the Vice Chancellor of the Kashmir University extended all the SROs of UT of J&K Government to the University employees on 03-02-2018 as follows:

University of Kashmir, Srinagar
Order

"Persuant to the University Council Resolution of the year 1972, the Vice Chancellor has been pleased to authorize the implementation of all J&K State govt SRO's, ipso-facto applicable to the University Employees as well."

By Order

Assistant Registrar
General Administration

Dated 03-02-2018

43. In light of the above all the rules, regulations, including Jammu & Kashmir Civil Services Regulations (CSR) are applicable to the employees of Kashmir University, including the applicant. In view

of the above discussion we are of the considered view that applicant is holding a civil post under the State i.e. Kashmir University. Therefore, the contention raised by the learned counsel for the applicant that the applicant is not holding a civil post cannot be accepted and is hereby rejected.

Question of Law/Issue No. 3- Whether the Lieutenant Governor of UT of J&K is empowered to pass an order under Article 311(2)(c) of the Constitution of India?

44. Learned counsel for the applicant has contended that the Lieutenant Governor of the Union Territory of Jammu and Kashmir cannot pass a dismissal order under Article 311(2)(c) of the Constitution of India because he is neither the President of India nor the Governor of a State.

45. Part VIII of the Constitution of India contains the provisions for the administration of Union Territories and describes the relationship between the Union and Union Territories from Articles 239 to 241. Article

239(1) of the Constitution provides that every Union Territory shall be administered by the President through an Administrator appointed by him, with such designation as he may specify. Article 239(1) is reproduced below for ready reference:

"239-Administration of Union territories. (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify."

46. Article 239(1) of the Constitution clearly provides that the constitutional status of Union Territories is distinct from that of the State. It states that the Union Territories shall be administered by the President through an Administrator appointed by him, with such designation as he may specify. The Administrator so appointed under Article 239(1) exercises such powers as may be conferred upon him by the President. Though a Union Territory is centrally administered under Article 239(1), it does not merge with the

Central Government. A Union Territory retains its own constitutional identity and structure. To administer the Union Territories, Parliament enacted the Government of Union Territories Act, 1963. The Hon'ble Supreme Court, in the matter of **K. Lakshminarayanan v. Union of India, 2020 (14) SCC 664**, while interpreting the provisions of the Government of Union Territories Act, 1963, held that Union Territories, though artificially belonging to the Union, are governed under the administration and control of the President.

47. After the abrogation of Article 370 of the Constitution of India, the erstwhile State of Jammu and Kashmir was bifurcated into two Union Territories:

- 1.The Union Territory of Jammu and Kashmir.
- 2.The Union Territory of Ladakh.

48. According to Section 14 of the Jammu and Kashmir Reorganization Act, 2019, there shall be an Administrator appointed by the President under Article

239(1) of the Constitution of India for the Union Territory of Jammu and Kashmir, who shall be designated as the Lieutenant Governor of the Union Territory of Jammu and Kashmir. Section 14 of the Reorganization Act 2019 is reproduced below for ready reference:

Section 14 of the Re-Organization Act 2019:- *There shall be an Administrator appointed under Article 239 of the Constitution of India for the Union Territory of Jammu and Kashmir, who shall be designated as the Lieutenant Governor of the said Union Territory.*

49. Under Section 2 (h) of the Jammu and Kashmir Reorganization Act, 2019, "Lieutenant Governor" means the Administrator appointed by the President under Article 239(1) of the Constitution. Section 2(h) is reproduced below for ready reference:

‘Definition- Section 2(h)- *Lieutenant Governor’ means the Administrator of the Union Territory appointed by the President under Article 239 of the Constitution of India.”*

50. According to Article 239(1) of the Constitution, a Union Territory is to be administered by the President

through an Administrator. Thus, whatever powers the Lieutenant Governor exercises in administering the Union Territory are exercised by him on behalf of the President, since he is the nominee and appointee of the President. Therefore, it cannot be said that the Lieutenant Governor is neither the President nor the Governor. The Lieutenant Governor, being appointed by the President, administers the Union Territory on behalf of the President and exercises all powers delegated to him by the President for administering the Union Territory.

51. In view of the above, the UT of J&K is administered by the President acting through Lieutenant Governor, and hence is in charge of the Union Territory and is vested with all administrative powers on behalf of the President. Therefore, the contention of the Learned counsel for the applicant that the Lieutenant Governor is not empowered or authorized to pass an order under Article 311(2)(c) of the Constitution is not tenable and

is, accordingly, rejected.

Question of Law/Issue No. 4:- Whether there was sufficient material available with the respondent to justify dismissal under Article 311(2)(c) of the Constitution?

52. Learned counsel for the applicant has contended that sufficient material was not available with the respondents to justify the extreme penalty of dismissal from service invoking Article 311(2)(c) of the Constitution of India. In other words, it was submitted that sufficient material was not available with the respondents for subjective satisfaction of the Lieutenant Governor on the issue that in the interest of the security of the State, it was necessary to dismiss the applicant without holding an inquiry as provided under Article 311(2) (c) of the Constitution of India.

53. Articles 309, 310, and 311 of the Constitution of India are relevant to decide the issue no. 4 as above in the present case:

•Article 309 -Recruitment and conditions of service of persons serving the Union or a State-

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article and any rules so made shall have effect subject to the provisions of any such Act.

Article 310- Tenure of deffice of persons serving the Union or State- (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

Article 311- Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State- (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which

he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges. against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him stany such penalty, such pelas adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practical to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

54. Article 309 provides that the Union or State may, by legislation, regulate the recruitment and conditions of service of a person appointed to public service. The proviso to Article 309 gives authority to the President and the Governor to make rules until the Acts or Regulations are framed by the Legislature, as provided under the first part of the said Article.

55. Article 310(1) contains the pleasure doctrine, mentioning that every government employee holding a defence or civil post holds office during the pleasure of the President or the Governor. However, such pleasure tenure under Article 310(1) is subject to rules made under Article 309 and subject to the safeguards provided under Article 311(1) and (2) of the Constitution.

56. Article 311(1) and (2) of the Constitution of India provides two constitutional safeguards to a civil servant. Article 311(1) provides that a civil servant holding a civil post under the Union or the State shall

not be punished by an authority subordinate to that by which he has been appointed. Article 311(2) provides the procedural safeguards to be followed by the disciplinary authority before dismissing, removing, or reducing in rank.

57. Article 311(2) mandates compliance of natural justice.

Punishment as mentioned in the said Article cannot be imposed upon a civil servant without (a) having an enquiry, (b) informing him about the charges against him, and (c) giving him an opportunity of being heard. It is clear from the above that Article 311 (2) is a constitutional recognition of the principles of natural justice, which curtails the pleasure doctrine under Article 310(1) to that extent. In this way, Article 311 is an exception to Article 310.

58. The second proviso to Article 311(2) mentions about three exceptions (a), (b) and (c), where an enquiry is not mandatory and when the safeguards provided to a civil servant under Article 311(2) will not be available

to him. In this way the second proviso to Article 311(2) is an exception to Article 311(2) of the Constitution. These three clauses/exceptions in 2nd Proviso to Article 311(2), where an inquiry is not mandatory are as follows:

Clause (a): Conviction on a criminal charge

Clause (b): Where it is not practicable to hold an inquiry

Clause (c): Where the President or the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry.

59. Rule 33 and 34 of the J&K Civil Services (CCA) Rules 1956 are analogous and in conformity with the Article 126 of Constitution of J&K and Article 311(1) and (2) of the Constitution of India. The said rules are reproduced here in below for ready reference:

"33. (i) *Without prejudice to the provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank [which includes reduction to a lower post and/or lower time-scale, and/or to a lower stage in time-scale but excludes the reversion to a lower post of a person who is holding a higher post temporarily] shall be passed on a person who is a member of a Civil Service or holds a Civil Post under the State, unless he has been informed in writing of the grounds on which it is proposed*

to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry, such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may, for sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

(ii) This rule shall not apply where it is not reasonably practicable to hold the inquiry or where it is for other reasons impracticable to communicate with him, or where in the interest of the security of the State, it is considered not expedient to give to that person an opportunity of showing cause against the action proposed to be taken against him. All or any of the provisions of the rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of the rule and those requirements can, in the opinion of the inquiring officer, be waived without injustice to the person charged.

(iii) This shall also not apply where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, or to

dismiss, remove, or reduce in rank a temporary Government servant for any specified fault or on account of his unsuitability for the service.

(iv) The competent authority may inquire into the charges itself or, if it considers it necessary so to do, it may appoint an inquiry officer for the purpose."

"34. After the inquiry against a Government servant has been completed, and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed, the Government servant charged shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under Rule 33, excluding the recommendations, if any, in regard to punishment made by the officer conducting the inquiry, and asked to show cause by a particular date which affords him reasonable time why the proposed penalty should not be imposed on him."

60. The scope and effect of the second proviso to Article 311(2) has been elaborately considered by a Constitution Bench of the Supreme Court in the matter of **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC**

398. The Hon'ble Supreme Court in the said case has held as follows:

"Article 311(2) gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges

against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(1) is abridged because Article 311(2) is an express provision of the Constitution.

This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause (1) of Article 311, however, remains intact and continues to be available to the government servant. The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are:

- (a)** where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or
- (b)** where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; and
- (c)** where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry"

61.The Hon'ble Supreme Court in this case further held as follows:

"Before, however, any clause of the second proviso can come into play, the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause **(a)** a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clauses **(b)** the disciplinary

authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State it is not expedient to hold an inquiry."

The paramount thing however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such that he deserves the punishment of dismissal, removal, or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties.

Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal, or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."

62. In the present case, the applicant has been dismissed from service by the impugned order dated 13-05-2022, passed by the competent authority, i.e., the Lieutenant Governor, under the Clause (c) of Second Proviso to Article 311(2) of the Constitution of India, without holding a departmental enquiry, as the Lieutenant Governor was satisfied that, in the interest of the

security of the State, it was not expedient to hold such an enquiry.

63. It is a well accepted principle of law laid down by the Hon'ble Supreme Court in a catena of judgments that the expression security of State does not mean security of the entire country or a whole state but it will include security of a part of a state. It is also held that there are various ways in which security of the state could be affected but it would be difficult to innumerate such various ways in which the security of state could be affected. It might be either open or clandestine. The Hon'ble Supreme Court in the landmark judgment in **Tulsiram Patel (supra)** in para 142 has held as follows:

142- *“The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is “in the interest of the security of the State.” The interest of the security of the State may be affected by actual acts or even by the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected,*

but his satisfaction that, in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State."

" Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous, fit, proper, suitable, or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about a brewing danger to the security of the State and similar matters. There may be other factors which are required to be considered, weighed, and balanced in order to reach the requisite satisfaction as to whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no longer be available to the Government. The reasons for the satisfaction reached by the President or the Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal, or reduction in rank, nor can they be made public."

64. The law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Tulsiram Patel** case (**supra**) has been consistently followed in the

subsequent judgment relating to Article 311(2) Second Proviso Clause C. The Hon'ble Supreme Court in the matter of **Satyavir Singh and Others v. Union of India and Others, 1986 (4) SCC 252** has held as follows:

“(84) The condition for the application of clause (c) of the second proviso to Article 311(2) is the satisfaction of the President or the Governor, as the case may be, that it is not expedient in the interest of the security of the State to hold a disciplinary inquiry.

(85) Such satisfaction is not required to be that of the President or the Governor personally, but of the President or the Governor, as the case may be, acting in the constitutional sense.

(86) “Expedient” means “advantageous, fit, proper, suitable or politic.” Where, therefore, the President or the Governor, as the case may be, is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c) of the second proviso.

(87) Under clause (c) of the second proviso, the satisfaction reached by the President or the Governor, as the case may be, must necessarily be a subjective satisfaction, because expediency involves matters of policy.

(88) Satisfaction of the President or the Governor under clause (c) of the second proviso may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There are other factors which are also required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an

inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information, and once known, the particular source from which the information was received would no more be available to the Government. The reason for the satisfaction reached by the President or the Governor under clause (c) of the second proviso cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank, nor can it be made public."

65. The Hon'ble Supreme Court, in the matter of **A.K.**

Kaul vs. Union of India, reported in 1995 (4) SCC

73, has again reiterated the said position as follows:

"9- The provisions of the second proviso came up for consideration before the Constitution Bench of this Court in Union of India v. Tulsiram Patel. Madon, J., speaking for the majority, has observed that clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice/and audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges and that this safeguard provided for a government servant by clause (2) of Article 311(2) is, however, taken away when the second proviso to that clause becomes applicable. The Court has also pointed out that the paramount thing to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment

of dismissal, removal or reduction in rank and that before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the government servant concerned is such as justifies the penalty of dismissal, removal or reduction in rank and once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."

66. The Hon'ble Supreme Court in A.K. Kaul's (supra)

case for the first time held that any order passed by the President or Governor under passed Clause (C) of the second proviso to Article 311(2) is subject to judicial review following the judgment and order passed by the Constitution Bench in **S.R. Bommai vs. Union of India 1994 (3) SCC 1**. In this case(S.R. Bommai case) the Constitution Bench of the Hon'ble Supreme Court has held that the exercise of the power under Article 356 (1) is subject to judicial review. The Hon'ble Supreme Court in A.K. Kaul case (Supra) has held as follows:

"In our opinion, therefore, in a case where the validity of an order passed under clause (c) of the second proviso to Article 311(2) is assailed before a court or a tribunal it is

open to the court or the tribunal to examine whether the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds and for that purpose the Government is obliged to place before the court or tribunal the relevant material on the basis of which the satisfaction was arrived at subject to a claim of privilege under Sections 123 and 124 of the Evidence Act to withhold production of a particular document or record., Even in cases where such a privilege is claimed the Government concerned must disclose before the court or tribunal the nature of the activities in which the government employee is said to have indulged in."

67.The Hon'ble Supreme Court, in the matter of **Union of India Vs Balbir Singh, 1998 (5) SCC 216**, has held and reiterated the same principle as follows:

*"7- In the case of **A.K. Paul vs. Union of India** this court has examined the extent of judicial review permissible in respect of an order of dismissal passed under second proviso clause (c) of Article 311(2) of the Constitution This court has held that the satisfaction of the President can be examined within the limits laid down in **S.R. Bommai vs. Union of India**. The order of the President can be examined to ascertain whether it is vitiated either by mala fides or is based on wholly extraneous and/or irrelevant grounds. The Court, however, cannot sit in appeal over the order or substitute its own satisfaction for that of the President. So long as there is material before the President which is relevant for arriving at his satisfaction for taking action under clause (c) of the second proviso to Article 311(2), the Court would be bound by the order so passed. The Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The*

Court has stated that **(1)** the order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds. **(2)** Even if some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action. **(3)** The truth or correctness of the material cannot be questioned by the Court, nor will it go into the adequacy of the material, and it will also not substitute its opinion for that of the President. **(4)** The ground of mala fides includes, inter alia, situations where the proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power. **(5)** The Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Council of Ministers are the best judges of the situation and that they are also in possession of information and material, and the Constitution has trusted their judgment in the matter. **(6)** This does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive."

"8- If an order passed under Article 311(2), proviso (c), is assailed before a court of law on the ground that the satisfaction of the President or the Governor is not based on circumstances which have a bearing on the security of the State, the Court can examine the circumstances on which the satisfaction of the President or the Governor is based. If it finds that the said circumstances have no bearing whatsoever on the security of the State, the Court can hold that the satisfaction of the President or the Governor, which is required for passing such an order, has been vitiated by wholly extraneous or irrelevant considerations."

68. The Hon'ble Supreme Court, in the matter of **Union of India and Another vs. M.M. Sharma, 2011 (11)**

SCC 293 has followed the same principle as follows:

"15- It should also be pointed out at this stage that clause of the second proviso to Article 311 (2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken Clause of the second proviso to Article 311 (2) on the other hand B does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable c and cogent grounds 15 recorded it would not be possible for the court or the Tribunal, where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of security of State is based on reasons and is not arbitrary, If and when such an order is challenged in the court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of the security of the State."

69. The Hon'ble Supreme Court in the matter of **Dr. V.S.**

Sanal Kumar v. Union of India, 2023 LiveLaw (SC)

page 432 has held as follows:

"24- We have already taken note of the indisputable and undisputed facts obtained in this case which are relevant for the purpose of consideration of the question with respect to the expediency or in expediency of holding an inquiry "in the interest

of the security of the State." In view of the situations deducible from the materials on record, we find absolutely no reason to hold that the satisfaction that it is not expedient to hold an inquiry in the interest of security of the State" was arrived at without any material. When once it is obvious that circumstances based on materials capable of arriving at a satisfaction that it is not expedient to hold an inquiry "in the interest of the security of the State" are available the decision in holding that it is inexpedient "in the interest of the security of the State" to hold an inquiry warrants no further scrutiny rather, it is not fit to be subjected to further judicial review. In other words, the Court cannot, in such circumstances, judge on the expediency or inexpediency to dispense with the inquiry as it was arrived at based on the subjective satisfaction of the President based on materials in the above circumstances, we do not find any reason to interfere with the disinclination on the part of the Tribunal and then the High Court, on the aforesaid issue."

70. In view of the case laws cited, detailed analysis and discussion as above and the principles laid down by the Hon'ble Supreme Court in the catena of judgments as mentioned above, it follows that Article 311 (2) contains constitutional mandate and safeguards in the form of natural justice to the civil servant by providing that a civil servant under Union or State shall not be dismissed removed from service or reduced in rank until an enquiry, in which he has been informed of the

charges against him and has been given a reasonable opportunity of being heard of the charges. This safeguard provided to civil servant under Article 311 (2) is however, taken away when second proviso to that clause becomes applicable. Second Proviso to Article 311 (2) will apply only where the conduct of a civil servant is such that he deserves the punishment of dismissal, removal or reduction in rank. Therefore, before denying a civil servant his constitutional rights in the form of safeguards under Article 311 (2) the first consideration would be whether the conduct of the concerned civil servant is such as justifies the penalty of dismissal, removal or reduction in rank? Once that conclusion is reached and the condition specified in the relevant clauses of second proviso is satisfied that proviso becomes applicable and the civil servant is not entitled to any enquiry. In this way constitutional safeguard under Article 311 (2) can be dispensed with under exceptions provided in clauses a

b and c of second proviso to Article 311 (2) of the Constitution.

71. (i) Under Clause (a) of Second proviso to article 311

(2) a major penalty is not the automatic result of a conviction on criminal charges, A disciplinary authority has to apply its mind and decide ex-parte as to what is the appropriate punishment to be given.

(ii) Under Clause (b) of the Second Proviso of Article 311(2) satisfaction of the competent authority that the holding of an enquiry is not reasonably practicable under the prevailing situation in the opinion of the authority empowered for the reasons to be recorded in writing. The decision of the authority empowered on the issue that it is not reasonably practicable to hold an enquiry shall be final under Article 311 (3).

(iii) Under Clause (c) of the second proviso to Article 311 (2), the expression security of state does not mean security of the entire country or entire state. It may be a part of the state. There are various ways by which

security of state can be affected. The relevant issue under Clause (c) is not whether the security of state has been actually affected but whether there is even the likelihood of the acts taking place which could jeopardize the security of the state. Under Clause (c) it is the subjective satisfaction of the President or the Governor that it is not expedient to hold an enquiry in the interest of security of the State.

Under Clause (b) of the Second Proviso to 311(2) requires the authority empowered to record in writing the reasons of its satisfaction and the decision of empowered authority that it is not reasonably practicable to hold an enquiry is final under Article 311 (3) of the Constitution of India but there is no such finality attached to the satisfaction under clause (c) nor does it require to record in writing the reasons for its satisfaction.

Examination of the Present Case:

72. Reverting back to the present case, the applicant has

been dismissed from service vide impugned order dated 13-05-2022 passed by the Lieutenant Governor on the recommendation of a high level committee constituted specifically for scrutinizing/examining the cases covered under Article 311(2)(c) of the Constitution. Upon scrutiny of the record, it was observed that:

- The said procedure was established by invoking powers under the proviso to Article 309 of the Constitution, which has the force of law.*
- The high level committee considered entire material relating to the activities and conduct of the applicant which were allegedly prejudicial to the security, of state sovereignty, and integrity of India.*
- The material placed before the high level committee was examined, and after thorough consideration, the committee recommended to the Lieutenant Governor that it was necessary, in the interest of the security of the State, to dispense with the inquiry and dismiss the applicant from service under Article 311(2)(c) of the Constitution.*

73. The conduct of the applicant, as reflected from the record produced in the counter affidavit filed by the respondent, which is reproduced for ready reference:

The factual matrix of the case is that a dossier has been submitted by the Criminal Investigation Department in respect of Dr. Altaf Hussain Pandit, Professor in the Chemistry Department at Kashmir University, who has an association with Jamaat-e-Islami (Jel) and had also crossed the LOC for arms and ammunition training in Pakistan in 1990. He returned that same year and joined terrorist ranks. He remained an active terrorist associated with JKLF for three years.

The high level Committee was informed that Altaf Hussain Pandit was a trained militant belonging to JKLF and was arrested in 1993 by Security Forces. After his release, he went to Aligarh Muslim University for pursuing higher education. During his study at Aligarh Muslim University, he remained associated with the Jel cadre and secessionist elements. It was further informed that the subject, on various occasions, as a faculty member of Kashmir University, instigated the students to carry out anti-national activities detrimental to the security and integrity of the Nation. The details of such incidents, in which the subject was an instigator, were provided to the committee and are mentioned as under:

- (a) On 17 September 2011, during the visit of the Hon'ble Governor, J&K, to Kashmir University, students walked out of the convocation hall when the National Anthem was being played.*

- (b) On 20 June 2014, students held in absentia funeral prayers for three HM terrorists killed in Pulwama.
- (c) In 2015, a remembrance programme was observed in memory of people killed during the 2010 law and order situation.
- (d) On 24–25 June 2015, unruly protests were organized by the students in Kashmir University against the arrest of OGW Muzamil Farooq Dar (Student of Kashmir University), who was a close associate of a foreign terrorist (LeT) commander Abu Qasim.
- (e) In May 2018, an FIR under UAPA was registered in Police Station Nageen against the students of Kashmir University for raising pro-terrorist slogans on the campus of Kashmir University.

It was further informed that the petitioner played a vital role in orchestrating student protests during the 2016 law and order crisis and demanded compliance with the protest calendars from the administration and students of Kashmir University in various meetings. He also ensured the participation of University students in the protests of 2016. The Government Committee was informed that the petitioner, being the executive member of the Kashmir University Teachers Association (KUTA) from 2015–2017 and Vice President of KUTA from 2017–2018, used his position to propagate secessionism among students of Kashmir University.

The Committee was informed that the anti-national activities of the petitioner were instrumental in creating an environment among students at Kashmir University, propagating secessionism, and facilitating the university students to join terrorist outfits and

frequent protests in favour of terrorists. It was informed that since 2016, three students of Kashmir University—namely Imran Nabi Dar of Kulgam, Showkat Ahmad Bhat of Pulwama, and Mohd Amir Malik of Shopian—joined terrorist outfits.

The recommendation of the DGP, J&K, vide No. 77-2/INT/CIV/PHO/2022/782 dated 05.05.2022 was also perused by the Committee. It was informed that the petitioner indulged in certain activities, which deepened and broadened the anti-national sentiment among the university students by leveraging his position as a faculty member of Kashmir University, and therefore, his continuation as a senior faculty member of Kashmir University is highly detrimental to national security.

The Committee perused all the material brought before it, inter alia, details about the instances of his unlawful acts having a bearing on security, and held extensive deliberations on the appropriate punishment, which would be commensurate with the nature of national activities of the subject. After consideration, the Committee observed that the nature of the activities in which the subject was involved warranted the punishment of dismissal from service. Consequent to the recommendation of the Committee, the matter along with the incriminating material was placed before the Competent Authority for consideration and decision. The Competent Authority, upon consideration of all aspects, including the reasons for dispensing with the inquiry and after recording its satisfaction, decided to dismiss the applicant from service, which decision culminated in

the issuance of the impugned order.

Reasons for Dismissal:

- a. The dossier of the subject details grave misconduct and activities which are directly impacting the security of the State.*
 - b. The available record evidences the involvement of the subject in abetting a terrorist-secessionist programme and promoting terrorist-related activities.*
 - c. The CID is of the view that the continuation of the subject in service in an institution of higher learning will not only harm national security but could act as a motivating factor for the students to follow the same path.*
 - d. The CID has been categorical in its report that the subject has, all along, been a propagator of anti-national activities, initially by using arms and ammunition and later by propagating the same ideology among students by joining an educational institution. Thus, he is disloyal to the nation, and his continuation in the present position would encourage both faculty members and students of Kashmir University not to discharge their duties faithfully in the interest of the nation, and therefore, warrants his dismissal from the service of Kashmir University. The Police Organization is also of the view that the subject is an imminent threat to the security of the State, and his continuation in service poses a grave risk to other Government employees and is a deterrent to them for discharging their duties faithfully in the interest of the nation.*
- Law enforcement/intelligence agencies were unanimous in their view that this is a fit case for action, in terms of Article 311(2)(c) of the Constitution of India.*

The Committee also deliberated on the aspect of expediency, or otherwise, of holding an inquiry in the instant case and concluded that resorting to such a course would defeat the very object sought to be achieved.

Reasons why it is not expedient to hold the Inquiry:

The assessment, besides the already known wrongdoings of the subject in the public domain, is also based on discreetly obtained information from sensitive sources through mechanisms that need confidentiality at all times in the largest interest of national security.

The human intelligence, which has helped in tracking the activities of the subject, cannot be made a part of the processes involved in the departmental inquiries, as the same would pose a grave risk to their life and limb.

The interest of the security of the state demands that the dismissal of the employee from service should be carried out without holding an inquiry.

Upon due consideration of all aspects, the Committee was unanimous in its decision to recommend the dismissal of the government employee, Dr. Altaf Hussain Pandit, Professor in the Chemistry Department of Kashmir University, from service, in terms of Article 311(2)(c) of the Constitution of India. Accordingly, Government Order No. 550-JK(GAD) of 2022, dated 13.05.2022, was issued, by virtue of which the services of the petitioner were dismissed with immediate effect, in terms of sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution of India.

74. It reveals activities of the applicant inconsistent with

the duties of a responsible government servant that too a professor of a University were and prejudicial to the sovereignty and integrity of India. Based on the material placed before the Lieutenant Governor, satisfaction was duly recorded that it is not expedient to hold an inquiry in the interest of security of State. Thus, the procedure adopted in the present case is in consonance with the constitutional mandate under Article 311(2)(c) and the law laid down by the Hon'ble Supreme Court.

75. The Next question before this Tribunal is whether the order of dismissal dated 13-05-2022 under 311 (2) (c) impugned by the applicant warrants any interference by this Tribunal. The applicant has not alleged any malafied nor it is alleged that the order of dismissal is based on wholly extraneous or irrelevant grounds. The applicant has alleged in ground (h) of the TA that *“there is absolutely no material available with the respondents to dismiss the petitioner from service at*

the peak of his outstanding career which necessitates review of the impugned decision”.

76.As per the law laid down by the Hon’ble Supreme Court in the matter of **S.R. Bommai Vs. Union of India 1994 (3) SCC 1**, the order of the President or the Governor is subject to judicial review. However, the Hon’ble Supreme Court in the matter of **A.K. Kaul vs. Union of India 1995 (4) SCC 73**, has enumerated scope of judicial review of the order passed by the President or the Governor under Clause (c) of Second Proviso to Article 311 (2) as under:

“The Court has enumerated the scope of judicial review of the President's satisfaction for passing an order under clause (c) of the second proviso to Article 311(2). The Court has stated that:

(1) *The order would be open to challenge on the ground of mala fides or being based wholly on extraneous and/or irrelevant grounds.*

(2) *Even if some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action.*

(3) *The truth or correctness of the material cannot be questioned by the Court, nor will it go into the adequacy of the material, and it will also not substitute its opinion for that of the President.*

(4) The ground of mala fides includes, inter alia, situations where the proclamation is found to be a clear case of abuse of power or what is sometimes called fraud on power.

(5) The Court will not lightly presume abuse or misuse of power and will make allowance for the fact that the President and the Council of Ministers are the best judges of the situation and that they are also in possession of information and material, and the Constitution has trusted their judgment in the matter.

(6) This does not mean that the President and the Council of Ministers are the final arbiters in the matter or that their opinion is conclusive."

77. The Lieutenant Governor has passed the order dated 13-05-2022 against the applicant under Article 311(2) (c) of the Constitution by which the applicant has been dismissed from service. Tested on the touchstone of the criteria laid down by the Hon'ble Supreme Court in **A.K. Kaul's** (Supra) case the material was considered and scrutinized by the High Level Committee constituted for the purpose and it was found that the activities of the applicant were highly objectionable which would prejudicially affect the security of the State/UT of J&K. The respondents/ State UT of J&K has not claimed any privilege in

disclosing the material/activities of the applicant to this Tribunal and has given a detailed history of the activities of the applicant. The activities of the applicant relates to his close association with the Jamaat-e-Islami (JeI) and JKLF, both are banned organizations. We are of the considered view that there was more than sufficient material indicating the prejudicial activities of the applicant in the State/UT of J&K and the said material was scrutinized and considered by the High Level Committee and after considering the entire material the High Level Committee recommended the dismissal of the applicant under Article 311 (2) (c) of the constitution. The order of dismissal has been passed by the competent authority on the recommendations of the High Level Committee and is in accordance with law, hence affirmed. The contention of the Learned Counsel for the applicant that there was sufficient material was not available with the respondents for

dismissing the applicant is contrary to the record before us and is without any basis and hence is rejected and the order of dismissal dated 13-05-2022 under Article 311(2) (c) is affirmed and upheld.

(VI) **Conclusion:**

78. After a detailed analysis and discussion as above, We have come to a conclusion that Kashmir University is a “State” under Article 12 of the Constitution of India. The applicant was holding a “civil post” under the Kashmir University. The Lieutenant Governor is a competent authority appointed under Article 239 (1) of Constitution and Section 14 of the J&K Re-organization Act 2019. The dismissal order dated 13-05-2022 passed by the Lieutenant Governor under Article 311 (2) (c) of the Constitution of India, on the recommendation of the High Level Committee is in accordance with law and there was sufficient material available against the applicant which was scrutinized by the High Level Committee before recommending

the dismissal of the applicant under Article 311(2) (c) of the Constitution of India. The order dated 13-05-2022 under 311 (2) (c) is upheld and T.A. No. 43/2024 is dismissed.

79. Before parting, We highly appreciate the valuable assistance rendered by the Learned Counsel for the applicant Mr. M. Asraf Wani and Learned Counsel for the respondents/UT of J&K Mr. Waseem Gul rendering the valuable assistance in deciding the present TA.

80. In view of the above T.A. No. 43/2024 is dismissed.
No order as to costs.

PRASANT KUMAR
Member(A)

D S MAHRA
Member(J)

Dated- 09-05-2025

DEVENDRA TRIPATHI