HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

LPASW No. 91/2015

Reserved on: 25.05.2023
Pronounced on: 13.06.2023

Mushtaq Ahmad Rather and Ors.

……...Petitioner(s)

Through:
Mr. M. A. Qayoom, Advocate

Versus

State and Ors.

……Respondent(s)

Through:
Mr. Mubeen Wani, Dy. AG

***CORAM*:**
HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

Per Moksha, J

1. The sword of Damocles Hangs by a thread right over one's head, ready to drop and rip one's head right off. It means living one's life under a constant fear or threat, which you always know about, but you only have a choice to live with it with the belief that the danger will never materialize.

2. This Intra Court Appeal is directed against the Judgment dated 06.05.2015, for short impugned Judgment, passed by the writ Court in a writ petition, SWP No. 1874/2012, seeking setting aside of the same on the grounds taken in the memo of appeal.

3. Before the grounds of challenge, put-forth by the appellants, are set out, the Court desires to record the events, that led to the filing of the instant Letters Patent Appeal, in the first instance.

Factual background

4. The appellants are stated to have been engaged as Lecturers/Demonstrators in various branches of the education department on academic arrangement basis commencing 1994. The details of the engagement of appellants are summarized in the tabulated form below.

S. No.	Name of the appellants	Date/year of engagement	Service rendered as on date
1.	Nidhi Sawhney/Appellant No. 2	07.11.1994	29 years
2.	Mushtaq Ahmad Rather/Appellant No. 1	14.12.2000	23 years
3.	Urvashi Gupta/Appellant No. 3	2002	21 years
4.	Shalini Goel/Appellant No. 4	2003	20 years
5.	Ajay Pal Singh Chib/Appellant No. 5	2003	20 years

5. Pursuant to their engagement, the appellants joined their services and continued to perform their duties on the basis of the extensions granted to their term of engagement from time to time. During their continuation as such, the respondents passed a legislation known as the Jammu and Kashmir Civil Services (Special Provisions), Act, 2010, for short Act of 2010, which *inter alia* provided for the regularization of certain group of employees including *ad hoc*, contractual/consolidated and other employees.

6. It is pleaded that the case of the appellants came to be forwarded by the Technical Education Department for their regularization for placing the same before the Empowered Committee constituted by the Government in this behalf. The Empowered Committee in terms of the minutes of meetings dated 18.07.2012 and 25.07.2012, considered the case of the appellants and rejected the same on the ground that the *academic arrangement-based candidates* are not eligible for regularization in terms of Section 3(b) of the Act of 2010. It would be appropriate to reproduce relevant portion of the Minutes of the Meeting of the Empowered Committee dated 18.07.2012 and 25.07.2012 as under, wherein the appellants figure at serial No. 50 to 52, 54 and 62.

" CONT

S. No.	26ECM S. No.	Name of the employee.	Desg.	Decision of EC
48	1	Azra Iqram	Demonstrator in Computer engg.	As per initial appointment orders, the incumbents from S. No. 48 to 64 are shown to have been engaged on academic arrangement. Under Section 3 (b) of J&K Civil Services (special Provisions) Act, 2010, persons engaged on academic arrangements are not eligible for regularization by the Empowered Committee.
49	2	Anita Kumari	Teacher	
50.	**3**	**Nidhi Sawhney**	**Demonstrator in electronics and communication engg.**	

51	**4**	**Urvashi Gupta**	**Demonstrator in Computer engg.**	
52.	**5.**	**Ajay Pal Singh Chib**	**Demonstrator in Computer engg.**	

Polytechnic boys Girls Sgr (PBW, Sgr).

S. No.	26ECM S. No.	Name of the employee.	Desg.	Decision of EC
53	1	Shafqat Ah. Beigh	Lecturer in Physics	
54	**3**	**Mushtaq Ahmad Rather**	**Demonstrator Computer engg.**	
55.	4	Sumeena Sultan	Comp. Operator	
56	5	Tufail Ahmad Mir	Demonstrator in Auto Mobile	

Technical Education Polytechnic Jammu (TEPJ)

S. No.	26ECM S. No.	Name of the employee.	Desg.	Decision of EC
57	2	Archana Razdan	Demonstrator in Architecture	
58	3	Vandana Chib (cont)	Demonstrator in electrical	
59.	4	Sunil Bhatu	Demonstrator in Computer engg.	
60	7	Gagan Partap	Demonstrator in Computer engg.	
61	9	Seema Kanotra	Lecturer in English	
62.	**6**	**Shalini Goel**	**Demonstrator in Computer engg.**	
63.	6	Abdul Majid Zargar	Drawing Insttt. (sic)	
64.	4.	Farooq Ahmad Malik	Driver	Deptt to clarify as to whether a clear post exist against which the incumbent is working"

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7. Aggrieved of such rejection, the appellants challenged the same before the writ Court by filing writ petition, SWP No. 1874/2012, seeking a direction in the name of respondents to regularize their services in the light of the recommendations made by the Technical Education Department and in terms of the provisions of the Act of 2010.

8. The writ Court after considering the matter and upon hearing the learned counsel for the parties, dismissed the writ petition of the appellants on the ground that the appellants have been appointed on academic arrangements for fixed terms, therefore, are not covered by the provisions of the Act of 2010. The writ Court had further observed that the appellants continuation, probably on the basis of Court orders, will not change the nature of their appointment. The operative portion of the impugned Judgment is reproduced as under:-

> " 9. *The orders of appointment of petitioners herein, placed by them on record of this petition, make it manifest that they had been appointed on academic arrangements for fixed terms. They might have been appointed on vacant posts and continued pursuant to*

> *Court orders, but their appointment on vacant posts or continuation pursuant to Court orders would not change the nature of their appointments. They would continue to remain appointees on academic arrangement for fixed terms.*
>
> *10. In light of the above, I do not see any merit in this petition. It is, accordingly, dismissed alongwith the connected CMP. Interim direction, if any, subsisting, shall stand vacated."*

9. Aggrieved of the dismissal of their writ petition, the appellants have filed the instant appeal before this Court. This is how the instant LPA has come into being.

10. The appellants have challenged the impugned Judgment precisely on the grounds that the writ Court has lost sight of the fact that the appellants are holding the posts against clear vacancies, therefore, are covered under Rule 3 read with Rule 5 of the Act of 2010, for their regularization; the appellants have been engaged initially on academic arrangements for fixed term, however, later on with their continuation ordered "*till further order*s" the nature of their engagement changed; the appellants have been prejudiced as their writ petition has been dismissed for erroneous considerations.

11. In order to demonstrate that the case of the appellants has wrongly been taken as a fixed term engagement, the learned counsel for the appellants made an endeavour to portray that they have ceased to be the employees engaged on fixed terms. It is submitted by the learned counsel for the appellants that the respondents cannot take refuge in the orders of engagement of the appellants to put forth a claim that the appellants are engaged on fixed term engagement notwithstanding their decade's long continuance in service.

12. The learned counsel for the appellants, while reiterating the grounds of appeal, submits that the respondents have continued the appellants in service without their being any compulsion on them to do so, which not only sufficiently proves that the appellants are not engaged on fixed term engagement, but also connotes a promise having been extended to the appellants for their absorption on permanent basis in the respondent department. The learned counsel for the appellants further submits that the documents placed on record by the appellants would indicate that the appellants have been continued beyond a fixed term, proving thereby the stand of the

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appellants that they do not fall within the category of employees as indicated in clause (b) of Section 3 of the Act of 2010.

13. Learned counsel for the appellants further submits that the promise made by the respondents, extending their term of engagement *till further orders or till selection on regular basis is made*, has given rise to the legitimate expectation to the appellants for their permanent absorption in the department. Learned counsel further submits that it is in this background that the Technical Education Department, where the appellants were working, had recommended their case for regularization in terms of Rule 5 of the Act of 2010, to the Empowered Committee.

14. The learned counsel for the appellants further submits that the rejection of the Empowered Committee and the dismissal of the writ petition by the writ Court are erroneous, as the Empowered Committee as also the writ Court have not adopted a pragmatic approach in dealing with the pleas raised by the appellants. The learned counsel in support of his submissions has referred to and relied upon the Judgment of the Supreme Court of India reported as 2008 (10) SCC1, titled Anita Kumari Vs. State of J&K and Ors.

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15. Per contra, the learned counsel for the respondents, while resisting the claim of the appellants, submits that the impugned Judgment is well reasoned and needs no interference, as the positive case set up by the respondents, in opposition to the writ petition, was that the appellants had been engaged on academic arrangements for a fixed term, therefore, are not eligible to be considered for regularization in terms of clause (b) of Section 3 of the Act of 2010.

16. The learned counsel for the respondents further submits that the extensions granted in the term of the engagement of the appellants has mostly been done in compliance to the orders passed in different writ petitions filed by the appellants for their regularization from time to time.

17. The learned counsel for the respondents has produced relevant record to lend support to his submissions that the appellants are engaged on academic arrangements only, therefore, are not entitled to regularization.

18. We have heard learned counsel for the parties, perused the material made available, went through the impugned Judgment and considered the submissions made by the learned counsel for the parties.

19. Before we deal with the merits of the case, we feel it appropriate to record our concern for the way the appellants have been treated and their case has been dealt with. We feel constrained to record that the system adopted and nurtured by the respondents to indulge in the practice of filling up the gaps on temporary basis for decades together is nothing but can amount to exploitation. The irony is that these are the educated class of our society, who have given their lives to impart education to the students and are now at the verge of retirement. The Court is of the view that the educators and teachers ought to be given a better treatment moveover when they have continued to serve the respondent department, spreading to decades, against the meagre salary of Rs. 5700/- per month. It is indeed a sad state of affair that the said remuneration has not been revised during all these years despite the fact that the inflation is at sky high, at least, there is nothing on record to that extent. The said factum makes the picture of the case even grimmer, suggesting again nothing but a miserable exploitation of the appellants at the hands of the respondents. For a comparison the Court records herein that regular Lecturer/Demonstrator in the Government department discharges almost similar duties on a salary of approximately Rs. 1.00 lac or above. The aforesaid salary of Rs. 5700/- per month is even lower than the minimum wages prescribed by the Administration of UT of J&K as per the Jammu and Kashmir Minimum Wages notified/issued in October, 2022. The wages have been fixed for the following categories:

"Unskilled	*Rs. 8056/- per month*
Semi skilled	*Rs. 10,400/- per month*
Skilled	*Rs. 12558/- per month*
Highly skilled	*Rs. 14352/- per month*
Ministerial/ Superior/Accounts staff	*Rs. 11674/- per month"*

We may add herein that the monthly remuneration of the Lecturers/Demonstrators appears to have been enhanced by certain Government orders, as we could see from the online portal. However, nothing is borne out from the record to suggest that such enhancement has been made applicable in the case of the appellants also and they are being paid on the said lines.

20. Coming back to the merits of the case, it is stated herein that the admitted position of the case is that the respondents needed certain vacancies of Lecturers/Demonstrators to be filled up and they utilized the services of the appellants in this behalf, though on temporary basis, but continued such arrangements for not years but decades together. Additionally, it is also undisputed that the Technical Education Department, with whom the appellants are working, had recommended the case of the appellants for their regularization in terms of Rule 5 of the Act of 2010, which however, did not find favour from the Empowered Committee, who rejected the same on the ground that appellants' case is hit by Section 3 (b) of the Act of 2010. The view taken by the Empowered Committee was also upheld by the writ Court in terms of the impugned Judgment. It is also undisputed that the respondents had the posts available, allowed these to be occupied by the temporary employees/appellants till date and no regular selection process, against such vacancies, has ever been undertaken by the respondents. In the circumstances, this Court would only require to see as to whether the appellants had to be accorded the benefit of Section 5 in recognition of their decades long continuance or were to be denied the same in terms of clause (b) of Section 3 of the Act of 2010 in disregard of such decades long service?

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21. Academic arrangement normally is for a fixed period, it starts with the session and ends with the session, then the selection is initiated afresh for the next session and for another spell of time. The selection is made after advertising the posts, scrutiny of the documents of the candidates etc. The selected candidates keep serving the Government for decades on a meagre salary on mere peanuts. This circle turns vicious when the same arrangement is continued for more than two to three decades, but with same terms and conditions, without conducting any regular selections by the Government. The candidates discharging their duties on academics arrangements with sword hanging on their heads, turn over age with passage of time, but Government continues their services with meagre salary which virtually amounts to exploitation in the guise of academic arrangements.

22. Since the controversy entirely revolves around Section 3 (b) and Section 5 of the Act of 2010, therefore, the said provisions of law are taken note of in the first instance, thus:

> *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) ….*
>
> *(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;"*
>
> *5. Regularization of ad hoc or contractual or consolidated appointees.- Notwithstanding anything to the contrary contained in any law for the time being in force or any judgment or order of any Court or tribunal, the ad hoc or contractual or consolidated appointees referred to in Section 3 shall be regularized on fulfilment of the following conditions, namely;-*
>
> *(i) That he has been appointed against a clear vacancy or post;*
>
> *(ii) That he continues as such on the appointed day;*
>
> *(iii) That he possessed the requisite qualification and eligibility for the post on the date of his initial appointment on ah hoc or contractual or consolidated basis as prescribed under the recruitment rules governing the service or post;*
>
> *(iv) That no disciplinary or criminal proceedings are pending against him on the appointed day; and*
>
> *(v) That he has completed seven years of service as such on the appointed day;*
>
> *Provided that the regularization of the eligible ad hoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization;*
>
> *Provided further that any ad hoc or contractual or consolidated appointee who has not completed seven years service on the appointed day shall thereafter be entitled to regularization under this Act."*

23. The learned counsel for the appellants appears to be quite justified in his submission that once the engagement of the appellants was ordered "*till further orders or till regular selection against the post is made*", the nature of the engagement gets converted into consolidated one. It no longer can be said to be an academic arrangement or a fixed term employment. When a relief sought for by the aggrieved party from the Court exclusively depends on the interpretation of the statute, the Courts, have to be extremely careful in accepting or rejecting such reliefs. The Court cannot and must not lose sight of the fact that every rule or Act of law comes into being in pursuance to an object, therefore, while interpreting the rule or statute, the Court must bear in mind such object of the rule/statute it is interpreting. The Apex Court in case titled

Satheedevi vs. Prasanna and Anr., reported as *(2010) 5 SCC 622,* in paragraph No. 12, has held as under:-

> *12. "Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise- Kanai Lal Sur v. Paramnidhi Sadhukhan 1958 SCR 360."*

24. In construing statutes, the cardinal rule is to construe its provisions literally and grammatically, giving the words their ordinary and natural meaning. Every word in the law should be given meaning as no word is unnecessarily used. The intent of the legislature is always reflected in the statute. The "*Noscitur a Sociis"* means that the word should be known from its accompanying or associating words, a word in a statutory provision is to be read in collocation with its companion words. The rule states that where two or more words which are susceptible or analogous, meaning or couple together, they are understood in their cognate sense. They take colour from each other, the meaning of more generally being restricted to less general. The word maybe known by the company it keeps associated words explain and limit each other. A statute is the will of the legislature. The legislature follows the procedure, laid down or prescribed in the enactment of laws.

25. The respondents are denying the claim of regularization of the appellants only on the ground that they have been engaged on fixed term/ academic arrangement, therefore, are not entitled for such treatment in terms of the provisions of the Act of 2010. However, the term 'fixed' is self-explanatory as is the academic arrangement. The respondents are well aware of the meaning of the term *academic arranged/fixed term*. To treat appellants as employees on academic arrangement/fixed term in order to deny them the benefit of regularization, appears to be just a camouflage ingeniously being made use to deny the benefit of permanency flowing out of long service rendered.

26. The record, as made available by the learned counsel for the respondents, would show that appellant No. 2 namely Nidhi Sawhney has been engaged way

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back in the year 1994, allowed to continue for all these years on a meagre sum of Rs. 5700/- per month. The other four appellants are also shown to have been engaged in the year 2000, 2002 and 2003 and are continuing as on date again on a meagre sum of Rs. 5700/- per month. The Courts of the country including the Apex Court have deprecated the practice of *ad hocism* and *contractualism*, for, it ends up only in an academic mess, which not only casts shadow upon the careers of the *ad- hoc* incumbents but also on the students of such institutions, as they do not get the best of the education as the faculty keeps on moving. A model employer is the one whose concern towards the welfare of his employees is depicted in his actions and not in mere words alone.

27. The material available on record also makes it clear that the writs have been filed on the subject and the courts have shown its indulgence and passed certain interim measures, however, it also transpires therefrom that despite there being no litigation on the subject till 2012, the appellants have been allowed to continue which goes on to show that there is something much more than what meets the eye. The respondents could have taken this plea that it was on the basis of court orders that the appellants were allowed to continue only when they were able to show and effectively demonstrate through record that the entire period of service of the appellants spreading to decades was actually based on court orders which, however, is belied by the records. As pointed out by the learned counsel for the appellants, we could find that one Shafqat Ahmad Beigh had filed a writ petition, but choose not to file any appeal later on, whereas the petition, SWP No. 1058/2001 tilted *Farooq Ahmad Ahangar and Ors. Vs. State of JK and Ors*., in which appellant No. 1 figures as petitioner No. 4, has been withdrawn in terms of order dated 21.12.2005.

28. It would not be out of place to mention herein that the record produced by Mr. Mubeen Wani, learned Dy. AG, only consists of the engagement orders as also the subsequent extensions granted in favour of appellants namely Nidhi Sawhney, Ajay Pal Singh Chib and Urvashi Gupta, besides a Court order passed in case titled *Farooq Ahmad Ahangar and Ors. Vs. State of J&K and Ors*. It does not even contain the notification pursuant to which the appellants have been engaged, nor does it have the engagement details of the rest of the two appellants namely, Mushtaq Ahmad Rather and Shalini Goel. It also needs

to be emphasized herein that the claim projected by the appellants for their regularization is resisted by the counsel representing the Department, i.e., Technical Education Department, who had forwarded their case for such regularization. Irony is that the Empowered Committee, which rejected the case of the appellants has not been represented before the Court at all, thereby leaving the rejection order unexplained.

29. The doctrine of legitimate expectation connotes which can be reasonably or legitimately expected. The department recommend the claim of the candidates, but when the same is turned down by the committee duly appointed by the Government, despite the fact that claim of the department clearly reflects the eligibility of the candidates, it completely shatters the individual who has given his life to the government, engaged in the academic process for decades.

30. We are inclined to take note of the Judgment delivered by Supreme Court in case titled *Central Inland Water Transport Corporation Vs. Brojo Nath Ganguli* (1986) 3 SCC 156. Paragraph No. 89, is, for facility of reference, taken note of herein, thus:-

> *"Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under-foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the*

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parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

31. Another important aspect of the matter is that the recommendation so made by the Technical Education Department has given rise, as a natural consequence, to the legitimate expectations of the appellants to see their permanent absorption in the respondent department, which cannot be lost sight of or brushed aside completely. The Apex Court in case titled Food Corporation of India v. M/S Kamdhenu Cattle Feed Industries, reported as AIR 1993 Supreme Court 1601, has in paragraphs 7 and 8 laid down as under:-

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art. 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with the element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process.

> *Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."*

32. The Apex Court has, in various of its pronouncements, laid down that employment cannot be on exploitative terms, whereas the principle laid down in a celebrated Umadevi Judgment *(State of Karnataka Vs. Umadevi) (2006) 4 SCC 1*, provides that there should not be backdoor entry and every post should be filled up by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise, which is impermissible when the principle laid down in the Umadevi Judgment is taken in its true spirit. It would be profitable to reproduce paragraph 53 of the Judgment supra, herein:-

> *" 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **S. V. Narayanappa** AIR 1967 SC 1071, **R. N. Nanjundappa** (1972) 1 SCC 409 and **B. N. Nagarajan** (1979) 4 SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the case above referred to an in the light of this Judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for then years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing for the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.*
>
> (Emphasis added)"

33. The contention put forth by the learned counsel for the respondents that the appellants are working against academic arrangements/fixed terms, in the circumstances explained herein before, does not hold good. An academic arrangement is for an academic session/year, it gets terminated at the end of such session/year and is renewed again at the commencement of successive

session/year and again terminated at the end of such successive session/year so on and so forth. However, as taken note of hereinbefore, once the service of the appellants is extended for an indefinite period or till selection on regular basis against the posts is made, it no longer remains or can be said to be an academic arrangement. Therefore, the view taken by the writ Court that the nature of the engagement of the appellants does not get changed because of subsequent developments is unreasonable.

34. The cumulative analysis of the above discussion is that the appellants are the *consolidated/temporary* employees and deserve to be treated as such in terms of the provisions of the Act of 2010, notwithstanding the nature of their initial order of engagement.

35. The respondents are also not justified, rather are absolutely on wrong footing, to say that the appellants have been and are continuing on the posts on the basis of court orders. The fact of the matter is that respondents have allowed them to continue as per their sweet wish without there being any compulsion from any quarter to do so, they appear to have been in need of their services and are now contemplating to show them the door or deny them the usufruct of their services in complete disregard to the decades long services rendered by the appellants for the department by taking recourse to Section 3(b) of the Act of 2010. The law cannot be made applicable selectively to extend benefit to few and deny it to few. We, therefore, do not subscribe to the view that the appellants fall within the exception as prescribed under clause (b) of Section 3 of the Act of 2010. On the contrary, we find the case of the appellants tilting more towards Section 5 of the Act of 2010, as they satisfy its requirement in its entirety. In the instant case as detailed out hereinbefore, the appellants have not only been continued for an indefinite period in contravention of the scope and concept of the academic arrangement, but have even been ordered to continue till further orders, which, to our view, connotes that the exception to Section 3 in the shape of clause (b) of the Act of 2010, has completely lost its significance vis-à-vis the appellants.

36. The question so formulated in the preceding paragraphs is, accordingly, answered on the above lines.

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37. It is made clear that the repealment of the Act of 2010, by enactment of J&K Re-Organization Act, 2019, shall not wipe out the accrued rights of the appellants.

38. In view of above, the writ Court does not appear to have appreciated the controversy in its right perspective. Accordingly, in acceptance of the present LPA, we set aside the impugned Judgment dated 06.05.2015 passed in SWP No. 1874/2012, by the writ Court. The writ petition of the appellants as a sequel to above, is also allowed. The impugned rejection orders of the Empowered Committee dated 18.07.2012 and 25.07.2012 are also quashed by a writ of certiorari. The respondents by a writ of mandamus are commanded to re-consider the case of the appellants for their regularization in terms of the provisions of Act of 2010. Given the fact that the appellants have given their youth in the service of respondents and have spent good amount of time in litigation pursuing the cause of their regularization, the respondents are commanded to re-consider regularizing their services in terms of Section 5 of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010, within a period of one month from the date copy of this judgment is served upon them notwithstanding the age factor of the appellants.

39. The instant case has been decided on the basis of its chequered history and in the peculiar circumstances, therefore, it shall not set a precedence in any manner whatsoever.

40. The LPA as also the writ petition SWP No. 1874/2012, shall stand **disposed of** on the above lines.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Srinagar
13.06.2023
"Mohammad Yasin Dar"

Whether the Judgment is reportable: Yes/No.
Whether the Judgment is speaking: Yes/No.

HIGH COURT JAMMU & KASHMIR AND LADAKH