

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

Reserved on : 22.09.2023

Pronounced on : 19.12.2023

Case:- **WP(C) No. 1502/2022**
CM No. 4159/2022

Dr. Reva Sharma, age 55 years,
W/o Sh. Rajnish Sharma,
R/o 110-A/D, Gandhi Nagar,
Jammu.

....Petitioner

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Dhruv Pant, Advocate

Vs

- 1. J&K Institute of Management, Public Administration and Rural Development (IMPARD)**
M. A. Road, Srinagar (Kashmir)
Through its Director General.
- 2. Vice Chairman,**
J&K Institute of Management, Public Administration and Rural Development (IMPARD)
Civil Secretariat, Srinagar (Kashmir).
- 3. Principal Secretary to Government,**
General Administration Department,
Jammu & Kashmir Government,
Civil Secretariat, Srinagar (Kashmir).
- 4. Director General,**
J&K Institute of Management, Public Administration and Rural Development (IMPARD)
M. A. Road, Srinagar (Kashmir).
- 5. Joint Director,**
J&K Institute of Management, Public Administration and Rural Development (IMPARD)
Near ASCOMS, Sidhra, Jammu.

..... Respondents

Through: Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

1. As the determination of the nature of service status of the petitioner vis-à-vis Jammu & Kashmir Institute of Management & Public Administration and Rural Development is the kernel on which the adjudication of the writ petition rests in view of the claim and denial from the respective ends' of the parties to the writ petition, as such the fact line of the case needs to start from the Jammu & Kashmir Institute of Management & Public Administration and Rural Development in terms of its conception, inception and continuation as an entity/authority.

2. The Government of the erstwhile State of J&K, vide a Govt. Order No. 514-GD of 1982 dated 24/02/1982, had sanctioned setting up of a government institute under the name and style "Institute of Management and Public Administration", IMPA.

3. The objectives then intended for the creation of the Institute of Management and Public Administration", IMPA were:

- (i) to provide training and administration,
- (ii) to provide training and management,
- (iii) to provide training in rural development to the state government employees,
- (iv) to operate as a center for applied research on administrative issues,

- (v) to serve as a clearing house for the latest relevant and appropriate techniques in the field of management and administration,
- (vi) to function as a documentation center for all relevant data and information required for administrative processes,
- (vii) to maintain a reference library with books and literature connected with training on JNK cultural and social history and other books for general reading/ and will also subscribe to journal, periodicals, newspapers etc. for being placed in the reading room,
- (viii) to issue a publication or administration and publish also the result of research projects and also to publish a journal of the institute.

4. In order to carry forward the practical manifestation of said Govt. Order No. **514-GD of 1982** dated **24/02/1982**, a High-Powered Committee, vested with the powers of Cabinet, under the chairmanship of the then Chief Minister of the State of J&K, had taken a decision on **12/10/1985** resulting in issuance of a Govt. Order No. **1815-GD of 1985** dated **18/10/1985** for creation of requisite infrastructural facilities for the commissioning of the Institute of Management and Public Administration, IMPA, J&K.

5. The Institute of Management and Public Administration, IMPA, J&K was meant to have faculties which are: -

- (a) Public Administration,
- (b) Financial Management,
- (c) Rural Development,
- (d) Communication and Behavior,
- (e) Industrial Management,

(f) Social Sciences/Law.

6. The Institute of Management and Public Administration, IMPA's service cadre was also created to be headed by a director and other enlisted officials against the posts mentioned in the Govt. Order 1815 – GD of 1985. Posts of Professor and Assistant Professor with UGC pay scale also came to be provided in the Institute of Management and Public Administration, IMPA.

7. Towards further functionality and empowerment of the Institute of Management and Public Administration, IMPA so created, the Govt. of the State of J&K, vide its Govt. Order No. **1838-GD** dated **21/10/1985**, had declared the Institute of Management and Public Administration, IMPA to be an apex institute for training and research in rural development in the State of J&K.

8. In order to invest a legal standing and status for the purpose of enabling the Institute of Management and Public Administration, IMPA to meet more efficiently the diverse types of training requirements for government officers and managerial levels of public sector undertakings and also to impart autonomous character to the Govt. created Institute of Management and Public Administration, IMPA which was also to be an apex institute for training and research in rural development in the State of J&K, a High-Powered committee for Institute of Management and Public Administration, IMPA came to take a decision for registration of the

Institute of Management and Public Administration, IMPA as a society under the Jammu and Kashmir Societies Registration Act, 1988.

9. In order to carry forward the said the decision of the High-Powered Committee, a Govt. Order No. **1071-GD of 1986** dated **22/08/1986** was issued setting up an Executive Council of the Institute of Management and Public Administration, IMPA going to be registered as a society and then to be headed by the Hon'ble Governor of the State of Jammu and Kashmir as its chairman.

10. Vide a Certificate of Registration No. 1241-S of 1986 dated **04/09/1986**, the Jammu & Kashmir Institute of Management and Public Administration (J&K IMPA) from being a simple govt. set up body/authority came into being as a registered govt. society having the Memorandum of Association and the Rules.

11. In terms of its Memorandum of Association's clause 3 (V), the J&K IMPA, as a society, was deemed to have been entrusted with the function of the Institute of Management and Public Administration, IMPA as per Government Order No. 514-GD of 1982 dated **24/02/1982** Government Order No. 1815- GD dated **18/10/1985** and Government Order No. 1071 - GD dated **22/08/1986**. Thus, said three Govt. Orders came to be read into the creation, composition, character, and charter of the J&K IMPA as a registered society.

12. Upon its registration as a society, the name which instead came to be officially referred and routinely used for J&K IMPA came to be the Jammu & Kashmir Institute of Management, Public Administration and Rural Development (**J&K IMPARD** in short) although the society's legal name was retained to be J&K Institute of Management & Public Administration **IMPA**. Thus, J&K IMPA and J&K IMPARD came to be interchangeably used and meant to be as one and same entity for all intents and purposes and for its introduction and function.

Petitioner's Case Projection:

13. It is with respect to the said Jammu & Kashmir Institute of Management & Public Administration and Rural Development, J&K IMPARD that the petitioner came to bear a relationship in its employment.

14. Vide an Order **No. 116 of 1996** dated **13/06/1996** of the J&K IMPARD issued by its Director, with due approval of the then Hon'ble Governor of the State of J&K, as Chairman of the Executive Council, the petitioner came to be appointed as an Assistant Professor in the **faculty of Rural Development**(2200-4000) against an available vacancy on two years' probation upon completion of which the confirmation as Assistant Professor (Rural Development) IMPA was to come into being and that is how the petitioner's service career had commenced and continued.

15. The petitioner's said appointment order **No. 116 of 1996** reads as follow:

“As recommended by the IMPA Selection Committee for faculty members and approved by His Excellency the Governor (Chairman IMPA Executive Council) Ms. Reva Sharma, D/o Sh. M.L.Bhat, 42-B/D, Gandhinagar, Jammu is appointed as Assistant Professor in the faculty of Rural Development in the scale of 2200-4000 against an available vacancy in the Institute. She shall be on probation for a period of two years and her confirmation as Assistant Professor Rural Development IMPA shall be subject to the successful completion of the period of probation. The appointee shall have to join in IMPA Sub-Office, Jammu within a period of 21 days from the date of issue of this order.”

16. Upon completing her more than nine years' service as an Assistant Professor, the petitioner then came to be further appointed in the same very J&K Institute of Management & Public Administration and Rural Development (IMPARD) as an Associate Professor **(Rural Development) with pay scale of Rs. 12000-16,500** in terms of **an IMPA Order No. 172/J dated 27/04/2005** passed by the Director General IMPA upon the recommendation of a selection committee and with an approval by the then Hon'ble Governor of the then State of Jammu and Kashmir, as being Chairman IMPA's Executive Council.

17. In fact, in terms of the aforesaid order, sanction was accorded to the appointment of a number of candidates for the posts in

the **J&K-IMPARD** and the petitioner had figured at serial No.2 getting posted for Centre of IMPA Regional Campus Jammu. This appointment was also on two years' probation to be followed by confirmation. In this order, five appointments had taken place which included one for the post of Professor (Rural Development), two for the post of Associate Professor (Rural Development) and two for the Assistant Professor, (Rural Development). It is pertinent to observe here that as per the original cadre constitution of the J&K IMPA as per **Govt. Order No. 1815-GD of 1985 dated 18/10/1985**, there is found no mention of the post of Associate Professor provided in the faculty of the J&K IMPA.

18. On the basis of a cabinet decision **No. 185 dated 23/09/2005** backed with concurrence of the Finance Department in terms of communication No. A/711991-1014 dated **22/09/2005**, a Govt. Order No. 1192-GAD dated **27/09/2005** was issued whereby sanction came to be accorded to adoption of pension rules applicable to the State Government employees for payment pension including superannuating and special pension, family pension, invalid pension, commuted pension, gratuity and death cum retirement gratuity etc., to the **employees of J&K IMPARD** out of the grant in aid provided by the State Government from time to time and also authorizing the Director General/Director IMPA to sanction pension and other retirement benefits to all the employees working in IMPA in accordance with the rules applicable to the State

Government employees. The application of this order was to be with effect from September 2005 to all employees of IMPA. This order clearly envisaged admissibility of pension to the petitioner as well upon acquiring the qualifying service in terms of the rules as per the service status of the petitioner.

19. An advertisement notice No. 01 of 2012 dated **21/08/2012** was issued by the Deputy Director J&K IMPA & RD thereby inviting applications on all India basis from eligible candidates for 16 faculty positions/posts **in the Institute**. The word 'Institute' in the advertisement, without admitting of any other meaning and sense, expressly meant to be **JK IMPARD**.

20. Out of these 16 posts in the Institute, 11 posts were mentioned to be in the faculty of **J&K IMPA and 5 posts in the faculty of SIRD Wing of J&K IMPA**. The very text and context of this advertisement clearly meant to be understood that 16 posts advertised were in and of the Institute which is **Jammu & Kashmir Institute of Management, Public Administration & Rural Development JK-IMPARD**.

21. Of the 11 posts in the faculty of J&K IMPA, the composition was as under: -

4 (Four) posts were of Professor in Financial Management, Public Administration and Communication & Behavioral Sciences,

5 (Five) posts were of Associate Professor in Financial Management; Industrial Management; Public Administration and Communication & Behavioral Sciences; and

2 (Two) posts of Assistant Professor in Rural Development and Social Sciences.

Out of 5 posts in the faculty of SIRD wing of J&K IMPARD, the composition was as under: -

One (1) post was of Professor (Rural Development),

Two (2) posts of Associate Professor (Rural Development) and

Two (2) posts of Assistant Professor (Rural Development) in the faculty **for SIRD Wing of J&K IMPA.**

The aforementioned advertisement did not mention in any sense and manner any distinction and differentiation between JK IMPA and SIRD Wing of JK IMPA between which the posts were declared available for selection and appointment process. In fact, all the sixteen (16) posts were mentioned to be in the Institute and the obvious reference to the Institute was the Jammu & Kashmir Institute of Management & Public Administration and Rural Development under which caption the advertisement was issued.

22. The petitioner, already being an Associate Professor (Rural Development) in J&K IMPARD, had responded by applying for the post of Professor (Rural Development) in the faculty of SIRD wing of the J&K IMPA having then no reason and occasion to discern and decipher that the said post of Professor SIRD Wing of IMPA was

outside the service cadre of J&K IMPARD given the fact that the petitioner was already serving as an Associate Professor in the Institute i.e. JK IMPARD, and as there was only one post of Professor for Rural Development in JK IMPARD finding mention in the said advertisement.

23. Vide an IMPA Order No. 307 dated **12/06/2013** issued by the Director General J&K IMPARD, pursuant to the said advertisement notice No. 01 of 2012 dated **21/08/2012**, the petitioner came to be appointed as Professor in Rural Development SIRD purportedly mentioned to be under funding by the Ministry of Rural Development (MoRD), Government of India (GOI) at J&K IMPARD in the pay scale of Rs. 37,000-67000+ grade pay of Rs. 8700 plus usual allowances as admissible under rules to **the State Govt. Employees**. The petitioner's appointment was recommended by J&K IMPARD's Selection Committee headed by Chief Secretary J&K Govt. and approved by the Chief Minister as Chairman IMPARD Executive Council.

24. The said appointment order of the petitioner as Professor reads as follow:

"As recommended by the J&K IMPARD Selection Committee headed by Chief Secretary, J&K Government (Vice Chairman, IMPARD executive Council), sanction is here by accorded to the appointment of Dr Reva Sharma W/o Rajnish Sharma 110-A/D Gandhi Nagar, Jammu as Professor in Rural Development (SIRD) under funding by Ministry of Rural Development, GOI at

J&K IMPARD in the Pay scale of Rs. 37000-67000+Grade Pay 8700 plus usual allowances as admissible under rules to State Government employees. The appointee shall be allowed to join only after production of the following certificates: -

- i) Academic qualification certificates**
- ii) Age and health certificate**
- iii) Character and antecedents' certificate**
- iv) certificate to the fact that no loan has been obtained under self-employment scheme**
- v) State Subject Certificate as may be applicable**
- vi) Any other certificate as required under rules.**

The appointee shall be on probation for a period of two years and the confirmation on the post shall be subject to successful completion of probation period in accordance with the rules.

The appointee shall join for duties at the J&K IMPARD within 21 days from the date of issuance of this appointment order."

25. In the writ petition, the profile of the petitioner, thus, comes out to be that she is a Professor of Economics with specialization in International Economics and Development Administration. The petitioner claims to be an accomplished professional and national trainer certified by the Department of Personnel and Training, DoPT, GOI. The petitioner has put in 26 years of service starting as an Assistant Professor, then as an Associate Professor and lately as Professor of Rural Development in the area of capacity building training, research and consultancy in the J&K IMPARD i.e. the respondent No.1.

26. In her stint as Professor, Rural Development, J&K-IMPARD, the petitioner is said to have gathered experience in organization of training courses, workshops, seminars, conferences on various contemporary themes and issues of public relevance and importance at national level especially for central civil services, IAS, J&K Administrative Services, secretariat training of J&K Government employees.

27. The petitioner is said to have served as Head Academics and Trainings of J&K-IMPARD for two years' tenure 2014-2016 and as Director Training from 2016 onwards till date of filing of the writ petition.

28. With respect to the administrative set up of J&K-IMPARD, it is said to be comprised of three wings which are Administrative wing, Academic wing and Finance wing.

29. In the hierarchy of the Administrative wing of J&K-IMPARD, it is the Director General who is the overall In-charge. Below the Director General is a Joint Director followed by two Deputy Directors at provincial level in the Administrative wing of J&K-IMPARD.

30. In so far as the Academic wing of J&K-IMPARD is concerned, it is said to be headed by a Director Training, which the petitioner claims to be was at the time of institution of the present writ petition getting posted at said position in the year 2015 as Head

Academics Training, Jammu. It is pleaded that in fact the designation of the post of Professor was updated to be Director Trainings Jammu in the year 2016 when the JK&-IMPARD was re-organized.

31. The petitioner is said to have continued as Director Training till 2021 as said posting was for a period of five years initially beginning for three years later extended by two years.

32. It is pleaded in the writ petition that the petitioner is the sole senior most Professor in the two Regional Centers i.e. JK IMPARD Jammu and IMPARD Kashmir.

33. It is stated in the writ petition that upon completion of five years as Director Training Jammu, the petitioner was given the extended responsibility as such apart from the position of Head SIRD DGGI.

34. In reference to her posting as Head, Academic and Training at Regional level, the petitioner refers to IMPA Order No. **153 of 2015** dated **11/06/2015** of J&K-IMPARD issued through its Deputy Director IMPA Srinagar. The operative part of this order is reproduced herein as under:

“It is hereby ordered that Dr Mushtaq Ahmed Khan, Professor Industrial Management, Main Campus, Srinagar and **Dr. Reva Sharma, Professor, Rural Development, IMPA Regional Centre, Jammu** shall function as Head, Academics and Trainings at Regional level for a period of two years w.e.f., 15th June, 2015.

The post shall be rotated after every two years among us the professors at the respective Institute Campuses.”

35. In furtherance to re-designation of her position from Head, Academics and as Director Trainings ATI to be Director (Trainings) for IMPARD Jammu, the petitioner has referred in her writ petition to an IMPA Order No. 352 of 2016 dated **18/11/2016** passed by the Vice Chairman/Director General of J&K-IMPARD the operative part of which is reproduced herein next: -

“In order to streamline the functioning of the Institute in the new system of faculties being organized into ‘Centre of Excellence’ and to facilitate coordination between IMPARD Srinagar and IMPARD Jammu, sanction is here by accorded to the following:

- i) Dr Mushtaq Ahmed Khan, Head, Academic and trainings ATI and Dr. Reva Sharma, Head, Academic and Trainings (SIRD) are re-designated as Director (Trainings) for IMPARD, Srinagar and IMPARD, Jammu respectively for a fixed tenure of three years, w.e.f the date of issuance of this order till their superannuation, which will be earlier;**
- ii) Director (Trainings) will be responsible for coordinating and supervising the overall functioning of all centres at the regional level of the institute and on these matters will directly report to the director General. The detailed job profile of the Director (Trainings) is annexed to this order.**

This issue is with the approval of the Hon’ble Chief Minister of the State of Jammu and Kashmir (Chairperson, IMPARD Executive Council) conveyed wide endorsement No. PS/PRS/HCM/1863/16 dated 16/11/2016.”

36. The petitioner refers in her writ petition with respect to the reorganization of the J&K IMPARD undertaken in 2016. In this regard the petitioner has referred to an IMPA Order No. **352 of**

2016 dated **18/11/2016** issued by the Director General/Vice Chairman, J&K IMPARD. This order recites a fact that for streamlining of the functioning of the Institute, faculties being reorganized into '**Centres of Excellence**' and to facilitate co-ordination between IMPARD Srinagar and IMPARD Jammu, the petitioner and Dr. Mushtaq Ahmad Khan, posted as Head Academics & Trainings (ATI) and Head, Academics & Trainings (SIRD) respectively came to be re-designated as Director (Trainings) for IMPARD Jammu and Srinagar respectively for three years' term.

37. As Director Trainings for Srinagar and Jammu respectively, Dr. Mushtaq Ahmad Khan and the petitioner were declared to be responsible for coordinating and supervising the over-all functioning of all Centres at the regional level of the Institute directly reporting to the Director General J&K IMPARD. The Petitioner's as well as Dr Mushtaq Ahmed Khan's postings as Director (Trainings) were extended for a period of two years with effect from **18/11/2019** in terms of IMPA Order No. 522 of 2020.

38. In the proposal with respect to the reorganization of the J&K IMPARD's faculties into Centres of Excellence, there is a recital to the effect that the Faculty of Rural Development and State Institute of Rural Development deal with same clientele and subjects for the purpose of training and research and that the separate working of said two Divisions was reckoned to be not logical.

39. The petitioner has pleaded the shift in the approach of the establishment of J&K IMPARD vis-à-vis her status and position when after expiry of her term of five years as Director Training , IMPARD Jammu, which position is meant to be held by a Professor only, and the petitioner being the sole professor in J&K IMPARD was not given the said posting but was asked to look after the responsibilities of Director Trainings, Jammu/Head SIRD DGGI (Kashmir Elamia)in terms of IMPARD Order No. **369 of 2022** dated **26/04/2022** issued by the Director General J&K IMPARD. It is by the situation and status envisaged in condition No. 6 of the Reorganization of the J&K IMPARD's Faculty into Centres of Excellence from which the petitioner reckoned herself being deprived by referring her to look after the responsibilities as Director Trainings Jammu.

40. The situation which precipitated and finally led the dejected petitioner to come up with the present writ petition is the scenario staring the petitioner that despite having put in 26 long years of service with the J&K IMPARD, the petitioner is given to believe and understand by the Finance Wing of the J&K IMPARD that her post and position would not entitle her to pensionable service otherwise admissible in terms of Govt. Order No. 1192-GAD of 2005 dated 27/09/2005 and the purported reason is that the petitioner has been appointed as Professor SIRD Wing.

RESPONDENTS' CASE RESPONSE

41. The respondents in response to the writ petition have come up with a reply with a take which is taken to reference herein next.

42. The Institute of Management and Public Administration, IMPA was set up vide Govt. Order No. **514-GD of 1982** dated 24/02/1982 and declared as the Apex Institute for training and research in rural development vide Govt. Order No. **1838-GD of 1985** dated 21/10/1985. A Govt. set up high-powered committee for Institute of Management and Public Administration, IMPA, had taken a decision dated 29/07/1986 based whereupon a Govt. Order No. 1071-GD of 1986 dated 22/08/1986 was issued for the purposes of registration of the Institute as a society.

43. The Institute of Management and Public Administration, IMPA, is claimed to be an autonomous entity in the form of a registered society under the relevant Act for enabling it as a body to meet more efficiently diverse types of training requirements for government officers and managerial levels public sector undertakings.

44. The respondents have pleaded that the petitioner is trying to create a false impression that JK IMPARD and SIRD are singular entity and her plea of the singularity with respect to two wings is not sustainable.

45. The respondents plead that there is no overlap between SIRD and JK IMPARD as the appointments in the faculty of JK IMPARD are against duly approved posts against which the appointments are made following regular procedure and are backed by all concomitant benefits as per UT of Govt. Rules.

46. It is pleaded that the appointments to the posts in the faculty relating to SIRD are funded by the Ministry of Rural Development, (MoRD), Govt. of India (GOI) was mentioned in the advertisement notice to which the petitioner is said to have responded and applied voluntarily by applying for the SIRD post and that is how the petitioner was shifted from JK IMPARD (ATI) in 2013.

47. It is stated by the respondents that it is not correct on the part of the petitioner to say that the original Institute of Management and Public Administration (IMPA) was transformed to be J&K Institute of Management Public Administration and Rural Development (IMPARD).

48. It is asserted by the respondents in the context of IMPA and IMPARD that it had so happened because of Govt. Order No. 1838-GD of 1985 dated 21/10/1985, Rural Development was included in the basic Memorandum of Association of the Society (IMPARD). The name of the society is said to be J&K Institute of Management and Public Administration, IMPA, which includes apex institute for training and research in rural development.

49. It is pleaded that the appointments and arrangements in the faculty of Institute (ATI) were made by the Apex Society which were taking care of needs and requirements of all sectors of the then State of Jammu & Kashmir. The respondents urge to say that ATI (IMPARD) faculty positions are in continuous existence from its creation till date of filing of response in the case and which positions are being paid by the Government of the Jammu & Kashmir.

50. In the reply it is being stated by the respondents that the faculty positions in SIRD advertised vide notice No. 1 Of 2012 dated 21/08/2012 were meant to be paid by recurring grants of the MoRD GOI under the rules and regulations of the Ministry of Rural Development (MoRD)& Panchayati Raj (PR), Govt. of India (GOI) being evident from the appointment order issued vide IMPA No. 307 of 2013 dated 12/06/2013.

51. It is pleaded by the respondents that there was no ambiguity to the effect that there is any overlap between SIRD and IMPARD two being separate entities having their separate funding sources which are one from UT and other from the central government. The respondents are meaning to plead that the petitioner is resorting to an afterthought to claim retiral benefits.

52. The respondents are over emphasizing an assertion that the petitioner is under appointment with SIRD since 2013 which is the faculty under recurring grants from MoRD GOI and that the JK

IMPARD and SIRD are separate wings but though controlled by the same director general being the only commonality.

53. The respondents are laying stress upon the plea that the petitioner's decision to apply for SIRD recruitment resulted in her giving up the ATI appointment due to her shifting to SIRD on 12/06/2013 and her claim with respect to her length of service is contrary to facts whereas her length of service in SIRD is 09 years.

54. The respondents have asserted that the petitioner's engagement as Assistant Professor/Associate Professor between 13/06/1996 to 11/06/2013 reckoning 17 years was in ATI and her said engagement is previous engagement whereas upon her applying for post in SIRD and getting appointed resulted in giving up the ATI appointment due to her shifting.

55. With respect to the petitioner's posting as Director Training, the same is said to be a work distribution and role in the nature of assignment of work responsibility and not an appointment to any sanctioned/created post with any financial or pecuniary benefit.

56. The respondents have come forward asserting that in the interest of administration frequent work distribution as Head Academics, Head Hostel, Director Training, DVO, CVO etc., is and used to be done on day-to-day basis by allocating work to Faculty.

57. The respondents have asserted that the petitioner, by clever drafting of writ petition, has made a deliberate attempt to confuse a substantive appointment with work assignment.

58. By meaning to say that IMPA is a separate entity, the respondents are referring to the creation order of IMPA to show that the ATI's faculty is Assistant Professor, Associate Professor and Professor in which Director Training is not at all a post in the hierarchy but just a work distribution from the handling of which the petitioner cannot be allowed to draw support in the context of her claim.

59. The respondents are coming in admission to the fact that vide IMPARD's Order No. 153 of 2015 dated 11/06/2015 two professors one of which being the petitioner were ordered to look after the work as Head, Academics and Training at Regional Levels for a period of two years w.e.f., 15/06/2015 and that arrangement was to be rotated after every two years amongst the faculty at the respective Institute Campuses. In continuation of said admission, the respondents have further admitted that in furtherance of said arrangement, the petitioner was designated to look after the work of Director Trainings for IMPARD Jammu for a fixed tenure of three years from the date of issuance of IMPA Order No. 352 of 2016 dated 28/11/2016 whereas another faculty was asked to look after the same at Kashmir as due to two separate campuses, one in

Srinagar and one in Jammu, separate faculty members have been identified from time to time to look after supervisory roles.

60. The respondents are refuting the contention of the petitioner for picking up the entire role singularly having no precedent in history of organization and not practicable. The respondents are asserting that the claim of the petitioner, as being the senior most professor in the Institute, is misconceived as she was appointed in Rural Development SIRD in 2013 and the Institute has never ever issued any seniority list of the faculty till date of submission of reply in the writ petition.

61. In explaining the position of Director General of JK IMPARD, also as Head of the Autonomous Institution, the respondents in their reply have attributed it to the delegation of power ordered by the Govt. to task the faculty and deliver the training needs of the UT Government. The respondents have come up with a version in their reply that the decisions regarding work distribution is taken based on the current reality of faculty members available with the organization.

62. By meaning to show JK IMPARD and SIRD to be two separate entities, the respondents have stated that due to retirement of several senior faculty members and delay in recruitment, the JK IMPARD was having only six associate professors, five assistant professors and two research officers as against the SIRD having one professor, an assistant professor and that inter se seniority can

only be counted within IMPARD (ATI) and the seniority within SIRD can be utilized only for reckoning within SIRD domain. The claim of the petitioner to serve as director training is said to be neither tenable nor as per the government policy.

63. It is pleaded by the respondents that with only one professor (SIRD) in place, it is not possible for the Institute to run the training affairs at campuses (Srinagar/Jammu) without a nomenclature that suits the ground realities at two geographical locations.

64. The Director General is said to be well within his power of delegation to allocate work of supervision to one, two or even more faculty albeit by any name whether head training, director training, coordinator, supervisor et cetera and any search designation did not qualify any employee of claiming any benefit.

65. The respondents are questioning the maintainability of writ petition of the petitioner by a plea that before approaching this court with this writ petition, the petitioner ought to have exhausted various mechanisms provided for in the government in the form of HOD, administrative secretary, GAD, grievance cell and lastly CAT.

66. The respondent have repeatedly stressed upon a plea that the petitioner was appointed as Professor Rural Development SIRD vide IMPA Order No. 307 of 2013 dated 12/06/2013 against the post of Professor funded by MoRD GOI under centrally sponsored scheme and that there is no basis with respect to the claim of the petitioner

regarding her seniority as a senior most Professor in IMPARD (ATI) because there cannot be combining of seniority of ATI with SIRD.

67. The respondents are pleading that the fact of the petitioner being ordered to look after the work of Head Academics Trainings vide IMPA Order No. 153 of 2015 dated 11/06/2015 and re-designated to look-after the work of Director Trainings, JK IMPARD, Jammu vide IMPA Order No. 252 of 2016 dated 28/11/2016 and IMPA Order No. 522 of 2020 dated 15/01/2020 is of no significance and lending no support to the case of the petitioner as there were no financial implications or any kind of creation of the post of Director Trainings.

68. The respondents submit that the petitioner ought not to have falsely utilized the word “appointed” with respect to her designation as Director Trainings which was nothing but a work distribution by HOD being well within his domain to so order to streamline the training activities of JK IMPARD and SIRD.

69. The respondents plead that the funding source of JK IMPARD (ATI) and SIRD is the State Govt. (now UT of J&K) in the shape of grant-in-aid and recurring and non-recurring grants from MoRD, GOI respectively.

70. With respect and reference to JK IMPARD, the respondents submit that JK IMPARD was given the role of Rural Development in the year 1986 by the Government by inclusion in the Memorandum

of Association. It is pleaded by the respondents in their reply that separate faculty positions which were proposed to be funded by the Ministry of Rural Development and Panchayati Raj Government of India were advertised separately and for that the rules and regulations of the Ministry of Rural Development (MoRD) and Panchayati Raj (PR), Government of India (GOI) along with source of funding of Ministry of Rural Development, Government of India was envisaged which can be made out from the appointment order issued in 2013.

71. The respondents are taking a position that only with respect to the employees of IMPARD (ATI) who has been duly selected by competent authority after creation of posts and sanction of budgetary provisions that they are entitled to the pensionary benefits meant in terms of Govt. Order No. 1192 of 2005 which is not the case of the petitioner who is born on the SIRD.

72. The respondents are rebutting the case of the petitioner by saying that at no point of time any order/communication was issued by the finance wing of the Institute with respect to the issue whether the post of professor has been created with pensionary benefits or not.

73. It is submitted by the respondents that the petitioner's appointment order as Professor Rural Development SIRD proves that funds for this post coming from the Ministry of Rural Development are in the nature of recurring grants and the

comparison of the benefits associated with two separate wings is neither tenable nor logical.

74. The respondents claim that the petitioner knew about the nature of her appointment as Professor SIRD when she upon her voluntary decision had applied for it and was selected and therefore her claim of ignorance of the nature of SIRD appointment is not reasonable.

75. In response to the petitioner's assertion that similarly selected two other candidates along with her in SIRD Wing in the year 2013 were to be covered under new pension scheme whereas with respect to the petitioner upon her appointment as Professor her pay and pension remained protected under article 77-D of J&K Civil Services regulations, the respondents' stance is that of said two selectees Dr. Ruchi Gupta had applied afresh and Dr. Mohd. Ashraf Dar had applied through proper channel as he was working in the Council for Advancement of Peoples' Action and Rural Technology CAPART under the aegis of Ministry of Rural Development Government of India whereas the nature of appointment of the petitioner was a change from ATI to SIRD in 2013 meaning literally meaning to say as if the petitioner was appointed to a new service by JK IMPARD and that cost the petitioner her previous service in JK IMPARD.

76. In reference to the pleas and submissions made in the reply to the writ petition, the respondents have annexed documents with

the reply which need to be referred to before undertaking the evaluation and adjudication of the cause set up in the case.

77. First of the enlisted documents is annexure I which is a May 1987 issued “Delegation of Financial Powers to Director General IMPA”, by the Director J&K IMPA. In terms of this Delegation of Powers, the Director IMPA was to a Major Head of Department in exercise of powers delegated to him. Along with it is a document which is an order No. IMPA/EC-11th/2012/10100-11 dated 19/12/2012 issued by the Director General J&K IMPARD on the subject of “Delegation of financial powers to the Director General, J&K IMPARD-Recasting thereof”. There is an extract of a document in the form of the Governor (Chairman Executive Council, IMPARD) signed 24/03/2016 delegating financial powers to VC & DG, IMPARD.

78. Second document, as annexure II, is the Memorandum of Association and Rules of Jammu & Kashmir Institute of Management Public Administration & Rural Development, IMPA along with Govt. of J&K GAD Order No. 1071-GD of 1986 dated 22/08/1986, Certificate of Registration No. 1241-S of 1986, Memorandum of Association of Jammu & Kashmir Institute of Management and Public Administration as annexure A and Rules of Jammu & Kashmir Institute of Management and Public Administration as annexure B.

79. Third document as annexure III is an appointment order dated 12/06/2013 with respect to the appointment of the petitioner as Professor in Rural Development (SIRD) at J&K IMPARD. In the matter of pay and allowances, the petitioner's appointment was meant to be in parity with the employees of the State Government.

80. The fourth document as annexure IV is Govt. Order No. 1815-GD of 1985 dated 18/10/1985 on the subject of creation of infrastructural facilities for the Institute of Management and Public Administration, J&K.

Appraisal & Adjudication of Case:

81. In embarking upon the appraisal of the case to arrive at its adjudication, culmination, reference needs first to be made to the Rules of the Jammu & Kashmir Institute of Management and Public Administration, IMPA. Rule 3 (g) defines 'Institute' to mean "J&K Institute of Management and Public Administration, Srinagar and includes the apex State Institute for Training and Research in Rural Development". So, the rule confirms the single identity of the Institute having in its entity the apex State Institute for Training and Research in Rural Development as well, therefore, leaving no scope for any claim/assertion to say that State Institute for Training and Research in Rural Development is an institute independent of and unconnected to the J&K Institute of Management and Public Administration.

82. Thus, the State Institute for Training and Research in Rural Development, if there was any obtaining at that point of time of formation of society in the State of J&K, although there is nothing on record to establish it that there was any such State Institute in place before, came to be subsumed in the society of Institute of Management and Public Administration, IMPA dissolving/merging the very existence and entity of the State Institute for Training and Research in Rural Development in the J&K Institute of Management and Public Administration, Srinagar to be popularly and routinely known and mentioned as J&K Institute of Management, Public Administration and Rural Development, **J&K IMPARD** as a single entity. It would, thus, be fitting to state that State Institute for Training and Research in Rural Development is an inborn facet of the J&K Institute of Management and Public Administration, Srinagar admitting no split personality.

83. This court is required to examine a related point. The examination calls for a very evident question as to whether, prior to coming in conception and creation of the Institute of Management and Public Administration IMPA in the State of J&K-being sourced to Govt. Order of 1982 and two Orders subsequent thereto, there was any State Institute of Rural Development so to say SIRD set up and functioning in the State of J&K, be it by reference to the Ministry of Rural Development (MoRD), Govt. of India (GOI) or by

reference to own initiative of the Govt. of J&K. If so existing, then by virtue of which Govt. Order/Notification and under which and what dispensation. The onus for establishing and exhibiting this fact always rested upon none other than the respondent No. 1.

84. In this regard, firstly it is nowhere stated and/or clarified by the respondent No. 1- that in the State of J&K, be it before or after the Govt. of State of J&K came forward with sanctioning of establishment of an Institute of Management and Public Administration vide Govt. Order No. 514-GD of 1982 dated 24/02/1982, there was existing a government established and administered State Institute of Rural Development SIRD and even if there was any such State Institute of Rural Development SIRD then vide which State Govt. order/notification/decision the same was set up and run.

85. The respondent No. 1 cannot escape, or let to escape, from its standpoint that it is the Ministry of Rural Development, MoRD, Govt. of India which is meant to bear the financial burden of administrative set up and working of any given State Institute of Rural Development SIRD in every and all States of India and that is how in the context of the then State of J&K, its SIRD was meant to be financially supported and sustained by the MoRD and Panchayati Raj, GOI. Now if that was to be so, then how and when the then State of J&K first came to set up its SIRD and how it was being administered and managed and since when and how the State

of J&K came to avail financial grants and support from MoRD & PR GOI is nowhere to be found said or suggested or meant to be said or suggested. This court cannot be expected to take the words of the respondents just by face value that the State of J&K had and continues to have a SIRD independent of IMPA.

86. A perusal of the Govt. Order No. 514-GAD of 1982 dated 24/02/1982 would establish a fact that the Govt. of J&K came to set up the Institute of Management and Public Administration IMPA but without getting it into any functional state. Then the Govt. of J&K, vide Govt. Order No. 1838-GAD of 1985 dated 21/10/1985, declared the same very IMPA also to be an apex Institute for Training and Research in Rural Development meaning thereby this apex institute could not have been the one which MoRD & PR GOI was meaning to be in existence otherwise Govt. Order No. 1838-GAD of 1985 dated 21/10/1985 would have recited a fact to said effect that IMPA to be an apex Institute for Training and Research in Rural Development is the one funded and financed by the MoRD&PR GOI.

87. Now, the Institute of Management and Public Administration, IMPA, being borne out of the blend of said two Govt. Orders No. 514-GD of 1982 and 1838-GD of 1985, was the one for which Govt. Order No. 1850-GD of 1985 dated 18/10/1985 for creation of infrastructural facilities came to be passed and thereafter the same very Institute, sourced to said three govt. orders, came to be

incorporated as a society in terms of Govt. Order No. 1071-GD of 1986 dated 22/08/1986.

88. Now, as registered society, the J&K IMPA came to be a unified legal entity admitting of no spilt status in the eyes of law and for any end or purpose. From this legal status and perspective of JK IMPA, there is nothing on record from the respondents' end to point out and prove as to how and when IMPA as being a registered society and SIRD as a MoRD & PR GOI funded and financed entity came to have an interface with each other. On the contrary, what the respondents seem to present and plead is an illusion that while IMPA has SIRD in it but SIRD is outside IMPA and this is something mind boggling to the extent of straining one's understanding that can government functioning with respect to an institution be such a puzzlement.

89. There is no express or implied declaration on the part of the IMPARD, or for that matter on the part of the Govt. of J&K at any point of time that the apex State Institute for Training and Research in Rural Development constituted and composed in the IMPA is the one which was already in existence as the State Institute of Rural Development SIRD and was as such a separate institute in itself bearing no existential and functional identity with IMPA and its faculty of rural development.

90. The respondent No. 1 in particular, and the respondents in general, cannot be heard to say and claim, and it has never been

said and claimed, that at every relevant point of time from the coming into working existence of J&K Institute of Management and Public Administration (IMPA) in terms of Govt. Order No. 1850-GD of 1985 dated 18/10/1985 it was clearly known and made known to all and sundry that J&K IMPA is to be and is a Two-in-One entity having the State Institute of Rural Development SIRD in it because in saying and claiming so the respondents are expected and ought to have pleaded in reply without fail as to how and when the State Institute of Rural Development SIRD in and of the State of J&K first came to be constituted as an independent Institute which upon coming into being of J&K IMPA was conjoined with it but without merging it.

91. Having not said and stated anything to said effect, the respondents cannot be allowed in the present case to expect this court to accept just by a mere bald and barren assertion that the State Institute of Rural Development SIRD and J&K IMPA are two separate Institutes though governed by a common Head and Hand and that the petitioner came to be in cadre of the State Institute of Rural Development SIRD and not of J&K IMPA. This court cannot allow the respondents to ascribe a split personality to J&K IMPARD as neither facts nor law lend such a scope with respect to J&K IMPARD.

92. From where SIRD Wing of J&K IMPA had come to be created has not been disclosed from the respondents' end thereby leaving

the petitioner justified in her plea that it was all along the very in-house component/set up of the J&K IMPARD at all relevant points of time continuing as on date. Which rules were in reference in terms of mention in said appointment order of the petitioner as Professor is also not revealed for checkmating the petitioner that she cannot turn around to wriggle out of the bounds of said appointment order which never meant to say and claim that SIRD is not part of JK IMPARD.

93. The fallacy at the end of the respondents' stand is that while on one hand it is being claimed that SIRD and JK IMPARD are not singular whereas on the other hand the two are said to be the wings without however disclosing the wings of which entity. Thus, this court has no hesitation fact front to say that there is an inherent paradox in the stand of the respondents.

94. In none of three appointment orders with respect to the petitioner starting from her first appointment as an Assistant Professor, then as an Associate Professor and lastly as Professor, issued by none else than same employer that being JK IMPARD, the respondents have referred to any service rules under which the appointments of the petitioner as well as of other faculty members came to be made. If the last appointment of the petitioner as Professor is not to the cadre of J&K IMPARD but to that of SIRD, then under which service rules of SIRD the petitioner's appointment as professor was made and before her who were the professors/

assistant professors/ associate professors appointed in SIRD by the Director General J&K IMPARD is nowhere to be found stated in the reply by the respondents obviously meaning to hide that there were no such appointments made to so called SIRD.

95. There is no averment in the reply and there is no document accompanying the reply showing under which rules and regulations SIRD cadre is maintained and how it is being funded by the Ministry of Rural Development & Panchayati Raj, GOI. Thus, just by mere clamoring about rules and regulations the respondents have pleaded and exhibited nothing.

96. The respondents have not come forward explaining whether the petitioner was asked by JK IMPARD to first resign from JK IMPARD before applying and/or joining SIRD if the respondents are to be reckoned serious in stressing upon that the two are distinct entities as employers. In absence of an explanation to said effect from their end, the respondents cannot be heard to say and maintain that SIRD is a distinct entity unrelated to JK IMPARD when there is an apparent umbilical relationship between JK IMPARD and SIRD sourced to same origin.

97. The respondents are pleading against the record as when in all the orders/correspondences it is by J&K Institute of Management, Public Administration and Rural Development IMPARD that the identity of the society is being referred then how come it can be heard to be urged by the respondents that the name

of the Society is the Institute of Management and Public Administration IMPA whereas the Memorandum of Association and Rules are of the J&K Institute of Management, Public Administration & Rural Development. The respondents are, thus, the prisoners of their own confusion but its adverse fall out is meant to befall upon the petitioner.

98. The claim of the respondents that J&K IMPA is an autonomous entity is not in tune with the plea that the positions in (ATI) IMPARD are being paid by the Government of Jammu & Kashmir and SIRD are being funded by the Ministry of Rural Development & Panchayati Raj, GOI. The advertisement notice did not spell out clearly about this aspect that position in SIRD is grant based emoluments from MoRD GOI. By that logic its pay scale ought to have been different than that of Professor in IMPARD but that has not been claimed by the respondents.

99. Since when SIRD is being maintained in IMPARD as a distinct and an independent entity has not been stated in the reply by the respondents except a bald statement that the two are independent. Had this aspect been known to the petitioner, as is being meant to be pressingly suggested by the respondents, then the petitioner, surely in her prudence, would have exercised her option to join or not to join as Professor SIRD and continue to be in IMPA as an associate professor and to compromise or not her lifetime post-retirement security status by opting to be Professor in SIRD faculty.

100. Govt. Order No. 1192- GAD of 2005 dated 27/09/2005 very expressly and categorically provides that that pension including superannuating and special pension, family pension, invalid pension, commuted pension, gratuity and death cum retirement gratuity etc., is to be admissible to the employees of J&K Institute of Management, Public Administration and Rural Development as being the same very institute in which the petitioner's entire course of service including as being the professor is borne. Nowhere in said Govt. Order anything hinted or suggested that the Rural Development of IMPA is or is not the SIRD. If State Institute of Rural Development SIRD is a different entity, as is meant to be claimed loudly by the respondents in their stand, then it ought not have missed to be stated by the respondents in their reply by same breath as to when the State Institute of Rural Development SIRD in the State of J&K purportedly funded by the grants of MoRD GOI had come into its existence and when and how it came to be associated with IMPARD and by whose decision without meaning any merger.

101. The stand of the respondents in the writ petition vis-à-vis the order/s, communications and correspondences very evidently exhibit that the stand is nothing but chameleon like to suit the situation. Advertisement Notice in itself and later the appointment order also nowhere carried a mention, expressly or inferentially, that upon selected and appointed as Professor in response to the

advertisement notice No. 1 of 2012, an in-service candidate would be losing or forgoing the benefit of past service in JK IMPARD.

102. In explaining the position of Director General of JK IMPARD also as Head of the Autonomous Institution, the respondents in their reply have attributed it to the delegation of power ordered by the Govt. to task the faculty and deliver the training needs of the UT Government. This is a very ambiguous averment and also very misleading assertion as which Govt. Order has affected this arrangement has nowhere been stated and therefore leaves only one strong inference in favour of the petitioner that JK IMPARD is a single entity in terms of its administration, management and governance.

103. The respondents have come up with a version in their reply that the decisions regarding work distribution is taken based upon the current reality of faculty members available with the organization. Which Organization is being alluded to is again being evaded by the respondents in their stand and the reason for this omission is obvious as the respondents find themselves caught in catch 22 position by claiming separation of identities but acting on unity of JK IMPARD as an entity.

104. With respect to the purported plea of the respondents that inter se seniority can only be counted within IMPARD (ATI) and the seniority within SIRD can be utilized only for reckoning within SIRD domain, from where and which rule this plea of seniority is being

pressed is not revealed and that disqualifies it to be an averment of any factual worth.

105. The respondent have repeatedly stressed upon a plea that the petitioner was appointed as Professor Rural Development SIRD vide IMPA Order No. 307 of 2013 dated 12/06/2013 against the post of Professor funded by MoRD GOI under centrally sponsored scheme and that there is no basis with respect to the claim of the petitioner regarding her seniority as a senior most professor in IMPARD (ATI) because there cannot be combining of seniority of ATI with SIRD. If it is so, then how the respondent No. 1 IMPARD came to carry out the selection process with respect to SIRD without having an administrative control qua SIRD or without delegated with an administrative control by the administrative department of SIRD is also nowhere found to be stated in the entire reply.

106. There is no averment from the respondents' end to explain the position that if JK IMPARD and SIRD are two separate entities then how come JK IMPARD, as being a separate entity, is administering and controlling SIRD literally as its better half. The absence of explanation can only be taken to mean that, in fact, SIRD is nothing but an inborn faculty of JK IMPARD and that is how JK IMPARD is the parent authority quo SIRD. If SIRD would have been a separate entity, be it before coming into being of JK IMPARD or after that, then by which Govt. Order, the SIRD came into being and under whose administrative control it was and by

which Govt. Order the SIRD was ordered to be administered by JK IMPARD, there would have been no stone like silence from the end of the respondents leaving only one inference to hold its ground for this court to take due cognizance and that is that SIRD was and continues to be an inborn feature of JK IMPARD admitting of no separation of situs and status.

107. The respondents are caught on the wrong foot in replying to para 16 of the writ petition wherein the petitioner has pleaded that JK IMPARD was receiving financial support to the extent of 70% office infrastructure for Jammu as well as Kashmir campuses from the Ministry of Rural Development Government of India and also Department of Personnel and Training, Government of India. Petitioner has further made a very relevant plea that when the funding from the Ministry of Rural Development, Government of India was to be received, the Government of Jammu and Kashmir had the option to form a State Institute of Rural Development but instead of formation of the said institute, the Government of J&K decided to form a composite institute IMPARD and renamed it as J&K Institute of Management Public Administration and Rural Development but nevertheless everybody appointed in the respondent No.1-JK IMPARD continued to be the employee of IMPARD and appointment orders were also issued by the respondent No. 1 JK IMPARD. With same stretch of working and functioning the petitioner came to be appointed as assistant

professor, associate professor and lastly as professor and further also as Director Training made by no one else than JK IMPARD.

108. In reply to para 16 of the writ petition, the respondents have only this much to respond that admittedly the funding source of JK IMPARD (ATI) and SIRD is the State Government (now UT) in the shape of grant in aid and recurring and non-recurring grants from Ministry of Rural Development, MoRD, GOI. The respondents have, thus, plainly evaded and side stepped in stating and showing the so-called separate status of SIRD viz a viz JK IMPARD.

109. The respondents' plea that the Institute of Management and Public Administration is an autonomous entity in the form of a registered society is a very evasive plea because the Institute of Management and Public Administration is fully government created, constituted, administered and managed society having nothing differentiating it from other govt. administered and managed bodies/departments.

110. The respondents have not divulged and disclosed what is SIRD as an entity and what was and is its legal/administrative relationship with JK IMPARD and under which decision and arrangement. If the respondents are not bare opening this aspect in the case before this court, then how come can it be expected of the petitioner to self-know that SIRD and JK IMPARD were to be taken by her to be distinct entities for the purpose of her employment status therein.

111. Nothing can be more fallacious than this plea of the respondents that though SIRD got under IMPARD by inclusion in the Memorandum of Association in 1986 but still SIRD remained a separate entity. This begs an obvious question as to how a prospective Society, which in the present case IMPA was in its pre-registration status, for the purpose of its registration as a society having in its Memorandum of Association the rural development one of its objectives and work area and for that an institute provided therein, upon its registration as a society can later on be heard to say and claim that very same rural development institute is not part of its society's make up. Camouflaging is not permissible to Govt. and the agencies/authorities/entities.

112. There was nothing stated/suggested in the Advertisement Notice No. 1 of 2012 for its readers and responders that faculty of SIRD is a distinct entity administratively, functionally and financially unrelated to JK IMPARD and that such and such is the true creation and character of SIRD vis-à-vis the JK IMPARD. The respondents are stating their position in the writ petition with contradictory posturing as in the reply they say that with respect to positions advertised under SIRD, the rules and regulations of the MoRD and Panchayati Raj GOI and source funding of MoRD was envisaged but not disclosing anything in the advertisement and also in the appointment order.

113. The very fact that the respondents are meaning to exploit from the appointment order of the petitioner a position that her appointment as Professor, SIRD was unrelated to faculty in JK IMPARD is an admission of fact that the advertisement notice No. 1 of 2012 did not mean that situation. If SIRD was a separate faculty funded by the MoRD and Panchayati Raj GOI then why there was no separate advertisement issued with respect and by reference only to SIRD and why by same very advertisement issued by JK IMPARD, the faculty of JK IMPARD and SIRD were advertised. The stance of the respondents in the matter is nothing but self-hypocritical and evasive.

114. The adjudication of this writ petition by reference to case of the petitioner and response of the respondents converges to moot points firstly as to legal status of State Institute of Rural Development SIRD vis-à-vis the J&K IMPA in the sense whether State Institute of Rural Development SIRD is an inborn set up of the J&K IMPA or an independent Institute and secondly if an independent Institute then what is the effect of its merged identity with the J&K IMPA in the context of the petitioner's service status and entitlements including for the pensionary benefits.

115. In this scenario, during the pendency of this writ petition, a development of significance came to take place for which the petitioner came to lay an application CM No. 5775/2022 referring to a proposal mooted in September 2018 to cater to the equities of the

petitioner's case for an internal adjustment of the petitioner as Professor SIRD to Professor Faculty of Rural Development for drawal of salary and protection of pensionary benefits. For carrying out this intended course correction, matter was envisaged to be taken up by JK IMPARD with General Administration GAD and Finance Department of Govt. of J&K and for that post of Professor in the faculty of Rural Development was to be withheld from selection to enable process in favour of the petitioner. Thus, there is an implied recognition of the fact at the end of JK IMPARD that the petitioner has been subjected to very unfair and discriminatory treatment which requires to be set correct.

116. Before arriving to adjudicatory end of the writ petition, this court needs to refer to the case law cited in support of the petitioner's case in the context of her right and entitlement to pension.

117. In this regard, the learned counsel for the petitioner refers to **V. Sukumaran V.s State of Kerala & Anr., (2020) 8 SCC 106**, the Hon'ble Supreme Court of India has in para 22 has viewed the pensionary provision to be given a liberal construction. Para 22 is reproduced as under:-

"22. We begin by, once again, emphasizing that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired

Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities.”

118. This court holds that the petitioner’s position and post cannot admit of any compartmentalization within JK IMPARD. The petitioner cannot be left to feel as if an outcaste though to be found working and serving within JK IMPARD but not a part of it. This is most superficial and spurious status defining of the petitioner by the respondents which is violating article 14 of the Constitution of India. In the case of **Dhirendra Chamoli & an. Vs State of U.P., (1986) 1 SCC 637**, the Hon’ble Supreme Court in para 2 observed as under:-

“2.
..... It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same

salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees.”

119. In the case of **Kerala State Road Transport Corporation Vs K. O. Varghese and others, (2003)12 SCC 293** the Hon’ble Supreme Court of India has dealt with the concept of pension and its importance in the life of a public servant and the recognition on the basis of which it is earned. In this regard, paras 17, 18, 19 & 20 are reproduced hereunder:-

- “17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Dodge v. Board of Education*, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.
18. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of

invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon.

19. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them obscure (See *American Jurisprudence* 24.881).
20. From the aforesaid analysis three things emerge: (i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field, (ii) that the pension is not an *ex gratia* payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.”

120. In the light of all the aforesaid facts and circumstances the petitioner is held to have made a case for allowing her writ petition and entitled to the reliefs as prayed for therein. This court holds that JK IMPARD and SIRD are single entity and the petitioner's appointment as Professor is in JK IMPARD which has SIRD in it and as such the petitioner's entire course of service in JK IMPARD from being an Assistant Professor followed by Associate Professor, then as Professor and lastly as Director Trainings fully entitles her to an equitable recognition and treatment as a part and parcel of the faculty of JK IMPARD and accordingly entitles her to all benefits and effects, be it position, pay and/or pension related, and the respondent No. 1 is obliged to grant her the same without any exception and denial.

121. *Disposed of.*

(RAHUL BHARTI)
JUDGE

JAMMU
19.12.2023
Muneesh

Whether the order is reportable : **Yes**

Whether the order is speaking : **Yes**