

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

Reserved on: 14.11.2024
Pronounced on: 27.12.2024

WP(C) No. 2535/2023

1. **Syed Yunis (Age 48 years) S/o Syed Mohammad Amin R/o Anantnag.**
2. **Sheikh Saba (Age 34 years) D/o Ghulam Mohammad Sheikh R/o Tral, Pulwama**
3. **Mohammad Ashraf Ganai (Age 45 years) S/o Ali Mohammad Ganai R/o Mazhama Magam. Distt Budgam.**
4. **Aijaz Ahmad Bhat (Age 44 years) S/o Gull Mohammad Beigh R/o Anantnag.**
5. **Rifat Rashid Bhat (Age 34 years) D/o Abdul Rashid Bhat R/O Hari Singh High Street, Srinagar.**
6. **Nuzika Parveen (Age 33 years) d/o Ghulam Qadir Dar R/o Chanapora, Srinagar.**
7. **Rukhsana Rasool (Age 33 years) S/o Ghulam Rasool R/o Nowshehra, Srinagar.**
8. **Rumaisa (Age 41 years) D/o Ghulam Nabi Dar R/o Tankipora, Srinagar.**
9. **Nusrat (Age 39 years) S/o Noor Mohammad Sofi R/o Karan Nagar, Srinagar.**

..... Petitioner(s)

Through: **Mr. M. I. Dar, Advocate with
Ms. Sana, Advocate.**

V/s

1. **Union Territory of Jammu & Kashmir
through Administrative Secretary to
Government, Health & Medical**

**Education Department, Civil
Secretariat, Jammu/ Srinagar.**

2. **Commissioner Secretary to
Government, General Administration
Department, J&K Civil Secretariat,
Jammu/Srinagar.**
3. **Principal/Dean, Government Dental
College & Hospital, Srinagar.**

.....Respondent(s)

Through: Mr. Hakim Aman Ali, Dy. AG.

CORAM:

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.**

JUDGMENT

Per Rajnesh Oswal; J

1. The petitioners had filed the writ petition for quashing the office memorandum issued vide OM No. GAD (Adm) 121/2019-IV dated 11.02.2020 and for issuance of directions to the respondents to take a final decision to regularize/confirm their services by framing a special policy in that behalf, on the analogy of the J&K Civil Services (Special Provisions) Act, 2010 and to restrain the respondents from disengaging the petitioners from the posts held by them in the respective sections of the Government Dental College/Hospital, Srinagar.

2. With the establishment of the Central Administrative Tribunal, the writ petition filed by the petitioners was transferred to the Central Administrative Tribunal, Bench, Srinagar, and the same came to be registered as TA No. 204/2021.

3. The learned Central Administrative Tribunal vide its order dated 04.09.2023, dismissed the application preferred by the petitioners by observing that the petitioners are not entitled to any relief and it cannot be said that they have legitimate expectation of regularization, as with open eyes, they executed the agreements, being fully conscious that they are appointed only for a period of one year, subject to extension and maximum period of engagement would be only six years and beyond that period, they cannot claim any right.

4. The petitioners have assailed the order impugned dated 04.09.2023 on the following grounds:

- (i) That the petitioners have been holding their posts by virtue of their selection made by the duly constituted selection Committee, and till date, no selection has been made against these posts, therefore, the petitioners have every right to continue till the posts are filled up substantively by proper selection by the competent board/authority.
- (ii) That as the petitioners have completed more than ten years of service in the department, therefore, a right has accrued to them to be considered for their regularization, but the learned Tribunal has given a free hand to the respondents to terminate the services of the petitioners.
- (iii) That as the petitioners are holding their post for more than ten years, as such, as per law of the land, they cannot be replaced by the same mode and in fact, the respondents are trying to replace the petitioners by adopting same mode and method of

selection on academic arrangement basis, on which, the petitioners have admittedly been initially appointed by way of proper selection and then allowed to continue.

- (iv) That on the basis of same SRO i.e. SRO 384/2009, hundreds of similar appointments were made in the Government Medical College, Srinagar, and those employees had preferred a writ petition before this Court, which was subsequently transferred to the learned Central Administrative Tribunal, and same was dismissed vide order dated 15.11.2022 and the said order was also upheld by this Court vide order dated 31.01.2023. The said employees thereafter approached the Hon'ble Supreme Court of India by way of Special Leave Petition and upon hearing the matter, the Hon'ble Supreme Court vide order dated 24.02.2023, directed the maintenance of status quo with regard to the employment status of the petitioners therein.
- (v) That after passing of the order impugned dated 04.09.2023, the respondent No. 3 on the very next day i.e. 05.09.2023, issued the disengagement orders to the petitioners and the petitioners have challenged the said disengagement order before the learned Central Administrative Tribunal, Srinagar, by way of an Original Application bearing O.A No. 717/2023 and the learned Central Administrative Tribunal has passed the order dated 19.09.2023, whereby the learned Tribunal has observed that if the respondents therein need the service of the candidates on academic arrangement basis, they shall consider the applicants first.

5. The respondents have objected the claim of the petitioners by submitting that the petitioners were engaged on academic arrangement basis against available vacancies for a period of one-year, extendable up to maximum period of six years or till the posts are filled up by the competent authority on regular basis, whichever is earlier. In the engagement orders, it is clearly mentioned that the arrangement is purely on temporary basis and shall not confer upon them any special claim/right for appointment against such posts and that the appointees shall be governed by the terms and conditions envisaged under SRO 384/2009 dated 14.12.2009 read with SRO 409/2013 dated 19.09.2013. The petitioners have also submitted the agreements duly attested by Judicial Magistrate 1st Class, which provide that the engagement of the petitioners is for a period of one year, or till the posts are filled up by the competent authority on regular basis through DPC/JKSSB, whichever is earlier and that they will abide by all the terms and conditions of the Academic Appointment rules, which clearly shows that the petitioners were very well aware about the terms of their engagement on Academic Arrangement basis. The petitioners, therefore, cannot claim their continuation in service beyond the permissible period. The respondents have denied that the petitioners are protected under J&K Civil Services (Special Provisions Act), 2010, as they are specifically excluded from the purview of Section 3 Clause (b) of the Act.

6. It is further submitted by the respondents that the petitioners have worked for longer duration only under the benefit of judicial orders, as such, cannot claim any right of regularization as they have voluntarily agreed to

the terms and conditions of the service, which is maximum for a period of six years. The respondents have placed on record the engagement orders of the petitioners; agreements executed by them and the orders of their extension.

7. The petitioners have filed the rejoinder affidavit, stating therein that they have been working against clear vacancies and in the present scenario, because of their knowhow and experience, the services of the petitioners are indeed required by the hospital for its smooth functioning. It is further stated that the petitioners have been appointed pursuant to a selection undertaken by a duly constituted committee, as such, there should be no objection in regularizing the services of the petitioners. The petitioners have also filed written submissions in support of their claim.

8. Mr. M. I. Dar, learned senior counsel appearing on behalf of the petitioners has submitted that the petitioners would only press the relief of their continuation of their engagements till the posts are filled by proper selection by SSRB. In Para-5 of the written submissions, reference has been made in respect of restricting the claims to the extent of allowing the petitioners to perform their duties till regular selection by the competent authority. Mr. Dar, has further submitted that in the Government Medical College, Srinagar, and Government Medical College, Anantnag, the process has been initiated for engagement of staff on academic arrangement basis for different posts, therefore, the petitioners too are entitled to continue on their respective posts, till the posts are filled through regular selection.

9. *Per contra*, Mr. Hakim Aman Ali, learned Deputy Advocate General submitted that the petitioners were disengaged vide order dated

05.09.2023 and the respondents no longer require the services of the petitioners, as they are managing the affairs of the hospital with the available staff, without any difficulty. He has further submitted that the posts were referred to the recruiting agency, but the recruitment could not take place due to lack of rules.

10. Heard learned counsel for the parties and perused on record.

11. Perusal of the order impugned dated 04.09.2023 reveals that the application preferred by the petitioners has been dismissed by the Tribunal by taking into consideration SRO 384/2009, pursuant to which, the petitioners were engaged. The said SRO provided for engagement on academic arrangement basis initially for a period of one-year, extendable upto four years (one year at a time and subject to good performance and conduct) or till the selection/promotion is made in accordance with the rules. SRO 384/2009 was amended subsequently by SRO 409 dated 19.09.2013, whereby the tenure of four years was amended and extended to six years, with the provision that extension upto three years could be made on year to year basis by the Principal of the college concerned and for cases beyond three years, the case will be considered by the Government and once the Government approves the proposal, the Principal concerned shall be authorized to grant further extension upto six years.

12. Later by virtue of SRO 24 dated 10.01.2019, both the above SROs i.e. SRO 384/009 and 409/2019 were repealed and Rule 4 of SRO 24/2019 provides that academic arrangement shall be initially for a period of one year, extendable upto maximum of six years, one year at a time, subject to

good performance and conduct, or till the selection/promotion is made in accordance with the rules of recruitment, governing the respective post(s), whichever is earlier.

13. The petitioners have admittedly exhausted the maximum period of six years, permissible under relevant SRO. The engagement orders placed on record by the respondents clearly provide that the engagement of the petitioners is purely on academic arrangement basis, for a stipulated period or till the posts are filled by the competent authority on regular basis through SSRB, whichever is earlier. The petitioners have also executed agreements to that effect.

14. The learned Tribunal after taking note of the relevant SROs, has come to the conclusion that the petitioners are not entitled to any relief, however, the respondents have been directed to pay the salary to the petitioners, though they continued beyond six years till the date of their disengagement. There cannot be any exception to the view taken by the learned Tribunal.

15. This Court vide order dated 06.09.2024, directed the respondent No. 1 to file an affidavit with regard to the status of the selection process initiated, if any, in respect of the posts occupied by the petitioners and also to state as to whether the respondents would resort to process of contractual appointment/academic arrangement after the disengagement of the petitioners. The respondent No. 1 was also directed to state as to how the affairs are being run by the authorities in absence of the petitioners.

16. The affidavit was filed by the respondent No. 1, stating therein that in terms of the communication dated 03.02.2022, General Administration Department intimated all the Administrative Secretaries that all the posts referred to JKPSC/JKSSB prior to 31.10.2019, for which the selections have not been finalized till date, as also the posts in which there are litigations and the cases are pending before the Court(s), shall be deemed to have been withdrawn with immediate effect. It is further stated that the matter of recruitment was taken up with the Finance Department, who in turn advised the department to draft the recruitment rules in consultation with the ARI and Trainings Department and all the proposals regarding referral of vacancies were kept withheld till the recruitment rules are finalized. It is also stated in the affidavit that the work used to be performed by the petitioners, is properly being taken care of by the existing staff/ manpower available with the Government Dental College and Hospital, Srinagar.

17. This Court vide order dated 22.10.2024, directed the respondents to respond to the query posed by this Court as to whether the respondents would resort to the process of contractual appointment/academic arrangement after the disengagement of the petitioners. The respondent No. 1 in response to the aforesaid query filed an affidavit on 14.11.2024, stating therein that the work done by the petitioners on the posts held by them, is being duly taken care of and properly discharged by the available staff with Government Dental College, Srinagar, without any adverse impact on patient care, therefore, the recruitment on academic arrangement / contractual basis against the said posts would not be done in future.

18. It needs to be reiterated that after the application of the petitioners was dismissed by the learned Tribunal, the petitioners were disengaged vide order dated 05.09.2023, which is already the subject matter of challenge by the petitioners in original application bearing O.A. No. 717/2023, wherein the learned Tribunal vide order dated 19.09.2023, has observed that if the respondents therein need the service of the candidates on academic arrangement basis, they shall consider the applicants first.

19. In view of the categorical stand taken by the respondents that they are not going to make any appointment on academic arrangement basis/ contractual appointment in future and the work done by the petitioner on the posts held by them, is being duly taken care of and discharged by the existing staff available with the Government Dental College and Hospital, Srinagar, no direction can be issued to the respondents to continue with the engagement of the petitioners. The respondents being employers, are well within their rights to determine the necessity and requirement of the staff and once the respondents are not in need of the services of the petitioners, no direction can be issued to the respondents to continue the engagement of the petitioners till the posts are filled by normal selection process, more particularly when they have already been disengaged. Merely because the Government Medical College, Srinagar, and Government Medical College, Anantnag, have initiated the process for engaging the staff on academic arrangement basis, the petitioners cannot claim any benefit, as the requirements of different institutions are different.

20. In view of what has been said and discussed above, no direction can be issued to the respondents to continue the engagement of the petitioners. However, in case the respondents resort to engagement on academic arrangement basis/contractual appointment against the posts held by the petitioners prior to their disengagement, the petitioners shall have the first right of consideration as well as engagement.

21. **Disposed** of.

22. Since, the main writ petition stands disposed of, the connected contempt petitions shall also stand *closed*.

23. A copy of this judgment be placed on each file.

(Rajesh Sekhri)
Judge

(Rajnish Oswal)
Judge

SRINAGAR:
27.12.2024.
“Hamid”

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| i. Whether the Judgment is Speaking? | Yes/No |
| ii. Whether the Judgment is Reportable? | Yes/No |

