

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 766/2025

1. UT of J&K through Chief Secretary, ...Appellant(s)
J&K Government, Civil Secretariat,
Jammu.
2. The Commissioner/ Secretary to
Government, Health & Medical
Education Department J&K
Government, Civil Secretariat,
Jammu.
3. The Director, Health Services,
Jammu.
4. The Chief Medical Officer, Doda.
5. The Block Medical Officer Assar
Doda.
6. The Medical Officer, Primary Health
Center, Goha (Marmat) Tehsil and
District, Doda.

Through: Mrs. Monika Kohli, Sr. AAG

vs

Jahangir Ali, age 40 years,
S/o Sh. Jamat Ali,
R/o Roat (Marmat), Tehsil and District Doda.

..... Respondent(s)

Through: Mr. M.Y Akhoon, Advocate vice
Mr. F.A Natnoo, Advocate

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

ORDER(ORAL)

16.09.2025

Sanjeev Kumar J

1. The Union Territory of Jammu & Kashmir alongwith five others are before us in this petition filed under Article 226 of the Constitution of India to thrown challenge to an order and judgment dated 06.12.2024 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [*hereinafter referred to as “the Tribunal”*] in

TA No. 4917/2020 titled *“Jahangir Ali Vs. State of J&K and Ors”*, whereby the Tribunal has, while allowing the TA filed by the respondents, directed the petitioners to consider regularisation of services of the respondent in terms of the Jammu & Kashmir Civil Services (Special Provisions) Act, 2010 [*for short “the Act of 2010”*].

2. The impugned judgment is challenged, primarily, on the ground that with the repeal of the Act of 2010 by the Jammu & Kashmir Reorganisation Act, (Adaptation of State Laws) Order 2020 [**“Order, 2020”**] the direction to consider the case of respondent for regularisation under the repealed Act i.e., Act of 2010 could not have been passed by the Tribunal. It is also contended that the respondent having been engaged as Driver on ‘need basis’ was neither an adhoc nor a contractual employee nor even a consolidated, so as to claim the benefits of Act of 2010.
3. Before we appreciate the arguments addressed by Mrs. Monika Kohli, learned Sr. AAG appearing on behalf of the petitioners, we deem it appropriate to notice few material facts. It seems that the respondent moved an application recommended by the then Minister of Health and Medical Education before the Director of Health Services Jammu for his appointment as Driver for Ambulance of Primary Health Centre, Goha (Marmat). The Director Health Services, Jammu vide its Communication dated 06.07.2007 requested the District Development Commissioner, Doda to take necessary steps for appointment of the respondent as Driver on contractual

basis under rules in the interest of patient care, till such time the posts of Driver are filled up by the competent authority. The Director Health Services Jammu also intimated to the District Development Commissioner, Doda that there were in as many as 10 vacancies of driver available in District Doda.

4. The office of District Development Commissioner, Doda, in terms of Communication dated 25.07.2007 issued by Chief Planning Officer, Doda requested the Chief Medical Officer, Doda to issue a formal order of engagement in favour of the respondent. In compliance with the said Communication, the Chief Medical Officer, Doda vide its order No. Est-4/Driver-cont/3535-39, dated 30.07.2007 accorded sanction to the temporary engagement of respondent as Driver on need basis at PHC, Goha, Block Assar, District Doda, subject to certain terms and conditions enumerated in the order itself. Later on, the said order was extended by the District Development Commissioner, Doda vide its order dated 14.07.2008. This is how, the respondent continues in service.
5. With the coming into force of the Act of 2010 and on completing 3 years' continuous service, the respondent approached the petitioners for regularisation of his services as Driver. When the request of respondent was not acceded to by the petitioners, the respondent filed SWP No. 1946/2010, which on transfer to the Tribunal, was registered as TA No. 4917/2020. The writ petition filed by the respondent, claiming regularisation under the Act of 2010 was met

with a resistance by the respondents (petitioners herein), who in their reply affidavit disputed the eligibility of the respondent to seek regularisation under the Act of 2010. They also took a specific stand before the Tribunal that in view of the repeal of the Act of 2010 by the Order, 2020, the benefit of regularisation could not be extended to the respondent. The Tribunal has not accepted the stand of the petitioners and has allowed the TA in terms of the judgment, impugned before us in these proceedings.

6. Having heard learned counsel for the parties and pursued the record, we are of the considered opinion that the Tribunal has rightly considered the issue and has come to a correct conclusion that the respondent having been engaged as 'Driver' against a clear vacancy in the year 2007 acquired right of regularisation under the Act of 2010 in the year 2014 and that the subsequent repeal of the Act of 2010 for Order, 2020 was inconsequential. The Tribunal has also rejected the plea of the petitioners that the respondent was only a need based and not a contractual/ ad hoc/consolidated employee and, therefore, ineligible to seek regularisation under the Act of 2010.

7. We fully concur with the conclusions arrived at by the Tribunal. From a bare look on the order of engagement of the petitioner issued by the Chief Medical Officer, Doda in the context of recommendations made by Director Health Services, Jammu dated 07.07.2007. It clearly comes out that the engagement of the respondent as Driver in Primary Health Centre, Goha (Marmat) was

against a clear vacancy. At the time of engagement of the respondent on 06.07.2007, there were in as many as 10 posts of Driver lying vacant in District Doda. It is with a view to make the ambulances functional, the respondent alongwith three others was engaged as Driver on contractual basis, till such time the posts were filled up by the competent authority. The Communication of Director Health Services, Jammu dated 06.07.2007 makes it abundantly clear that the engagement of the respondent was contractual in nature and against one of the 10 available posts lying vacant in District Doda. Even the first engagement order issued by the CMO dated 30.07.2007 contains condition No. 2 which clearly provides that the engagement is for a period of 89 days in the first instance or till regular selection is made in accordance with rules. This clause presupposes the existence of a vacant post of Driver against which the respondent has been engaged.

8. For all these reasons, we are of the considered opinion that the Tribunal was correct in arriving at the conclusion that the respondent on completion of continuous successful services of 07 years as contractual Driver was entitled to the benefit of Act of 2010. This brings us to another plea raised by Mrs. Monika Kohli, learned Sr. AAG that with the repeal of Act of 2010 by the Order, 2020, no direction for regularisation of the respondent could not have been issued by the Tribunal. The Tribunal has deliberated on this aspect at some length and having regard to the provisions of Section 6 of the General Clauses Act 1897 held that the repeal of a legislation would

not affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed. That being the clear legal position emanating from Section 6 of the General Clauses Act, 1987 with regard to the impact of the repeal of an existing legislation by a new legislation, we need not delve more on these facts. Suffice it to say that the repeal of Act of 2010 by the Order, 2020, did not take away the rights, which had already accrued to the eligible persons under the repealed legislation. In the instant case right of regularisation accrued to the respondent on completion of 7 years of continuous service as 'contractual employee' in the year 2014. The repeal of the Act in the year 2020 in terms of the Order, 2020, issued vide SO 1229(E) dated 31.03.2020 cannot said to have taken away the right of regularisation vested in the respondent under the Act of 2010. The Clause 6 of Order, 2020 reads under:

The repeal or amendment of any law specified in the Schedule to this Order shall not affect-

- a. the previous operation of any law so repealed or anything duly done or suffered thereunder;*
- b. any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed;***
- c. any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or*
- d. any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) or this Order had not been passed.

9. From reading of Clause 6 of the Jammu and Kashmir, Reorganisation (Adaptation of State Laws) Orders, 2020, it is abundantly clear that repeal or amendment of any law specified in Schedule to the aforesaid order shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the law so repealed.
10. Viewed thus, the right of regularisation, which was acquired by and accrued to the respondent under the Act of 2010 would not be affected by its repeal by SO 1229(E) dated 31.03.2020. In view of the clear provisions contained Clause 6 of the Jammu and Kashmir, Reorganisation (Adaptation of State Laws) Orders, 2020, we find no substance in the argument raised by Mrs. Monika Kohli, learned Sr. AAG appearing for the petitioner.
11. For the foregoing reasons, we find no merit in this petition and the same is, accordingly, ***dismissed.***

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
16.09.2025
Rahul

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