

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 3059/2022

HUMA JAN AND ANR.

...Appellant(s)/Petitioner(s)

Through: Mr. Arif Sikander, Advocate with
Ms. Anjleena Laraib, Advocate

Vs.

ISLAMIC UNIVERSITY OF SCIENCE AND
TECHNOLOGY AND ORS.

...Respondent(s)

Through: Mr. Tajamul Hussain, GA

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
09.07.2025

1. Petitioners were engaged vide order No. 114 of 2021 dated 16.03.2021, on temporary engagement as contractual Lecturer(s) on need basis in the Govt. Polytechnic, IUST for Academic Session 2021 ending 31.12.2021 or till the posts were filled up on substantive basis, whichever is earlier. Their engagement was extended from time to time.
2. The respondents vide Notification No. IUST/DAA-Acad/22/2033 dated 19.12.2022, invited applications for engagement of faculty positions on contract as an academic arrangement, in the associated colleges of the University, which has been challenged in this writ petition. The said Notice has been challenged precisely on the ground that once the petitioners have been engaged on contractual basis as academic arrangement they could not be substituted by same

engagement, therefore, the Notification is bad and is required to be quashed.

3. The petitioners submit that they are entitled to continue till regular arrangement on substantive basis is made. They submit that they are entitled to salary for the period they worked and may work.
4. Respondents have objected writ petition in their objections and stated that petitioners have no right to continue and that petitioner can be substituted as their engagement was for a particular academic session and it is further submitted by respondents' counsel that petitioners have no right to continue or to be engaged again, and urged that writ petition may be dismissed.
5. Heard and considered.
6. The only question which is required to be considered and determined in this case is as to whether an employee engaged on contractual basis/need basis for a particular academic session could be substituted by the same arrangement in a subsequent academic session.
7. In view of the issue raised in writ petition, it is to be determined by hearing both the parties. However, learned counsel for the parties submit that this petition can be decided at this stage.
8. Heard. **Admit.**
9. Notice. Mr. Tajamul, GA accepts notice. He does not want to file any counter and with the consent of learned counsel for the parties, this matter is taken up for final disposal.
10. The details of the submissions of both the parties need not be reiterated again here because similar issue has been considered by a Coordinate Bench of this Court in a batch of writ petitions with lead case **WP(C)**

no. 708/2023 titled *Mushtaq Ahmad Shah vs. University of Kashmir* *and* others decided on 04.07.2025. In the said Judgment it has been observed and held that no such substitution can be made except such employees could be replaced by the persons appointed on the substantive basis. Para 6 to 12 and 21 are reproduced as under:

6) So far as the position of law as regards the replacement of contractual/ad hoc employees engaged on academic arrangement basis by similar set of employees, is concerned, the same is more or less settled. The Supreme Court has, in the case of Rattan Lal and others vs. State of Haryana and others, (1985) 4 SCC 43, while dealing with the cases where the State Government had resorted to practice of appointing teachers on ad hoc basis at the commencement of an academic year and terminating their services before the commencement of next summer vacation and to reappoint them on ad hoc basis at the commencement of next academic year, deprecated this policy of the State Government to appoint teachers on ad hoc basis and terminate their services and then appoint them on ad hoc basis, in this regard, it would be apt to refer to the relevant observations of the Supreme Court, which are reproduced as under:

"In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary "hiring and firing"

policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of "ad hocism" followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

7) Replacement of ad hoc or temporary employees with another set of temporary or ad hoc employees was deprecated by the Supreme Court in the case of State of Haryana and others vs. Piara Singh and others, (1992) 4 SCC 118. In the said case, the Supreme Court made the following observations"

"21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to allow made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer...."

8) In the case of Hargurpratap Singh vs. State of Punjab & Ors, (2007) 13 SCC 292, the Supreme Court has, while dealing with the cases where appointment of the employees was made on ad hoc basis in several colleges, observed as under:

"3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular

appointments made on minimum of the pay scale. The appeals shall stand allowed in part accordingly”.

9) The Supreme Court in the case of **Mohd. Abdul Kadir and another vs. Director General of Police, Assam and others, (2009) 6 SCC 611**, which was a case wherein servicemen were being subjected to re-selection after the expiry of their contracts despite the fact that the scheme under which they were appointed was not discontinued, held as under:

"17. When the ad hoc appointment is under a scheme and is in accordance with the Selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularisation nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing scheme, the ex-servicemen employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.

18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and reappointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminous with the Scheme...."

10) Relying upon the ratio laid down in **Rattan Lal's** case (supra) followed in **Hargurpratap Singh's** case (supra), the Supreme Court has, in **Manish Gupta and anr.** (supra), while dealing with a case where teachers were appointed as guest faculty for a particular academic year and after the end of the academic year their services were discontinued whereafter fresh advertisements were issued for next academic year, observed as under:

"13. A perusal of the advertisement dated 24-6-2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the appeal paperbook and the advertisement dated 2-7-2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the appeal paperbook, would show that the appointments were to be made after the candidates had gone through due selection procedure. Though Shri Nataraj, learned ASG has strenuously urged that the appointments of the appellants were as guest lecturers and not as ad hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on ad hoc basis. It is a settled principle of law that an ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed.

Reliance in this respect can be placed on the judgment of this Court in *Rattan Lal v. State of Haryana*, (1985) 4 SCC 43 and on the order of this Court in *Hargurpratap Singh v. State of Punjab*, (2007) 13 SCC 292.”

11) This Court in the case of **Murad Ali Sajan & Ors.** (supra), after following the ratio laid down by the Supreme Court in **Munish Gupta's** case (supra), came to the conclusion that the action of respondents in the said case in inviting applications from the candidates for filling up of posts of Staff Nurses on academic arrangement basis after disengaging the services of the petitioners therein who were already working on a similar arrangement with the respondents therein, was not in accordance with law. It was further observed by this Court that the respondents therein can replace the writ petitioners therein only by filling up the vacant posts of Staff Nurses on substantive basis.

12) Recently, a Division Bench of Delhi High Court in the case of **Delhi Skill and Entrepreneurship University vs. Neeru Kalher and Ors.** (LPA No.615/2023 decided on 30.08.2023), after considering various decisions of the Supreme Court on the issue, summed up the legal principles in the following manner:

“23. The principles emerging from the afore-stated precedents are squarely applicable to the case at hand. The Appellant University, without effecting any change to their scheme of employing Master Trainers sought to replace the Respondents with similarly situated fresh contractual employees. It is pertinent to note that the Appellant University has not alleged any deficiency in services provided by the Respondents or any instance of misconduct. They have failed to provide any rationale justifying the replacement of the Respondents other than asserting their desire to attract fresh talent. The action of replacing contractual faculty members who possess experience is not only unfair to the Respondents but is also detrimental for the University and its students. Under these circumstances, this Court finds no reason to interfere with the finding of the Learned Single Judge that the action of the Appellant University is untenable by virtue of Being contrary to the law laid down in *Piara Singh* (supra)”.

21) For what has been discussed hereinbefore, there is no doubt in holding that the faculty engaged on academic arrangement basis or contractual basis to impart education to the students cannot be replaced by a similar arrangement after conclusion of the contract period or after conclusion of the academic session. They can be replaced only by regularly selected/appointed candidates. Merely because the candidates have executed undertakings wherein, they have declared that they will not claim regularization and that they would adhere to the terms and conditions of the advertisement notice(s) does not give a licence to the respondent institutes to resort to hire and fire policy. Having regard to the consistent legal position on the subject, notwithstanding the undertakings executed by the writ petitioners, they cannot be replaced by a similar arrangement. They can be replaced only by filling up the posts on substantive basis in accordance with the relevant rules. It is also

clear that the respondent institutes cannot be forced to continue the candidates engaged on academic arrangement/ contractual basis in perpetuity in case there is no requirement for the respondent institutes to make such engagements/ arrangements.”

11.The faculty engaged on academic arrangement basis or contractual basis cannot be replaced by a similar arrangement after conclusion of contract period or after conclusion of academic session, has been held by a Bench of this Court and that such arrangement can be replaced only by regularly selected/appointed candidates. The aforesaid judgement squarely applies to the case in hand.

12.Hence the instant writ petition is disposed of by providing that engagement of petitioners shall not be replaced by a similar arrangement and petitioners shall be allowed to continue till regular selection/appointment is made on substantive basis.

13.**Disposed of.**

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
09.07.2025
“Imtiyaz”