S.No. 80

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) 3027/2024 CM 8227/2024
CM 7520/2025

Pronounced on : 28.10.2026
Uploaded on : 28.10.2026
Whether the operative part or full judgment is pronounced: Full

1. Shaika Hassan, Age 26 Years **…Appellant(s)/Petitioners(s)**
D/O Ghulam Hassan
R/O Shah Mohalla, Nawabazar, Srinagar
2. Syed Majid Ali, Age 30 Years
S/O Syed Showket Ali
R/O Daharmannah, Budgam

Through: Mr. Lone Altaf, Advocate

Vs.

1. Government of Jammu and Kashmir through Commissioner Cum Secretary to Govt. Technical Education Department, Civil Secretariat, Srinagar/Jammu **...Respondent(s)**
2. Director, Skill Development Jammu & Kashmir, Srinagar
3. Principal Kashmir Government Polytechnic College, Gogjibagh, Srinagar

Through: Mr. G. N. Sofi, Dy.AG

CORAM:
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT
28.10.2026

(ORAL)

1. The legal issue presented in the present writ petition is whether Government can validly replace a temporary engagement with a similar arrangement without recourse to the regular recruitment process.

2. As factual matrix would unfurl, pursuant to a selection process, in terms of an advertisement notice issued by the respondents, petitioner No. 1 came to be engaged as a guest lecturer in the Electronics and

Communications discipline and petitioner No. 2 came to be engaged as a guest lecturer in the Medical Lab-Technology for the Academic Session August-December 2024. Though, no formal engagement orders were issued in their favour, they continued to work in their respective disciplines.

3. According to the petitioners, since they were engaged, pursuant to a fair and transparent selection process, and have acquired experience of years by working efficiently against the posts held by them, their continuation in the respective disciplines would be in the public interest.

4. It is also contention of the petitioners that the method adopted by the respondents for paying them against a specified session and a lecture is violative of Article 23 of the Constitution of India.

5. It is alleged by the petitioners that they were asked by respondent No. 3-Principal Kashmir Government Polytechnic College, Gogjibagh Sriangar, not to mark their attendance from December 2024. Therefore, apprehending their disengagement and replacement by a similar arrangement by the respondents, without adopting the regular mode of selection, the petitioners with a common cause to agitate, have invoked writ jurisdiction of this Court, *inter alia*, for the following reliefs:

    i. *By way of issuance of a writ of mandamus the respondents may be directed to continue the petitioners as guest lecturers till the posts are filled up by regular arrangement and not by the same interim/adhoc arrangement by replacing the petitioners and respondents may be further restrained to issue an advertisement in the same and similar manner.*

    ii. *That by issuance of writ of mandamus the respondents may be directed to pay the wages/salary of the petitioners throughout the year without any break.*

    iii. *Any other writ, order of direction which this Hon'ble court may deem fit in the circumstances of the case may also be*

passed in favour of the petitioners and against the respondents in the interest and equity.

6. The plea has been opposed on the other side by the respondents, primarily on the ground that petitioners' appointment was a specialized arrangement on consolidated basis, catering to the transient nature of academic sessions. The terms and conditions of their engagement were defined in the advertisement notice, which clearly depict that it was for a specific period and candidates shall have no right to claim regularization in any capacity.

7. It is contended that petitioners at the time of their engagement executed an undertaking, whereby they consented to comply with the terms and conditions delineated by the Skill Development Department- respondent No. 2 and, expressly submitted that they shall not claim for permanent absorption in the department. According to the respondents, the petitioners now cannot be permitted to deviate from the terms delineated in their assignment and the undertaking furnished by them at that time of their engagement. The petitioners continued on guest faculty basis for a single academic session as per the advertisement notice, which was purely on temporary basis and it did not confer any legal or vested right for their regularization or continuation.

8. It is also contention of the respondents that, since petitioners were engaged purely as guest lecturers from time to time and intermittently, therefore, as per the requirements, they were paid as per the rates fixed by the Government from time to time and their arrangement automatically terminates once the contract was over.

9. According to the respondents, the candidates who are better trained and more qualified approach for their engagement and their rights get curbed, if the same arrangement is allowed to continue and it may lead to low quality teaching, which may adversely affect the improvement in teaching-learning process.

10. Respondents have prayed for dismissal of the petition.

11. Having heard learned counsel for the parties, I have gone through the record.

12. It is well settled in law that arbitrariness in public employment goes to the very root of fundamental right to equality. True it is that no individual can claim a fundamental right to appointment, but it does not mean that Government can be allowed to act in an arbitrary fashion. Public employment process initiated by the Government is supposed to be fair, transparent, impartial & within the precincts of the Constitution of India, because every citizen has a fundamental right to be treated equally and impartially, which is an appendage to the right of equality under Article 14 of the Constitution of India. It is, therefore, fundamental that rigors of Articles 14 & 16 of the Constitution of India are scrupulously adhered to in relation to the matters concerning public employment.

13. Admitted facts of the case are that petitioners came to be engaged as guest lecturers in their respective disciplines, pursuant to an advertisement notice issued by the respondents, followed by a fair and transparent selection process in the year 2024. They continued to work as such in their respective disciplines, which is evident from the time table and online attendance sheet annexed with the petition. The grievance of the petitioners is that despite having acquired experience by working

efficiently against the posts held by them, respondents are taking steps to terminate their engagement and replace them with another set of employees under a similar temporary contractual or adhoc arrangement, without initiating a process for regular selection, which is not countenanced in law.

14. The legal preposition governing the scenario presented in the present writ petition is well settled.

15. Hon'ble Supreme Court in *"**Rattan Lal & Ors. Vs. State of Haryana; 1985 SCC (4) 43**"* deprecated the policy adopted by the Government of Haryana, to appoint teachers on adhoc basis on the commencement of the academic year and terminate the arrangement before the commencement of the next session and re-appoint them again on adhoc basis at the commencement of the next academic year.

16. Again Supreme Court in *"**State of Haryana Vs. Piara Singh; 1992 4 SCC 118**"* explicitly held that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee and such a replacement must only take place when a regular candidate is available to assume the position.

17. An identical observation has been made by Supreme Court in *"**Hargurpratab Singh Vs. State of Punjab & Ors.; (2007) 13 SCC 292**"*, in the following words:

> *"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 not 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 are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly."

18. Similarly, the Apex Court in *"**Manish Gupta & Anr. Vs. President Jan Bhagidari Samiti & Ors.; 2022 SCC Online 485**"* in a similar fact situation, where teachers were appointed as guest faculty for an academic year and disengaged at the end of academic year and fresh advertisement notices were issued by the Government for the next academic year, clearly held that adhoc employee cannot be replaced by another adhoc employee and he can be replaced by another candidate, who is regularly appointed by following a regular procedure prescribed.

Relevant extract captured in para 12 reads as below:

"12.A perusal of the advertisement dated 24th June, 2016 issued by the Principal, Government Kamla Raja Girls Post Graduate Autonomous College, Gwalior, which is at Annexure P-2 of the Appeal Paper Book and the advertisement dated 2nd July, 2016 issued by the Principal, SMS Government Model Science College, Gwalior, M.P., which is at Annexure P-3 of the Appeal Paper Book, 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 the case of Rattan Lal and others vs. State of Haryana and others, (1985) 4 SCC 43 and on the order of this Court in the case of

Hargurpratap Singh vs. State of Punjab and others, (2007) 13 SCC 292".

19. Hon'ble Supreme Court in ***Manish Gupta (supra)***, pertinently, held that to substitute one temporary arrangement with another equivalent temporary arrangement amounts to arbitrary state action, violating Articles 14 & 16 of the Constitution of India.

20. It is clear from the aforesaid principles articulated by Hon'ble Supreme Court, that an adhoc or temporary employee cannot be replaced by another adhoc or temporary employee and a temporary arrangement can only be substituted by a regular selection process to prevent the arbitrary hire-and-fire practices by the Government and its instrumentalities under Article 14 of the Constitution of India. The rationale behind this doctrine is to ensure that the Government, acting as a model employer, does not indulge in caprice or create a perpetual state of job insecurity through revolving-door employment mechanisms, while the underlying institutional need for the work remains constant.

21. For the forgoing reasons, present petition is allowed and respondents are directed to allow the petitioners to continue in their respective disciplines with all existing benefits under rules, as long as the requirement exists, but subject, of course to their good conduct & satisfactory performance and they are prohibited & restrained from replacing them under a similar adhoc arrangement or contract.

22. This order, however, shall not impede or restrain the right of the respondents to fill the posts held by the petitioners through a formal and regular selection process, conducted in accordance with established recruitment rules and constitutional schemes.

23. It is also made clear that this judgment shall not confer an automatic right of permanent regularization upon the petitioners, which shall remain subject to separate statutory rules and schemes.

24. Disposed of in the manner as indicated above, along with connected CMs.

(RAJESH SEKHRI)
JUDGE

Srinagar:
28.10.2026
Adil Ismail

- Whether the Judgment is Reportable? **Yes**
- Whether the Judgment is Speaking? **Yes**

HIGH COURT
JAMMU & KASHMIR AND LADAKH