
(2017) 12 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : 2594 of 2017

Nazir Ahmad

APPELLANT

Vs

State of J&K & others

RESPONDENT

Date of Decision : 19-12-2017

Acts Referred:

[Jammu and Kashmir Civil Service \(Special Provisions\) Act, 2010](#),
Section 10, Section 5

Citation : (2017) 12 J&K CK 0014

Hon'ble Judges : Janak Raj Kotwal

Bench : SINGLE BENCH

Advocate : S.N.Ratinpuri, M.A.Rathore, B.A.Dar

Final Decision : Disposed Of

Judgement

1. On asking of the court, Mr.Rathore,AAG, waives notice on behalf of respondents vice Mr.B.A.Dar, Sr.AAG Having regard to grievance set up in the petition and with the consensus of learned counsel on each side, the petition is taken up for final disposal.

2. Heard.

3. Petitioner, who was initially engaged on temporary basis by way of stop gap arrangement as Class-IV employee vide order No.38 of 2001

dated 17.01.2001 by Director General of Prisons/FS J&K, Jammu, has been regularized in terms of Jammu and Kashmir Civil Service (Special

Provisions) Act of 2010 (for short, the Act) vide Government Order No.1629/ Home of 2017 dated 14.11.2017.

4. Since the regularization in terms of the said order has been effected from 14.11.2017, the petitioner in this writ petition seeks primarily and inter-

alia mandamus directing respondents to regularize him w.e.f. 26.09.2010 in

terms of the judgment in SWP No.624/2014 dated 07.09.2016 titled

Mrs. Rabia Shah Vs State & Others recently followed in another Division Bench Judgment of this court in LPA No.118/2017 dated 04.08.2017

in State of J&K & anr. Vs Afaq Rasool Gadda & anr. In reference to the judgment passed in SWP No.624/2014, learned Division Bench in the

judgment passed in LPA No.118/2017 has stated that :-

We have gone through the decision dated 07.09.2016 in that case in detail and find that the very issue of Section 5 of the said Act

was specifically considered by the Division Bench in Mrs. Rabia Shah (Supra). Therefore, the contention of the learned counsel for

the appellants that Section 5 of the said Act had not been considered and that only Section 10 was considered in Mrs. Rabia Shah (

Supra), does not have any basis. In these circumstances, the learned Single Judge has not committed any error in relying upon the

decision of the Division Bench in the case of Mrs. Rabia Shah (Supra) and the present case is fully covered by that decision.

Consequently, the appeal has no merit. The respondents' services would have to be regularized in terms of the provisions of the said

Act and the said Division Bench with effect from 26.09.2010 and the regularization order shall be modified accordingly.

5. In view of the aforementioned legal position, petitioner is entitled to be regularized from the date to be ascertained in terms of Section 5 and 10

of the Act and in light of the aforementioned judgments in particular the judgment in Mrs. Rabia Shah (Supra).

6. Viewed thus, the petition is disposed of with the direction to respondents to regularize the services of the petitioner in terms of the provisions of

the Act and the judgment passed in Rabia Shah (Supra) and take appropriate decision in the matter within four weeks after the petitioner

produces copy of this order in the office of respondent no.1. However, it shall remain open for the petitioner to approach this court afresh, if cause

survives.

7. Writ petition disposed of in aforesaid terms.