Serial No. 55

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) 1520/2023

Pronounced on : 29.10.2026
Uploaded on : 30.10.2026

Manzoor Ahmad Sheikh, Aged 31 Years **…Appellant(s)/Petitioners(s)**
S/O Mohammad Maqbool Sheikh
R/O Ladhoo Pampore
District Pulwama, Kashmir

Through: Mr. Zaffar Mehdi, Advocate

Vs.

1. **Union Territory of J&K through its Commissioner/Secretary to Govt., Technical Education Department, Civil Secretariat, Srinagar/Jammu** **...Respondent(s)**
2. **Director, Skill Development, J&K Technical Education, Kashmir, Srinagar**
3. **Joint Director, Skill Development, Kashmir, Srinagar**
4. **Deputy Director, Skill Development, Kashmir, Srinagar**
5. **Principal/Superintendent, Industrial Training Pampore, Pulwama**

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

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

JUDGMENT
29.10.2026

(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, Principal, Industrial Training Pampore, Pulwama-respondent No. 5 issued an advertisement notice dated 14.07.2022, which was published on 16.07.2022, inviting applications for

engagement of Vocational Instructors, which included the post of Software Testing Assistant, as Guest Faculty for the academic session 2022–2023. In response thereto, the petitioner applied and came to be selected for a period of one academic session, on consolidated remuneration of Rs. 20,000/- per month, vide selection order dated 02.08.2022. Respondent No. 3 forwarded petitioner's case to respondent No. 5 on 24.09.2022, pursuant to which he was permitted to join, subject to verification of his documents and he submitted his joining report on 26.09.2022. The petitioner claims to be continuously performing his duties thereafter, receiving remuneration for the services rendered.

3. The grievance projected by the petitioner is that respondents No. 3 to 5, are threatening to discontinue his engagement and issue fresh advertisement notice for temporary engagement of Vocational Instructors as Guest Faculty for the academic session 2024–2025. According to the petitioner, he cannot be replaced by another temporary appointee. He is entitled to the protection of SRO 255 dated 05.08.2003 and continue against the post until it is filled through the prescribed regular selection process, as other similarly situated Vocational Instructors have been permitted to continue beyond the periods specified in their initial engagement orders and that denial of similar treatment to him is discriminatory.

4. Petitioner has invoked writ jurisdiction of this Court, *inter alia*, for the following reliefs:

    i. Issue a Writ, Order or Direction in the nature of Prohibition, prohibiting the respondents from advertising the post held by the petitioner as Vocational Instructor as Guest Faculties as Software Testing Assistant lastly advertised vide advertisement

notice dated 14.07.2022 by engaging any other person on temporary engagement basis till the said post is not filled up on substantive basis through proper selection to be conducted by SSRB or Public Service Commissioner;

ii. *Issue a Writ, Order or Direction in the nature of Mandamus, commanding the respondents to allow the petitioner to perform his duties as Software Testing Assistant as Vocational Instructor on the basis of his latest engagement made on the basis of selection list dated 02.08.2022 read with engagement order dated 24.09.2022 and pay him the salary/wages attached to the post continuously in future as well as are being paid to him as on today till regular arrangement for filling the post on which he has been engaged is made and the petitioner be also given an opportunity to compete for such regular engagement as and when same is contemplated or brought into existence;*

iii. *The Hon'ble Court may pass any other order or direction, which it deems just and proper under the facts and circumstances of the case in favour of the petitioner and against the respondents.*

5. The plea has been opposed on the other side by the respondents, primarily on the ground that petitioner was engaged purely on temporary basis as Guest Faculty for the academic session 2022–2023, on consolidated remuneration of Rs. 20,000/- per month, and his engagement was subject to the terms and conditions stipulated in the advertisement and engagement/confirmation order dated 24.09.2022 that it does not confer any claim for continuation beyond the stipulated period or regularization or permanent absorption.

6. According to the respondents, no legal, statutory or fundamental right of the petitioner has been infringed, so as to warrant interference by this Court in the exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

7. It is contended that the engagement of Guest Faculty depends upon the institutional requirements, student admissions and availability of work

during a particular academic session, and no right to continued engagement accrues merely because petitioner had previously worked in the institution. Respondents have also disputed petitioner's claim to parity with persons engaged under academic arrangements, contending that the nature and conditions of such engagements are distinct. According to the respondents, petitioner's employment, by its nature is subject to the scheme's duration and the requirement of the employer.

8. Respondents also aver that institution has appointed a regular (permanent) Chowkidar, duly appointed by the Government after receiving recommendation of SSRB, and petitioner is not working in the institution, as his services were discontinued on account of unsatisfactory performance and all the earned wages have already been paid to him for the period he worked in the department.

9. Respondents have prayed for dismissal of the petition.

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

11. True it is that nobody can claim a fundamental right to appointment, but it does not mean that Government can be allowed to indulge in arbitrariness. Public employment process initiated by the Government is supposed to be fair, transparent, impartial and 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.

12. Admitted facts of the case are that petitioner came to be engaged as guest faculty as Software Testing Assistant, pursuant to an advertisement notice dated 14.07.2022 issued by the respondents and he continues to work as such. The grievance of the petitioner is that despite having acquired experience by working efficiently against the post held by him, respondents are threatening to terminate his engagement and replace him with another contractual or adhoc arrangement, without initiating a process for regular selection, which is not countenanced in law.

13. The legal preposition underlying the scenario presented in the present petition is no longer *res-integra*.

14. 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.

15. 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.

16. 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."

17. 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".

18. 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.

19. 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.

20. Though, it is stand of the respondents that services of the petitioner were dis-continued on account of his unsatisfactory performance, however, Mr. Zaffar Mehdi, learned counsel for the petitioner has made a statement at Bar that petitioner continues to work as Software Testing Assistant, which is evident from the monthly status report cum attendance sheet annexed with the petition.

21. Having regard to the aforesaid, present petition is allowed and respondents are directed to allow the petitioner to continue as Software Testing Assistant, with all existing benefits under rules, as long as the requirement exists, but subject, of course to his good conduct & satisfactory performance and they are prohibited & restrained from replacing him under a similar adhoc arrangement or contract.

22. This order, however, shall not impede or restrain the right of the respondents to fill the post held by the petitioner 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 petitioner, 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:
29.10.2026
Adil Ismail

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