

**HIGH COURT OF JAMMU AND KASHMIR AT  
SRINAGAR**

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SWP No. 1295/2014  
IA No. 2059/2014

Date of order: **31-03-2015**

Muzaffar Rasool Mir & Ors. V/s State & others

**Coram:**

**Hon'ble Mr. Justice Hasnain Massodi, Judge**

**Appearing counsel:**

For the Petitioner(s):	Mr. F. A Parray, Adv.
For the respondent(s):	Mr. M. A Qayoom, Adv. Mr. Azhar-ul-Amin, Adv.

i) Whether approved for reporting in Press/Journal/Media	:	Yes/No/optional
ii) Whether to be reported in Digest/Journal	:	Yes/No

- Jammu and Kashmir Public Service Commission-respondent No. 4 herein vide Notification No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 invited applications from eligible candidates to fill up 1289 vacancies of Assistant Professor (carrying pay scale of Rs. 15600-39100+6000) in different disciplines in various Government Degree Colleges of the State. The selection process was to be undertaken in accordance with Jammu and Kashmir Education (Gazetted) College Services Recruitment Rules, 2008 (in short Rules of 2008) notified vide SRO-423 of 2008 dated 23<sup>rd</sup> December 2008 read with Government Order No.s 252-HE of 2012 dated 30<sup>th</sup> May 2012, 254-HE of 2013 dated 21<sup>st</sup> May 2013 and Communication No. Coll/Coord/774/2013 dated 22<sup>nd</sup>

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March 2013 issued by Higher Education Department of the State Government. In terms of SRO-423 of 2008 dated 23-12-2008, a candidate with MPhil Degree would be eligible for the advertised position even if he had not qualified National Eligibility Test/State Level Eligibility Test /State Eligibility Test (NET/SLET/SET) conducted by UGC/CISR/Association of Indian Universities/AIU/University of Jammu/Kashmir.

2. The Government Order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013 deleted MPhil from the relevant para of Schedule II of Rules of 2008. Resultantly a candidate with MPhil Degree would not be eligible for the advertised post unless he has qualified NET/SLET/SET. The Government order dated 21<sup>st</sup> May 2013 emboldened respondent No. 4 to delete MPhil Degree from "prescribed qualification" in the Advertisement Notification dated 23<sup>rd</sup> May 2013.
3. The Advertisement Notification No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 came to be questioned to the extent it excluded aspirants for advertised posts with MPhil Degree without NET/SLET/SET clearance before both the wings of this Court in SWP NO.s 1288/2013, 1400/2013, 1080/2013, 1027/2013, 1123/2013 and 1140/2013. Challenge was thrown to aforementioned Notification primarily on the



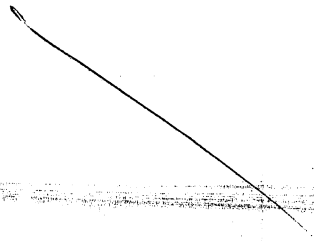
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ground that as Rules of 2008 were made in exercise of powers under Section 124 Constitution of Jammu and Kashmir, it was not open to respondent No. 1 to amend the rules by Government order bypassing procedure for amendment laid down under law.

4. The writ petitions- SWP No.s 1288 of 2013 and 1400/2013 were allowed Government order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013 as also para II titled "prescribed qualification" of the Advertisement Notification to the extent it deleted MPhil Degree from the prescribed qualification, set aside. The court opined that Rules of 2008 could not be amended by an executive order and Government Order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013 was not to stand legal scrutiny. Petitioners with MPhil Degree but without NET/SLET/SET were held eligible for advertised posts, under Rules of 2008. The writ petition No.s 1080/2013, 1027/2013, 1127/2013 and 1140/2013 were disposed of vide Judgment dated 26-12-2013 in terms of Judgment dated 3<sup>rd</sup> October 2013 whereby SWP No. 1288/2013 and SWP No. 1400/2013 were disposed of.
5. One of the options available to respondents 1 to 4 was to allow petitioners and other aspirants with MPhil Degree but without NET/SLET/SET clearance, to participate in the

selection process pursuant to Advertisement Notification of 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013, finalize selection process and make appointments against the advertised posts.

6. Respondents, however conceived a different idea to deal with the matter. They noticing that their effort to restrict eligibility criteria to the candidates with Post Graduate Degree in the concerned discipline with NET/SLET/SET clearance or with Ph.D was set aside on the ground that Rules of 2008 were amended by executive order and not having recourse to the procedures prescribed under law, decided to amend Rules of 2008 in accordance with the law governing amendment to the statutory Rules made in exercise of powers under Section 124 Constitution of Jammu and Kashmir.
7. The State Government vide SRO-124 of 2014 dated 21-04-2014 "substituted" Schedule I and II of Rules of 2008 by Schedule I and II embodied in the notification. The "substituted" Schedule I gave revised up to date, strength and composition of service. Schedule II provided for qualification and method of recruitment to the service. Schedule II (IV.A) is relevant to the present controversy and needs to be noticed.



V	A	Assistant Professor (All Disciplines except those mentioned hereinafter)	Rs. 15600-39,100+6000	<p>1. Good Academic record as defined by the concerned university with at least 55 % marks (50%, excluding any grace marks, in case of Scheduled Caste/Scheduled tribe/Differently-abled (Physically and visually differently abled) Categories/Ph.D degree holders who have obtained their Master's Degree prior to 19<sup>th</sup> September 1991) or an equivalent grade in a point scale wherever grading system is followed at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from any accredited foreign University.</p> <p>2. The candidates must have cleared NET/SLET/SET conducted by the UGC, CSR/AIU.</p> <p>3. The candidates who are or have been awarded a Ph.D degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D degree regulations) 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET.</p> <p>4. NET/SLET/SET shall also not be required for</p>	By Direct Recruitment
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				such Master's programmes in disciplines for which NET/SLET/SET is not conducted.	
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8. In terms of "substituted" Schedule exemption from NET/SLET/SET conducted by UGC/CISR/AIU was restricted to candidate having Ph.D Degree in accordance with UGC (Minimum Standards and Procedure for Award of Ph.D Degree Regulations) 2009 to his credit. Such exemption was no more available to a candidate with MPhil Degree.
9. The substitution of Schedule I and II by SRO 124 of 2014, has been followed by a fresh Advertisement Notification being 12-PSC(DRP) of 2014 dated 29<sup>th</sup> May 2014. The Notification reproduces in Para 2, prescribes qualification for eligibility to the advertised post as per schedule substituted by Rules of 2014. The Notification is issued in suppression of Notification No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013. In terms of Note 2 to the Notification, the candidates who earlier responded to Notification 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 dated 23<sup>rd</sup> May 2013 and fulfill the eligibility criteria laid down in SRO-124 of 2014 dated 21-04-2014 are not to apply afresh for the advertised posts.

Petitioners who claim to have MPhil Degree to their credit but not cleared NET/SET/SLET, and eligible for the advertised posts on the date of Advertisement Notification 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 under Rules of 2008, cease to be eligible for the advertised posts under changed eligibility criteria.

11. Petitioners aggrieved that they are unjustifiably excluded from consideration for the advertised posts seek quashment of SRO-124 dated 21-04-2014 as also Advertisement Notification No. 12-PSC(DRP) of 2014 dated 29<sup>th</sup> May 2014 on the grounds set out in the petition. It is pleaded that SRO-124 of 2014 cannot stand legal scrutiny as it retrospectively deprives petitioners of right of consideration for the advertised posts available to them under SRO 423 of 2008 dated 23-12-2008.
12. Petitioners' case is that a right accrued to them under Advertisement Notification No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 to participate in the selection process and to be considered for the advertised posts and that right cannot be taken away by Rules of 2014 or subsequent Advertisement Notification. It is pointed out that they were exempted from NET/SLET/SET clearance under Rules of 2008, having regard to period spent for obtaining MPhil

Degree after Post Graduate Degree, that MPhil is a superior qualification as against Post Graduation Degree and that a candidate with MPhil Degree deserves to be given extra credit as against a candidate with only Post Graduate Degree. It is pleaded that change in eligibility criteria can at the most be prospective and applicable to the candidates who have obtained or obtain MPhil Degree after change in eligibility criteria.

13. The petition is resisted by the respondents on the grounds that the amendment to Recruitment Rules has been necessitated by University Grants Commission Guidelines. It is pointed out that the post of Lecturer in Higher Education Department is re-designated as Assistant Professor with MPhil Degree without NET/SLET/SET deleted from eligibility criteria for appointment/recruitment to the post of Assistant Professor and that NET/SLET/SET clearance prescribed as minimum eligibility condition for appointment as Assistant Professor in Universities/Colleges and other like Institutions. It is pleaded that the steps taken by the respondents to reframe the rules under SRO-124 of 2014 dated 21<sup>st</sup> April 2014 are in tune with Judgment rendered in SWP No. 1288/2013, and identical petitions. It is next pleaded that the respondents are competent to



withdraw a post from the Selection Body-Public Service Commission in the present case, and re-advertize the post so withdrawn with the change in the eligibility criteria. Respondents deny that a right accrued to the petitioners under Rules of 2008 or under Advertisement Notice of 2013, to be considered for the advertized posts, as per the old criteria or that the change in recruitment rules in their case has to be prospective. It is pleaded that the withdrawal of the posts earlier advertized vide Advertisement Notice No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 has been ordered with the approval of the Competent Authority and only candidates fulfilling eligibility criteria laid down in SRO 124 of 2014 dated 21<sup>st</sup> April 2014 are to be eligible for the post advertized vide Notification dated 29<sup>th</sup> May 2014.

14. I have gone through the pleadings as also record available on the file. I have heard learned counsel for the parties.
15. It is well settled law that the Advertisement Notice does not confer any right on a candidate who responds to the notice, to be considered for advertised post, to ask for finalization of the selection process or a right to oppose withdrawal of the post advertized or resist the abandonment of the selection process. The advertisement is nothing but a notice to the general public regarding availability of advertized

vacancies so as to enable the candidates satisfying the eligibility criteria to submit their applications. It signifies the intention of the Selection Body to receive applications for the advertized post and initiate the selection process. It does not vest right for appointment in the candidate(s) who respond to the Advertisement Notice. It is equally well settled that the Selection Body can at any time withdraw the Advertisement Notice or abandon the selection process or withdraw some of the advertized posts and decide to restrict selection to only some of such posts. A candidate applying for the advertized post is not clothed with right to restrain the Selection Body from withdrawal of Advertisement Notice or abandonment of the selection process.

16. Furthermore, the Competent Authority would be well within its powers to change eligibility criteria after the advertisement is issued and withdraw the advertisement notice. It may thereafter re-advertise the posts earlier advertized, now prescribing the changed eligibility criteria. The candidates, who responded to the earlier notice and become ineligible because of change in Recruitment Rules and therefore ineligible under the new Advertisement Notice, cannot insist that their eligibility should be assessed at the touchstone of old and repealed Recruitment

Rules and they allowed to participate in the selection process. The only exception possibly would be where malafides are alleged and substantiated on part of the employer or Selection Body in taking such decision. Having said so, let us for a while briefly even at the cost of repetition, revisit the facts and thereafter scan the case law on the subject to find out whether the above conclusions are supported by law.

17. Petitioners' case is that at the time of publication of Advertisement Notice No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013, and the cut of date laid down therein they had MPhil Degree to their credit and notwithstanding the Government Order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013 they were eligible for the advertised posts even in absence of NET/SLET/SET clearance. They place reliance in this regard on Jammu and Kashmir Education (Gazetted) College Services Recruitment Rules, 2008 notified vide SRO-423 of 2008 dated 23<sup>rd</sup> December 2008. It is pleaded that they would continue to be so eligible even after withdrawal of the Advertisement Notice dated 23<sup>rd</sup> May 2013, amendment in Recruitment Rules vide SRO-124

of 2014 dated 21-04-2014 and the Advertisement Notification 12-PSC (DRP) of 2014 dated 29<sup>th</sup> May 2014 as their eligibility is to be determined on the anvil of Rules of 2008 and not Rules of 2014. They insist that as Rules of 2014 changed eligibility criteria, these rules are to be prospective in operation and not to adversely affect the right of the candidates who were eligible in terms of Rules of 2008 on the cut of date fixed in the earlier notification.

18. The controversy identical to one involved in the present petition was raised before Punjab and Haryana High Court in *Babita Rani Vs. State of Haryana & others* 2002(4) SCT(670). It would be advantageous to reproduce the facts of the case with some detail.
19. The Recruitment Board on 7-11-1996 invited applications for filling of 504 vacancies of SS Masters in the Education Department of State of Haryana. The Advertisement Notice laid down combination of particular subjects at the Graduation level as eligibility criteria for the advertised posts. The Recruitment Rules however did not provide for such combination.

Resultantly candidates without requisite combination of subjects were not allowed to participate in the selection process. The action of Recruitment Board was questioned in writ petition before the Punjab and Haryana High Court. The ground taken was that eligibility criteria was not in tune with Recruitment Rules.

20. The Division Bench of Punjab and Haryana High Court in case of *Dharamvir Vs. State of Haryana & anr.*, 1996 (1) R.S.J. 296 set aside eligibility criteria laid down in the advertisement notice as it did not correspond to criteria laid down in the Recruitment Rules. The State Government, as in present case, amended and replaced the Recruitment Rules by Haryana State Education School Cadre (Group C) Service Rules, 1998. Whatever laid down in the Advertisement Notice dated 7-11-1996, was now incorporated in the Rules. In other words, amended Rules now provided for combination of subjects. It issued a fresh Advertisement Notice on 14<sup>th</sup> November 1999, inviting applications from eligible candidates with particular subject combination to fill

up 2217 vacancies of SS Masters. While issuing Advertisement Notice dated 14<sup>th</sup> November 1999 all previous Advertisement Notices were withdrawn.

21. Petitioners, earlier eligible for the advertised positions having responded to Advertisement Notice dated 7-11-1996, once again approached Punjab and Haryana High Court, now questioning the Advertisement Notice dated 14<sup>th</sup> November 1999 refusing them right to participate in the selection process. They, like petitioners in the present case, insisted that their eligibility was to be assessed on the anvil of unamended Recruitment Rules and not the Recruitment Rules of 1998 and the State Government was stripped of power to withdraw earlier Advertisement Notifications and reject their candidature.

22. The Punjab and Haryana High Court, rejecting the contention of the petitioners held that the Advertisement Notification dated 14<sup>th</sup> November 1999, was tailored as per principle spelt out by the Division Bench in Dharamvir's case. It held that the Advertisement of

posts, does not vest any indefeasible right in the candidates who apply in response to such advertisement and only because Advertisement Notice is subsequently withdrawn does not give any right to the candidates who responded to the Advertisement Notice to claim selection or even consideration under new Advertisement Notice.

23. The court held.:

*There is hardly any question of operating the Rules of 1998 retrospectively. The advertisement in question for 2124 posts had been issued subsequent to the amendment of the rules and, thus, the rules would squarely apply to the process of scrutiny and selection for appointment to these posts. The applicants who have applied under and in response to the advertisement of 1996 do not have any indefeasible or vested right to require the State to fill up the erstwhile advertised vacancies. The state in its wisdom and for appropriate reasons can always abandon a selection. No malafides have been alleged against the State on this score.*

The new advertisement has been issued after amendment of the rules. We have already noticed that the qualification essential or otherwise specified in the advertisement are in conformity with Rule 7 and Appendix thereto. The Hon'ble Supreme Court of India in the case of Dr. K. Ramulu and anr. Etc vs. Dr. S. Suryaprakash Rao and Ors., J.T. 1997(2) S.C 80 while dealing with the cases of promotion and enforcing a panel under the repealed Rules, negating the contentions of the petitioner that they have any vested right, held under:

"Thus we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Director of Animal Husbandry



*Department in accordance with the repealed Rules and to operate the same."*

24. The Bench relying on law laid down in *Renu Ahuja Vs. State of Punjab & Others* 1992 (4) S.L.R. 263 extracted the following observations made by the court:

*".....If the advertisement notice issued for direct recruitment is withdrawn after amendment of Rules and fresh advertisement is issued, the applicants cannot claim any right under previous recruitment".*

It held:

*"In the case of Raghuvver Sigh Yadav (supra) their Lordships of the Supreme Court held that upon amendment of the rules, alteration in eligibility conditions and essential qualification could be prescribed by the Government. The Government was competent to make selections on the basis of the amended criteria, though amended rules were prospective in their operation. The candidates who pass an examination under the unamended rules or advertisement are not vested with any right against the state.*

Furthermore, in the case of *Union of India Vs. Yogendra Singh*, 1994 (3) S.C.T. 176 again the Hon'ble Apex Court reiterated the principle that where the qualification for the post of Health Inspector was changed with effect from 24-5-1990, then the candidates possessing qualifications earlier to the amendment cannot claim appointment even in respect of the vacancies which had fallen vacant before 25-4-1990. The candidates would have to satisfy the currently prescribed qualifications. This view was also taken by the Hon'ble Apex Court in the case of *Rajasthan Public Service Commission (supra)*."

25. The law laid down on the subject was reiterated by the Apex Court in *State of Orissa & Others Vs. Bhikari Charan Khuntia & Others* 2003(10) SCC 144. The court relying on Constitution Bench Judgment in *Shankarsan Dash Vs. Union of India* (1991) 2 SCR 567 held:

"that the candidates whose names appear in the merit list do not acquire any indefeasible right of appointment if vacancies exist. The State is under no

*obligation to fill up all or any of the vacancies, unless the relevant recruitment rules so indicated".*

Reference was also made to law laid down in *All India SC & ST Employees Association and anr, Vs. A Arthur Jeen & others, (2001) 6 SCC 380* and *Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh & Ors. (2003) 6 Supreme 196*. The court held:

*"that merely because names were forwarded by the employment exchange did not confer on the candidates right of getting selected or included in the select list".*

26. Learned counsel for the petitioner argues that the Recruitment Rules of 2014 notified vide SRO-124 of 2014 dated 21-04-2014 are prospective in nature and therefore not applicable to petitioners case. It is pleaded that as petitioners were eligible under Recruitment Rules of 2008, for the advertized posts they cannot be denied eligibility by pressing into service Recruitment Rules of 2014. The arguments is repelled by counsel for the respondents insisting that the rule makers by making use of expression "substitute" instead of "amend" have made it amply



clear that the rules would be retrospective in nature and to have substituted Schedule I and Schedule II to the rules from the initial date the Recruitment Rules of 2008 were framed. Much emphasis has been laid on the expression "substitute" as according to learned counsel, had the rule makers intended to make Recruitment Rules of 2014 prospective in operation, the expression used would have been "amended" and not "substituted" as used in SRO 124 of 2014.

27. I am of the view that as the Rules of 2008 or the Advertisement Notice 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013, did not vest any right to be considered or selected, in the petitioners and as petitioners because of Government Order 254-HE of 2013 dated 21<sup>st</sup> May 2013, did not respond to Advertisement Notice and there was no headway in the selection process, we need not to be drawn into discussion over meaning and scope of expression "substitute" and "amend" or prospective/retrospective nature of Rules of 2014. However as much labour has been done by learned counsel for the parties on said aspect of the case, reference to the case law relied upon by the parties would be necessary so that all aspects of the controversy are dealt with.

28. Mr. F. A Parray relying on *Public Service Commission, Uttarnachal Vs. Jagdish Chandra Singh Bora & Ors.* (Civil Appeal No. 3034 of 2007 with Civil Appeal No. 3036 of 2007 and High Court of Karnataka in *Sri Govardhan M Vs. The State of Karnataka 2013(1) Karnataka Law Journal (437)* clubbed with identical matters, insists that Rules of 2014 notwithstanding expression used, cannot be retrospective in operation. Reliance is also placed on *State of Tamil Nadu Vs. State of Kerala & anr.* (Original suit No. 3 of 2006) wherein it has been held that right accrued cannot be nullified by the legislation made by State Legislature.
29. The facts of *Public Service Commission, Uttaranchal's case* are distinguishable from the facts of this case. It was sometime after the Rules of 2001 framed after the creation of State of Uttaranchal ceased to exist, that new Recruitment Rules were framed in 2003. The Recruitment Rules of 2003 did not "substitute" or "amend" the Rules of 2001 as the Rules had ceased to operate and lost their force. It is in the said background that Hon'ble Supreme Court held that the Recruitment Rules of 2003 could not have retrospective effect. However, *Shri Govardhan M's case (supra)*, is closer to the controversy raised in the present case.

Karnataka High Court after making a comprehensive survey of the case law on the subject held that "substitution" has the effect of deleting the old rule and making the new rule operative. It held that by the process of "substitution", the old rule is made to cease to exist and new rule is brought into existence in that place. Summarizing the conclusion, it was held:

*"The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. Whenever an amended Act has to be applied subsequent to the date of amendment, the various unamended provisions of the Act have to be read along with the amended provision "as though they are the part of it.*

The court proceeded to observe:

*"It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have*

retrospective effect. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. When the legislature amends an existing provision in a statute by way of substitution, the effect is the substituted provision stands repealed and the amended provision is substituted in the place of earlier provision in the earlier Act, as if the substituted provision is there in the earlier act from the inception. By express provision or by implication if it is not made clear that it is prospective in nature, the said amended provision comes into effect from the date of the earlier Act. But it is not an invariable Rule. If such an interpretation is given, if it leads to repugnancy, inconsistency or absurdity then the said general rule is not followed. In certain situations, the court having regard to the purport and object sought to be achieved by the Legislature may construe the word "substitution" as an "amendment" having a prospective effect. If the amendment Act expressly states that the substituted provision shall come into

force from the date of the amendment comes into forces, the said provisions in nature. Then it is not open to the Court by way of interpretation to give retrospective effect to such provision. Ultimately to decide whether these provisions are prospective or retrospective, it is the intention of the legislature which is the sole guide. If the procedure adopted for amendment is substitution and in the Amended Act it is specifically stated that the substituted provisions come into effect from the date the amended Rules or Act came into force, the intention of the legislature is clear. On the pretext that it is the case of substitution, the effect cannot be given to that substituted provision from the date of the earlier statute. It has to be necessarily from the date the amended rules came into force.

30. Mr. Qayoom on the other hand relying on law laid down in *Ramkanali Colliery of BCCL Vs. Workmen by Secy. Rashtriya Colliery Mazdoor Sangh & anr.* (2001)4 SCC 236 and *Government of India & Ors. Vs. Indian Tobacco Association* (2005) 7 SCC 396 insists that use of expression "substitution" was intended to give retrospective effect to the Rules of 2014. Learned counsel in particular places



reliance on following observations of Supreme Court in *Ramkanali Colliery of BCCL case*:

*"The relevant question herein is as to the effect of the expression "substituted" used in the context of deletion of sub sections of Section 14, as was originally enacted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of the repeal of the existing provision and also provides for introduction of a new provision. There is, thus, no real distinction between repeal and amendment or substitution in such cases. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such.*

31. In the present case, a bare look on the Rules of 2014 would reveal that the ruler makers though using the

expression "substituted" have in their wisdom decided to make rules operative from the date they were made. Having regard to the law laid down in *Shri Govardhan M's case*, the rules of 2014 are to be taken as "prospective" and the court cannot in face of the decision of Rule makers interpret the rules as retrospective. However, as already indicated this is not going to change complexion of the matter as right of consideration for advertized posts did not vest in the petitioners under Rules of 2008 or the Advertisement Notification of 2013.

32. One more aspect of the matter which call for attention is that petitioners did not respond to the Advertisement Notice of 2013, as the Government Order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013, had the effect of excluding them from selection process. The selection process pursuant to the Advertisement Notice could not take off because of litigation over competence of Higher Education Department to amend the Recruitment Rules of 2008, made in exercise of powers under Section 124 Constitution of Jammu and Kashmir, by an executive order and change prescribed eligibility criteria. In the said background, petitioners cannot draw any support from the law laid down in *N.T. Devin Katti & others Vs. Karnataka Public*

*Service Commission & Ors. (1990) 3 SCC 157* relied upon by Mr. Parray. In the reported case, it was observed:

*".....Candidates who apply, and undergo written or viva voce test, acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention".*

33. The law on the subject has been reiterated by Supreme Court in *State of Jharkhand & Ors Vs. Ashok Kumar Dangi & Ors.* on 4<sup>th</sup> July 2011. It would be advantageous to extract following observations made by the court while laying down that the Government has power to change rules and make selection in accordance with changed rules.

*Further in the case of Rajasthan Public Service Commission Vs. Chanan Ram (1998) 4 SCC 202, this Court held that Government has the right to make selection in accordance with the changed rules and make final recruitment. In the said case, it has been observed as follows:*

*".....The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered*

according to the rules then in vogue. The amendment Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment."

Obviously no candidate acquired any vested right against the state. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.....".

34. Appreciating the case set up by the petitioners on the basis of settled legal principles, it is more than clear that petitioners' claim is bereft of any merit. Merely because petitioners' responded or proposed to respond to earlier Advertisement Notice or were eligible for the advertised posts under unamended rules would not give petitioners a right to insist that they be considered on the basis of unamended rules. In the present case, petitioners were not eligible for the advertised posts in view of Government order No. 254-HE of 2013 dated 21<sup>st</sup> May 2013. They successfully challenged the Government order and the Advertisement Notification

No. 09-PSC (DR-P) of 2013 dated 23<sup>rd</sup> May 2013 on the grounds that in absence of necessary amendment of the rules, the eligibility criteria could not be tailored in the manner Government Order dated 21<sup>st</sup> May 2013 required and as reflected in the Advertisement Notice. Petitioners admittedly did not participate in the selection process and the selection process itself was not initiated pursuant to the Advertisement Notice. The State Government taking clue from the observations made by the High Court while allowing writ petitions bearing SWP No.s 1288 of 2013 and 1400/2013 amended the rules and issued a fresh Advertisement Notice. The Advertisement Notice earlier issued was withdrawn and the selection process abandoned. In terms of SRO-124 of 2014 dated 21-04-2014, a candidate with Mphil Degree to be eligible for the post is necessarily to have NET/SET/SLET clearance. Petitioners have only MPhil Degree to their credit. They have not cleared NET/SET/SLET, and therefore would not be eligible for the advertised posts of Assistant Professor in the Higher Education Department.

35. It is nobody's case that the amendment to the Recruitment Rules was motivated by any malafides. The respondent Commission as a matter of fact has taken pains to explain the background in which NET/SLET/SET was required in case of candidates with M-Phil Degree. The explanation given sounds convincing. The exercise therefore is not tainted with any malafides.

36. For the reasons discussed writ petition, is devoid of any merit and is accordingly dismissed. The respondent Commission shall proceed with the selection process so that 1289 vacancies are filled up with due dispatch.

37. Dismissed.

Srinagar  
31/3/15

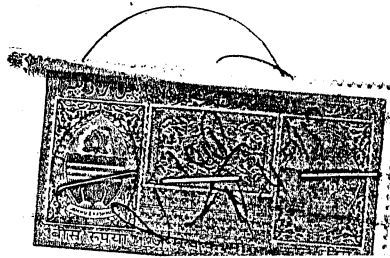
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**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND  
KASHMIR AT SRINAGAR**

S.W.P. No. 1295 / 2014

The case of:

- 1) Muzafer Rasool Mir Aged about 31 years S/O Ghulam Rasool Mir R/O Kanir Chadoora, Kashmir.
- 2) Shabir Ahmad Dar , Aged about 32 years S/O Abdul Karim Dar R/O Naroo Ichigam Budgam.
- 3) Gurmeet Kour Bali, Aged about 28 years D/O S. Ranbir Singh Bali R/O Ichahama Tehsil Khag District Budgam.
- 4) Mohammad Arif Peer Aged about 33years S/O Abdul Rashid Peer R/O Chackloo Baramulla.
- 5) Anayat Ahmad Mir , Aged about 29 years S/O Mohammad Maqbool Mir R/O Nowshera Srinagar.
- 6) Syed Muzimal Rashid Aged about 32years S/O Syed Abdul Rashid R/O Safapora Bandipora.
- 7) Rumaisa Nazir , Aged about 36 years D/O Nazir Ahmad Wani R/O Baramulla Kashmir.
- 8) Asif Majid Tantri Aged about 33years S/O Abdul Majid Tantri R/O Baramulla.
- 9) Fayaz Ahmad Wani ,Aged about 32 years S/O Ghulam Mohi ud din Wani R/O Soibug Budgam.
- 10) Basir Ahmad Khan Aged about 33years S/O Ghulam Hassan Khan R/C Kupwara.
- 11) Muzzafar Ahmad Dar Aged about 31years S/O Abdul Khaliq-Dar.R/O Sopore Kashmir.

For Learned Counsel: *[Signature]*  
Srinagar.

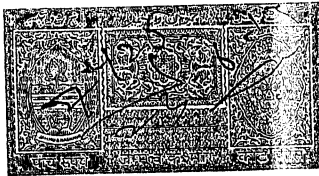
*[Vertical handwritten notes and signatures]*

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Assistant Registrar  
High Court of Jammu and Kashmir  
Srinagar

*[Handwritten notes and signatures]*  
24/6/14

Dated 24 Day of June 2014



(2)

12) Ghulam Mohammad Lone Aged about 36 years S/O Ghulam Rasool Lone R/O Sopore Baramulla.

13) Javid Ahmad Dar Aged about 31 years S/O Ghulam Mohammad Dar R/O Sopore Baramulla.

14) Bilal Ahmad Bhat aged about 33 years S/O Ghulam Hassan Bhat R/O Sopore.

15) Tariq Ahmad Sheikh Aged about 29 years S/O Ghulam Mohi ud din Mir R/o Sopore Kmr.

16) Aijaz Ahmad Aged about 33 years S/o Shamus ud din R/o Rajouri Jammu.

17) Ghulam Mustafa Mir aged about 34 years S/O Ghulam Nabi Mir R/O Batamaloo Srinagar.

18) Syed Shafiq ul Athar Bukhari Aged about 36 years S/O Syed Mohammad Athar Bukhari R/O Baghati Kanipora Tehsil Chadoora

19) Samina Qadir Aged about 30 years D/O Ghulam Qadir Charoo R/O Srinagar.

20) Sajad Ahmad Bhat Aged about 33 years S/O Ghulam Mohammad Bhat R/O Pattan Baramulla.

21) Mohsin Ahmad Paray, Aged about 30 years S/O Mohammad Manzoor Paray R/O Jgjan Dailgam.

22) Mushtaq Ahmad Bhat, Aged about 33 years S/O Abdul Ahad Bhat R/O Srinagar.

23) Mansoor Bashir Lone Aged about 35 yrs S/O Bashir Ahmad Lone R/O Sopore Bla

24) Ruheela Khan Aged about 34 years D/O Ghulam Mohammad Khan R/O Baramulla.

10. 10. 2012  
for Jammu for

UNFILED COPY

Assistant Registrar  
High Court of Jammu & Kashmir  
Srinagar

On 10.10.2012  
HON'BLE JUDGE  
OF CIVIL APPEALS

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3

25) Arshad Ali Bhat aged about 33 years S/O Ghulam Ali Bhat R/O Delina Baramulla.

26) Iftikar Ahmad Jan Aged about 29 years S/O Ghulam Ahmad Jan R/O Srinagar.

27) Manzoor Ahmad Wani Aged about 35yrs S/O Abdul Aziz Wani R/O Budgam.

28) Shuja Assad Aged about 31years D/o Assad ullah Naik R/O Tral Pulwama.

29) Abid Mohi ud din Rather Aged 30 years S/O Ghulam Mohi ud din Rather R/O Srinagar.

30) Tahseen Hafiz Khan Aged about 33 years D/o Abdul Hafiz Khan R/O Srinagar.

31) Ashiq Khan , Aged about 33 years S/O Ghulam Mohammad Khan R/O Bemina Srinagar.

32) Sheikh. Abid Amin Aged about 31 years S/O Master Mohammad Amin R/O Sopore Baramulla.

33) Nazima Bano Aged about 29 years D/O Mohammad Ashrif Najar R/O Sopore Baramulla.

34) Shamsul Arif Aged about 33 years D/O Syed Mohd. Raza Razvi R/O Srinagar .

35) Nafisa Akhter, Aged about 31 years D/O Ghulam Mohammad Dar R/O Hassan abad Rainwari Srinagar.

36) Kifayat Hussain Shah, Age about 33 years S/O Syed Safdar Shah R/O Malnoh Pattan .

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ORIGINAL COPY

High Court of Jammu and Kashmir

ated... RECEIVED UNDER SECTION OF EVIDENCE

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4

- 37) Mohammad Ashrif Mir Aged about 35 years S/O Ghulam Ahmad Mir R/O Gutyar Baramulla.
- 38) Afroza Gul Aged about 34 years D/O Ghulam Mohammad Dar R/O Perniyar Baramulla.
- 39) Aeyaz Ahmad Lone Aged about 33 years S/O Habib ullah Lone R/O Kreeri Baramulla.
- 40) Ishfaq Ahmad Ganie Aged about 32 years S/O Ghulam Rasool Ganie R/O Koil Pulwama.
- 41) Manzoor Ahmad Wani Aged about 29 years S/O Ghulam Mohammad Wani R/O Tangpona Pulwama.
- 42) Mudasir Gani Aged about 27 years S/O Abdul Gani Wani R/O Koil Pulwama , Kashmir.
- 43) Mohammad Haneef Akhoon Aged about 32 yeas S/O Ali Mohammad Akhoon R/O Baramulla.
- 44) Nisar Ahmad Dar Aged about 33 years S/O Nazir Ahmad Dar R/O Baramulla.
- 45) Mohammad Iqbal Baba aged about 29 yrs S/O Ghulam Hassan Baba R/O Pattan Baramulla.
- 46) Saba Nabi Aged about 30 years D/O Ghulam Nabi R/O Baramulla.
- 47) Shahnawaz Ahmad War Aged about 32 years S/O Abdul Rashid War R/O Baramulla.
- 48) Satindar Singh Aged about 33 years S/O Jang Bahadur Singh R/O Baramulla.
- 49) Showkat Ahmad Dar Aged about 33 years S/O Abdul Rashid Dar R/O Baramulla.

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Jem  
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50) Mohammad Younis Ganie aged about 33 years S/O Abdul Rashid Ganie R/O Baramulla.

51) Irshad Ahmad Kandri Aged about 29 years S/O Ali Mohammad Kandri R/O Sopore Baramulla.

52) Tajamul Hussain Mir, Aged about 36 years S/O Ghulam Hassan Mir R/O Kralpora Hawal Srinagar, Kashmir.

53) Feroz Ahmad Najar Aged about 30 years S/O Ghulam Hassan Najar R/O Pulwama Kmr.

54) Bilal Ahmad Najar Aged about 33 years S/O Mohammad Rajab Najar R/O Anantnag.

55) Manzoor Ahmad Fafoo Aged about 32 years S/O Ali Mohammad Fafoo R/O Sopore Baramulla.

56) Nisar Ahmad Ganie Aged about 29 years S/O Abdul Ahad Ganie R/O Pulwama.

57) Javid Ahmad Ganie Aged about 32 years S/O Abdul Ahad Ganie R/O Pulwama.

58) Reyaz Ahmad Dar, Aged about 35yrs S/O Ghulam Nabi Dar R/O Cherari Pora Budgam, Kashmir.

59) Fayaz Ahmad Dar, Aged about 33 years S/O Sona Ullah Dar R/O Rakhi Lajurah Pulwama, Kashmir.

60) Nazir Ahmad Bhat Aged about 37 yrs S/O Abdul Ahad Bhat R/O Ratnipora Pulwama Kashmir.

61) Barkat Ahmad Dar Aged about 33 years S/O Mohammad Subhan Dar R/O Seer Jagir Sopore.

CERTIFIED COPY  
Dated: 02/05/2011  
At: Srinagar  
RECORDED UNDER SECTION 17  
OF EVIDENCE ACT

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6

62) Kousar Hussain Bhat, Aged about 30 years S/O Abdul Rashid Bhat R/O Pathan Pulwama.

63) Sabzar Ahmad Chopan Aged about 35 years S/O Ghulam Mohammad Chopan R/O Pulwama.

64) Jamsheeda Bano Aged about 30 years D/O Ghulam Nabi Bhat R/O Baramulla.

65) Tanzeel Rafiqi aged about 31 yrs D/O Abdul Haq Rafiqi R/O Hakim Bagh Rawalpora, Kashmir.

66) Burhan Mohammad Paddar Aged 30 years S/O Ghulam Mohammad Paddar R/O Bonigam Kulgam, Kashmir.

67) Mohammad Nayeem Shah, Aged 33 years S/O Bashir Ud din Shah R/O Kranshivan colony Sopore.

68) Sajad Ahmad Bhat aged about 32 years S/O Ghulam Nabi Bhat R/O Nowgam Shangus Anantnag.

69) Ashiq Hussain Mir., Aged about 30 years S/O Abdul Ahad Mir R/O Khimbar Hazratba Sringare.

70) Ruqaya Rashid Aged about 31 years D/O Abdul Rashid Bhanday R/O Sopore Kashmir.

71) Mohammad Mansoor Bhat, Aged about 32 yrs S/O Mohammad Shaban Bhat R/O Qazi abad (Kharbrari) Kulgam.

72) Javid Ahmad Kuchai, Aged about 34 yrs S/O Ghulam Mohammad Kuchai R/O Humhama Budgam.

73) Hamidulla Dar, Aged about 33 years S/O Mohammad Shaban Dar R/O Panzgam Pulwama, Kashmir.

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For copy of the same please refer to the file of the case.

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[Signature]

7

74) Bilal Ahmad Lone, Aged about 31 year S/O Abdul Gani Lone R/O Pampore.

75) Irfan Ul Haq, Aged about 31 years S/O Abdul Rashid Dar R/O Panzgam Pulwama , Kashmir.

76) Nisar Ahmad Shah Aged about 29 years S/O Nawab ud din Shah R/O Rohama Rafi abad Baramulla.

77) Reyaz Ahmad Ganie, Aged about 31 years S/O Ghulam Nabi Ganie R/O Awantipora Kashmir.

78) Feroz Ahmad Wani Aged about 36 years S/O Abdul Rehman Wani R/O Awantipora Kashmir .

79) Abdul Rahim Khan aged about 33 years S/O Mohd. Abdullah Khan R/O Kanis pora Baramulla.

80) Mussadiq Ahmad Kirmani aged about 34 years S/O Mohammad Afzal Kirmani R/O Baramulla.

81) Mohsin Maqbool Dar Aged about 35 years S/O Mohammad Maqbool Dar R/O Baramulla.

82) Naseer Ahmad Bhat aged about 33 years S/O Abdul Gani Bhat R/O Baramulla.

83) Nazir Ahmad Bhat Aged about 36 years S/O Ghulam Ahmad Bhat R/O Pulwama.

84) Nafeez Ahmad Rather Aged about 32 years S/O Ghulam Ahmad Rather R/O Baramulla.

85) Ghulam Mohammad Rather Aged about 36 years S/O Mohammad Ramzan Rather R/O Tral Pulwama.

86) Iftikar Hussanin Lone Aged about 36 years S/O Mohammad Anwar Lone R/O Sirhama Bijbhera.

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Handwritten signature and stamp: "D. P. R. ... AUTHORIZED UNDER SECTION 30 ... Nafeez"

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8

*Handwritten notes and signatures in the top left corner, including names like 'Mudasir Ahmad Bhat' and 'Javed Ahmad Bhat'.*

87) Intikhab Ahmad Bhat Aged about 37 years S/O Ghulam Mohammad Bhat R/O Hariporigam Awantipora.

88) Mudasir Ahmad Bafanda Aged about 29 years S/O Ghulam Mohammad Bafanda R/O Widay Srigufara.

89) Showkat Hussain Malik Aged about 33 years S/O Ghulam Mohammad Malik R/O Arwani Bejibera

90) Mudasir Ahmad Bhat Aged about 31 years S/O Ghulam Nabi Bhat R/O Noonmai Kulgam.

91) Javid Ahmad Bhat aged about 33 years S/O Ghulam Hassan Bhat R/O Gundi Jaffar Anantnag.

... Petitioners

Versus

1. State of Jammu and Kashmir through Chief Secretary J&K State Civil Secretariat, Srinagar.
2. Commissioner/ Secretary to Government General Administration Department Civil Secretariat Srinagar.
3. Secretary to Government Higher Education Department Civil Secretariat Srinagar.
4. J&K Public Service Commission through its secretary Polo Ground Srinagar

.Respondents

*In terms of Hon'ble Court order dated 14-8-14 passed in C.M.P. 2561/2014 Respondents no 5 to 10 impleaded as party Respondents*

*19/8/14*

CERTIFIED COPY

*High Court of J&K Srinagar*

Date: *19/8/14* Day of *April* 2014  
REGISTERED UNDER SECTION 74  
GATEWAY NO. 10

*Handwritten signatures at the bottom left.*

- 5) Altaf Shah Syed S/O Gayas-Ud-Din Shah  
Syed R/O Handwara,
- 6) Mohd Salim Dar S/O Abdul Majid Dar R/O  
Qazigund, Anantnag,
- 7) Aijaz Ahmad Najar S/O Ghulam Qadir  
Nagar R/O Bhan, Kulgam.
- 8) Tauseef Ahmad Malik S/O Ahmadullah  
Malik R/O Bamloora, Ganderbal.
- 9) Sajad Ahmad Bhat S/O Abdul Hamid Bhat  
R/O Chadoora, Budgam.
- 10) Aijaz Ahmad Mir S/O Ghulam Mohammad  
Mir R/O Gundipora, Sopat Khanabal,  
Ananthag.
- 11) Fayaz Ahmad Shah S/O Ghulam Mohi-ud-  
Din Shah R/O Hafroo Batapora, Budgam.
- 12) Dr. Ummer Rashid Zarger S/O Abdul  
Rashid Zarger R/O Dooru, Anantnag.
- 13) Dr. Nasrul Islam S/O Mohd Sultan Rather  
R/O Bandipora.
- 14) Dr. Imtiyaz Gul S/O Noor-ud-Din Khan R/O  
Wanigam, Pattan.
- 15) Gowhar Hamid Dar S/O Abdul Hamid Dar,  
R/O Kulgam.
- 16) Gowhar Meraj S/O Meraj-ud-Din Wani R/O  
Nowpora, Khanyar Srinagar.
- 17) Sayar Yaseen S/O Mohammad Yaseen  
R/O Shopian.
- 18) Javaid Muzaffar Lone S/O Mohammad  
Muzaffar Lone R/O Handwara.

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(Respondents)

As per the list of  
 Respondents  
 dated 8/4/15  
 2015  
 SECTION  
 ACT

... S/O Gawa...  
Handwara.

Salim Dar S/O Abdul Majid Dar R/O  
Zigund, Anantnag.

1) Aijaz Ahmad Najar S/O Ghulam Qadir  
Nagar R/O Bhan, Kulgam.

2) Tauseef Ahmad Malik S/O Ahmadullah  
Malik R/O Bamloora, Ganderbal

3) Sajad Ahmad Bhat S/O Abdul Hamid Bhat  
R/O Chadoora, Budgam

4) Aijaz Ahmad Mir S/O Ghulam Mohammad  
Mir R/O Gundipora, Sopat Khanabal,  
Ananthag.

5) Fayaz Ahmad Shah S/O Ghulam Mohi-ud-  
Din Shah R/O Hafroo Batapora, Budgam.

6) Dr. Ummer Rashid Zarger S/O Abdul  
Rashid Zarger R/O Dooru, Anantnag.

7) Dr. Nasrul Islam S/O Mohd Sultan Rather  
R/O Bandipora.

8) Dr. Imtiyaz Gul S/O Noor-ud-Din Khan R/O  
Wanigam, Pattan.

9) Gowhar Hamid Dar S/O Abdul Hamid Dar,  
R/O Kulgam.

10) Gowhar Meraj S/O Meraj-ud-Din Wani R/O  
Nowpora, Khanyar Srinagar.

11) Sayar Yaseen S/O Mohammad Yaseen  
R/O Shopian.

12) Javid Muzaffar Lone S/O Mohammad  
Muzaffar Lone R/O Handwara.

(Respondents)

A.O. dated 19/8/2014 -> G.S.M. No. F. New Bani - S. 1 Ch. 1 C. 1

in terms of  
Hon'ble Court  
Order dated  
14-8-14  
passed in  
C.M.P. No. 2561/2014  
Respondents no 5 to 18  
implicated as party  
Respondents  
19/8/2014.

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