

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

Reserved on: 09.12.2025

Pronounced on: 19.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

WP(C) No.175/2020

GHULAM RASOOL BHAT & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. Nissar Ahmad Bhat, Advocate.

Vs.

GOVERNMENT OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners, through the medium of present petition, have sought a direction upon the respondents to give effect to their regularization order dated 24.11.2017 on the analogy of similarly situated persons. A further direction commanding the respondents to give effect to the regularization order of the petitioners strictly in terms of the policy in vogue in the respondent Corporation by regularizing them after completing two years of service, has also been sought.

2) As per case of the petitioners, petitioner No.1 was engaged as Shift Engineer on consolidated basis at

Pahalgam MHP in J&K Power Development Corporation in terms of order No.PDC/30 of 2005 dated 08.06.2005. Petitioner No.2 was engaged as Shift Engineer on consolidated basis at Pahalgam MHP in terms of order No.PDC/05 of 2005 dated 27.06.2005. Similarly, petitioners No.3 and 4 came to be engaged as Shift Engineers on consolidated basis in terms of order No.PDC/31 of 2005 dated 08.06.2005. The services of the petitioners on consolidated basis were extended from time to time by the respondent Corporation.

3) It is being pleaded that as per the policy in vogue in the respondent Corporation, the petitioners were to be regularized after successful completion of two years of service. However, this benefit was not given to them. A representation was made by the petitioners to the respondents which was forwarded to respondent No.2 in terms of his communication dated 19.03.2010 but no action was taken on the said representation. It has been contended that the services of consolidated/contractual/daily rated employees, who were engaged after the petitioners, came to be regularized by the respondent Corporation leaving out the petitioners and it was only in the year 2013 that the respondent Corporation initiated the process of regularization of the petitioners in its 68th Annual meeting

held on 22.02.2013. Thereafter a notification was issued in the newspaper in which the petitioners were figuring at serial Nos.4, 5, 6 and 7 and it was notified that the petitioners have completed seven years of service on consolidated/contractual /*ad hoc* basis as on 31.12.2012. The objections were invited against the said list.

4) It has been submitted that the In-house Committee, after scrutinizing the records and other credentials of the petitioners, recommended their case for regularization and forwarded the same to the Board of Directors of the respondent Corporation in the year 2014 itself. The case of the petitioners for regularization of their services remained pending and in the meantime, in terms of order No.PDC/08 of 2016 dated 31.08.2016, the services of eight more candidates came to be regularized after completion of two years of continuous service.

5) According to the petitioners, their case for regularization of service was kept pending for unknown reasons and ultimately, the respondent Corporation in terms of order No.PDC/CJ/264 of 2017 dated 24.11.2017 accorded sanction to the regularization of their services. It has been contended that that the petitioners had completed two years of continuous service in the respondent Corporation in June, 2007 and they had completed seven

years continuous service in the year 2012 but they were regularized only on 24.11.2017 with prospective effect by denying the effect of regularization to their services from the date of completion of two/seven years of continuous service. In this regard, the petitioners are stated to have made a representation in the office of respondent No.2, who, in terms of communication dated 06.09.2018, forwarded the said representation to the Chief Engineer concerned. A recommendation was made by the Technical Officer in Chief Engineer's office in terms of letter dated 11.09.2018 in favour of the petitioners for their retrospective regularization and the Chief Engineer vide his letter dated 12.03.2019, recommended that the effect of service benefit of contractual period rendered by the petitioners may be extended in their favour. However, the said benefit was not given to the petitioners.

6) It has been contended that the petitioners have been discriminated against, inasmuch as other similarly situated employees of the respondent Corporation have been regularized after completion of two years whereas no such benefit has been extended to the petitioners. In this regard, the petitioners have made reference to order No.PDC/15 of 2009 dated 24.09.2009, whereby post-facto sanction was accorded to the appointment of some of the Junior Engineers

with effect from 19.12.2003. It has been contended that the inaction on the part of the respondents in not granting approval to the recommendations made in their favour for their retrospective regularization amounts to violation of Article 14 of the Constitution.

7) It has been contended that even as per the provisions of J&K Civil Services (Special Provisions) Act, 2010 (for short “the Act”), the petitioners were entitled to be regularized after completion of seven years of service which they had completed in the year 2012 but they were regularized with effect from 24.11.2017 thereby violating the mandate of the Act.

8) The respondents have contested the writ petition by filing their reply, wherein it has been contended that there is no policy in vogue with respect to regularization of services of contractual employees etc. upon completion of two years’ service in the Corporation, as has been claimed by the petitioners. It has been submitted that the Engineers who are being recruited through proper channel after following due procedure/selection process, initially have to serve for two years on contractual basis and on completion of two years of satisfactory work, their services are being regularised. It has been claimed that the case of the

petitioners stands on a different footing as they were engaged without any selection process and without following the due procedure for recruitment on consolidated/contractual basis, therefore, the policy of regularization of services after two years of satisfactory performance is not applicable to their case.

9) Regarding regularization of services of the persons whose services were regularized in terms of communication dated 12.04.2013, the respondents have submitted that their cases stand on a different footing and that the petitioners cannot claim parity with them. It has been claimed that those eight candidates were considered for regularization on completion of probation period in terms of the policy applicable to them. The respondents, while placing reliance upon Section 5 of the Act, have contended that the said provision does not provide for retrospective regularization of services but it clearly provides that the regularization of eligible *ad hoc*, contractual or consolidated appointees shall have effect only from the date of such regularization irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter.

10) The respondents have filed a supplementary affidavit pursuant to order dated 20.02.2023 passed by this Court, in
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which they have clarified that the petitioners were engaged as consolidated Junior Engineers for a period of 89 days in the year 2005 and thereafter their services were extended from time to time. It has been further clarified that no formal process/procedure of selection was adopted at the time of engagement of the petitioners on consolidated basis. It has been submitted that pursuant to interim order dated 20.02.2023 passed in the writ petition, the representation of the petitioners has been examined in accordance with the rules and the same has been found without any merit. In this regard, consideration order dated 28.03.2023 has been placed on record by the respondents along with the supplementary affidavit.

11) I have heard learned counsel for the parties and perused record of the case.

12) The first contention that has been raised by the petitioners is that the respondent Corporation has regularized services of similarly situated persons after completion of two years of satisfactory service on contractual basis, which benefit has been denied to the petitioners. In this regard, the petitioners have relied upon order No.PDC/08 of 2016 dated 31.08.2016 issued by the respondent Corporation, whereby eight employees have been regularized in service after completion of two years

satisfactory service on contractual basis. Reliance has also been placed on order No.PDC/15 of 2009 dated 24.09.2009, whereby four Engineers have been regularized in service with effect from 19.12.2003, the date when they completed two years of satisfactory service on contractual basis.

13) In the above context, a look at the record produced by the respondent Corporation would reveal that the employees whose services were regularized after completion of two years satisfactory performance on contractual basis were appointed after holding a proper selection process. These employees were appointed by the respondent Corporation/Government under J&K Contractual Appointment Rules, 2003, issued vide SRO 255 of 2003 dated 05.08.2003. The said Rules provide for initial appointment on contractual basis on a consolidated salary equivalent to the minimum of the pay scale of the post to which the appointees are appointed with a provision for regularization of their services after two years satisfactory completion of service. As per the record and as per the stand of the respondents, the initial appointment of the petitioners has not been made pursuant to any selection process, much less in accordance with the aforesaid Rules of 2003. Thus, the policy relating to regularization of their services after

completion of two years of satisfactory performance is not applicable to the case of the petitioners.

14) That takes us to the issue as to from which date the petitioners are entitled to be regularized in service in terms of the provisions of the Act of 2010. Admittedly, the petitioners have been given the benefit of the provisions contained in the Act and their services have been regularized in terms of order dated 24.11.2017. The effect to their regularization has been given prospectively from the date of said order. The question that falls for determination is as to whether the petitioners, who have completed seven years of continuous service on consolidated basis in the year 2012, which is a date after coming into effect of the Act, are entitled to regularization immediately upon completion of seven years' service or their services are to be regularized prospectively from the date when an order to this effect is issued by the respondents.

15) In the above context, the provisions contained in Section 5 of the Act are required to be noticed. The same read as under:

Regularization of adhoc or contractual or consolidated appointees- Notwithstanding anything to the contrary contained in any law for the time being in force or any judgment or order of any court or tribunal, the adhoc or contractual or consolidated appointees

referred to in section 3 shall be regularized on fulfilment of the following conditions, namely: -

- i. That he has been appointed against a clear vacancy of post;*
- ii. That he continues as such on appointed day;*
- iii. That he processed the requisite qualification and eligibility for the post on the date of his initial appointment on adhoc or contractual or consolidated basis as prescribed under the recruitment rules governing the services of post;*
- iv. That no disciplinary or criminal proceeding are pending against him on the appointed day; and*
- v. That he has completed seven years of service as such on the appointed day.*

Further conditions which were laid under special provision Act, 2010, envisaged as under, now scrapped by the Government of India.

- (i) Provided that the regularization of the eligible adhoc or contractual or consolidated appointees under this Act shall have effect only from the date of such regularization, irrespective of the fact that such appointees have completed more than seven years of service on the appointed date or thereafter but before such regularization;*
- (ii) Provided further that any adhoc or contractual consolidated appointee who has not completed seven-year service on the appointed day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act.*

16) A plain reading of first proviso to Section 5, quoted above, gives an impression that regularization of eligible

adhoc or contractual appointees shall have effect only from

the date of such regularization even if such appointees may have completed more than seven years of service on the appointed date or even if these appointees have completed seven years of service after the appointed date but before such regularization. The second proviso to the aforesaid provision deals with those appointees who have not completed seven years' service on the appointed date and as per this provision, such appointees shall continue till they complete seven years and thereafter they shall be entitled to regularization under the Act.

17) The aforesaid provision has fallen for interpretation before a Division Bench of this Court in the case of **Rabia Shah vs. State of J&K & Ors.**, 2017 (1) JKJ [HC] 490. In the said case, the Division Bench of this Court has, while interpreting the aforesaid provision, observed as under:

“12. A conjoint reading of the various provisions of the 2010 Act, especially the two above quoted provisos appended to Section 5 and Section 10 thereof, makes it unambiguously manifest that such appointees could be regularized only subject to the fulfillment of conditions stipulated in Section 5 and in accordance with the procedure prescribed in Section 10, and that such regularization could be made effective only from a date posterior to the appointed day. The 2010 Act did not have any retrospective application. It is specifically provided in the first proviso appended to Section 5, as quoted above, that the regularization of such appointees under the Act shall have effect only from the date of such regularization irrespective of the fact that such

appointees have completed more than seven years of service on the appointed day or thereafter, but before such regularization, meaning thereby the regularization could not be ordered from a date anterior to the appointed day. The requirement of possession and completion of seven years' service as such, as provided in Section 5(v) of the Act, is one of the conditions of eligibility, qualifying and entitling such an appointee for regularization on or after the appointed day, not anterior thereto."

18) Relying upon the aforesaid ratio laid down by the Division Bench in **Rabia Shah's** case (supra), another Division Bench of this Court has, in the case of **State of J&K & Ors. V. Ulfat Ara and Ors.** (LPASW No.39/2019 decided on 27.11.2020), observed as under:

We have carefully gone through the judgment of the Writ Court and do not find any illegality or infirmity therein. We also feel bound by the judgment rendered by the Division Bench of this Court in the case of Rabia Shah. Despite great persuasion of Mr. Chashoo, AAG, we could not persuade ourselves to give a re-look to the judgment rendered in the case of Rabia Shah nor could we find any distinctive features in the appeals in hand. It may be noteworthy that if the arguments of Mr. Chashoo based on his understanding of Section 5 were to be accepted, the first Proviso to Section 5 of the Act of 2010 would be rendered ultra vires the Constitution for it would concede arbitrary and unbridled power to the competent authority to order regularization of an eligible *ad hoc*/contractual/ consolidated appointee at its whims and on the date of its choosing. But as is well settled, there is a presumption in the Constitutionality of an Act of Legislature and the provisions thereof and the Courts are loath to declare them unconstitutional unless a cast iron case for such declaration is made out. In the case of Rabia Shah, the Division Bench acted on such presumption and interpreted

Section 5 in a manner that would save it from being assailed as unconstitutional.

19) The issue again came up for consideration before this Court in a later judgment passed by another Division Bench of this Court in the case of **Abdul Majid Magray vs. State of J&K and Ors.** (LPASW No.29/2019 decided on 18.05.2022). The Division Bench after noticing and analysing the ratio laid down by the Division Benches of this Court in the cases of **Rabia Shah** (supra) and **Ulfat Ara** (supra) and after noticing the provisions contained in Section 5 of the Act, made the following observations:

9. In view of the unequivocal language employed in the aforesaid proviso, it is implicit that the regularization has to be from the date of regularization irrespective of the person having completed 7 years of service earlier. There is no other statutory rule or provision which may provide for regularization of the services of the petitioner-appellant from some earlier date than the date of regularization. The regularization, as such, cannot be ordered from any earlier date other than the date of the regularization.

10. In the case of Mrs. Rabia Shah v. State of J&K and others (SWP No.624/2014), the controversy was simply with regard to the regularization of the services of the petitioner therein and the Court without noticing the proviso to Section 5 of the aforesaid Act held that the petitioner is entitled for regularization on completion of 7 years of service. There was no controversy before the Division Bench as to the date of regularization of the petitioner therein. The said Division Bench has not considered about the effective date of entitlement of regularisation of the petitioner therein and, as such, is not a good precedent to be followed in a case where the controversy is regarding the effective date of regularization of the candidate. Since the other decision relied upon by the learned counsel for the

petitioner-appellant is based upon the above decision of Mrs. Rabia Shah (supra), we are of the opinion that the same will also not be of any assistance to the petitioner-appellant rather while referring to the Mrs. Rabia Shah's, case it clearly mentions that the regularization of appointees under the Act shall have effect only from the date of such regularization irrespective of the fact that such appointees may have completed 7 years or more service on the appointed date or thereafter but before regularization."

20) From a perusal of the aforesaid judgments of the three different Division Benches of this Court on the issue of interpretation of Section 5 of the Act, there appears to be a conflict of opinion amongst the Division Benches, inasmuch as in the case of **Ulfat Ara** and **Rabia Shah** (supra), it appears that the Division Benches of this Court have taken a view that the regularization of an eligible *ad hoc*/contractual/ consolidated has to take effect immediately after the appointed date in a case where such appointee has completed seven years of service before the appointed date. However, in **Abdul Majid Magray's** case (supra), the Division Bench has, after noticing the ratio laid down in **Rabia Shah's** case (supra), held that the regularization cannot be from an earlier date other than the date of regularization.

21) It is pertinent to mention here that in all the three cases (supra) which have been dealt with by the Division Benches, the writ petitioners had completed seven years of service

before the appointed date. However, in the present case, the writ petitioners have, admittedly, completed seven years of service on consolidated basis after the appointed date in the year 2012. So, there is a slight difference in the facts of the present case. In fact, against the order of Division Bench passed **Ulfat Ara's** case (supra) the respondent State had gone in appeal before the Supreme Court which came to be disposed of in terms of order dated December 4, 2024 passed in SLP(Civil) No.8720 of 2021. In the said case, the Supreme Court did not interfere with the judgment in **Ulfat Ara's** case (supra) but it was clarified that if there are instances where seven years period is completed by the employee beyond the appointed date, they would be governed by second proviso to Section 5 of the Act. Thus, the Supreme Court did not express any opinion as regards a situation where an appointee has completed seven years period beyond the appointed date.

22) If we have a look at the provisions contained in second proviso to Section 5 of the Act, it clearly provides that an *adhoc* or contractual or consolidated appointee, who has not completed seven years' service on the appointed date, shall continue till completion of seven years and shall thereafter be entitled to regularization under the Act. So, once an *adhoc*, contractual or consolidated appointee completes

seven years of service after the appointed date, his right to consideration for regularization under the Act matures. It is nowhere provided in the said provision that an *ad hoc* or contractual or consolidated appointee, shall be regularized on the date when he completes seven years of service on *ad hoc*/consolidated basis. When we read this proviso in conjunction with first proviso to Section 5 of the Act, it comes to the force that there is no provision for retrospective regularization in a case where an appointee has completed seven years of service after the appointed date. The first proviso Section 5 of the Act, makes it clear that prospective regularization is applicable in the case of even those appointees who have completed more than seven years of service after the appointed date.

23) There is an apparent conflict of view expressed by the Division Benches of this Court so far as interpretation of first proviso to Section 5 of the Act is concerned. So, this Court is faced with a situation where it has to choose between two apparently conflicting views of the Division Benches of this Court. A Full Bench of the Patna High Court has, in the case of **Amar Singh Yadav v. Shanti Devi and Ors.** AIR 1987 Patna 191, held that when there are two differing judgments, then the High Court should follow that judgment which lays

down the correct law. The relevant paras of the judgment are reproduced as under:

“15. In fairness to the learned Counsel for the respondents, it must be said that the aforesaid observation indicates that there is a direct conflict on this point herein with the ratio in the Himalaya Tiles and Marble (Private) Limited, (AIR 1980 SC 1118) (supra). However, both the judgments have been rendered by a Bench consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the fore the somewhat intricate question posed at the outset, which has come to be of not infrequent occurrence, namely, when there is a direct conflict between two decisions of the Supreme Court, rendered by co-equal Benches which of them should be followed by the High Courts and the Courts below.

16. Now the contention strongly urged on behalf of the respondents that the earlier judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence, irrespective of any other consideration, because the latter one has missed notice thereof, does not commend itself to me. When judgments of the superior Courts are of co-equal Benches, and, therefore, a matching authority, then their weight inevitably must be considered by the rational and the logic thereof and not by the mere fortuitous circumstance of the time and date on which they were rendered. Equally, the fact that the subsequent judgment failed to take notice of the earlier one or any presumption that a deviation therefrom could not be intended, cannot possibly be conclusive. Vital issues, pertaining to the vital questions of the certainty and uniformity of the law, cannot be scuttled by such legal sophistry. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority exist, then both of them cannot be binding on the Courts below. A choice, however difficult it may be, has to be made in such a situation and the date cannot be the guide. However, on principle, it appears to me, that the High Court must in this context follow the judgment, which would appear to lay down the law more elaborately and accurately. The mere incidence of time, whether the judgments of co-equal Benches of the superior Court are earlier

or later, and whether the later one missed consideration of the earlier, are matters which appear to me as hardly relevant, and, in any case, not conclusive.

17. The view I am inclined to take has the support of the high authority of Jessel M. R. in *Hampton v. Holman*, (1877) 5 Ch D 183. Therein also the learned Master of the Rolls was faced with the difficult task of choosing between the two decisions of equal authority, which were directly in conflict with each other. He observed as follows : --

"Now I take it that both the cases to which I have referred are not to be reconciled with Hayes v. Hayes, (1828) 38 ER 822 at all events, they differ from it so far as to leave me at liberty now to say that Hayes v. Hayes is not sound law; indeed it appears that Sir John Leach himself was dissatisfied with his decision."

Again in *Miles v. Jarvis*, (1883) 24 Ch D 633, Kay, J., was similarly faced with two judgments of equal weight which were in conflict. He observed as follows :--

"..... The question is which of these two decisions 1 should follow, and, it seems to me that 1 ought to follow that of the Master of the Rolls as being the better in point of law."

Reference in this context may in particular be made to the celebrated case of *Young v. Bristol Aeroplane Co. Ltd.*, (1944) KB 718. Therein, in a similar context of the Court of appeal being bound by its previous decisions, it was held that it was not only entitled but indeed duty bound to decide which of the two conflicting decisions of its own will it follow in case of a clear divergence of the opinion in the earlier precedents.

18. I am not unaware that in *Govindnaik G. Kalaghatigi v. West Patent Press Company Limited*, AIR 1980 Kant 92, a narrowly divided Full Bench has taken the view, by majority of three : two, that in such a situation, the later of the two decisions should be followed. A perusal of the judgment would, however, show that, in fact, there were two questions firmly posed before the Full Bench -- firstly that where there was a conflict of two decisions of the Supreme Court of unequal Benches, which one is to be

followed and, secondly, when these decisions are of co-equal Benches, then which decision is to be followed. It seems somewhat patent that the majority view adverted to the first of the two questions alone, and, there does not appear to be any discussion whatsoever on the second question. The minority decision, however, while agreeing with the majority view on the first question, adverted to the second question and considered the matter in detail, concluding as follows : --

".....It seems to us, therefore, the High Court would be well advised to consider which of two conflicting decisions it will follow in the interest of the administration of justice and it ought to follow that which is better in point of law than in point of time."

With great respect, I am inclined to wholly agree with the aforesaid view of the minority and it bears repetition that the majority view does not seem to have even adverted to this question in essence.

20. I am not unmindful of the legal aphorism that a living authority is not to be quoted. Yet, because of the eminence, Mr. Seervai's authoritative Constitutional Law of India already achieved, it is necessary to notice his opinion in this context, in the latest edition of that work at page 2244 (Third Edn.).

"But judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and to the subordinate Courts. It is submitted that in such situations, the correct thing is to follow that judgment which appears to the Court to state the law accurately, or more accurately than the other conflicting judgment."

23. I am more than amply conscious of the difficulties of making a choice between decisions of the superior court when they are in direct conflict with each other. But, such a duty can neither be skirted nor evaded. It was rightly and forcefully pointed out by Lord Denning in Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155 that when a Judge comes up against such a truck, he is not to fold his hands and it is his duty to iron out the creases. Therefore, when such a divergence arises and the litigant's fortune depends thereon, the issue has to be frontally adjudicated upon. Obviously, in such a situation, it is not the province of the High

Court or the subordinate court to comment on the judgment of the Supreme Court, which are patently entitled to respect. Its plain duty, in the interest of justice, is to respectfully follow that which appears to it to state the law accurately or, in any case more accurately than the other conflicting judgment. The view I am inclined to take is not only fortified, but in a way derived from the Full Bench judgment in Indo Swiss Time Limited v. Umrao, AIR 1981 Punj & Har 213. It, perhaps, deserves highlighting that though on another point the learned Judges of the Full Bench differed but on this particular momentous issue there was an absolute unanimity. The subsequent Full Bench decision in Kulbhushan Kumar and Co. v. State of Punjab, AIR 1984 Punj & Har 55 is also in a way relevant and instructive.

24. To conclude on this aspect, it is held that where there is a direct conflict betwixt two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posed at the outset is rendered in these terms.

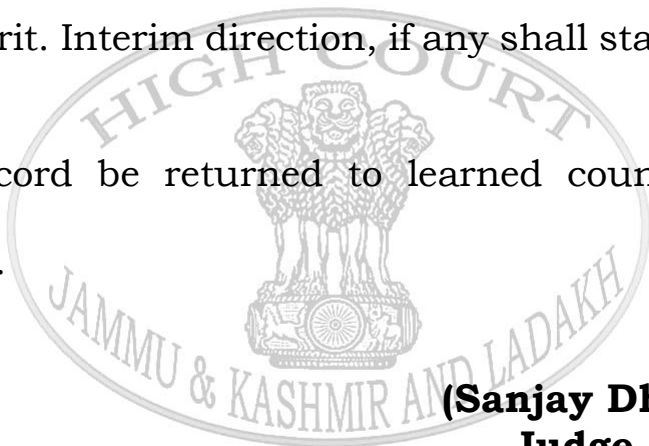
24) In view of the aforesaid position of law, this Court, while choosing between the two apparently conflicting views by Division Benches of co-equivalent strength of this Court on the question of interpretation of first proviso to Section 5 of the Act has to follow the view which appears to it more correct.

25) It appears to this Court that the view taken by the Division Bench in **Abdul Majid Magray's** case (supra) is more logical. Apart from this, the aforesaid judgment being later in point of time, having dealt with the ratio laid down in the earlier two Division Bench judgments, has to be followed. Thus, this Court with greatest respect to the views

rendered by the two Division Benches in **Ulfat Ara's** and **Rabia Shah's** case (supra) would like to follow the ratio laid down in **Abdul Majid Magray's** case (supra).

26) For what has been discussed hereinabove, the petitioners are not entitled to claim regularisation of their services either after completion of two years of service or after completion of exactly seven years of service but they are entitled to regularisation from the date sanction has been accorded by the respondents for regularization of their services. The writ petition is, therefore, dismissed being devoid of merit. Interim direction, if any shall stand vacated.

27) The record be returned to learned counsel for the respondents.



(Sanjay Dhar)
Judge

SRINAGAR

19.12.2025

“Bhat Altaf-Szeg”

Whether the Judgement is speaking:	YES
Whether the Judgement is reportable:	YES/No