

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU**

Hearing through video conferencing

**T.A. No. 61/5796/2021**

**C/w**

**T.A. No. 61/5809/2021**

**C/w**

**T.A. No. 61/5800/2021**

**Pronounced on: This the 12th day of January 2022**

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**  
**HON'BLE MR. ANAND MATHUR, MEMBER (A)**

**T.A. No. 61/5796/2021**

1. Kartar Chand, Age 58 years, S/o Sh. Chiru Ram, R/o Jandi Colony, P.O. Jandi, Tehsil Hiranagar, District Kathua.
2. K.S. Koushal Age, 56 years, S/o Sh Om Parkash, R/o Partap Singhpora, Tehsil Bishnah, District Jammu.
3. Subash Chander, Age 53 years, S/o Sh. Krishan Lal, R/o 330/2, Upper Roop Nagar, Jammu.
4. Tara Nath, Age 60 years, S/o Sh. Gulabu Ram, R/o Village Birnoo, P.O. Chowki, Jandore, Tehsil Ram Nagar, District Udhampur.
5. Kuldeep Raj Sharma, Age 53 years, S/o Sh. Shiv Ram Sharma, R/o Village Bagdal, P.O. Sohal, Tehsil Akhnoor, District Jammu.
6. Suresh Kumar, Age 55 years, S/o Sh. Asha Nand, R/o 258/3 Channi Himmat, Jammu.
7. Janak Singh, Age 60 years, S/o Sh. Chain Singh, R/o Ward No. 1 Ramneek Vihar, Tehsil and District Kathua.
8. Tejinder Singh Age 57 years, S/o Sh. Balwant Singh, R/o Mohalla Khorinar, Ward No. 6, H. No. 37/B, Tehsil Haveli, District Poonch.
9. Rita Bhagat, Age 58 years, W/o Sh. R K Bhagat, R/o 118, Sector-5, Upper Roop Nagar, Jammu.



10. Dr. Y P Kundal, Age 58 years, S/o Sh. Inder Dass, R/o Satyam Vihar,  
Trikuta Nagar Extension, Jammu.

.....Applicants

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Mr. Abhimanyu  
Sharma



**Versus**

1. State of J&K through Principal Secretary to J&K Govt., Higher Education Department, Civil Secretariat, Jammu.
2. J&K Public Service Commission, through its Secretary, Resham Ghar Colony, Jammu.
3. Yasmeen Ashai, at present Principal, Govt. Amar Singh College, Srinagar.
4. Shakeel Ahmad Raina, at present Principal, Govt. Degree College, Thanamandi, Rajouri.
5. Anil Gupta, at present Principal Govt. Degree College, Kalakot.
6. Khurshid Ahmad Khan, at present Principal Govt. Degree College, Tral.
7. Aftab Ahmad Khan, at present Principal C/o Director College, Higher Education Department, Sarwal, Jammu.
8. Geetanjali Rana, at present Dean, Research Studies, Cluster University, Jammu.
9. Raj Shree Dhar, at present Incharge Mathematical Society, MAM College, Jammu.
10. P.K. Sharma, at present Principal, Govt. Degree College, Sarh Bagga, Mahore.
11. Muzaffar Ahmad Khan, at present Principal, Islamic College of Science & Commerce, Srinagar.
12. AB Qayoom Khatai, at present Associate Professor, Department of Urdu, Govt. Degree College, Bemina.
13. Nazir Ahmad Ganie, at present Principal, Women College, Sopore.
14. Shiekh Ajaz Bashir, at present Principal, Govt. Degree College, pattan,
15. Shafqat Hussain Rafiqi, at present Principal, Govt. Degree College, Doda.
16. S.P. Sarwat, at present Principal, Govt. Degree College, Reasy.
17. Ashok Kumar, at present Principal, C/o Govt. Degree College, Samba.



18. Maqsoosa Khan, at present Dean Sciences, Cluster University, Kashmir (Srinagar).
19. G.M. Dar, at present Principal Govt. Degree College, Shopian.
20. Nazir Ahmad Sheikh, at present Principal Govt. Degree College, Urgi.
21. Javid Ahmad Qazi, at present Principal, Govt. Degree College, Rajouri.
22. Nisar Ahmad Yattoo, at present Principal, GM College, Srinagar.
23. N.K. Gupta, at present Dean of Social Science, Cluster University, Jammu.
24. Nasreen Amann, at present Dean, Cluster University, Srinagar.
25. Ravender Kumar Tikoo, at present Principal Govt. Degree College, Ramban.
26. Manzoor Ahmad Lone, at present Principal, Govt. Degree College, Khanshabib, Budgam.
27. Farooq Ahmad Peer, at present Director Academic, J&K Bose, Srinagar/Jammu.
28. Abdul Rehman Bhat, at present Associate Professor, SP College, Srinagar.
29. S.K. Mangotra, at present Principal, Govt. Degree College, Udhampur.
30. R.K. Raina, at present Principal, Govt. Degree College, Khour.
31. Kuldeep Raj Sharma, at present Principal, Govt. Degree College, Nowshera.
32. Kusum Gupta, at present Principal, Govt. Degree College, Majalta.
33. A.R. War, at present Principal, C/o Director College, Higher Education Department, Sarwal, Jammu.
34. Nasreen Malik, at present Dean, Cluster University, Kashmir, Srinagar.
35. B.B. Sharma, at present Principal, C/o Director College, Higher Education Department, Sarwal, Jammu.
36. Mushtaq Ahmad Lone, at present Principal, Govt. Degree College, Bemina.
37. Fayaz Ahmad Mir, at present Principal, C/o Director College, Higher Education Department, Sarwal, jammu.
38. Bashir Ahmad Mir, at present Principal, Govt. Degree College, Pulwama.
39. Ghulam Jeelani Qureshi, at present Incharge Principal, Govt. Degree College, Handwara.
40. Tasleem Peer, at present Member, SSRB, Jammu/Srinagar.



41. Tabasum Rafiq, at present Principal, C/o Director College, Higher Education Department, Sarwal, Jammu.
42. Nasreen Malik, at present Principal, Govt. Degree College, Sumbal.
43. Fahmido Bano, at present Principal, C/o Director College,. Higher Education Department, Sarwal, Jammu.
44. Sangeeta Nagari, at present Principal, Govt. Degree College, Sunderbani.
45. Mirza Khan, at present Principal, C/o Director College, Higher Education Department, Sarwal, jammu.
46. Shoukat Ali Bhat, at present Principal, C/o Director College, Higher Education Department, Sarwal, jammu.
47. Kulvinder Kour, at present Principal, Govt. College Women, Kathua.
48. Maheen Mustafa, at present Principal, New Women's College, Srinagar (A.S. College Campus).
49. B.A. Rather, at present Principal, Govt. Degree College, Kulgam.
50. Abdul Majid Dar, at present Principal, Govt. Degree College Womens Sopore.
51. Z.A. Hashmi, At present Controller, Cluster University, Jammu.
52. Abdul Hamid Sheikh, at present Principal, Govt. Degree College, Ganderbal.
53. M.A. Lone at present Dean Faculty of Education, Cluster University, Jammu.
54. Rohi Jan Kanth, at present Associate Professor, Women College, Srinagar.
55. Ghulam Mustafa Hakim, at present Principal Govt. Degree College, Bandipora.
56. Shaheen Altar Matoo, at present Principal, Women's College, M.A. Road, Srinagar.
57. Rafiya Rashid, at present Principal, Govt. Degree College, Budgam.
58. Yudvir Singh, at present C/o Director, RUSA Jammu.
59. G.S. Rakhwal, at present Principal Govt. Degree College, Samba.
60. Sohan lal, at present Principal, C/o Director College, Higher Education Department, Sarwal, Jammu.
61. [selection withheld for want of vigilance clearance]
62. Zaheer-ud-Din at present Principal, Govt. Degree College, Jammu.
63. G.R. Wani, at present Principal, C/o Director, College, Higher Education Department, Sarwal, Jammu.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G/Mr. F A Natnoo along with Mr. M Y Akhooon/Mr. Rahul Pant, Sr. Advocate assisted by Mr. Aniruddha Sharma for private respondents.)

Connected with

**T.A. No. 61/5809/2021**



1. Kartar Chand, Age 58 years, S/o Sh. Chiru Ram, R/o Jandi Colony, P.O. Jandi, Tehsil Hiranagar, District kathua.
2. K.S. Koushal Age, 56 years, S/o Sh Om Parkash, R/o Partap Singhpora, Tehsil Bishnah, District Jammu.
3. Subash Chander, Age 53 years, S/o Sh. Krishan Lal, R/o 330/2, Upper Roop Nagar, Jammu.
4. Tara Nath, Age 60 years, S/o Sh. Gulabu Ram, R/o Village Birnoo, P.O. Chowki, Jandrore, Tehsil Ram Nagar, District Udhampur.
5. R.K. Raina, Age 57 years, S/o Sh. Bishen Dass, R/o H. No. G-132, Durga Nagar, Sector-2, Roop Nagar, Jammu.
6. Kuldeep Raj Sharma, Age 52 years, S/o Sh. Shiv Ram Sharma, R/o Village Badgal, P.O. Sohal, Tehsil Akhnoor, District Jammu.
7. Suresh Kumar, Age 55 years, S/o Sh. Asha Nand, R/o 258/3 Channi Himmat, Jammu.
8. Z.A. Hashmi, Age 58 years, S/o. Sh. M Y Shah, R/o Ghat, P.O. Ghat, Tehsil & District Doda.
9. Janak Singh, Age 60 years, S/o Sh. Chain Singh, R/o Ward No. 1 Ramneek Vihar, Tehsil and District Kathua.
10. Tejinder Singh Age 57 years, S/o Sh. Balwant Singh, R/o Mohalla Khorinar, Ward No. 6, H. No. 37/B, Tehsil Haveli, District Poonch.
11. Dr. B B Sharma, Age 59 years, S/o Sh. Anant Ram, R/o Ward No. 3, Krishna Colony, Tehsil and District Kathua.
12. Dr. T.R. Sharma, Age 57 years, S/o Sh. Anant Ram, R/o Ward No. 3, Krishna Colony, Tehsil and District Kathua.

.....Applicants

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Mr. Abhimanyu Sharma)

**Versus**

1. State of J&K, through Commissioner/Secretary to J&K Govt. Higher Education Department, Civil Secretariat, Jammu.

2. J&K Public Service Commission, through its Secretary, Resham Ghar Colony, Jammu.

.....Respondents



(Advocate: Mr. Amit Gupta, learned A.A.G/Mr. F A Natnoo along with Mr. M Y Akhoon/Mr. Rahul Pant, Sr. Advocate assisted by Mr. Aniruddha Sharma for private respondents.)

Connected with

**T.A. No. 61/5800/2021**

1. Dr. Y.P. Kundal, Age 56 years, S/o Sh. Inder Dass, R/o Satyam Vihar, Trikuta Nagar Extension, Jammu.

.....Applicant

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Mr. Abhimanyu Sharma)

**Versus**

1. State of J&K, through Commissioner/Secretary to J&K Govt. Higher Education Department, Civil Secretariat, Jammu.
2. J&K Public Service Commission, through its Secretary, Resham Ghar Colony, Jammu.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G/Mr. F A Natnoo along with Mr. M Y Akhoon)

**(ORDER)**

**(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))**



1. T.A. No. 61/5796/2021 titled Kartar Chand v/s State of J&K, T.A. No. 61/5809/2021 titled Kartar Chand v/s State of J&K and T.A. No. 61/5800/2021 titled Dr.Y.P. Kundal v/s State of J&K involving identical disputes are being disposed of by common order.

**T.A. No. 61/5796/2021 titled Kartar Chand v/s State of J&K and Ors**

Applicants Kartar Chand and 9 other applicants seek the following reliefs:-

- “(a) allow the present writ petition;
- (b) quash Govt. Order No. 684-HE of 2017 dated 12.12.2017 whereby and whereunder, respondents No. 3 to 63 have been promoted/appointed as Principal Govt. Degree Colleges, in the pay band of Rs. 37400-6700+AGP of Rs. 10,000/-.
- (c) quash Communication No. PSC/DPC/HE-Coll/Sel/Prpl/52d/2013 dated 11.10.2017;
- (d) restrain the respondent No. 1 from giving effect to Govt. Order No. 684-HE of 2017 dated 12.12.2017.
- (e) command and direct the respondents to regularize the promotion of the petitioners as Principal Degree Colleges from their respective dates i.e., from the date, the petitioners were promoted as Principal Degree Colleges in their own pay and grade;
- (f) ANY other writ, order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.”

**T.A. No. 61/5809/2021 titled Kartar Chand v/s State of J&K and Ors**

Applicant Kartar Chand and 11 other applicants seek the following reliefs:-



- “(a) Certiorari, seeking to quash Notice No. Nil dated 11.04.2016 issued by respondent No. 2, whereby and whereunder, for filling up the Post of Principals, Govt. Degree Colleges, by promotion, the petitioners and other eligible candidates have been directed to appear for getting interviewed by J&K Public Service Commission;
- (b) Mandamus, commanding and directing the respondents No. 1 and 2 to make promotion though by selection to the post of Principals Govt. Degree Colleges, but strictly in accordance with J&K (Gazetted) Colleges Service Recruitment Rules, 2008 read with amendment carried in the aforesaid Rules, through the medium of SRO 124 dated 21.04.2014 i.e., by not conducting the interview, but by making promotion by considering the merit, suitability on the basis of the performance of the eligible candidates in the service, their APRS, ACRs as well;
- (c) Mandamus, commanding and directing the respondent No. 2 not to act upon and proceed pursuant to impugned Notice No. Nil dated 11.04.2016.
- (d) Any other writ, order or direction which this Hon’ble Court may deem fit or proper in the facts and circumstances of the case.”

**T.A. No. 61/5800/2021 titled Dr.Y.P. Kundal v/s State of J&K & ors**

Applicant Y.P. Kundal seeks the following reliefs:-

- “(a) allow the present writ petition;
- (b) quash Notice No. Nil dated 11.04.2016 issued by respondent No. 2, whereby and whereunder, for filling up the Post of Principals, Govt. Degree Colleges, by promotion, the petitioner and other eligible candidates have been directed to appear for getting interviewed by J&K Public Service Commission;





- (c) quash the criteria adopted by the PSC for selection by promotion to the post of Principal Degree Colleges, which is in sheer violation of mode of promotion to the post of Pr. Degree Colleges, provided under J&K (Gazetted) College, Service Recruitment Rules, 2008;
- (d) command and direct the respondents No. 1 and 2 to make promotion though by selection to the post of Principals Govt. Degree Colleges, but strictly in accordance with J&K (Gazetted) Colleges Service Recruitment Rules, 2008 i.e., by not conducting the interview, but by making promotion by considering the merit, suitability on the basis of the performance of the eligible candidates in the service, their APRs, ACRs as well;
- (e) command and direct the respondent No. 2 not to act upon and proceed pursuant to impugned Notice No. Nil dated 11.04.2016;
- (f) command and direct the respondents to regular/confirm the promotion of the petitioner as Principal Degree College w.e.f 22.07.2011 and to grant all consequential benefit including the arrears of salary w.e.f., 22.07.2011, increments and all other service benefits based upon such confirmation.
- (g) Any other writ, order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.”

2. Case of applicants is that they were appointed as Lecturers in Degree Colleges and in 2008, the J&K Education (Gazetted) Colleges Service Recruitment Rules, 2008 were promulgated which laid down the criteria for promotion to the post of Principal, Degree Colleges whereby the applicants became entitled to be promoted to the post of Principal. It is the further case of applicants that they were promoted as Incharge Principal on various dates.



3. The further case of applicants is that in order to make substantive promotions, 51 posts were referred to J&K PSC/DPC by the year 2012 and direction given to furnish the ACRs of persons including the applicants in the list for consideration of promotions. However, in 2013, ACRs was sought of the applicants along with persons (private respondents) who did not fulfil the promotion criteria. During this period, SRO 124 dated 21.04.2014 substituted Schedule-I and II attached to Rules of 2008 wherein besides changing the method of recruitment to post of principal also included the post of Associate Professor between Selection Grade Lecturer and Principal.
4. As per, the applicant, no DPC/PSC took place for confirmation of applicants as Principals, PSC issued notice dated 11.04.2016 for holding interviews in violation of original Schedule II of Rules of 2008 which was challenged by applicants No. 1 to 8 by filing SWP No. 789/2016 titled Kartar Chand v/s State wherein the PSC also disclosed the criteria as detailed in the T.A. for filing up the posts up to 31.03.2016. In the said SWP, order was passed by the Court that the selection process initiated by PSC's notice dated 11.04.2016 was directed not to be finalised.

5. Meanwhile, in LPA (SW) No. 159/2016 filed in the present dispute, the

Hon'ble Division Bench vide order dated 16.12.2016 observed that:

“6. The contention of the learned counsel for the applicant insofar as applicability of Rules for promotion is concerned, the said issue is no longer res integra. Admittedly the rules substituting the earlier Rules was notified on 21.04.2014, hence the vacancies which arose prior to the said date, which are being filled up by promotion shall be filled up by the procedure which was in vogue prior to the substitution of the said rules i.e., the J&K (Gazetted) Colleges Service Recruitment Rules, 2008.

7. In the decision reported in (1995) 4 SCC 246 (Vinod Kumar Sangal v. Union of India and ors) the issue regarding simultaneous selection to promotional vacancies occurring in different years came up for consideration and Hon'ble the Supreme Court, taking note of non-convening of the DPC to consider the appellant for selection against the vacancies occurring in the years preceding the last of such years directed to convene the DPC for considering the appellant in that case for selection/promotion to the post of Senior Technical Assistant (Drilling) against the vacancies which occurred in the years 1980, 1982 and 1983 separately as per the procedure in-vogue. In paragraph 9 it is held thus:-

“9. The 6 persons who were selected by the DPC in 1985 for promotion to the post of Senior Technical Assistant (Drilling) are not parties in these proceedings. Their selection cannot, therefore, be disturbed. Therefore, without disturbing the selection of the 6 officers who were selected by the DPC in 1985 for the post of Senior Technical Assistant (Drilling), the respondents are directed to convene a DPC for considering the appellant for selection for promotion to the post of Senior Technical Assistant (Drilling) against the vacancies which occurred in the years 1980, 1982 and 1983, The said DPC shall consider the appellant for such selection for the vacancies for each of these years separately as per the Office Memorandum dated December 24, 1980. In





case the appellant is selected for such promotion against any of these vacancies, the reversion of the appellant made by order dated February 18, 1985 would stand revoked and he would be regularly promoted on the post of Senior Technical Assistant (Drilling) with all consequential benefits with effect from the date when 6 persons who were selected by the DPC in 1985 were so promoted on the post of Senior Technical Assistant (Drilling). In case the appellant is not selected by the DPC for any of the vacancies, his reversion under order dated February 18, 1985 would remain undisturbed. The DPC should be convened within a period of four months.”

In the decision reported in (2010) 4 SCC 290 (Union of India and anr v. Hemraj Singh Chauhan and ors) the delay in considering promotion due to inaction in finalizing the cadre review came up for consideration before the Hon’ble the Supreme Court and in paragraph nos. 35 to 38 it is held thus:-

“35.The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

37. In The Manager, Government Branch Press and Another Vs. D.B. Belliappa, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is “fairness founded on reason” (See para 24 page 486).



38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.”

The Regulation framed for giving promotion was applied prospectively as the Government delayed the exercise of statutory function. In paragraph 48 it is further held thus:-

“The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.”

In the decision reported in (2014) 1 SCC 144 (State of Rajasthan v. Uchhab Lal Chhanwal), a question arose as to the applicability of Circular issued on 26.07.2006 for considering promotion of the years 1996-97 before Hon'ble the Supreme Court and it was held that the said Circular cannot be applied to the vacancies which arose in the year 1996-97.

8. It is relevant to be noted at this juncture that the Higher Education Department, Government of Jammu and Kashmir, initiated the process of filing up the vacancies of College Principals through Public Service Commission and the Nodal Principals, A.S College Srinagar and G.G.M. Science College Jammu were requested to furnish the APRs complete in all respects for last three years in respect of In-Charge Principals/

Associate professors of 195 persons by communication dated 13.11.2013. Thus, it is evident that process of selection of Principals was commenced by the Government from the said date and Rules, which were in vogue at that time alone can be applied in terms of the judgment of Hon'ble the Supreme Court reported in (1998) 9 SCC 223 (B.L. Gupta v. M.C.D.).

9. Hence we are of the view that Public Service Commission shall proceed with the selection of principals by promotion to such of those vacancies, which arose prior to 2.104.2014 after getting vacancy position from respondent No. 1- Higher Education Department as per the procedure in-vogue prior to 21.04.2014 and the vacancies which arose after 21.04.2014 are to be filled up by following the procedure contemplated under SRO 124 dated 21.04.2014. The writ petitioners can also participate for selection/promotion subject to their right in the writ petitioners seeking regularization, which can be considered at the time of final hearing of the case. The interim order granted by the Writ Court stands vacated.”

6. So, as per, the judgment in the LPA (SW) No. 159/2016, direction was given by the Hon'ble High Court that vacancies prior to amended Schedule II were to be filled up, as per, unamended Schedule II of 2008 and the post becoming vacant after the amendment as per the amended Schedule.
7. The applicants contend that a review application was filed by PSC and other seeking review of the order dated 16.12.2016 in LPA (SW) No. 159/2016 and during the pendency of the review applications, respondent No. 1 passed the impugned order No. 684-HE of 2017 dated



12.12.2017 whereby the posts of Principals have been filled up on the basis of criteria adopted by the PSC in accordance with SRO 124 of 2014 dated 21.04.2014. Applicants amongst other reliefs seeks quashing of the impugned order.



8. The respondents filed counter affidavit opposing the TA. On merits, it is stated that the method of recruitment rules, as per, the unamended as well as amended rules is same being by way of selection from the eligible candidates. It is also stated that the provisions of law which are in force as on the date of the meeting of PSC would become applicable and the contention of the applicants cannot be accepted.
9. We have heard learned counsel for the applicants and learned AAG and learned counsels for private respondents and gone through the materials on record.
10. The question that arises for consideration in this TA is whether the impugned order has been passed, as per, directions of the Hon'ble High Court in LPA (SW) No. 159/2016 (supra) i.e. the promotion of the applicants to a higher post is to be governed by the unamended schedule II of Rules of 2008 or the amended schedule II in 2014.



11. It is not in dispute that the applicants acquired eligibility to be promoted to a higher post of Principal before amended schedule II in 2014. The method of recruitment as per SRO 423 of 2008 and the amendment issued vide SRO 124 of 2014 reads as under:

SRO 423 of 2008	SRO 124 of 2014
By selection through DPC/PSC from Class II, Category A on the basis of integrity, merit and suitability from amongst persons have at least ten years service in that category.	By selection through PSC/DPC from Class II Category (A) from amongst persons having at least 15 years of teaching experience in Colleges out of which at least three years must be as Associate Professor. Provided that the number of candidates to be considered shall not ordinarily exceed five times the number of posts.

12. The respondents have taken the view that since the cases of the applicants were considered at a time when the amended schedule II of 2014 was in force, the conditions contained therein were applied.

13. However, the judgment in LPA No. 159/2016 (supra) and the judgment of the Hon'ble Supreme Court in Y.V. Rangaiah vs J. Sreenivasa Rao,(1983) 3 SCC 284 becomes relevant. After discussing the matter at



length, their Lordships in case of Y.V. Rangaiah (supra) observed as  
under:-



“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

14. From this, it becomes evident that if an employee has acquired eligibility under the existing rules, he cannot be subjected to any disadvantage or loss, on account of change of rules thereafter. The same situation obtains in this case also.

15. Looking to the arguments of the learned counsel for the parties and the materials placed on record, it is clear that the PSC/DPC was to be held for the vacancies occurring prior to coming into force SRO 124 of

2014, as per the unamended Schedule II of Rules of 2008 which laid down the minimum qualification as well as method of recruitment. The method of recruitment as per unamended Schedule II was by selection through DPC/PSC from Class II, Category A on the basis of integrity, merit and suitability from amongst persons have at least ten years service in that category.



16. If we look to the impugned order, it has changed the method of recruitment as given in the Schedule II to the post of Principal as laying down the criteria as 'By selection through DPC/PSC from Class II, Category-A (i.e. Lecturer Selection grade)' but does not mention the criteria of at least 10 years service and made the same as basis for filling up of the post of Principal by promotions in violation of the order of the Hon'ble High Court in LPA (SW) No. 159/2016 (supra). This also gives substance to the submission of the applicants that the averment in the paragraphs No. 13 and 16 of the T.A. that in the list of candidates having 10 years of service as on 03.04.2012, many candidates including private respondents who had not completed 10 years of service as Selection Grade Lecturers in the year 2011 and 2012 were included and which too has not been specifically denied by the

respondents in their counter affidavits. We also note the averment in the impugned order that “candidates figuring in the select list fulfil conditions as laid down in SRO 423 based on the revised eligibility list provided by the Higher Education Department”. If the list was to be as per unamended Schedule II to the Rules of 2008, there was no necessity to file a revised eligibility list by the Higher Education Department which also tells heavily against the correctness of the impugned order.



17. Another averment in the impugned order deserves to be noticed. It reads as ‘The candidates figuring in the list are eligible for selection to the post of Principal both in terms of SRO 423 of 2008 as well as SRO 124 of 2014’. How the applicants could be having teaching experience of atleast three years in college as Associate Professor is another factor which throws doubt on the correctness of the procedure adopted by the respondents while passing the impugned order directing promotions. The method of recruitment in amended and unamended Schedule II is different and, on this ground, also, the impugned order deserves to be set aside.
18. Learned counsel for applicants placing reliance on J&K Civil Services (Reference of vacancies and holding of meetings of Departmental

Promotion Committees), Rules, 2005 and Suraj Parkash Gupta v/s State of Jammu, AIR 2000 SC 2386 contended that no yearly DPC was held in the year when the applicants became eligible for being considered for promotion to the post of principal and the DPC/PSC that met in 2016/2017 was required to prepare a year wise panel of selected candidates in respect of each of the years/periods for which no DPC was held. The aforesaid requirement, according to learned counsel, was necessary to prevent prejudice to the applicants who were eligible for selection on earlier dates when the DPC should have been convened. Yet, many persons who were not so eligible and who would not have come within the zone of consideration had the DPC met regularly were considered by the DPC which held its deliberations in 2016/2017. Learned counsel has contended that preparation of a year wise panel, to prevent prejudice to candidates (applicants) who had become eligible on dates when the DPC was required to be convened but was not convened, is mandatory. In the present case, the aforesaid mandatory requirement of law was not adhered to by the respondents who, instead, clubbed all the vacancies together for consideration by the DPC which met in 2016/2017 and therefore, the recommendations of the DPC/PSC



culminating in the impugned order and the consequential promotions of the private respondent are wholly illegal.



19. We refer to J&K Civil Services (Reference of vacancies and holding of meetings of Departmental Promotion Committees), Rules, 2005 (hereinafter referred to as 'Rules of 2005'). Rule 2 (2) and Rule 3 of Rules of 2005 reads as under:-

“Rule 2: Reference of vacancies

xx

xx

xx

2 (2): The Departments shall refer vacancies in the promotion quota to Public Service Commission and Departmental Promotion Committees, as the case may be, at least twice a year preferably in the months of January and July and also take necessary steps for having the meetings convened.

Rule 3: Annual Status Reports

(1) The Administrative Departments shall submit Annual Status Report to the General Administrative Department by 31<sup>st</sup> of January every year reflecting therein the number of status of the vacancies/posts referred for direct recruitment/promotion to the Public Service Commission/Services Selection Board/other Recruiting Committees/Departmental Promotion Committees.

(2) The Annual Status Report shall in particular indicate the date of reference as well as the time taken for making selection/recommendation.”

20. As per the procedure prescribed by the Rules of 2005, the departments are to refer the vacancies and preparation of the panel of candidates for consideration by the PSC/DPC at least twice a year preferably in January and July to fill up the clear vacancies by promotion is

necessary. The intention of framers of Rules of 2005 is clear that the Government should estimate the regular vacancies twice in a year and that the DPC should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is clear that the Departments should keep the panel of vacancies ready in advance so that the same may be filled up soon from amongst the approved candidates whose names appear in the panel. It would also be seen that DPCs/PSC are required to be convened twice a year to fill up the vacancies likely to arise in the year for being filled up.



21. It is settled position that the State formulates and notifies Statutory Rules to comply with the mandate contained in Articles 14 & 16 of the Constitution of India. One such requirement being meting out fair and similar treatment to the similarly circumstanced persons. Unamended Rules of 2008 have fixed the criteria for appointing the Selection Grade Lecturers by way of promotion to the posts of Principal, Government Degree Colleges. The respondents are under statutory obligation to follow the mandate of the rules aforementioned in making appointments byway of promotion on the posts of Principal, Government Degree Colleges. Although the Lecturers would constitute



a class in themselves, yet while considering their claim for being promoted on next higher posts, the respondents have to adhere to the statutory rules and from amongst the class of Lecturers, only those lecturers are to be considered, who are eligible in terms of the unamended Rules of 2008 so, that they cannot be grouped with the ineligible candidates, for, that will be doing violation to the constitutional guarantees contained in articles 14 & 16 of the Constitution of India, in as much as, the ineligible and eligible candidates cannot be grouped together and considered for being given uniform treatment. So, the position is clear that in cases where there has been delay in holding DPCs/PSCs for a year or more, vacancies should be indicated year wise separately and taken for consideration separately on yearly basis by the DPCs/PSCs.

22. In Syed Khalid Rizvi v. Union of India, 1993 Supp 3 SCC 575 the mandatory duty of the preparation of the select list of the officers for promotion to the All India Services has been indicated in para 35 of the judgment at p. 605 by the Hon'ble Apex Court thus:

“We, therefore, hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee

officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction.”



23. We may refer to Union of India v. N.R Banerjee, 1997 (9) SCC 287 wherein the Hon’ble Apex Court held that:

“11. It would thus be seen that the claims of the candidates eligible have to be considered for promotion objectively and dispassionately, with a sense of achieving manifold purpose — (1) affording an opportunity to the incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within the zone of consideration for promotion to a higher post or office; and (4) ensuring that the Committee regularly meets and considers their claim objectively, impartially with a high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. They are salutary principles and form the purpose and the policy behind the above rules and the Government should follow them.”

“If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith.”

24. We also refer to Union of India v. Vipinchandra Hiralal Shah, 1996 (6) SCC 721 wherein the Hon’ble Apex Court held thus:

“11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from



amongst the State Civil Service officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year.”



25. The respondents are therefore duty bound to follow the mandate contained in the unamended Rules of 2008 as well as the judgment of Hon'ble Apex Court in S.P. Gupta v/s State of J&K, AIR 2000 SC 2386 and Hon'ble High Court in LPA (SW) No. 159/2016 (supra) as well as recast paragraph No. 7 of Government Order No. 743-GAD of 2007 dated 28.06.2007. The available vacancies are to be referred to the DPC which is to be convened twice a year. It appears that the rules have been notified to avoid stagnation of the employees also to ensure that the public interest does not suffer because of non-manning of the available public posts. The respondents are, thus, under obligation to accomplish the purpose enshrined in the Rules of 2005.

:: 26 : T.A No. 61/5796/2021 and other  
connected matters



26. In view of the facts and circumstances of the case, the T.As are disposed of whereby impugned order No. 684-HE of 2017 dated 12.12.2017 is quashed and set aside and official-Respondents are directed that the eligible candidates including the applicants be considered in accordance with the mandate contained in the unamended Rules of 2008 for being appointed by way of promotion to the posts of Principal, Government Degree Colleges and the respondents will also consider claim of the petitioners for regularisation of their services on the posts of Principal from the date they are officiating on the said posts in accordance with the rules and settled law. In undertaking the exercise, the respondents are directed to comply with the mandate contained in Sub Rule (2) of Rule 2 of the J&K Civil Services (Reference of Vacancies and Holding of Meetings of Departmental Promotion Committee) Rules, 2005 as well as the judgment of Hon'ble Apex Court in S.P. Gupta v/s State of J&K, AIR 2000 SC 2386 and Hon'ble High Court in LPA (SW) No. 159/2016 (supra) as well as recast paragraph No. 7 of Government Order No. 743-GAD of 2007 dated 28.06.2007. The exercise in this behalf shall be completed within a period of four months from the date of receipt of certified copy of this order. No order as to costs.

**(ANAND MATHUR)**  
**MEMBER (A)**

**(RAKESH SAGAR JAIN)**  
**MEMBER (J)**

*Arun*