



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
JAMMU**

LPA 70/2022

Reserved on: 15.07.2026
Pronounced on: 11.08.2026
Uploaded on: 11.08.2026

Whether the operative part of full
judgment is pronounced: Full

UT of Jammu and Kashmir through
Commissioner Secretary to Government,
Forest Ecology Department.

Appellant

Vs.

Neeru Pandita

...Respondent(s)

Through: - Ms Meenakshi Salathia Adv. for
appellant.
Mr. P.N. Bhat Sr. Advocate for respondent.

CORAM: **HON'BLE THE CHIEF JUSTICE (ACTING)**
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

Chief Justice (A)

PREFACE:

1 The present Full Bench has been constituted pursuant to an order of reference dated 11.09.2024 made by a Division Bench of this Court noticing a conflict of opinion between two judgments rendered by Coordinate Benches of equal strength regarding the interpretation and effect of Section 5 of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 (hereinafter referred to as “the Act of 2010”), particularly the 1st proviso appended thereto.



2 In LPASW No.29/2019 titled “Abdul Majid Magray v. State of J&K and others” decided on 18.05.2022, a Division Bench of this Court has held that regularization of eligible ad hoc, contractual or consolidated appointees would take effect only from the date of actual regularization and not from any earlier date, even if such appointees have completed seven years of service earlier. However, an earlier Division Bench in “**Rabia Shah v. State of Jammu & Kashmir and others**”, reported as 2017 (I) JKJ 490 (HC), while considering Section 5 read with Section 10 of the Act of 2010, has held that once an employee fulfills the statutory conditions for regularization, he/she becomes entitled to regularization from the date on which eligibility is acquired and the authorities are required to complete the process within the prescribed time.

3 With a view to saving the provision from being rendered *ultra vires* the Constitution, the Division Bench of this Court in *Rabia Shah's* case (supra) has, by resort to Section 10 in conjunction with Section 5 of the Act of 2010, held that regularization shall take effect 150 days after the right to regularization has accrued.

4 Since both the judgments were rendered by Coordinate Benches of equal strength and expressed conflicting views on the issue, the matter has been referred to this Larger Bench for authoritative determination.

QUESTIONS:

5 In the present reference, the following questions arise for determination:

- (i) Whether the proviso 1 of Section 5 of the Act of 2010 confers unfettered and unbridled power on the Government to pass order of regularization of an ad hoc, contractual or consolidated



appointee having completed 07 years of service on the appointed date or thereafter and whether reservation of such unfettered and unbridled power in the executive by a statutory provision is *ultra vires* the Constitution.

(ii) Whether the provisions of Section 10 can be read into Section 5 of the Act of 2010 to hold that the Government is under an obligation to complete the entire exercise culminating in the passing of an order of regularization in respect of an eligible ad hoc, contractual or consolidated appointee within 150 days from the appointed day and, therefore, the effective date for regularization would be 150 days after acquiring the eligibility for regularization.

(iii) Which of the two judgments, namely **Abdul Majid Magray's case** or **Rabia Shah's case**, lays down the correct position of law?

STATUTORY PROVISIONS:

5 In view of the controversy involved, the provisions contained in Section 5 and 10 of the Act are required to be noticed:

“5.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 possessed 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. her conditions which were laid under special provision Act, 2010, envisaged as under, now scrapped by the Government of India:

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;

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.

10. Empowered Committee.-(1) There shall be an Empowered Committee consisting of-

- (i) Administrative Secretary: Finance Department
- (ii) Administrative Secretary, General Administration Department-Member
- (iii) Administrative Secretary of the concerned Department-Member
- (iv) Director General, Accounts and Treasuries-Member
- (v) Director, Codes, Finance Department-Member Secretary;

(2) The Department shall within sixty days from the commencement of this Act, refer all the cases of ad hoc or contractual or consolidated appointees eligible for regularization under section 5 to the Member Secretary for being placed before the Empowered Committee for scrutiny and verification with regard to their entitlement to regularization under this Act.

(2-A) The Empowered Committee shall not entertain any case of ad hoc or contractual or consolidated appointee after the expiry of period specified in the sub-section (2)

(3). The Empowered Committee shall examine such cases and notify the names of such ad hoc/contractual/consolidated employees who have been found eligible for regularization under said section 5 in respect of each Department within fifteen days period for filing of objections before the Committee.

(4) The Empowered Committee shall thereafter examine the complainants, if any, received and make appropriate recommendation (s) to the concerned administrative department with regard to regularization in respect of each case on fulfillment of the conditions specified under section 5 or rejection of the case.

(5) The concerned Administrative Department shall issue orders of regularization after seeking the approval of the Chief Minister through the Chief Secretary. in coordination.

**EARLIER JUDGMENTS:**

6 Before we advert to the issue in controversy, it would be appropriate to briefly notice hereinafter the views expressed on the issue by various Single Benches as well as Division Benches of this Court.

(I) Rabia Shah v. State of Jammu and Kashmir and others, (SWP No. 624 of 2014, decided on 19.05.2015:

7 In the said case, the petitioner, Rabia Shah, filed a writ petition seeking regularization of her services under the provisions of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 with effect from 23.06.2006, i.e., the date on which she had completed seven years of service. The writ petition was allowed by a Division Bench of this Court vide an order and judgment dated 19.05.2015. The erstwhile State of Jammu and Kashmir sought review of the aforesaid judgment on the ground that the direction to regularize the services of Rabia Shah with effect from 23.06.2006 was antithetic to the express provisions contained in Section 5 of the Act of 2010, which empowered the Government to regularize the services of ad hoc, contractual and consolidated appointees. While considering the review petition, the Division Bench proceeded to determine whether the petitioner would be entitled to regularization only from a date posterior to the commencement of the Act of 2010 and not from any date anterior thereto and, if so, from which date. The Division Bench examined the issue in the light of Sections 5 and 10 of the Act of 2010 and concluded that appointees like Rabia Shah could be regularized only upon fulfilment of the conditions stipulated in Section 5 and in accordance with the procedure prescribed under Section 10 of the Act. It was further held that such regularization could be made effective only from a date posterior to the appointed day, as the Act of



2010 did not have any retrospective application. The Court held that the first proviso to Section 5 specifically provides that the regularization of such appointees shall take effect only from the date of regularization irrespective of the fact that they had completed more than seven years of service on the appointed day or thereafter, but before such regularization. The Court, therefore, opined that regularization could not be granted from a date anterior to the appointed day. Responding to the contention of Rabia Shah that, she having been found to have completed the prescribed seven years of service much before the appointed day and fulfilled the conditions stipulated in Section 5 of the Act, its provisions could not be read in a manner so as to confer an unbridled discretion on the Government to order regularization as and when it wished, at its whims and caprice, the Division Bench found the answer in Section 10 of the Act, which had laid down a timeline for completion of the process of regularization of eligible employees. Accordingly, it was held that employees who had completed seven years or more of service on the appointed day were entitled to regularization from a date atleast *150 days posterior to the appointed day*. With these observations, the earlier judgment dated 19.05.2015 was recalled in review and Rabia Shah was held entitled to regularization with effect from a date 150 days after the appointed day. This view thereafter came to be followed by several Single as well as Division Benches of this Court.

(II) State of Jammu and Kashmir v. Afaq Rasool Gadda and another (LPASW No. 118/2017, decided on 04.08.2017)

8 In this case also, the actual date from which the regularization under the Act of 2010 was to operate became the subject matter of debate.



The State contended that, in view of the clear provisions of Section 5, the regularization shall operate prospectively from the date of issuance of the order of regularization, whereas it was the contention of the respondents, Afaq Rasool and another, that they were entitled to regularization retrospectively with effect from the date they completed seven years of ad hoc service, even if such date was prior to the appointed day. The Division Bench placed reliance upon **Rabia Shah**' case (supra) and held that the regularization of the respondents, Afaq Rasool and another, shall take effect from a date *150 days posterior to the appointed day*.

(III) Ghulam Hassan Ganai v. State of J&K and others, (SWP No. 1970/2015, decided on 11.10.2017)

9 In this petition, the petitioner, claiming to have completed seven years of continuous service much before the appointed day, i.e., November, 2006, had sought a direction to the State to regularize his services retrospectively with effect from November, 2006 or, at least, within a period of 150 days posterior to the appointed day under the Act of 2010, which is 28.04.2010. The petitioner had also laid a challenge to the *vires* of the Act of 2010 to the extent it provided for regularization prospectively irrespective of the completion of seven years of service as a consolidated employee much earlier. A learned Single Bench of this Court disposed of the petition by placing reliance upon the judgment in **Rabia Shah's case** (supra) and held the writ petitioner entitled to regularization with effect from a date *150 days posterior to the appointed day*.



(IV) State of J&K and others v. Ulfat Ara and others (LPASW No. 39/2019 c/w connected appeals, decided on 27.11.2020)

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10 The view taken by the Division Bench in **Rabia Shah's** case (supra) was approved, and the Letters Patent Appeals challenging the judgments of the writ Court passed on the basis of the law laid down in **Rabia Shah's** case were dismissed. Paragraph 11 of the judgment is noteworthy and is, therefore, set out below:

"11) 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 c/w 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. Para 12 of the judgment in Rabia Shah's case deserves to be noticed at this stage and the same reads thus:

"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."

(V) Dr. Muneeb Iqbal v. Union Territory of Jammu and Kashmir and others (WP(C) No. 551/2021, decided on 10.02.2025

11 In this case, the Division Bench had the advantage of the judgment rendered by the Supreme Court in **SLP(C) No. 8720/2021 titled 'State of Jammu and Kashmir and others v. Mohd. Syed Parray and others**, wherein the Supreme Court, after adverting to the provisions of the Act of 2010, particularly Section 5 thereof, held that ad hoc, contractual or consolidated appointees having completed seven years of continuous service as such on the appointed day were entitled to be regularized only with effect from the appointed day and not from any date anterior thereto. Clearing the air around the first proviso to Section 5, the Division Bench, in paragraph 12, held thus:

"12. In view of clear interpretation of Proviso Ist made by the Hon'ble Supreme Court, it is no more debatable as to whether an eligible ad hoc, contractual or consolidated appointee who has completed seven years or more service on the appointed date, is to be regularized with effect from the appointed date or from the date a formal order of his regularization is passed"

There was, however, no discussion or interpretation made in respect of the second proviso. The judgment made a slight departure from the earlier position settled in **Rabia Shah's** case (supra) that an eligible ad hoc, contractual or consolidated appointee, having completed seven years or more of service on the appointed day, shall be entitled to be regularized with effect



from a date **150 days posterior to the appointed day**. The Division Bench was, however, of the view that an eligible ad hoc, contractual or consolidated employee, having completed seven years or more of service on the appointed day, had an accrued right of regularization from such date and, therefore, his regularization could not be postponed by 150 days, which was merely a procedural requirement to complete the exercise of regularization.

(V). Abdul Majid Magray v. State of Jammu and Kashmir and others (LPASW No. 29/2019, decided on 18.05.2022)

12 In this case, a Division Bench of this Court, for the first time, took a view contrary to the one taken in **Rabia Shah's** case (supra) and consistently followed by different Division Benches and Single Benches of this Court. The Division Bench interpreted the provisions of Section 5, particularly the first proviso thereof, literally and came to the conclusion that regularization of eligible ad hoc, contractual or consolidated appointees under the Act shall take effect only from the date of regularization, irrespective of the fact that the appointees may have completed more than seven years of service on the appointed day or thereafter but before such regularization. The Division Bench did not rely upon **Rabia Shah** on the ground that the controversy before the Division Bench in **Rabia Shah** was only with regard to regularization of services of the petitioner therein, and the Division Bench, without noticing the proviso to Section 5 of the Act, had held her entitled to regularization on completion of seven years of service. It was opined that there was no controversy before the Division Bench hearing **Rabia Shah** as to the date from which the regularization could be made. The Division Bench thus concluded that since the Division Bench had not considered the effective



date of entitlement of regularization of the petitioner therein, the judgment did not lay down good law to be followed as a precedent with regard to the effective date of regularization under the Act of 2010.

13 What was held by the Division Bench in *Abdul Majid Magrey's case (supra)* is summed up in paragraphs 9 and 10 of the judgment, which, for facility of reference, are set out below:

“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 regularization 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 Rabia Shah's case (*supra*) 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.



(VI). Ghulam Rasool Bhat and others vs State and others (WP(C) No. 175/2020, decided on 19.12.2025)

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14 In this matter, the learned Single Judge noticed the two conflicting views given by two different Benches of co-equal strength, one rendered in *Rabia Shah's case* and the other rendered in *Abdul Majid Magrey's case (supra)*. Relying upon various judgments of the Supreme Court, the learned Single Judge followed the view taken by the Division Bench in *Abdul Majid Magre's case* on the ground that the said judgment was more logical and was also later in point of time. Having dealt with the ratio laid down in the earlier two Division Bench judgments, the learned Single Judge thus held that the regularization of eligible ad hoc, contractual or consolidated appointees shall take effect from the date sanction is accorded by the competent authority for regularization of their services.

DISCUSSION & ANALYSIS:

15 Noticing the cleavage of judicial opinion on the issue, which primarily touches upon the true interpretation and effect of Section 5 of the Act of 2010, a Division Bench of this Court thought it appropriate to resolve the conflict by authoritative determination by the Full Bench.

16 We have heard learned counsel for the parties, carefully gone through the different provisions of the Act of 2010, particularly the provisions of Sections 5 and 10 thereof, as also the views on the point expressed by different Single Benches and Division Benches of this Court.

17 It is an undeniable fact that successive Governments in the erstwhile State of Jammu and Kashmir had been consistently indulging in backdoor appointments. Thousands of appointments to Government service



were made without issuing advertisement notifications and without conducting any selection process. The men in power picked up persons of their choice and appointed them against different posts by giving them different nomenclatures. Some were appointed as daily wagers, some as casual workers and some as contractual employees. There were persons engaged against substantive vacant posts on ad hoc and consolidated basis as well. These persons, who were brought into Government service on temporary basis through backdoor means, were later conferred legitimacy by regularizing their services. One such policy decision to regularize en masse the daily-rated workers was taken in the year 1994 when the Jammu and Kashmir Regularization of Daily Rated Workers/Work Charged Employees Regularization Rules, 1994 were promulgated vide SRO 64 of 1994 dated 24.03.1994. This was followed by Government Order No. 1220-GAD of 1989 dated 11.09.1989, which laid the foundation for regularization of thousands of backdoor appointees working on ad hoc basis against clear vacancies, both Gazetted and Non-Gazetted. Thereafter, Government Order No. 1285-GAD of 2001 dated 06.11.2001 came to be issued, further extending the process of regularization of such appointees. These were, of course, policy decisions of the Government. However, for the first time in the year 2010, the Jammu and Kashmir State Legislature enacted the Act of 2010 with a view to providing for regularization of employees appointed on ad hoc, contractual or consolidated basis. As per Section 2(c), the date of commencement of the Act, i.e., 28.04.2010, was declared as the appointed day for the purpose of giving effect to the various provisions of the Act of 2010. Section 3 of the Act deals with the application of the Act, whereas



Section 4 provides for exclusion of various vacancies held by ad hoc, contractual or consolidated appointees, who had acquired eligibility for regularization under the Act, from the purview of recruitment agencies. Section 5 is vital and lies at the core of the controversy raised in the present matter. Section 5 contains a non obstante clause and, therefore, has an overriding effect over any law for the time being in force or any judgment or order of any Court or Tribunal. It provides that an ad hoc, contractual or consolidated appointee shall be regularised on fulfilment of five prescribed conditions.

18 It is, thus, evident that if a person is working in Government service on ad hoc, contractual or consolidated basis, he shall be regularised upon fulfilment of certain conditions, including the condition that he has completed seven years of service as such on the appointed day. The proviso, which has been understood by different Division Benches in different manners, lays down that the regularization of an eligible ad hoc, contractual or consolidated appointee shall have effect only from the date of **such regularization**. The expression "such regularization" is of paramount importance and refers to the regularization provided in the main provision of Section 5. The main provision of Section 5 clearly provides that an ad hoc, contractual or consolidated appointee shall be regularized **upon** fulfillment of the five conditions enumerated therein, meaning thereby that if such employee has completed seven years of service on the appointed day and fulfils other eligibility conditions, he would be entitled to regularization forthwith. Viewed thus, an ad hoc, contractual or consolidated appointee acquires the right of regularization on the appointed day itself, provided he



has by that time completed seven years of service and meets the other prescribed eligibility requirements. It does not matter whether a formal order of his regularization is passed on the appointed day or subsequently after undertaking the procedure laid down in Section 10 of the Act of 2010. It needs no emphasis that Section 10 is procedural in nature and lays down a detailed procedure for processing cases of regularization of employees covered by the Act of 2010 before the Empowered Committee. A clear timeline has been prescribed in Section 10 to avoid unnecessary delay in conferring the benefit of regularization envisaged under the Act of 2010. The timeline prescribed is not mandatory in nature and may be overstepped in appropriate cases. We say so because although Section 10 uses the expression "shall" throughout, it does not prescribe any consequence for failure to adhere to the timeline provided therein.

19 We are, therefore, of the clear opinion that the timeline prescribed in Section 10, i.e., 150 days prescribed for completing the process of regularization, has nothing to do with the effective date from which a candidate is entitled to be regularized. As already stated, the main provision of Section 5 confers upon an ad hoc, contractual or consolidated appointee the right of regularization immediately upon fulfillment of the five conditions laid down therein. The first proviso has been added to the main Section only to make it unambiguous and unequivocal that the eligible ad hoc, contractual or consolidated appointees shall be given effect of regularization only from the date of such regularization, i.e., regularization envisaged under the main Section, irrespective of the fact that such appointee may have completed more than seven years of service on the appointed day. In other words, all



eligible ad hoc, contractual or consolidated appointees having seven years or more than seven years of service as such on the appointed day shall be treated on a par and shall be deemed to have fulfilled the requirement of completion of seven years of service on the appointed day. To make it more clear, there may be persons who have completed 10 years, 15 years or 20 years of ad hoc service and there may be some who have just completed seven years of ad hoc service on the appointed day, yet all of them shall be regularised with effect from the appointed day. It is with a view to avoid confusion on this aspect that the first proviso was added. It is true that in the last line of the proviso, the expression "or thereafter" has been used, but we are convinced that the expression "or thereafter" has been unnecessarily used and does not convey any meaning.

20. As per the principles of statutory interpretation, the doctrine of surplusage indicates that Courts presume that the Legislature does not use unnecessary words. Yet, in exceptional cases, words may be treated as surplusage or read down if giving them their literal meaning would defeat the object of the statute or lead to an absurd result. The doctrine of reading down could also be applied if the literal meaning given to a word or expression renders the entire provision *ultra vires* the Constitution. The expression "or thereafter" is not referable to the cases of regularization of those employees who complete seven years of service after the appointed date. The first proviso, which carries the expression "or thereafter", is more explanatory than an exception to the main provision of Section 5 of the Act of 2010. The regularization of employees completing seven years after the appointed date is dealt with by the second proviso. It is, therefore, totally inappropriate to



read the first proviso into the second proviso. As a matter of fact, both are provisos to the main Section and not to each other.

21. If we interpret the provision literally, as has been done by the Division Bench in *Abdul Majid Magray's case*, it would mean that the effective date of regularization of an eligible ad hoc, contractual or consolidated appointee shall not be definite but shall depend upon the whims and caprice of the Government. And that would render the provision *ultra vires* the Constitution, inasmuch as it would be left to the choice of the Government to regularize persons from a date of its choosing, thereby creating discrimination between similarly situated employees. A person whose case is cleared within 150 days would be regularized earlier than a person whose case takes years to be cleared by the Empowered Committee, and such delay could occur for various reasons not attributable to the employee. Such an interpretation would not only result in discrimination between similarly situated persons but would also suffer from the vice of arbitrariness. It is a well-established rule of statutory interpretation that when a literal reading leads to absurdity, anomaly, inconsistency or manifest injustice, the Court may adopt a purposive construction to correct it. A similar view has been taken by the Division Bench in *Rabia Shah*, wherein the *vires* of proviso is sought to be saved by importing the concept of 150 days from Section 10 of the Act. We, however, look at the issue from a slightly different angle. When we reconcile the first proviso with the main provision, we clearly find that the right of regularization accrues to an eligible ad hoc, contractual or consolidated appointee immediately upon



fulfilment of the prescribed five conditions, and the process of regularization followed by a formal order of regularization may take some time.

22 At this stage of discussion, we also need to take note of the second proviso to Section 5, which provides that an ad hoc, contractual or consolidated appointee who has not completed seven years of service on the appointed day shall be allowed to continue till he completes seven years of service and **thereafter** shall be entitled to regularization under the Act. This proviso has been put at the end of Section 5. The expression which has been totally misunderstood and misinterpreted, i.e., "appointed day or thereafter", used in the first proviso, has nothing to do with the second proviso. The second proviso also makes it abundantly clear that an ad hoc, contractual or consolidated appointee who may not have completed seven years of service on the appointed day may complete the requisite period in subsequent year(s), and he too shall be entitled to regularization immediately upon completion of seven years. There is thus no question of postponement of the effective date of regularization depending upon when the competent authority passes a formal order of regularization. The date on which the right of regularization is acquired is different from the date on which a formal order of regularization is passed by the competent authority. The date of acquisition of the right of regularization is statutory in character and does not depend upon the choice or discretion of the authority, whereas the latter depends upon the choice, convenience and even the whims of the authority designated to pass the order of regularization.

23 In view of the above discussion, we answer the questions referred to this Full Bench as under:



(i) The first proviso to Section 5 of the Act of 2010 does not give the Government an unfettered power to decide the date of regularization of an eligible ad hoc, contractual or consolidated appointee. It has to be read together with the main provision of Section 5 and cannot be interpreted to mean that the Government is free to choose any date of regularization at its own discretion.

(ii) Section 10 is only procedural in nature. It lays down the procedure and the time-frame for processing cases of regularization. However, the period of 150 days cannot be read into Section 5 for deciding the effective date of regularization. The right to regularization arises as soon as an employee fulfils all the conditions prescribed under Section 5 and cannot not be postponed till the expiry of 150 days.

(iii) Accordingly, neither *Abdul Majid Magray* nor *Rabia Shah* states the correct legal position in its entirety. Judgment in *Abdul Majid Magray's* case is overruled to the extent it holds that regularization takes effect only from the date on which the formal order of regularization is issued. Judgment in *Rabia Shah* is approved insofar as it holds that the Government cannot postpone regularization at its own will and that the right to regularization accrues on fulfillment of the statutory conditions. However, it is overruled to the extent it holds that regularization becomes effective only after the expiry of 150 days by reading Section 10 into Section 5.

24 The reference is answered accordingly. The matter be placed before the appropriate Division Bench for disposal in accordance with the law laid down in this judgment. The Judgment shall have prospective effect and shall apply to pending and future cases. The cases already settled or finally disposed of shall not be reopened.

(MOHD. YOUSUF WANI)
JUDGE

(SANJAY DHAR)
JUDGE

(SANJEEV KUMAR)
CHIEF JUSTICE(A)

Jammu
11.08.2026
Sanjeev

Whether the order is speaking:
Whether the order is reportable:

Yes
Yes