

The Jammu and Kashmir Civil Services (Special Provisions) Act, 2010

JAMMU & KASHMIR

India

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Act 14 of 2010

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The Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 Act No. 14 of 2010 [Received the assent of Governor on 28th April, 2010 and published in the Government Gazette dated 29th April, 2010.] An Act to provide for regularization of the employees appointed on ad hoc, contractual or consolidated basis. Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows

1. Short title and commencement.

(1) This Act may be called the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010. (2) It shall come into force from the date of its publication in the Government Gazette.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "Act" means the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 ; (b) "ad hoc appointee" means a person who has been appointed on ad hoc basis against any post under the Government ; (c) "appointed day" means the date of commencement of this Act ; (d) "competent authority" means the authority having power to make appointment on ad hoc or contractual or consolidated basis under rules governing the service or post ; (e) "consolidated appointee" means a person who has been appointed against any post under the Government on consolidated monthly salary/wages ; (f) "contractual appointee" means a person who has been appointed on contract basis against any post under the Government ; (g) "Empowered Committee" means the Empowered Committee constituted under sub-section (1) of section 10 ; (h) "Government" means the Government of Jammu and Kashmir ; (i) "post" means a post borne on the establishment of any Department of the Government ; (j) "recruiting agency" shall mean the Public Service Commission and Service Selection Board and shall include any other authority

empowered to make selection for appointment to any post or service under the Government ;(k)"regularized employee" means a person whose services are regularized under section 5 ; and(l)"rules" mean the rules regulating the appointment to any post or service under the Government.

3. Application of the Act.

- The provisions of this Act shall apply to such posts under the Government as are held by any person having been appointed on ad hoc or contractual basis including those appointed on consolidated pay provided that such appointments have been made against the clear vacancies, but shall not apply to : -(a)persons appointed in terms of Government Order No. 125-GAD of 2001 dated 01-02-2001, on contract basis in the personal sections of the Ministers or other authorities enjoying the status of a Minister ;(b)persons appointed on tenure posts co-terminus with the life of the Project or Scheme of the State or Central Government, as the case may be, and those appointed on academic arrangement for a fixed term in any Government Department ;(c)non-governmental agencies or autonomous bodies or public sector undertakings or corporations or government companies or societies or other local authorities which have their own rules and regulations governing their functioning ; and(d)part-time or seasonal employees including those whose wages are paid from out of the local funds or contingent grants.

4. Exclusion from the purview of recruiting agencies.

- Notwithstanding anything to the contrary contained in any other law for the time being in force, the posts referred to under section 3 shall be, and shall always be, deemed to have been excluded from the purview of the recruiting agencies.

5. Regularization of ad hoc 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 ad hoc or contractual or consolidated appointees referred to in section 3 shall be regularized on fulfillment of the following conditions, namely :
-(i)that he has been appointed against a clear vacancy or post ;(ii)that he continues as such on the appointed day ;(iii)that he possessed the requisite qualification and eligibility for the post on the date of his initial appointment on ad hoc or contractual or consolidated basis as prescribed under the recruitment rules governing the service or post ;(iv)that no disciplinary or criminal proceedings are pending against him on the appointed day ; and(v)that he has completed seven years of service as such on the appointed day :Provided that the regularization of the eligible ad hoc 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 ad hoc or contractual or consolidated appointee who has not completed seven years service on the appointed day shall continue as such till completion of seven years and shall thereafter be entitled to regularization under this Act.

6. Relaxation in upper age limit.

(1)The upper age limit as prescribed under rules, for entry into Government service shall be relaxed, in case the ad hoc or contractual or consolidated appointee is otherwise eligible for regularization under this Act ; provided such appointee has crossed the age limit at the time of his regularization but was within the prescribed age for appointment into the Government service at the time of his initial appointment as such or his age was relaxed by the competent authority at the time of his initial appointment(2)The ad hoc or contractual or consolidated appointee shall be treated as an in-service candidate so far as the upper age limit is concerned for direct recruitment to Government service ; provided his ad hoc or contractual or consolidated service is subsisting on the date of issue of the advertisement notification by the recruiting agency.

7. Fixation of pay.

- Every regularized employee shall from the date of his regularization be entitled to fixation of pay in the time scale of pay applicable to the post against which he is regularized.

8. Test or training.

- Wherever any test or training is prescribed as a qualification for declaration of completion of probation in a service, the regularized employee shall pass such test or undergo such training within one year from the appointed day, failing which his annual increments shall be stopped and if he fails to pass such test or undergo such training even by the end of the fourth year from the date of his regularization, his services shall be terminated.

9. Seniority.

- The seniority of the regularized employees shall be determined with reference to the date of their regularization :Provided that the inter se seniority of the regularized employees shall be determined with reference to the date of their initial appointment on ad hoc or contractual or consolidated basis, as the case may be, subject to the merit/select list, if any :Provided further that if the date of initial appointment on ad hoc or contractual or consolidated basis of two or more employees is same, then an employee older in age shall rank senior to an employee younger in age subject to merit/select list, if any.

10. Empowered Committee.

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

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| (i) Administrative Secretary, Finance Department | : Convener |
| (ii) Administrative Secretary, General AdministrationDepartment | : 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 [upto 31st January, 2011] [Substituted 'sixty days from the commencement of this Act' by Act No. VII of 2011, dated 9.4.2011.], 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.(2A)[The Empowered Committee shall not entertain any case of ad hoc, contractual or consolidated appointee after the expiry of period specified in the sub-section (2)] [Inserted by Act No. VII of 2011, dated 9.4.2011.](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.

11. Appeal.

(1)Any person aggrieved of the recommendation(s) made by the Empowered Committee under sub-section (4) of section 10 on account of being left out may prefer an appeal within 30 days from the date of recommendation by Empowered Committee before the Chief Secretary or any other officer nominated by him.(2)The appellate authority may, after hearing the appellant and after seeking comments from the Empowered Committee, pass appropriate orders in this behalf which shall be final and conclusive.

12. Penalty.

- In case any officer or official fabricates or forges any document to give undue advantage to any person in the matter of regularization or aids and abets any person to secure any fabricated or forged document to claim regularization under this Act, he shall be liable to disciplinary proceedings and the salary drawn by such regularized employee shall be recoverable from such defaulting officer or official as arrears of land revenue.

13. Creation of additional posts.

- Additional posts of equal number as are required for regularization and continuation of ad hoc or contractual or consolidated appointees may be created if the posts are not available in the Department when the regular appointments on the basis of the recommendations of recruiting agencies, to which the posts held by the ad hoc or contractual or consolidated appointees have been referred for making selection, are made against such posts and the additional posts so created shall

cease to exist once posts become available in the concerned Department of the Government :Provided that no additional posts shall be created without prior concurrence of the Finance Department.

14. Restriction on further ad hoc or contractual or consolidated appointments.

(1)With effect from the commencement of this Act, no appointment shall be made by any department against any post on ad hoc or contractual or consolidated or temporary basis and all the vacant posts shall be filled up strictly in accordance with the rules governing the recruitment to the respective services or posts.(2)Where any appointment is made by any officer in contravention to the provisions of sub-section (1), he shall be liable to disciplinary action under rules and the salary drawn by such appointee shall be recoverable from the defaulting officer as arrears of land revenue.

15. Repeal.

- The Jammu and Kashmir Contractual Appointment Rules, 2003 are hereby repealed.