

कार्यालय प्रमुख अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग,
जल भवन बाणगंगा भोपाल

क्रमांक 1669 / प्र.अ. / विधि / लो.स्वा.यां.वि. / 2024 भोपाल, दिनांक 21/02/2024

प्रति,

1. मुख्य अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र भोपाल / (वि. / यां.) भोपाल /
इंदौर / जबलपुर / ग्वालियर
2. समस्त अधीक्षण यंत्री,
लोक स्वास्थ्य यांत्रिकी विभाग
मंडल.....
3. समस्त कार्यपालन यंत्री,
लोक स्वास्थ्य यांत्रिकी विभाग
खंड / मैकेनिकल खंड.....

विषय:- दैनिक वेतन भोगी कर्मचारियों द्वारा सेवानिवृत्ति उपरांत पेंशन प्राप्ति हेतु एवं कार्यभारित / नियमित कर्मचारियों द्वारा सेवानिवृत्ति उपरांत दैनिक वेतन भोगी सेवाओं को पेंशन प्रयोजन के लिए कुल सेवा अवधि में जोड़ने हेतु, दायर किये जा रहे न्यायालयीन प्रकरणों में प्रभावी प्रतिरक्षण सुनिश्चित करने हेतु आवश्यक निर्देश जारी करने विषयक ।

संदर्भ:- इस कार्यालय का पत्र क्रमांक 1134 दिनांक 05.02.2024, पत्र क्रमांक 15657 दिनांक 15.12.2023, पत्र क्रमांक 15961 दिनांक 21.12.2023 एवं पत्र क्रमांक 15962 दिनांक 22.12.2023

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कृपया संदर्भित पत्रों का अवलोकन करने का कष्ट करें जिनके माध्यम से दैनिक वेतन भोगी कर्मचारियों द्वारा सेवानिवृत्ति उपरांत पेंशन प्राप्ति हेतु एवं कार्यभारित / नियमित कर्मचारियों द्वारा सेवानिवृत्ति उपरांत दैनिक वेतन भोगी सेवाओं को पेंशन प्रयोजन के लिए कुल सेवा अवधि में जोड़ने हेतु, दायर किये जा रहे न्यायालयीन प्रकरणों में प्रभावी प्रतिरक्षण सुनिश्चित करने हेतु आवश्यक निर्देश जारी किये गये हैं तथा इस संबंध में आपको माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा पारित महत्वपूर्ण निर्णय उनके सार सहित सूचित किये गये हैं ।

20.2.2024

इसी अनुक्रम में इस कार्यालय के संज्ञान में माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा पारित कुछ अन्य निर्णय आये हैं, जिनमें निम्नानुसार अभिनिर्धारित किया गया है :-

क्र०	माननीय न्यायालय का निर्णय	निर्णय सार
1.	माननीय उच्चतम न्यायालय द्वारा सिविल अपील क्रमांक 505-531/2020 (परमेश्वर नंदा आदि बनाम झारखंड राज्य) में पारित निर्णय दिनांक 07 फरवरी 2020	यदि किसी कर्मचारी को नवनियुक्त की तरह बिना वेतन एवं वरिष्ठता संरक्षण के नियमित सेवा में संविलियन किया जाता है, तो वह अपनी पुरानी सेवाओं को पेंशन प्रयोजन के लिये गिने जाने का पात्र नहीं होगा। विभाग में सभी दैनिक वेतन भोगी कर्मचारियों का कार्यभारित/नियमित सेवाओं में संविलियन इसी प्रक्रिया द्वारा किया जाता है ऐसी स्थिति में विभाग के ऐसे कार्यभारित कर्मचारी/नियमित कर्मचारी अपनी दैनिक वेतन भोगी सेवाओं को पेंशन प्रयोजन हेतु गिनने का दावा नहीं कर सकते हैं।
2.	माननीय उच्च न्यायालय जबलपुर द्वारा रिट अपील क्रमांक 226/2018 (म.प्र.शासन एवं अन्य बनाम इसरत मोहम्मद) में पारित निर्णय दिनांक 06.03.2019	दैनिक वेतन भोगी कर्मचारी को पेंशन पात्रता नहीं आती है।
3.	माननीय उच्चतम न्यायालय जबलपुर द्वारा रिट पिटीशन क्रमांक 29982/2023 (अशोक कुमार शर्मा बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 19.12.2023	दैनिक वेतन भोगी कर्मचारी को पेंशन पात्रता नहीं आती है।

आपको निर्देशित किया जाता है कि आप अपने परिक्षेत्र/मंडल/खंड के अधीनस्थ भविष्य में दायर होने वाले/विचाराधीन इस प्रकृति के प्रकरणों में ऊपर उल्लेखित न्यायदृष्टांतों का प्रयोग प्रतिरक्षण हेतु आवश्यक रूप से करें तथा इन निर्णयों को अनिवार्य रूप से शासकीय अधिवक्ता के संज्ञान में लावे।

कृपया ध्यान दें कि यदि प्रतिरक्षण में लापरवाही की वजह से इस कार्यालय के संज्ञान में कोई बाध्यकारी निर्णय आता है तो संबंधित प्रभारी अधिकारी/नियंत्रणकर्ता अधिकारी का उत्तरदायित्व का निर्धारण करते हुए, उनके विरुद्ध अनुशासनात्मक कार्यवाही की जावेगी।



प्रमुख अभियंता

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 505-531 OF 2020
(ARISING OUT OF SLP (CIVIL) NOS. 27922-27948 OF 2017)**

PARMESHWAR NANDA ETC.

.....APPELLANT(S)

VERSUS

THE STATE OF JHARKHAND THROUGH CHIEF
SECRETARY & ORS. ETC.

.....RESPONDENT(S)

W I T H

**CIVIL APPEAL NOS. 532-542 OF 2020
(ARISING OUT OF SLP (CIVIL) NOS. 32135-32145 OF 2017)**

**CIVIL APPEAL NO. 543 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 852 OF 2018)**

**CIVIL APPEAL NO. 544 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 4380 OF 2019)**

A N D

**CIVIL APPEAL NOS. 545-546 OF 2020
(ARISING OUT OF SLP (CIVIL) NOS. 4698-4699 OF 2019)**

J U D G M E N T

HEMANT GUPTA, J.

Civil Appeal Nos. 505-531 of 2020

Civil Appeal Nos. 532-542 of 2020

Civil Appeal Nos. 543 of 2020

A N D

Civil Appeal Nos. 545-546 of 2020

1. The present appeals are directed against an order passed by the Full Bench of High Court of Jharkhand on 16th June, 2017 wherein it has been held that the services rendered by the appellants under the Adult Education and Non-Formal Education Project¹ cannot be counted under a Government scheme for the purpose of pensionary benefits after the appellants were appointed by the State.
2. Briefly, the facts are that the appellants were appointed under the Project, co-sponsored by the Central Government and the State Government, in the erstwhile undivided State of Bihar between the period 1978 to 1990. Some of the appellants were appointed as Adult Education Supervisors whereas other appellants were appointed in the ministerial cadre such as Stenographer, Clerk cum Accountant, Clerk cum Typist, Peon as well as Drivers. The appellants were working under the Project during the bifurcation of the State and their services fell in the successor State of Jharkhand which was formed on 15th November, 2000. The Government of India vide policy decision dated 1st April, 2001 closed the Project. The Government of Jharkhand, consequent to the bifurcation of State of Bihar, declared the employees to be surplus w.e.f. 16th May, 2001.

1 for short, 'Project'

3. The Government of Jharkhand issued a notification dated 30th May, 2007 for absorption of the employees engaged in the Project in the Departments of Food, Public Distribution and Consumer Affairs, Finance, Social Welfare, Women and Child Development, Urban Development etc. on different posts, in their respective prescribed scales of pay. A perusal of the said notification shows that there were 756 employees who were declared as surplus and were to be absorbed by the State. It appears that most of the surplus employees were absorbed in different scales of pay vide letter of appointments starting from 24th July, 2007 except those who had attained the age of superannuation or had died prior to such absorption.
4. As per Clauses 11 and 12 of the notification dated 30th May, 2007, the surplus employees absorbed were to be treated as new appointments and the services rendered by them prior to their declaration as surplus i.e. prior to 15th May, 2001, would not be counted for the purpose of their seniority and pay protection. Clauses 11 and 12 of the notification read as under:
 - "11. The adjustment of surplus personnels will be considered new appointment and being surplus on the basis of prior service, they will not be benefitted of seniority.
 12. These surplus personnels will not be benefitted by pay protection."
5. 59 writ petitions came to be filed claiming pensionary benefits and seniority before the High Court. The matter was placed before the

Full Bench in view of the divergence of opinions of the two Division Benches of the Jharkhand High Court in ***State of Jharkhand & Ors. v. Bhubneshwar Mahto***² and ***State of Jharkhand & Ors. v. Bimal Kumar Sinha***³.

6. LPA No. 515 of 2004 was preferred by the State against the order of the learned Single Bench passed on 21st November, 2003. The writ petitioner was directed to be paid salary for the period 16th May, 2001 to 31st July, 2001 i.e. the date of his retirement. The writ petitioner was ordered to be treated as a regular employee of the State, having been appointed on 10th December, 1968, much before the Project started in the year 1978. LPA No. 188 of 2004 was preferred by the State against the order of the learned Single Bench. In the appeal, it was held that the writ petitioner therein was appointed under the Project which was abolished on the specific condition that past service rendered by him will not be taken into account. Such writ petitions were categorized into three groups by the Full Bench. The first group of petitions were from those employees who had retired after being declared surplus w.e.f. 16th May, 2001 but before they were absorbed pursuant to the notification dated 30th May, 2007. In this category, some of the writ petitioners were legal heirs of those employees who had died during this period before being absorbed. The second group of petitions were from those employees who were declared surplus but were absorbed by the Government of Jharkhand vide

² LPA No. 515 of 2004

³ LPA No. 188 of 2004

notification dated 30th May, 2007 and had retired thereafter. The third group of petitions were from those employees who were working on the date of filing of the writ petitions, after being absorbed by the Government of Jharkhand vide the aforementioned notification. The employees in writ petitions comprising of Categories I and II claim pensionary benefits whereas the writ petitions filed in Category III claim seniority by taking into consideration their past services rendered under the Project resulting into payment of pension after attaining the age of superannuation.

7. The common challenge in all the writ petitions were to clauses 11 and 12, as reproduced above. It was the stand of the writ petitioners that they are being treated as fresh appointees and their past service has not been counted for the purposes of seniority or fixation of their initial salary.
8. The High Court in the impugned order referred to Jharkhand Pension Rules to hold that the following three conditions are required to be satisfied before the service can be treated to be pensionable service-
 - (i) Service must be under Government.
 - (ii) Employment must be substantive and permanent.
 - (iii) Service must be paid by Government.
9. Rule 59 provides that the State Government can declare any specific kind of service rendered in a non-gazetted capacity to qualify for pension even though either or both of conditions (1) and

(2) are not fulfilled. The High Court held that no declaration of the State Government in general terms has been made nor any direction in individual cases issued in favour of any such petitioners.

10. Before this Court, learned counsel for the appellants referred to Circular issued by the State Government under Rule 59 of Bihar Pension Rules, 1950 which would be applicable in the State of Jharkhand after its bifurcation in terms of State Reorganization Act.

The Circular dated 12th August 1969 reads thus:

"Regarding: - Declaration of a temporary service of a Government Servant who is not confirmed as pensionable.

Under the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under Rule 59 of the Bihar Pension Rules.

2. There are a large number of temporary Government servants employed under different Schemes which are in existence for the last 15-20 years and it will cause hardship to them if they are not allowed pension after their retirement.

3. The State Government after careful consideration have, therefore, been pleased to decide that if the service of the temporary or officiating government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.

4. These orders will be applicable to government servants retiring on or after 12 August, 1969."

11. The argument is that the issue relating to arrears of salary for the period 16th May, 2001 till the date of the absorption of the

employees under notification dated 30th May, 2007 stands concluded by an order passed by this Court in ***State of Jharkhand & Ors. v. Asgar Ali & Ors.***⁴, therefore, the appellants are entitled to consequential benefits of pension.

12. On the other hand, the argument of learned counsel for the respondents is that the said Circular was not referred to by the appellants before the High Court and rightly so, as such Circular is not applicable to the employees engaged under Central Government sponsored project. Still further, it is the temporary or officiating service of a Government servant which is to be considered as pensionable under Rule 59 of the Rules. Since the employees engaged under the Project were not discharging duties as temporary or officiating Government servants, therefore, such Circular will not be applicable to them. It is, thus, argued that the view of the Full Bench of the Jharkhand High Court does not warrant any interference in the present appeals.
13. Before we consider the respective arguments of the learned counsel for the parties, some of the statutory provisions of Jharkhand Pension Rules are required to be reproduced:

"Rule 31:- Permanent post means a post carrying a definite rate of pay and sanctioned without limit of time.

Rule 38:- Substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the Provincial government under rule 26(a)(iii) to which a government servant is entitled on account of a

⁴ Special Leave to Appeal (Civil) CC Nos. 10361-10364 of 2014 decided on 18th July, 2014.

post to which he has been appointed substantively or by reasons of his substantive position in a cadre.

Rule 40:- Temporary post means a post carrying a definite rate of pay and sanctioned for a limited time.

CHAPTER III GENERAL PROVISIONS RELATING TO GRANT OF PENSION SECTION-1-GENERAL

Rule 58:- The service of Government servant does not qualify for pension unless it conforms to the following three conditions:-

First-The service must be under Government.

Second-The employment must be substantive and permanent.

Third-The service must be paid by Government.

Rule 59:- The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled-

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.

Rule 60:- The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants exclude from pension by this rule;

- (1) Employees of a municipality,
- (2) Employees of grant-in-aid schools and institutions.
- (3) Service on an establishment paid from the household allowance of the Governor or from his contract establishment allowance.

Rule 61:- Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

Rule 74:- Services which satisfied the conditions

prescribed in sub-sections (2) and (3) qualifies, or does not qualify, according to the source from which it is paid; with reference to this rule, service is classified as follows:-

- (a) Paid from the general revenues.
- (b) Paid from local funds.
- (c) Paid from funds in respect to which the Government hold the position of trustee.
- (d) Paid by fees levied by law, or under the authority of the Govt. or by commission.
- (e) Paid by the grant, in accordance with law and custom, of a tenure in land, or of a source of income, or right to collect money.

Rule 103:- An interruption in the service of a Government servant entails forfeiture of his past service, except in the following case:-

- (a) Authorised leave of absence.
- (b) Unauthorized absence in continuation of authorized leave of absence so long as the post of the absentee is not substantively filled; if his post is substantively filled, the past service of the absentee is forfeited.
- (c) Suspension, where it is immediately followed by reinstatement whether to the same or to a different post, or where the Government servant dies or is permitted to retire or is retired while under suspension.
- (d) Abolition of the post or loss of appointment owing to reduction of establishment.
- (e) Transfer or non-qualifying service in an establishment under Government Control. The transfer must be made by a competent authority; a Government servant who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.
- (f) Time occupied in transit from one appointment to another provided that the Government servant is transferred under the orders of competent authority, or, if he is a non-gazetted Government servant with the consent of the head of his old office."

14. Before this Court, 3 writ petitioners are in appeal falling in category I, 18 falling in category II and 6 falling in category III.
15. In the order under appeal, the claim of the employees for pension

was declined for the reason that no declaration within the meaning of Rule 59(1) in general terms has been made nor any direction in individual cases issued in their favour. The High Court relied upon judgment of this Court reported as ***Dhyan Singh & Ors. v. State of Haryana & Ors.***⁵. The High Court also held that judgment of Single Bench of Patna High Court in ***Baliram Singh & Ors. v. State of Bihar & Ors.***⁶ is *per incuriam*. The High Court concluded as under:

"The foregoing discussion therefore makes it clear that past services of these petitioners/employees were under the centrally sponsored scheme known as Adult Education/Non-formal Education/Mass Education Project which was abolished w.e.f. 1.4.2001 by the Central Government and consequently w.e.f. 15.5.2001 by the Government of Jharkhand. Appointment of these petitioners/employees under such a scheme/project therefore, cannot be treated as under regular establishment of the Government on a permanent and substantive post. Moreover, their pay and allowances were borne by the grant-in-aid released by the Central Government from time to time. That is the reason why their services were treated as surplus once the Central Government closed the scheme w.e.f. 1.4.2001. Petitioners have failed to controvert the aforesaid position on facts."

16. The judgment in ***Baliram Singh*** has attained finality with the judgment of this Court reported as ***State of Bihar & Ors. v. Baliram Singh & Ors.***⁷. In the aforesaid case, the policy decision of absorbing the writ petitioners appointed under the Project contained a clause that the candidates will be treated as fresh appointments and that the earlier services rendered by them shall

5 (2002) 10 SCC 656

6 2016 SCC OnLine Pat 9958

7 (2018) 18 SCC 46

be calculated for their pension. The writ petitioners before the Patna High Court claimed back wages from the date of their termination till the date they were absorbed. This Court declined the claim of back wages. The Court held as under:

"18. In the present case, however, the respondents have neither challenged the termination order after closure of the Non-Formal Education Scheme with effect from 1-4-2001 nor the policy dated 20-5-2005 under which they have been appointed or the appointment letter dated 16-3-2007. Even the appointment letter dated 16-3-2007 unambiguously predicates that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more. Indisputably, the respondents acted upon such terms and conditions of appointment without any demurrer. They chose to file the subject writ petition only in the year 2013, when the cause of action first arose on 1-4-2001, then on 20-5-2005 and once again, on 16-3-2007. Unless the respondents are to be reinstated in their previous post (held prior to 1-4-2001), the question of awarding back wages would not arise at all. The relief of back wages is and can be linked only to the order of reinstatement. It cannot be awarded in isolation or, for that matter, during the period when the respondents were not in employment at all."

17. The case of **Dhyan Singh** was in respect of appointments under the Project in the State of Haryana. The services of the employees were discharged upon abolishing of the aforementioned Project. The employees invoked the writ jurisdiction of the court claiming fixation of their salary by taking past service and for pension. This Court declined such claim and held as under:

".....The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when money for the same is

provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed."

18. In the present case, Clause 11 of the notification dated 30th May, 2007 issued by Government of Jharkhand is to the effect that absorption of the surplus personnel will be considered as new appointments and they will not be granted benefit of seniority on the basis of their past service. Neither will such past service entitle them to such pay protection. One of the appointment letters appointing 65 candidates as Project Officers was issued on 20th December, 2007. Such appointment letter had following clauses which read as under:

"4. Adjusted employees shall be covered under the old Pension Scheme. Their service period prior to retrenchment shall be counted for the purpose of pension. Period of retrenchment shall not be counted for the purpose of pension.

5. Adjustment of above surplus Project Officers shall be considered as fresh appointment and benefit of seniority on the basis their service rendered prior to becoming surplus shall not be admissible to them."

The appointment letters to the other employees is on similar lines.

19. The argument of the learned counsel for the appellants is that the policy decision of the State, vide notification dated 30th May, 2007

only denies them the benefit of seniority or pay protection but not of their past service being counted towards pensionary benefits. It is contended that in terms of Rule 59 of the Rules, the State Government has declared that the services rendered by a temporary Government servant employed under different schemes would be entitled to pension after the completion of 15 years of service.

20. The entire case is based upon Rule 59 of the Rules and the Circular dated 12th August, 1969 of the erstwhile State of Bihar. We do not find any merit in the arguments raised by the learned counsel for the appellants. Rule 59 of the Rules empowers the State Government to declare any specified kind of service rendered by one in a non-gazetted service to qualify for pension, provided, that the salary is paid from the general revenue. Rule 58 of the Rules contemplates the conditions that are required to be satisfied for services to be pensionable. Herein, as it has been reiterated before, first condition is that the service must be under the Government; second, that it must be substantive and permanent; and third, that it must be paid by the Government.
21. The appellants were appointed under a specific Scheme i.e. the Project. Such project was not a permanent establishment of the Government as it was meant for a specific purpose funded by the Central Government for a specified period. The appointment of the appellants under the Project is not a part of any cadre of the State

Government. Therefore, the first condition of Rule 58 that the service rendered must be under the State Government is not satisfied by the appellants having been appointed under the Project. The second condition that employment must be substantive and permanent is again not satisfied by the appellants as the employment of the appellants was under the Project. A permanent post in terms of Rule 31 of the Rules means a post carrying a definite rate of pay and that is sanctioned without a time limit. The appointment of the appellants under the project was not in a pay scale nor was it sanctioned without a time limit. Further, substantive pay is defined in Rule 38 of the Rules as a person who is appointed in a cadre. At best, the appellants satisfied only the third condition i.e. that they were paid by the Government.

22. If the first and second conditions mentioned in Rule 58 of the Rules are not satisfied, the State Government can declare any specified kind of service rendered in a non-gazetted capacity to qualify for pension. The Circular dated 12th August, 1969 deals with pensionary benefits to a temporary Government servant. The appellants were never appointed by the Government either on a temporary or on permanent basis. The appellants were engaged under the Project i.e. a scheme, therefore, the benefit of such a Circular cannot be claimed by the appellants. Still further, sub-rule (1) of Rule 59 of the Rules empowers the State to declare any specific kind of service to qualify for pension. The notification for absorption circulated on 30th May, 2007 and the subsequent letter

of appointments do not contain any condition that the services rendered by the appellants under the Project shall qualify for pension. The policy decision contemplates that it is a fresh appointment and no benefit either of seniority or pay protection shall be given. The appellants have not disputed such condition of appointment having been appointed under such policy decision vide the notification dated 30th May, 2007. The Circular has not granted pensionary benefits. In the absence of any specific condition in the Circular to grant pensionary benefits, it is not possible to read that pensionary benefits are to be granted to the erstwhile employees of the Project. The appellants cannot turn around to say that the services rendered by them under the Project shall be counted for pension. The Circular dated 12th August, 1969 is not even remotely applicable to the employees appointed under the Project as the very nature of the appointment was for a specific purpose and not for an unlimited period of time.

23. The case of **Baliram Singh** arises out of the policy of the State of Bihar wherein the past service has been specifically ordered to be considered for pension. Since in the State of Jharkhand, the policy decision is to treat them as fresh appointments without any benefit of seniority and pay protection, therefore, to count the period when the appellants were working under a Project as pensionable service is beyond comprehension. The appellants have been appointed as fresh candidates and, therefore, their period of service for pension has to be calculated from the date of their regular appointment and

therefore they cannot get any benefit of past service rendered by them.

24. Learned counsel for the appellants have referred to an order passed by this Court in **Asgar Ali & Ors. v. State of Jharkhand & Ors.**⁸ wherein the direction of the High Court for payment of arrears was not interfered with. It is contended that since the appellants have been paid salary for the period prior to their regular appointment, the appellants would be entitled to pension as well.
25. The Single Bench of the Jharkhand High Court in a judgment reported as **Asgar Ali** dealt with a prayer for absorption and for payment of arrears of salary from 16th May, 2001, i.e. when the employees were rendered as surplus, till January, 2008, i.e. the date of their absorption, in Writ Petition No.729 of 2004. The learned Single Bench vide order dated 4th January, 2010, directed the state for the payment of salary for the reason that the services of the employees under the Project were not retrenched, therefore, the employees were entitled to their salary. In such petition the employees had made no claim for counting of past services for the purposes of pensionary benefits. As against such order of the learned Single Judge, the state sought LPA No.533 of 2012 which was dismissed vide order dated 1st October, 2013. Thereafter the State sought a Special Leave Petition which was also dismissed with a direction to make phased payments of salary to the writ

petitioners/employees. Again, no claim for counting of past services for the purposes of pension was made or allowed by the Court. It was merely a monetary benefit which was granted on account of no formal order of retrenchment being passed against the employees employed under the Project.

26. Since the appellants were absorbed as fresh appointees without pay protection and seniority, as a consequence thereof, they will not be entitled to count their past service rendered under the Project for the purpose of pension. We, thus, do not find any error in the order passed by the High Court which may warrant interference in the present appeals. Accordingly, the appeals are dismissed.

Civil Appeal No. 544 of 2020

27. The present appeal is directed against an order passed by Division Bench of the High Court of Patna on 20th June, 2018 whereby LPA No.189 of 2018 filed by the State was dismissed relying upon an order passed by the Single Bench in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 on 19th April, 2011 wherein referring to Rule 103 of Bihar Pension Rules, 1950, it was held that an interruption in service on account of the abolition of a post shall not entail forfeiture of the past service of a Government servant, i.e. the intervening period can be counted for pensionary benefits. In view of the said fact, the State was directed to consider the writ petitioners as continuing in service between 1992 and 1998 solely

for the purpose of granting personal monetary benefits. The petitioners were not to be entitled to payment of salary for the period in any manner and neither claim any seniority over other Government servants.

28. After the aforesaid judgments, **Baliram Singh** along with others filed CWJC No. 22208 of 2013⁹ to claim back wages for the period from 1st October, 2001 to 3rd July, 2007. The learned Single Bench allowed the writ petition on 22nd August, 2016. Thereafter, LPA No. 2307 of 2016 was dismissed on 15th January, 2018. The said orders were set aside by this Court in **Baliram Singh**. Therefore, the reliance of the High Court on an order passed at earlier stage on **Baliram Singh** no longer holds good. It may be noticed that in the State of Bihar, past services rendered by employees under the Project were taken into consideration for pensionary benefits. In view of the said fact, the present appeal is disposed of in the same terms as in **Baliram Singh**.

.....J.
L. NAGESWARA RAO

.....J.
(HEMANT GUPTA)

NEW DELHI;
FEBRUARY 07, 2020.

⁹ 2016 SCC OnLine Patna 9958 decided on 22nd August, 2016.

THE HIGH COURT OF MADHYA PRADESH

W.A. No.226/2018

(State of M.P. and others Vs. Ishrat Mohammad)

JABALPUR Dated : 06.03.2019

Shri Himanshu Mishra, learned counsel for the appellant/State.

Shri Ashok Shrivastava, learned counsel for the respondent.

Heard on I.A. No.2247/2018 for condonation of delay.

The application is vehemently opposed by the learned counsel appearing for the respondent. He submits that the delay in filing the present appeal has not been properly explained by the appellants.

We have heard the learned counsel for the parties on I.A. No.2247/2018.

From a perusal of the aforesaid application, it is apparent that there were several petitions/appeals relating to same issue involved in the present case that were filed and disposed of by this Court as well as by the Supreme Court. It is also apparent that the respondent had filed a contempt petition against the order passed by the appellants on 03.05.2017 rejecting the respondent's prayer for grant of pension. It is, therefore, clear that in view of the aforesaid pending litigation and the decision of the Supreme Court dated 15.12.2016 passed in the case of **Ram Naresh Rawat Vs. Sri Ashwini Ray and others** (2017) 3 SCC 436, that the present appeal has been filed by the appellants justifying the delay of one year.

In the circumstances, I.A. No.2247/2018 for condonation of delay, though vehemently opposed, is allowed. The delay in filing the appeal is hereby condoned.

Also heard on the question of admission.

With the consent of the learned counsel for the parties, the matter is heard and decided finally.

This appeal has been filed by the appellants under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam 2005, being aggrieved by the order dated 24.11.2016 passed by the learned Single Judge in W.P No.1482/2014 whereby the learned Single Judge has allowed the petition with a direction to the appellants to consider the claim of the respondent for grant of pension.

From a perusal of the order passed by the learned Single Judge it is apparent that the respondent/petitioner had approached this Court assailing the validity of the order dated 20.06.2012, by which the respondent had been retired from service by treating him to be a daily rated employee totally ignoring the fact that he stood classified as a permanent employee pursuant to the Labour Court's order dated 31.08.1999.

The learned Single Judge, taking into consideration the order passed by the Labour Court classifying the respondent as a permanent employee, has allowed the petition by relying upon the Division Bench decision of this Court passed in W.A. No.110/2011. The learned Single Judge has quoted the relevant part of the order passed in W.A. No.110/2011 wherein it was stated that a person who is classified as a permanent employee under the standard standing orders, has to be treated at par with a regular permanent employee and to give any other meaning to the same would amount to discrimination. The learned Single Judge, quoting the relevant part and taking into consideration the order passed by the Labour Court classifying the respondent as a permanent employee; has quashed the impugned order dated 20.06.2012 and allowed the petition.

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The learned counsel for the appellants submits that several cases of daily rated/daily waged employees were decided by this Court on the basis of and following the order passed in W.A. No.110/2011. It is stated that pursuant to the aforesaid order, the State had passed an order of fixing the pay of the employees on the minimum of the scale against which persons similarly situated as the respondent had filed contempt petitions which were ultimately decided by the Supreme Court in the case of **Ram Naresh Rawat** (supra), a copy of which has also been filed by the appellants alongwith the writ appeal as Annexure-A-2.

It is submitted that the Supreme Court, after extensively considering the provisions of the standard standing orders as well as the previous decisions of the Supreme Court rendered in the cases of **State of Karnataka vs. Uma Devi** (2006) 4 SCC 1; **State of M.P. and others vs. Lalit Kumar Verma**, (2007) 1 SCC 575; **M.P. State Agro Industries Development Corporation Ltd. and another vs. S. C. Pandey** (2006) 2 SCC 716; **M.P. Housing Board vs. Manoj Shrivastava** (2006) 2 SCC 702; **Dhampur Sugar Mills Ltd. vs. Bhola Singh** (2005) 2 SCC 470; **Mahendra L. Jain and others vs. Indore Development Authority and others** (2005) 1 SCC 639, and others has held that conferral of permanent status under the standard standing orders is different from the status of a permanent employee conferred upon a regular employee who is engaged in accordance with the rules and a person who has been classified as a permanent employee under the standard standing orders cannot be treated at par with a regular employee and is only entitled to fixed pay equal to minimum of the scale. It is submitted that in such circumstances, the impugned order passed by the learned Single Judge be set aside.

The learned counsel appearing for the respondent *per contra* submits that once the respondent has been classified

as a permanent employee by the Labour Court and the order passed by the Labour Court has attained finality, the petitioner is entitled to all the benefits that are available to a regular permanent employee and, therefore, the respondent is also entitled to pension as has been held by the learned Single Judge. The learned counsel for the respondent submits that in such circumstances the appeal may be dismissed.

We have heard the learned counsel for the parties at length.

The issue raised by the parties is no longer *res integra* in view of the order passed by the Supreme Court in the case of **Ram Naresh Rawat** (supra). The Supreme Court has held that mere classification under the standard standing orders of a permanent employee does not confer the status of a regularly appointed employee upon a person neither does it entitle him to claim the same benefit as a regular employee. It is also apparent that though the order passed by the Supreme Court in the case of **Ram Naresh Rawat** (supra) also arises out of the same bunch of cases that were ultimately decided pursuant to the order passed by this Court in W.A. No.110/2011, the same could not be placed before the learned Single Judge as the order in the case of **Ram Naresh Rawat** (supra) had not been delivered at the time when the orders were passed by the learned Single Judge in the present case and the order passed in W.A. No.110/2011 was being followed.

In such circumstances, in view of the order passed by the Supreme court in the case of **Ram Naresh Rawat** (supra) which has practically over-ruled the order passed in W.A. No.110/2011 and has laid down the law that the respondent inspite of permanent classification under the standard standing orders does not acquire the status of a regular employee, the impugned order passed by the

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learned Single Judge dated 24.11.2016 in W.P.
No.1482/2014 is hereby set aside.

In view of the law laid down by the Supreme Court in
the case of **Ram Naresh Rawat** (supra), the appeal, filed
by the appellants, is allowed.

C.C as per rules.

(R. S. JHA)
J U D G E

(SANJAY DWIVEDI)
J U D G E

ac/-

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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 19th OF DECEMBER, 2023**

WRIT PETITION No. 29982 of 2023

BETWEEN:-

**ASHOK KUAMR SHARMA S/O SHRI
RAMKHELAWAN PANDEY, AGED ABOUT 66
YEARS, OCCUPATION: RETIRED LAB
ATTENDANT R/O ANANTPUR POST ENGINEERING
COLLEGE BEHIND GURU MARKET TIWARIYAN
SIRMOUR ROAD REWA DISTRICT REWA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHOK KUMAR GUPTA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL SECRETARY
HIGHER EDUCATION DEPARTMENT R/O
VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**
- 2. COMMISSIONER HIGHER EDUCATION
SATPUDA BHAWAN BHOPAL (MADHYA
PRADESH)**
- 3. ADDITIONAL DIRECTOR HIGHER
EDUCATION REWA DIVISION REWA
SHILPI PLAZA B-BLOCK REWA (MADHYA
PRADESH)**
- 4. DIVISIONAL PENSION OFFICER REWA
DIVISION REWA (MADHYA PRADESH)**
- 5. PRINCIPAL GOVT. SCIENCE COLLEGE
REWA DISTRICT REWA (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SMT.SWATI ASEEM GEORGE – DEPUTY GOVT. ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-
 - i) Issue a writ of Mandamus commanding the respondents to produce entire service records of the petitioner for ready perusal of the Hon'ble High Court.
 - ii) Issue a writ of Mandamus commanding the respondents to count the service period from 12.10.1984 to 07.02.1990 total 5 years 4 months for the purpose of pension of the petitioner and revised the pension of the petitioner accordingly and also pay the arrears, in the interest of justice.
 - iii) Issue a writ of mandamus commanding the respondents to consider and decide the representation, annexure P/7 of the petitioner in accordance with law in the interest of justice.
 - iv) Any other relief/order or directions as this Hon'ble Court deems fit and proper looking to the facts and circumstances of the case deemed fit and proper in the interest of justice may please be awarded along with the cost of proceedings.
2. It is the case of the petitioner that earlier by order dated 12.10.1984 he was appointed as daily wager and subsequently he was regularized in service by order dated 5.2.1990 but the service rendered by him from 12.10.1984 to 5.2.1990 has not been counted for pensionary purposes.

3. It is submitted by counsel for the petitioner that non-counting of service rendered by him as a daily wager is in violation of judgment passed by the Supreme court in the case of **Ram Kumar Agarwal Vs. State of M.P., reported in (1995) Suppl. 3 SCC 67.**
4. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that the petitioner was appointed as a daily wager which is evident from the **order dated 5.2.1990, annexure P/2.** As per rule 12, 13, 14, 15, 16 of the M.P. Civil Services (Pension) Rules, 1976, the services rendered by the petitioner as a daily wager are not to be counted for the pensionary purpose.
5. Heard the learned counsel for the parties.
6. Rule 12 to 16 of the Pension Rules reads as under :-

"12. Commencement of qualifying service. - (1) Except for compensation gratuity, a Government servant's service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.

(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

13. Conditions subject to which service qualifies. - (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service against a post under the Government and paid by the Government from the Consolidated Fund of the State which has not been declared as non-pensionable.

14. Counting of service on probation. - Service on probation against a post shall qualify.

15. Counting of service as apprentice. - Service as an apprentice shall not qualify, except in cases where it qualifies under the pension rules applicable at the time when the service was rendered.

16. Counting of service on contract. - (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in regular capacity in a pensionable establishment without interruption of duty, may opt either :

(a) to retain the Government contribution in the contributory provident fund with interest including any other compensation for that service; or

(b) to agree to refund to the Government the monetary benefits referred to in clause (a) or to forego the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Audit Officer within a period of three months from the date of issue of the order of transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2) the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of Service rendered on contract.

7. It is not the case of the petitioner that as a daily wager they were appointed substantially or in officiating or temporary capacity. The Supreme Court in the case of **Malook Singh and others Vs. State of Punjab**, decided on 28.9.2021 passed in Civil Appeal No.6026-2028/2021 has held as under :-

“20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In **Direct Recruits** (supra), a Constitution Bench of this Court has observed:

“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. **If an appointment is made by way of stop-gap arrangement, without considering the claims of all the**

eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary...

.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be

taken into account considering the seniority.”

(emphasis supplied)

The decision in **Direct Recruits** (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on **Direct Recruits** (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in **Direct Recruits** (supra) was subsequently followed by this Court in **Keshav Chandra Joshi v. Union of India**¹⁵. Recently a two judge Bench of this Court in **Rashi Mani Mishra v. State of Uttar Pradesh**¹⁶, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, “substantive appointment” does not include ad hoc appointment and thus seniority which has to be counted from “substantive appointment” would not include ad hoc service. This Court also clarified that the judgement in **Direct Recruits** (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their

regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their

names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.

The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since

their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority."

8. As a daily wager the petitioner was not having any service conditions. A Full Bench in the case of **Ashok Tiwari Vs. M.P. Text Book Corporations and Another**, reported in **2010 (2) MPLJ 662** has held that a daily rated employee is not appointed to any post and before he is appointed, the pre - conditions contemplated for appointment to the post are not followed. His appointment is on a day - to - day basis as per need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such an employee.
9. Since the petitioner was not appointed against any substantive post and the counsel for the petitioner has also failed to prima facie establish that under which provision of M.P. Civil Services (Pension) Rules, 1976, the case of the petitioner is covered, this Court is of the considered opinion that the services rendered by the petitioner as a daily wager cannot be counted for pensionary purposes.
10. Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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