

अतिआवश्यक
तेल्काल
समय - सीमा

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

क्रमांक / 134 / प्र.अ. / विधि / लो.स्वा.यां.वि. / 2024 भोपाल, दिनांक 05/02/2024

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 15657 दिनांक 15.12.2023 एवं पत्र क्रमांक 15961 दिनांक 22.12.2023, एवं पत्र क्रमांक 15962 दिनांक 22.12.2023 (प्रतिलिपियाँ संलग्न)

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उपरोक्त विषयांतर्गत इस कार्यालय के संज्ञान में आया है कि :-

- (i) विभाग के दैनिक वेतन भोगी कर्मचारियों द्वारा सेवानिवृत्ति के उपरांत पेंशन प्राप्त करने हेतु
- (ii) विभाग के कार्यभारित / नियमित स्थापना के कर्मचारियों द्वारा भी अपनी दैनिक वेतन भोगी सेवाओं को पेंशन प्रयोजन के लिये गणना में लेने हेतु एवं
- (iii) मृतक कार्यभारित / दैनिक वेतन भोगी कर्मचारियों के परिजनों द्वारा भी परिवार पेंशन प्राप्त करने हेतु

न्यायालयीन प्रकरण दायर किये गये हैं।

कुछ प्रकरणों में माननीय न्यायालय द्वारा ऐसे कर्मचारियों की पेंशन पात्रता के संबंध में अभ्यावेदन निराकृत करने एवं कुछ मामलों में पेंशन प्रदान करने के भी आदेश जारी किये गये हैं।

इस कार्यालय के संदर्भित पत्रों के माध्यम से आपको अवगत कराया गया था कि दैनिक वेतनभोगी कर्मचारियों के मामले में उन्हें नियमितीकरण का लाभ प्राप्त करने की पात्रता नहीं है क्योंकि उनका नियोजन सक्षम प्राधिकारी द्वारा जारी किये गये नियुक्ति आदेश के बिना एवं स्पष्ट

रिक्त पद के बिना किया गया था। इस संबंध में आपको माननीय उच्चतम न्यायालय द्वारा एस.एल.पी. (सिविल) क्रमांक 10519/2020 (विभूति शंकर पांडे बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 08.02.2023 की प्रति भी प्रेषित की गई थी। दैनिक वेतनभोगी कर्मचारियों द्वारा नियमितीकरण/ पेंशन चाहे जाने के मामले में यह एक बुनियादी निर्णय है जो शासन की ओर से प्रतिरक्षण में उपयोगी साबित हो सकता है।

इस संबंध में आपके संज्ञान में माननीय उच्च न्यायालय एवं उच्चतम न्यायालय नई दिल्ली के ऐसे न्याय दृष्टांत लाये जा रहे हैं जिनमें यह अभिनिर्धारित किया गया है कि :-

(अ) ऐसे कर्मचारी जिन्हें भर्ती की निर्धारित प्रक्रिया का पालन किये बिना तथा भर्ती नियमों के अनुरूप मूल स्वीकृत पदों पर भर्ती नहीं किया गया है तथा जिन्हें नियमित करने संबंधी कोई आदेश जारी नहीं किया गया है, उन्हें पेंशन की पात्रता नहीं होगी।

(ब) विभाग में दैनिक वेतन भोगी कर्मचारियों का उनके मासिक परिलब्धियों से पी.एफ.आर.डी.ए. द्वारा प्रयोजित एन.पी.एस.योजना के तहत 10 प्रतिशत अंशदान काटा जा रहा है। ऐसी स्थिति में उन्हें उसी माध्यम से पेंशन की पात्रता है तथा उन्हें अन्य नियमित/कर्मचारियों को देय पेंशन योजना की पात्रता नहीं है।

(स) दैनिक वेतन भोगी कर्मचारियों का नियोजन अवैधानिक होने के कारण उनकी दैनिक वेतन भोगी के रूप में दी गई सेवायें पेंशन प्रयोजन के लिये गणना में शामिल नहीं की जा सकती है।

इसके अतिरिक्त वर्ष 2005 के बाद जिन दैनिक वेतन भोगी की कर्मचारियों का नियमितीकरण हुआ है उनके नियुक्ति आदेश में उन पर "अंशदायी पेंशन योजना" लागू होने संबंधी शर्तों का उल्लेख है तथा उन्होंने उन शर्तों से सहमत होकर ही आगे की सेवायें दी है। ऐसी स्थिति में वर्ष 2005 के उपरांत नियमित होने वाले दैनिक वेतन भोगी कर्मचारी अपनी दैनिक वेतन भोगी सेवाओं को पेंशन प्रयोजन हेतु जोड़ने अथवा कार्यभारित कर्मचारियों हेतु लागू पूर्व की पेंशन योजना में शामिल होने हेतु पात्र नहीं है।

इस संबंध में उपलब्ध न्यायालयीन दृष्टांतों का विवरण निम्नानुसार है :-

(i) माननीय उच्च न्यायालय खंडपीठ इंदौर की रिट पिटीशन क्रमांक 1160/2015 (हीरालाल बनाम म.प्र.शासन एवं अन्य) में पारित निर्णय दिनांक 06.08.2018

(ii) माननीय उच्चतम न्यायालय नई दिल्ली की सिविल अपील क्रमांक 7068/2022 (सुनीता वर्मन बनाम कमिशनर हाउसिंग बोर्ड म.प्र.) में पारित निर्णय दिनांक 14.10.2022

(iii) माननीय उच्चतम न्यायालय नई दिल्ली की सिविल अपील क्रमांक 3155/2023 (उदय प्रताप ठाकुर बनाम बिहार राज्य) में पारित निर्णय दिनांक 28.04.2023

सभी न्यायदृष्टांतों की छायाप्रतियाँ आपके अवलोकनार्थ संलग्न कर प्रेषित हैं।

आपको निर्देशित किया जाता है कि आपके परिक्षेत्र/मंडल/खंड में यदि इस प्रकृति के प्रकरण विचाराधीन हैं अथवा उनमें कोई निर्णय पारित हो चुका है तो ऐसे मामलों में ऊपर वर्णित

संपूर्ण स्थिति एवं न्याय दृष्टांतों को शासकीय अधिवक्ता के संज्ञान में लाये तथा इन प्रकरणों का प्रभावी प्रतिरक्षण करना सुनिश्चित करें।

यदि इस संबंध में कोई विशेष प्रकरण आपके संज्ञान में है, जिसमें प्रतिरक्षण मुश्किल रहा हो तो उसे इस कार्यालय की विधि शाखा के संज्ञान में लाये।

संलग्न :- उपरोक्तानुसार
तीन कार्यालयीन पत्र एवं
तीन न्यायालयीन निर्णयों की छायाप्रतियाँ


5.2.2024
प्रमुख अभियंता

कार्यालय प्रमुख अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
जल भवन, बाणगंगा- भोपाल
दूरभाष 2779411-12, email-encph@nic.in

क्रमांक 15657/प्र.अ/विधि/लो.स्वा.यां.वि./ भोपाल, दिनांक 15 दिसम्बर 2023
प्रति,

1. मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र भोपाल/इंदौर/ग्वालियर, जबलपुर
एवं वि./यां. परिक्षेत्र भोपाल।
2. अधीक्षण यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
समस्त मण्डल मध्यप्रदेश।
3. कार्यपालन यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
समस्त खण्ड सिविल/मैके. (म.प्र.)

विषय : माननीय उच्चतम न्यायालय द्वारा पारित आदेश अनुसार बिना नियुक्ति आदेश अथवा रिक्त पद के विरुद्ध नियुक्त हुये बिना दैनिक वेतन भोगी कर्मचारी को नियमित/नियमितीकरण का लाभ नहीं देने संबंधी।

संदर्भ : माननीय उच्चतम न्यायालय द्वारा पारित आदेश एस.एल.पी. 10519/2020
विभूति शंकर पांडे विरुद्ध म.प्र. शासन

विषयान्तर्गत लेख है कि माननीय उच्चतम न्यायालय के संदर्भित आदेश की प्रति संलग्न है, जिसमें किसी भी व्यक्ति को बिना सक्षम प्राधिकारी द्वारा नियुक्ति आदेश अथवा रिक्त पद के विरुद्ध नियुक्त हुये बिना नियमितीकरण का लाभ नहीं दिये जाने का निर्णय पारित किया गया है।

अतः आपके अधिनस्थ कार्यालयों के माननीय श्रम न्यायालय/औद्योगिक न्यायालय/उच्च न्यायालय में प्रचलित ऐसे प्रकरणों में, जिनमें माननीय न्यायालय द्वारा दैनिक वेतन भोगी कर्मचारियों के संबंध में उनसे संबंधित पूर्व न्यायालयीन निर्णयों के आधार पर उन्हें नियमित श्रेणी में मानते हुये पेंशन/अनुकंपा नियुक्ति आदि लाभ देने के आदेश जारी किये गये हैं, उन प्रकरणों में माननीय उच्चतम न्यायालय के संदर्भित निर्णय का हवाला देते हुये जवाबदादा प्रस्तुत किया जाना सुनिश्चित करें ताकि शासन हित में निर्णय पारित किया जा सके।

संलग्न : उपरोक्तानुसार।


(संजय कुमार अधवान)
प्रमुख अभियंता

अति आवश्यक
तत्काल
समय-सीमा

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

क्रमांक 15961/विधि/प्र.अ./लोस्वायांवि./2023

भोपाल, दिनांक 22/11/2023

प्रति,

- (1) समस्त मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र _____
वि./यां परिक्षेत्र _____
- (2) समस्त अधीक्षण यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
मंडल/परियोजना मंडल _____
- (3) समस्त कार्यपालन यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
खंड _____

विषय :- दैनिक वेतन भोगी सेवा में नियोजित किये गये ऐसे कर्मचारी जिनका नियोजन सक्षम प्राधिकारी द्वारा जारी किये गये नियुक्ति आदेश के बिना एवं स्पष्ट रिक्त पद के बिना हुआ है, को, कार्यभारित/नियमित सेवा में नियमितीकरण के लाभ की पात्रता नहीं होने विषयक।

संदर्भ :- माननीय उच्चतम न्यायालय द्वारा एस.एल.पी.(सिविल) क्रमांक 10519/2020 में पारित निर्णय दिनांक 08.02.2023 एवं माननीय उच्च न्यायालय जबलपुर द्वारा रिट अपील क्रमांक 20/2020 में पारित निर्णय दिनांक 13.02.2020 (प्रतिलिपि संलग्न)।

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कृपया माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा संदर्भित प्रकरणों में पारित आदेशों का अवलोकन करने का कष्ट करें, जिसके माध्यम से माननीय न्यायालयों द्वारा यह अभिनिर्धारित किया गया है कि दैनिक वेतन भोगी सेवा में नियोजित किये गये ऐसे कर्मचारी जिनका नियोजन सक्षम प्राधिकारी द्वारा जारी किये गये नियुक्ति आदेश के बिना एवं स्पष्ट रिक्त पद के बिना हुआ है, कार्यभारित/नियमित सेवा में नियमितीकरण का लाभ प्राप्त करने के पात्र नहीं हैं।

उपरोक्त निर्णय विभाग के लिये अत्याधिक महत्वपूर्ण है तथा यह विभाग के विभिन्न परिक्षेत्रों के अंतर्गत वर्तमान में विचाराधीन न्यायालयीन प्रकरणों में अथवा विभाग की ओर दायर होने वाली रिट अपील अथवा एस.एल.पी.में से शासन की ओर से प्रभावी प्रतिरक्षण में उपयोगी साबित हो सकता है।

इस कार्यालय में परीक्षण के उपरांत प्रथम दृष्टया यह पाया गया है कि कुछ प्रकरणों में यह निर्णय उपयोगी साबित हो सकता है तथा इन प्रकरणों में अनिवार्य रूप से उक्त निर्णय शासकीय अधिवक्ता के माध्यम से माननीय न्यायालयों के समक्ष प्रस्तुत करने के निर्देश दिये जाते हैं :-

(1) ग्वालियर परिक्षेत्र ग्वालियर

(अ) माननीय उच्च न्यायालय खंडपीठ ग्वालियर के समक्ष विचाराधीन "आरती सक्सेना" प्रकरण (रिट पिटीशन क्रमांक 2387/2023) जिसमें त्रुटिपूर्ण वेतनवृद्धि के लाभ के आधार पर कर्मचारी द्वारा संपूर्ण नियमितीकरण की मांग की है।

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22/11/23

(3)

(ब) माननीय उच्चतम न्यायालय के समक्ष विचाराधीन एस.एल.पी. (सिविल) कमांक 12629/2019 (शंकर सिंह सेंगर एवं अन्य बनाम श्री प्रमोद अग्रवाल एवं अन्य) जिसमें स्थायी वर्गीकरण के लाभ स्वरूप न्यूनतम वेतन का लाभ लेने के उपरांत वेतनवृद्धि और नियमितीकरण के अन्य लाभ चाहे गये है।

(2) मैकेनिकल परिक्षेत्र भोपाल

"अजब सिंह" प्रकरण (रिट अपील कमांक 1098/2023) जिसमें माननीय न्यायालय ने स्थायी वर्गीकरण के फलस्वरूप जारी किये गये न्यूनतम वेतन के आदेश को नियमितीकरण का आदेश मानते हुये कर्मचारी को पेंशन का लाभ देने के लिये आदेशित किया है।

(3) जबलपुर परिक्षेत्र जबलपुर

रीवा जिले के "इन्द्र नारायण सिंह" प्रकरण (रिट पिटीशन कमांक 2556/2022 के विरुद्ध दायर होने वाली अपील) समेत 03 अन्य दैनिक वेतन भोगी कर्मचारियों के विचाराधीन न्यायालयीन प्रकरण कमशः राममिलन पांडे रिट पिटीशन कमांक 7624/2022, सुरेन्द्र प्रसाद शर्मा रिट पिटीशन कमांक 9485/2022 एवं कामता प्रसाद मिश्रा रिट पिटीशन कमांक 21027/2019, जिनमें माननीय न्यायालय ने दैनिक वेतन भोगी कर्मचारियों को, पूर्व न्यायालयीन निर्णयों के अनुपालन में दिये गये नियमित वेतनमान के लाभ को कर्मचारियों का नियमितीकरण मानते हुये उन्हें पेंशन देने के लिये आदेशित किया है।

(4) इंदौर परिक्षेत्र इंदौर

"देवेन्द्र ओव्हाल" प्रकरण (रिट पिटीशन कमांक 2484/2020) एवं राजेश भावसार प्रकरण (रिट पिटीशन कमांक 8921/2023) जिनमें विभाग द्वारा त्रुटिपूर्ण रूप से दिये गये नियमितीकरण के लाभ को बरकरार रखने के लिये कर्मचारियों द्वारा याचिकायें दायर की गई हैं। "देवेन्द्र ओव्हाल" प्रकरण में नियमितीकरण आदेश के निरस्तीकरण उपरांत माननीय उच्च न्यायालय को सूचना देने के लिये दायर होने वाले प्रकरण के ड्राफ्ट में भी इन निर्णयों का उल्लेख आवश्यक है।

इसके अतिरिक्त आपको निदेशित किया जाता है कि आप अपने परिक्षेत्र/मंडल/खंड के अधीनस्थ विचाराधीन एवं भविष्य में दायर करने वाले न्यायालयीन प्रकरणों की व्यक्तिगत रूप से समीक्षा करें एवं जहाँ भी आप यह पायें कि उक्त निर्णय शासन हित में उपयोग किया जा सकता है तो इसे शासकीय अधिवक्ता के संज्ञान में आवश्यक रूप से लाकर इनका इस्तेमाल प्रतिरक्षण में करने का कष्ट करें।

संलग्न :- उपरोक्तानुसार न्यायालयीन निर्णय


प्रमुख अभियंता

पृ.क्रमांक 1596/विधि/प्र.अ./लोस्वायांवि./2023
प्रतिलिपि :-

भोपाल, दिनांक 22/12/2023

प्रमुख सचिव महोदय, लोक स्वास्थ्य यांत्रिकी विभाग मंत्रालय भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।


प्रमुख अभियंता

ITEM NO.1501

COURT NO.11

SECTION IV-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 10519/2020

(Arising out of impugned final/interim judgment and order dated 13-02-2020 in WA No. 20/2020 passed by the High Court Of M.P. Principal Seat At Jabalpur)

VIBHUTI SHANKAR PANDEY

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

Date : 08-02-2023 This petition was called on for pronouncement of judgment today.

For Petitioner(s)

Mr. Ajay Choudhary, AOR

For Respondent(s)

Mr. Sunny Choudhary, AOR

Hon'ble Mr. Justice Sudhanshu Dhalia pronounced the judgment of the Bench comprising Hon'ble Mr. Justice S. Ravindra Bhat and His Lordship.

Leave granted.

The appeal is dismissed in terms of the signed judgment, which is placed on the file.

Pending application(s), if any, stand disposed of.

(NIRMAL NEGI)
COURT MASTER (SH)

(KAMLESH RAWAT)
COURT MASTER (NSH)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(ARISING OUT OF SLP (C) NO. 10519 OF 2020)

VIBHUTI SHANKAR PANDEY

...APPELLANT

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

...RESPONDENTS

JUDGMENT

Leave granted.

2. This appeal has been filed by the appellant who is aggrieved by the order dated 13.02.2020, by which a Division Bench of the Madhya Pradesh High Court has set aside the order of the learned Single Judge dated 27.06.2019, which had granted the benefit of regularization to the present appellant.
3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya

Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the

competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. v. Umadevi and Ors.**¹, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

¹ (2006) 4 SCC 1

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.

.....
J
[S. RAVINDRA BHAT]

.....
J
[SUDHANSHU DHULIA]

New Delhi,
February 8, 2023

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THE HIGH COURT OF MADHYA PRADESH

WRIT APPEAL NO. 20/2020

State of Madhya Pradesh V. Vibhuti Shankar Pandey

Jabalpur, Dated : 13.02.2020

Shri J.K. Pillai, learned Govt. Advocate for the appellants/State.

Shri K.N. Pethia, learned counsel for the respondent.

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

There is a delay of 102 days in filing the present writ appeal. Condonation whereof is being sought vide Interlocutory Application No. 80/2020. For the reasons which find mention in the application and which prevented the appellant from filing the appeal within the period of limitation, sufficient cause is made out. Consequently, delay is condoned. Interlocutory Application No. 80/2020 stands disposed of.

2. This intra-court appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 27.6.2019 passed in Writ Petition No. 17517/2018.

3. The Writ Petition was directed against the order dated 18.6.2018; whereby the claim of the petitioner for regularization was rejected. The order was passed in furtherance to direction in Writ Petition No. 13997/2000 decided on 2.11.2017. In the said Writ petition the petitioner had confined his claim for consideration in terms of G.A.D circular dated 31.12.2010. Evidently, earlier the claim of the petitioner for regularization as Time Keeper was turned down because his not passing matriculation with Mathematics and Science as subjects. These

conditions were relaxed vide circular dated 31.12.2010. The committee which considered the case of the petitioner, rejected it for the reasons that there was no permanent cadre in Narmada Valley Development Authority where the postings were on deputation, and that when engaged on daily wages in the office of Sub-Divisional Officer, Katanga there was no vacant post and was not found possessing requisite qualification and the appointment was not by the Competent Authority.

4. It is urged on behalf of the appellants that learned Single Judge glossed over these vital aspects and the law laid down by the Supreme Court in **Secretary, State of Karnataka and others v. Uma Devi and others** ((2006) 4 SCC 1) that the earlier regularization order were denuded of its precedence and overreached the relief by the petitioner by directing regularization from 1990.

5. Respondent/petitioner has, however, supported the order.

6. Considered rival submissions and perused the cogent material on record.

7. Admittedly in Writ Petition No. 13997/2010 the petitioner had confined his claim in context to circular dated 31.12.2010 and from retrospective date. Thus, the decision by learned Single Judge in granting regularization from the date on which his juniors were regularized was beyond the claim of the petitioner. Even the petitioner was estopped from claiming the regularization from a date prior to 31.12.2010. Furthermore, learned Single Judge while directing regularization from 1990 took into consideration the orders in favour of certain persons employed in the year 1990, when the petitioner admittedly was not eligible, glossed over the principle of law laid down in *Uma Devi* (supra) wherein it has been held:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

7. When earlier regularization order having been denuded of its precedence, the direction for regularization on the basis of such order cannot be upheld.

8. In view whereof the impugned order dated 27.6.2019 in Writ Petition No. 17517/2018 (S) is set aside. The petition filed by the petitioner is dismissed.

9. The appeal is allowed to the extent above. No costs.

(SANJAY YADAV)
JUDGE

(ATUL SREEDHARAN)
JUDGE

RECEIVED
JUDGE
DATE: 20/08/2019 AT 11:31 AM

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WP-17517-2018 (S)

1

HIGH COURT OF MADHYA PRADESH: JABALPUR

(SB : Hon'ble Shri Justice Subodh Abhyankar)

W.P. No. 17517/2018 (S)

Vibhuti Shankar Pandey

.....Petitioner

Versus

State of Madhya Pradesh & others

.....Respondents

Present:

For the Petitioner : Shri K.N. Pethia & Shri Brajesh Mishra, Advocates

For the Respondents : Kt. Aditi Varma, Panel Lawyer for the State.

Whether Approved for Reporting: No

ORDER (Oral)

(27.06.2019)

This writ petition has been filed under Article 226 of the Constitution of India by the petitioner, who has been working as Supervisor in Rani Avanti Bai Lodhi Sagar Pariyojna, against the order dated 18.06.2018 (Annexure P/11) passed by the respondent No.3 – Chief Engineer, Rani Avanti Bai Lodhi Sagar Pariyojna, Bargi Hills, Jabalpur whereby the representation submitted by the petitioner for his regularization has been rejected. The aforesaid representation was submitted by the petitioner pursuant to an order dated 02.11.2017 passed by this Court in W.P. No.13997/2010.

2. In brief, the facts of the case are that the petitioner entered into the services of the Water Resource Department in the year 1980 and has been

working continuously since then in the said department. The grievance of the petitioner is that despite working continuously for such a long time and despite the fact that juniors to the petitioner, namely, Shri Aadesh Jain and Shri Vishwamitra Choubey were subsequently regularized in the services on the post of Time Keeper vide order dated 08.01.1988 (Annexure P/8 to rejoinder filed in W.P. No.13997/2010) and similarly, one Shri Ajit Singh Gour, was also got regularized despite the fact that he joined the services of Narmada Valley Development Authority (hereinafter referred to in short as "NVDA") in the year 1990 i.e., after the petitioner, the petitioner is left out from the process of regularization.

3. The contention of the petitioner is that on 09.01.1990 a circular (Annexure P/1) has been issued by the State Government for regularization of the services of daily wagers working on Class-III and IV posts prior to 31.12.1988 and it is provided that those employees who are working on such posts which are not sanctioned, posts be sanctioned and they be regularized. It is the further case of the petitioner that the Deputy Collector, Jabalpur vide letter dated 18.01.1990 (Annexure P/3) written to the Chief Engineer has recommended for regularization of the petitioner. However, in the year 2004, the petitioner was informed that his case cannot be considered as he has not passed the Matriculation with Science subject. Hence, a writ petition being W.P. No.2148/2004 was filed by the petitioner for his regularization and the same was disposed of by this Court vide order dated 16.04.2004 (Annexure P/5) with a direction to the respondents to regularize the services of the petitioner in view of the guidelines issued by this Court in W.P. No.9900/2003 decided on 14.11.2003. Again the representation of the

petitioner was rejected by order dated 12.05.2004, therefore, the petitioner has filed writ petition bearing W.P. No.4466/2005 (S) which has been disposed of by this Court on 04.08.2006 (Annexure P/7) in the light of an order dated 03.08.2006 passed by this Court in W.P. No.3838/2005 (S) (*Daddi Lal Yadav vs. State of M.P. and others*) on due consideration of the decisions of the Apex Court in *Secretary, State of Karnataka and others vs. Uma Devi and others* (2006) 4 SCC 1 and certain other decisions. Against the order dated 04.08.2006 (Annexure P/7), the respondents preferred Writ Appeal No.1260/2007 and the same was also disposed of by a Division Bench of this Court vide order dated 18.11.2008 (Annexure P/8) with a direction to consider the case of the petitioner in view of the circular issued in this behalf on 16.05.2007 and 06.09.2008. Subsequently, another circular has also been issued by the State Government on 31.12.2010 (Annexure P/9) in which it is provided that the daily wagers, who are working for more than 10 years on the post of Time Keeper, shall be regularized by relaxing the condition of having passed Higher Secondary or 12th class examination with Mathematics subject. Since no orders were passed in the case of the petitioner, again a writ petition being W.P. No.13997/2010 was filed by the petitioner, which came to be disposed of on 02.11.2017 (Annexure P/10) directing the respondents to decide the petitioner's representation in terms of the aforesaid GAD circular dated 31.12.2010 and thus, the final order has been passed by the respondents on 18.06.2018 (Annexure P/11), which is under challenge before this Court.

4. Learned counsel for the petitioner has submitted that the impugned order has been passed *inter alia* on the ground that there are no recruitment

rules or the service rules in NVDA and that the petitioner's qualification does not meet the necessary requirement as provided by the Rules made in this behalf. Learned counsel has further submitted that the impugned order is liable to be set aside only on the ground that in the circular dated 31.12.2010, which clearly provides that those employees, who are posted as Time Keeper since last 10 years and who have not passed the Matriculation with Mathematics as subject, relaxation in qualification be given to them. It is further submitted that there is a rider in the aforesaid circular that the said facility will be given to only those daily wagers, who have completed 10 years service as on 10.04.2006 whereas in the present case, the petitioner is employed since 1980 as Time Keeper, which fact has not been denied by the respondents also, hence, Shri Pethia, learned counsel has further submitted that the case of the petitioner is on a better footing than the other similarly situated employees, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, who were admittedly appointed subsequent to the petitioner, as they were junior to the petitioner but despite this fact, their services were regularized. Thus, it is submitted that the impugned order be set aside and the respondents be directed to regularize the services of the petitioner.

5. Learned counsel for the petitioner has also placed reliance upon a Full Bench decision of this Court in the case of *Superintending Engineer, Public Works Department, Circle Gwalior and another vs. Dev Prakash Shrivastava, Gwalior and others* reported in 1999 (1) MPLJ 466 to submit that the M.P. Industrial Employment (Standing Orders) Act, 1961 (hereinafter referred to as "the Act of 1961"). Rules and Orders issued thereunder would

also be applicable to the Government Departments and as the petitioner has admittedly completed more than 180 days' services, his rights are also secured under the aforesaid Act of 1961.

6. *Per contra*, learned counsel for the respondents/State has vehemently opposed the prayer and submitted that no case for interference is made out in the present petition as there is no provision under which the petitioner's services could be regularized in NVDA. Apart from that, it is submitted that the petitioner's qualification is also not sufficient which would allow the respondents to regularize his services. Learned counsel has tried to distinguish the case of the petitioner with that of other similarly situated persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour on the ground that all these persons met the requisite qualification of Matriculation with Mathematics and as such the petitioner cannot claim parity on the basis of their regularization.

7. In rebuttal, Shri Pethia has submitted that so far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the same was done in the year 1990 whereas the aforesaid rule regarding the educational qualification of Time Keeper has come into force in the year 2007. Thus, it is contended by Shri Pethia that when the services of the aforesaid persons were regularized in the year 1990, the petitioner was already senior to them and there was no question of any qualification or disqualification for the purposes of regularization of the said persons, hence, it is submitted that on this ground the petitioner cannot be discriminated as he has already rendered the services for around 38 years. To bolster his submission, learned counsel for the petitioner has relied upon the judgment

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passed by the Apex Court in the case of *Secretary, Haryana State Electricity Board vs. Suresh and other etc. etc.* (AIR 1999 SC 1160).

8. Heard learned counsel for the parties and perused the record.

9. From the record, this Court finds that while dismissing the claim of the petitioner, the following order has been passed by the respondent:-

- i. That, the case of the petitioner for regularization on the post of Supervisor has been considered in accordance with the circular dated 16.05.2007 and also circular dated 31.12.2010. It has been held that Narmada Valley Development Authority has been established for the development of Narmada River Scheme and the employees appointed under the authority is not governed by any Cadre or Recruitment Rules or any sanctioned and Vacant post and these authorities are posted in different zone and petitioner was not performing the duties against the sanctioned and vacant post therefore he is not coming under the purview of the policy dated 16.05.2007. therefore, his case has not been recommended for regularization.
- ii. That as per Clause 4.1 of policy dated 16.05.2007, it is mandatory condition that while considering the case of regularization of the employee their sanctioned and vacant post should be available with the answering respondents as the petitioner was engaged as per availability of work and condition and there was no regular and sanctioned post of supervisor therefore, the case of the petitioner is not found fit to recommend for regularization.
- iii. That as per the Clause 4.1 of the circular dated 16.05.2007, the petitioner has been given the benefit of circular dated 31.12.2010, petitioner has been given benefit of relaxation to pass eligibility examination as provided in the aforesaid circular.

- iv. That the answering respondents also by following the Clause 4.1 of the policy dated 16.05.2007, came to the conclusion that the petitioner was not engaged by the competent authority and his appointment is not legal therefore his case is not found fit for recommending the regularization.
- v. That the answering respondents have also come to the conclusion that in absence of any recruitment rules or cadre with the Narmada Valley Development Authority, it is not possible to follow the roaster system while regularizing the petitioner in the appropriate post and final the committee has given its conclusion that the case of the petitioner has been considered in accordance with law and according to Clause 1, 2(1), 2(2), 2(4) and 2(5), the petitioner is not entitled to consider for regularization in service of the answering respondents."

10. It is also found that the petitioner has also relied upon the circulars issued by the State Government from time to time and has also filed a circular as Annexure P/9 which clearly provides that the persons who are working as daily wagers be regularized and also that their qualification be relaxed. The said circular, in the opinion of this court, would be applicable in the case of the petitioner.

11. So far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the respondent's contention is that they all had the requisite qualification hence their case is distinguishable, however, according to the petitioner, their appointment orders were passed in the year 1990 when the additional qualification of Mathematics was not required whereas the Rules regarding the educational qualification of Time Keeper have come into force in the year 2007. The aforesaid contention has not been denied by the respondent, which leads this

Court to conclude that the petitioner has been discriminated inasmuch as when the appointment orders of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour were passed in the year 1990, there was no mandatory requirement that an incumbent must possess the matriculation with Mathematics as the Rules in this behalf came in the year 2007 only. Thus, it cannot be said that the aforesaid persons were appointed only because they had special qualification of matriculation with Mathematics. In view of the same, as the petitioner has been able to make out a case of parity that his case is at par with the other persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, whose services have already been regularized, thus, the impugned order dated 18.06.2018 (Annexure P/11) cannot be sustained and is liable to be set aside.

12. As a result, the writ petition succeeds and is hereby allowed and the impugned order dated 18.06.2018 (Annexure P/11) is set aside and the respondents are directed to regularize the services of the petitioner from the date on which his juniors as above, were regularized. The respondents are also directed to accord all the consequential benefits to the petitioner.

(SUBODH ABHYANKAR)
JUDGE

2023 LiveLaw (SC) 91

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S. RAVINDRA BHAT; J., SUDHANSHU DHULIA; J.**

February 8, 2023

**CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO. 10519 OF 2020)
VIBHUTI SHANKAR PANDEY versus THE STATE OF MADHYA PRADESH & ORS.**

Service Law - Regularisation - Two conditions for regularisation of daily wage employees - Firstly, initial appointment must be done by the competent authority and Secondly, there must be a sanctioned post on which the daily rated employee must be working - No claim for regularization if these conditions are not met. Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 1.

(Arising out of impugned final/interim judgment and order dated 13-02-2020 in WA No. 20/2020 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Ajay Choudhary, AOR

For Respondent(s) Mr. Sunny Choudhary, AOR

JUDGMENT

Leave granted.

- 2. This appeal has been filed by the appellant who is aggrieved by the order dated 13.02.2020, by which a Division Bench of the Madhya Pradesh High Court has set aside the order of the learned Single Judge dated 27.06.2019, which had granted the benefit of regularization to the present appellant.**
- 3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in**

Secretary, State of Karnataka and Ors. v. Umadevi and Ors.¹, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.

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

क्रमांक 15962/विधि/प्र.अ./लोस्वायांवि/2023

भोपाल दिनांक 22/12/2023

प्रति,

- (1) समस्त मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र —————
वि./यां. परिक्षेत्र —————
- (2) समस्त अधीक्षण यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
मंडल/परियोजना मंडल —————
- (3) समस्त कार्यपालन यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
खंड —————

विषय :- सेवानिवृत्त कार्यभारित/नियमित स्थापना के कर्मचारियों द्वारा पेंशन प्रयोजन हेतु दैनिक वेतन भोगी सेवा को जोड़ने विषयक न्यायालयीन प्रकरणों में प्रभावी प्रतिरक्षण के संबंध में।

00

उपरोक्त विषयांतर्गत लेख है कि विभाग के सेवानिवृत्त अनेकों कार्यभारित/नियमित स्थापना के सेवानिवृत्त कर्मचारियों द्वारा सेवानिवृत्ति उपरांत उनकी दैनिक वेतन भोगी के रूप में की गई सेवाओं को पेंशन प्रयोजन हेतु कुल सेवा अवधि की गणना में शामिल कराने हेतु माननीय उच्च न्यायालय के समक्ष रिट पिटीशन दायर की जा रही हैं। विभाग द्वारा मुख्य रूप से ऐसे मामलों का प्रतिरक्षण पेंशन नियमों में दैनिक वेतन भोगी सेवाओं को शामिल करने का प्रावधान नहीं होने के आधार पर किया जा रहा है। कुछ प्रकरणों में माननीय न्यायालयों द्वारा सेवानिवृत्त कर्मचारियों के पक्ष में निर्णय भी पारित किये गये हैं।

इस संबंध में आपका ध्यान इस ओर आकृष्ट किया जाता है कि शासन के नियमों के अनुपालन में वर्ष 2013-14 में अनेकों दैनिक वेतन भोगी कर्मचारियों का नियमितीकरण कार्यभारित/नियमित स्थापना के पदों पर किया गया था। यदि ऐसे सेवानिवृत्त कर्मचारियों द्वारा उनकी दैनिक वेतन भोगी सेवा अवधि पेंशन प्रयोजन के लिये जोड़ने हेतु प्रकरण माननीय उच्च न्यायालय के समक्ष दायर किये जाते हैं तो उनका प्रतिरक्षण किसी भी स्थिति में कार्यभारित /नियमित स्थापना के पूर्व के सेवा नियमों के आधार पर नहीं किया जावे तथा किसी भी स्थिति में 10 वर्ष की सेवा अवधि पूर्ण नहीं होने को आधार नहीं बनाया जावे। बल्कि यह नोट करें कि वर्ष 2013-14 में जिन दैनिक वेतन भोगी कर्मचारियों का नियमितीकरण किया गया था, उन पर "अंशदायी पेंशन योजना लागू होती है। कृपया इन कर्मचारियों के नियमितीकरण आदेशों का अवलोकन करें जिसमें उनके "अंशदायी पेंशन योजना" के दायरे में आने का स्पष्ट उल्लेख है।

प्रकरण के प्रतिरक्षण हेतु इन नियुक्ति आदेशों को शासकीय अधिवक्ता के संज्ञान में लाये तथा उन्हें यह बतायें कि कर्मचारी द्वारा तत्समय इन नियुक्ति आदेशों को पूर्णतः स्वीकार किया गया था


22/12/23

तथा उनकी आगे की पूरी सेवा अवधि में उन्होंने इस पर किसी भी तरह की आपत्ति नहीं जताई है। ऐसी स्थिति में उन्हें सेवानिवृत्ति के उपरांत वर्ष 2005 के पूर्व लागू पेंशन नियमों के अधीन आने की पात्रता नहीं बनती। यह एक तरह से नियमितीकरण आदेश की स्वीकार्यता से मुकरने की श्रेणी में आता है।

इस प्रकृति के प्रतिरक्षण से शासन हित में निर्णय की संभावना उत्पन्न होती है। अतः इसका पालन सुनिश्चित करें।


प्रमुख अभियंता

पृ.क्रमांक 15962/विधि/प्र.अ./लोस्वायांवि./2023
प्रतिलिपि :-

भोपाल, दिनांक 22/12/2023

प्रमुख सचिव महोदय, लोक स्वास्थ्य यांत्रिकी विभाग मंत्रालय भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।


प्रमुख अभियंता

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA

Writ Petition No.1160/2015 (S)

Heeralal Vs. The State of Madhya Pradesh

Writ Petition No.207/2016 (S)

Bhagirath Vs. Public Works Department

Writ Petition No.263/2016 (S)

Jagdish Vs. Public Works Department

Writ Petition No.1093/2016 (S)

Sultan Kha Vs. Public Works Department

Writ Petition No.1532/2016 (S)

Ganpat Vs. Public Works Department

Writ Petition No.1831/2016 (S)

Balaram Vs. Public Works Department

Writ Petition No.1882/2016 (S)

Laxman Vs. Public Works Department

Writ Petition No.1886/2016 (S)

Gopal Vs. Public Works Department

Writ Petition No.2031/2016 (S)

Baliram Vs. Public Works Department

Writ Petition No.2983/2016 (S)

Motiya Vs. Public Works Department

Writ Petition No.4950/2016 (S)

Raghunath Vs. Public Works Department

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.5182/2016 (S)

Gangaram Vs. Public Works Department

Writ Petition No.5183/2016 (S)

Hukumchand Vs. Public Works Department

Writ Petition No.5498/2016 (S)

Champalal Vs. Public Works Department

Writ Petition No.6174/2016 (S)

Bapu Vs. Public Works Department

Writ Petition No.7387/2016 (S)

Tarabai Vs. Public Works Department

Writ Petition No.7840/2016 (S)

Nathugir Vs. Public Works Department

Writ Petition No.477/2017 (S)

Dudha Vs. Public Works Department

Writ Petition No.579/2017 (S)

Mangya Vs. Public Works Department

Writ Petition No.617/2017 (S)

Senda Vs. Public Works Department

Writ Petition No.745/2017 (S)

Tumadu Vs. Public Works Department

Writ Petition No.877/2017 (S)

Bashir Ali Vs. Public Works Department

Writ Petition No.920/2017 (S)

Ramesh Vs. The State of Madhya Pradesh

Writ Petition No.1119/2017 (S)

Ram Singh Vs. The State of Madhya Pradesh

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.1628/2017 (S)

Maharu Vs. Public Works Department

Writ Petition No.1777/2017 (S)

Ratan Vs. Public Works Department

Writ Petition No.1906/2017 (S)

Bane Singh Vs. Public Works Department

Writ Petition No.1910/2017 (S)

Siddu Vs. Public Works Department

Writ Petition No.1915/2017 (S)

Smt. Kailash Bai Vs. Public Works Department

Writ Petition No.1919/2017 (S)

Ramchandra Vs. Public Works Department

Writ Petition No.1923/2017 (S)

Narayansingh Vs. Public Works Department

Writ Petition No.1967/2017 (S)

Smt. Nitu Bai Vs. The State of Madhya Pradesh

Writ Petition No.2476/2017 (S)

Dhendo Vs. The State of Madhya Pradesh

Writ Petition No.2585/2017 (S)

Ramchandra Vs. The State of Madhya Pradesh

Writ Petition No.2588/2017 (S)

Mangilal Vs. Public Works Department

Writ Petition No.2590/2017 (S)

Gopilal Vs. The State of Madhya Pradesh

Writ Petition No.2593/2017 (S)

Gangaram Vs. Public Works Department

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.3298/2017 (S)

Ramesh Vs. Public Works Department

Writ Petition No.4172/2017 (S)

Deceased Sakharam Choube through LRs Rakesh Vs.
Public Works Department

Writ Petition No.4180/2017 (S)

Maniram Vs. The State of Madhya Pradesh

Writ Petition No.4311/2017 (S)

Mangilal Vs. Public Works Department

Writ Petition No.4314/2017 (S)

Deceased Gajanand through LRs Smt. Sajan Bai Vs.
Public Works Department

Writ Petition No.4861/2017 (S)

Smt. Ganga Bai Vs. Public Works Department

Writ Petition No.19471/2017 (S)

Ramprasad Vs. Department of Water and Irrigation Resources

Writ Petition No.19479/2017 (S)

Iliyas Vs. Department of Water and Irrigation Resources

Writ Petition No.19537/2017 (S)

Ramesh Vs. The State of Madhya Pradesh

Writ Petition No.19677/2017 (S)

Anarsingh Vs. The State of Madhya Pradesh

Writ Petition No.19940/2017 (S)

Moti Vs. Public Works Department

Writ Petition No.20055/2017 (S)

Bholiya Vs. The State of Madhya Pradesh

Writ Petition No.20217/2017 (S)

Budibai Vs. The State of Madhya Pradesh

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition No.20340/2017 (S)

Janadi Bai Vs. The State of Madhya Pradesh

Writ Petition No.20449/2017 (S)

Binka Bai Vs. The State of Madhya Pradesh

Writ Petition No.21619/2017 (S)

Dongariya Vs. Public Works Department

Writ Petition No.22531/2017 (S)

Vasudeo Vs. The State of Madhya Pradesh

Writ Petition No.2362/2018 (S)

Jadav Bai Vs. Public Works Department

Writ Petition No.3913/2018 (S)

Badri Vs. Public Works Department

Writ Petition No.7369/2018 (S)

Jagdish Vs. Public Works Department

Writ Petition No.769/2017 (S)

Suresh Vs. Public Works Department

Writ Petition No.1924/2017 (S)

Prabhulal Vs. Public Works Department

Writ Petition No.2184/2017 (S)

Narayansingh Kushwah Vs. Ujjain Nagar Palika Nigam

Writ Petition No.3795/2018 (S)

Ramesh Chandra Vs. Public Works Department

Ms. Ranjana Gawade, Mr. Jitendra Verma, Mr. Harish Joshi and
Mr. Prakhar Karpe, learned counsel for the petitioner(s).

Mr. Manoj Dwivedi, learned Additional Advocate General with
Mr. Pushyamitra Bhargava, learned Deputy Advocate General,
Mr. Vivek Patwa and Ms. Bhakti Vyas, learned Government
Advocate for the respondents / State.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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O R D E R(Delivered on this 06th of August, 2018)

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.1160/2015 (S) are narrated hereunder.

02- The petitioner before this Court has filed present petition for issuance of an appropriate writ, order or direction directing the respondents to pay pension to the petitioner. The petitioner's contention is that he was appointed in the year 1998 on the post of Master Gang Collie. In other connected cases, the petitioners were appointed on the post of Gangman (Daily Wagers) and other equivalent posts.

03- The petitioner's contention is that he was appointed in the year 1998 and has attained the age of superannuation on 30/04/2014. The petitioner's further contention is that similarly situated employee Lalsingh S/o Gangaram has filed a writ petition before this Court i.e. Writ Petition No.11238/2012 (S) claiming pension and by an order dated 10/12/2013, this Court has extended the benefit of pension to the petitioner therein. The petitioner has further stated that thereafter, he has submitted a representation to the Department claiming similar benefits, however, he has not been granted pension.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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04- A reply has been filed in the matter and the stand of the State Government is that the petitioner was appointed as a Daily Wager on the post of Gang Coolie and till his retirement he has not been regularized. From the date of his initial appointment till his retirement, the petitioner has not been regularized and therefore, the petitioner is not entitled for pension.

05- The contention of learned counsel for the respondents is that the petitioner's case is not covered under the Madhya Pradesh Civil Services (Pension) Rules, 1976 and the Madhya Pradesh (Work Charge and Contingency Paid Employees) Pension Rules, 1979 also do not provide for the pension in such cases. The petitioner has not been appointed keeping in view the Recruitment Rules and has not completed requisite years of regular service for grant of pension and therefore, he is not entitled for any pensionary dues. The respondents have prayed for dismissal of the writ petitions.

06- Heard learned counsel for the parties and perused the record.

07- The undisputed facts reveal that the petitioner was appointed as a Daily Wager and has retired as a Daily Wager. There was no order passed by the respondents regularizing the petitioner on a permanent post under the Work Charge and Contingency Paid Establishment. Regularization under the Work Charge and Contingency Paid Establishment is done by passing an appropriate order and conferral of permanent status should not be mixed-up

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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with the issue of regularization. They are altogether two different things and the employees who have been conferred permanent status, are entitled for grant of minimum of pay-scale.

08- It is a settled preposition of law that an employee who has been granted permanent status keeping in view the standing orders or keeping in view the Madhya Pradesh Industrial Relations Act, 1960, shall be entitled for only minimum of the pay-scale, whereas an employee who is regularized, is entitled for all consequential benefits. He gets regular pay-scale and after completing minimum number of service as provided under the Madhya Pradesh Work Charge and Contingency Paid Employee (Pension) Rules, 1976, he is also entitled for pension.

09- In the present case, there is no order brought to the notice of this Court regularizing the petitioner nor in other connected cases there is any order on record to establish that the petitioners were regularized or they were appointed after following due process of law.

10- Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of **Rahisha Begum W/o Late Ashraf Khan Vs. State of M. P. & Others** reported in 2010 (4) **MPLJ 332** claiming pensionary dues. In the aforesaid case, the wife was claiming family pension on account of death of her husband and a committee was constituted which has regularized the

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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husband of the petitioner *vide* order dated 31/12/1998. In those circumstances, the widow was held to be entitled for family pension, whereas in the present case, no such contingency is involved. The petitioner has never been regularized by passing any order nor his appointment was in consonance with the statutory provisions governing the filed. He was a Daily Wager and has attained the age of superannuation as a Daily Wager.

11- Heavy reliance has been placed again upon a judgment delivered in the case of **Harijan Paniben Dudabhai Vs. State of Gujarat and Others** reported in **Laws (SC) 2016 Pg.72**. In the aforesaid case, the deceased has put in 33 years of service and died in harness. He was an employee of Panchayat service under the Gujarat Stage. The apex Court was dealing with a case of an employee who was allocated to Gram Panchayat and in the present case in the State of Madhya Pradesh there are specific statutory provisions governing the filed. The Pension Rules are very clear on the subject and the petitioner has never been regularized by passing any order nor his appointment was as per the provisions of Recruitment Rules and therefore, the judgment is of again no help to the petitioner.

12- Learned counsel for the petitioner has placed heavy reliance upon a judgment delivered by Full Bench of this Court in the case of **Vishnu Mutiya and Others Vs. State of M.P. and Others** reported

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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in **2006(1) SCT 532 (MP)**. It was a case where the Full Bench of this Court was dealing with retirement of Gangman and even though the post of Gangman was not included in Schedule of Rules of 1976, they were given the benefit of continuance up to the age of 62 years by treating them at par with the other identically placed employees. The aforesaid case has got nothing to do with the grant of pensionary benefits and therefore, the judgment of Full Bench as it does not deal with the issue of pension, is also of no use to the petitioner.

13- Reliance has also been placed upon a judgment delivered in the case of **Brahm Pal Singh Vs. State of Uttarakhand and Another** passed in WPSS No.1142/2016 and other connected cases on 05/06/2017 and the issue involved in the aforesaid case was counting of past services as work-charge status followed by the regularization, whereas in the present case no such controversy involved.

14- On the other hand, learned counsel for the State of Madhya Pradesh has brought to the notice of this Court towards an order passed in Writ Petition No.1174/2015 (Vijaysingh & Anr. Vs. State of Madhya Pradesh & Anr.) decided on 29/03/2016, wherein this Court has held that a person who was appointed as a Daily Wager is not entitled for pension keeping in view the Pension Rules, 1976.

15- In the case of **Kala Bai Prajapati Vs. State of Madhya**

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Pradesh and Others reported in **2011 ILR 2319**, the Division Bench of this Court while dealing with similar issue in paragraphs No.5 to 7 has held as under:-

"5. We have given our anxious consideration to the above contention urged on behalf of the Appellant, but we are sorry, we have not been able to persuade ourselves to agree with this submission. It may be mentioned that Rule 6 of the Contingency Rules of 1977 which contains provisions for classification of the employees provides only two categories of employees, i.e. temporary and permanent. Contingency Rules of 1977 nowhere provide for employment on muster roll basis and hence, in our opinion, employment of the late husband of the Appellant on muster roll basis during the period from 01st May, 1973 to 09th April, 1991 does not fall within the ambit and scope of Contingency Rules of 1977.

6. Full Bench of this Court in the case of *Mamta Shukla v. State of M.P.* 2011 (3) MPLJ 210 has held in penultimate paragraph of the said judgment as under:

24. On the basis of above discussion, we hold in regard to the substantial questions of law Nos. 2 and 3 that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.

7. In view of the above judgment of the Full Bench of this Court, the Appellant is not entitled to family pension because the employment of her late husband on muster roll basis cannot be counted for counting the qualifying service required for grant of such pension to her. It is not the case of the Appellant that her late husband had, after regularisation with effect from 09th April, 1991, put in the qualifying service required for grant of pension on the day he died on 03rd August, 1997. His service on the date of his death fell short of qualifying service required under the Contingency Rules of 1977 for grant of family pension to his widow. Hence, in the opinion of this Court, there is no infirmity or illegality in the impugned order of the learned Single Judge declining family pension to the Appellant, which may require our interference in exercise of our appellate jurisdiction in the present appeal. This appeal is devoid of any merit and is, therefore, dismissed but with no order as to costs."

In similar circumstances, the writ appeal was dismissed

(35)

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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holding that Daily Wagers are not entitled for grant of pension even though they might be receiving salary from the contingency fund.

16- The last judgment which concludes the issue, has been delivered by the Full Bench of this Court in the case of **Mamta Shukla (Smt.) Vs. State of M. P. and Ors.** reported in **ILR (2011) MP 1807**, wherein this Court has dealt with the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 and in similar circumstances has held that an employee is not entitled for pension unless and until he is appointed in accordance with the provisions of Recruitment Rules and he is regularized. The reference which was made by the learned Single Judge to Hon'ble the Chief Justice which resulted in constitution of Full Bench reads as under:-

- “(i) Whether the decision of the Division Bench in W.A. No. 725/2007 Smt. Rahisha Begum v. State of M.P. and Ors. is not a good law in view of the decision of the earlier Division Bench of this Court vide order dated 18-7-2005, passed in W.P. No. 1273/2000 State of M.P. and Ors. v. Ram Singh and Anr.?
- (ii) Whether an employee is eligible for the benefit of family pension in accordance with the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 after completing qualifying service in accordance with the provisions of Recruitment Rules framed by the concerned Department for work charged and contingency paid employees or in accordance with the definition of Rule 2 of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 in regard to "contingency paid employee", "work-charged employee" and "permanent employee"?
- (iii) Whether for counting qualifying service of an employee for the purpose of grant of benefit of pension it is necessary that the employee has to be appointed in accordance with the provisions of contingency paid employees recruitment rules framed by the concerned department in regard to work

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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charged and contingency paid employees?"

17- The Full Bench after taking into account the relevant Pension

Rules in paragraphs No.19 to 25 has held as under:-

"19. The Hon'ble Supreme Court further in State of M.P. and Ors. v. Lalit Kumar Verma AIR 2007 SCW 70 has held as under in regard to illegal appointment:

13. The question which, thus, arises for consideration, would be: Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event of appointment is made made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 21 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

From the aforesaid decision of the Hon'ble Supreme Court, it is clear that if an appointment is not made in terms of statutory rules or against a clear vacancy or on any permanent post, the employee could not be declared or granted a permanent status in accordance with the provisions of Madhya Pradesh Industrial Relations Act, 1960.

20. A constitutional Bench of Hon'ble Supreme Court in Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 01 has held as under in regard to regularization and absorption of the daily wage employees.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules of procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State

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cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public

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employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the Respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept

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of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College*. That case arose out of a refusal to promote the writ Petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

From the aforesaid decision of the Hon'ble Supreme Court, it is clear that an employee who was appointed or engaged without following the procedure as enumerated in relevant Recruitment

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Rules and on ad hoc basis against any sanction post, could not get a status and hence on the basis of the aforesaid principle of law, it has to be held that Rule 3 of the Pension Rules of 1979, which prescribes scope and application of the Pension Rules of 1979, would be applicable to the 'work-charged and contingency paid employee', who comes within the definition of 'service' of the Recruitment Rules of 1977.

21. The concept of 'pension' has also been considered in various judgments by the Hon'ble Supreme Court. It is elaborately considered by the Constitutional Bench of Hon'ble Supreme Court in *D.S. Nakara and Ors. v. Union of India* MANU/SC/0237/1982 MANU/SC/0237/1982 : (1983) 1 SCC 305. The Hon'ble Supreme Court has also traced the history of concept of pension and held as under:

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*.

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former

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continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see Retirement Systems for Public Employees by Bleakney, p. 33).

23. As the present case is concerned with superannuation pension., a brief history of its initial introduction in early stages and continued existence till today may be illuminating. Superannuation is the most descriptive word of all but has become obsolescent because it seems ponderous. Its genesis can be traced to the first Act of Parliament (in U.K.) to be concerned with the provision of pensions generally in the public offices. It was passed in 1810. The Act which substantively devoted itself exclusively to the problem of superannuation pension was Superannuation Act of 1834. These are landmarks in pension history because they attempted for the first time to establish a comprehensive and uniform scheme for all whom we may now call civil servants. Even before the 19th century, the problem of providing for public servants who are unable, through old age or incapacity, to continue working, has been recognised, but methods of dealing with the problem varied from society to society and even occasionally from department to department.

24. A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on "considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development". And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as "Northoote-Trevelyan Report". The Report

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was pungent in its criticism when it says that:

[I] in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system.

25. This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.

26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live:

(i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments where by the social policies are implemented and pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such

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as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed.

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (1) as compensation to former members of the Armed Forces or their dependents from old age, disability or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in formed in one form or another countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare. But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Douge v. Board of Education*, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments of one retired from service. Thus the pension payable to a government employee is earned

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by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

22. The Hon'ble Supreme Court further in *Kerala State Road Transport Corporation v. K.O. Varghese and Ors.* (2003) 12 SCC 293 has considered the concept and object of pension and held as under:

12. Before we deal with their respective contentions, it is necessary to appreciate the concept of pension. There are different classes of pensions and different conditions govern their grant. It is almost in the nature of deferred compensation for services rendered. There is a definition of pension in Article 366(17) of the Constitution of India, 1950 (in short "the Constitution"), but the definition is not all-pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life.

13. A political society which has a goal to set up a welfare State, would introduce and has, in fact, introduced as a welfare measure wherein the retiral benefit is grounded on consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. But, the evolving concept of social security is a later-day development, and this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether changes were necessary in the system established by the operative 1834 Act. The report of the Commission is known as "Northcote-Trevelyan Report". The report was pungent in its criticism when it says that:

"in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducement to the parents and friends of sickly youth to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system". (See Gerald Rhodes: *Public Sector Pensions*, pp. 18-

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19.)

14. This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively young age, with selection through stiff competitive examinations and ordinarily the best talent gets the opportunity.

15. Let us, therefore, examine; as was done by this Court in *D.S. Nakara v. Union of India* as to what are the goals that any pension scheme seeks to subserve. A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want with decency, independence and self-respect, and (ii) at a standard equivalent at the preretirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that in determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. The law is one of the chief instruments whereby the social policies are implemented and pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual or a cash income adequate, when taken along with the benefit in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed. (See *Social Security Law* by Prof. Hany Calvert, p. 1.)

16. Viewed in the light of the present-day notions, pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are: (i) as compensation to former members of the armed forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or

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disability benefits for civilian, employees, and (iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of a recent origin, though they are of the greatest magnitude. There are other views about pensions, such as charity, paternalism, deferred pay, reward for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Dodge v. Board of Education* a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

18. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to the aging progress and therefore, one is required to fallback on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

19. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them obscure

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(see American Jurisprudence 24.881).

20. From the aforesaid analysis three things emerge: (i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field, (ii) that the pension is not an ex gratia payment but it is a payment for 'the past service rendered; and (iii) it is a social-welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in the lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

21. in *Corpus Juris Secundum*, Vol. 70, at p. 423, it is stated that the title "pension" includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representatives; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions.

22. In its strict sense a pension is not a matter of contract, and is not founded on any legal liability, it is a mere bounty or gratuity "springing from the appreciation and consciousness of the sovereign", and it may be given or withheld at the discretion of the sovereign. It may be bestowed on such persons and on such terms as the law-making body of the Government prescribes, and it is, at the most, an expectancy granted by the law. The term "pension" has been compared and distinguished from "bonus", "compensation", "profits" and "retirement payment". A pension fund is to be distinguished from an annuity fund derived in part from voluntary contributions under a statutory option to contribute or refrain from contributing.

In *State of Kerala v. M. Padmanabhan Nair* it was observed that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The view was reiterated in *Uma Agrawal (Dr.) v. State of U.P.*

24. It is to be noted that in certain countries wrongful withholding of pension money has been made a criminal

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offence and it has been observed in some of the Western countries that the federal statute making the wrongful withholding of pension money a criminal offence must be strictly construed. The purpose of the statute, it was held, is to protect the pensioner against fraud until the unconditional payment of the money to him.

25. In Halsbury's Law of England, 4th Edn., Reissue, Vol. 16, it has been observed on the subject as follows:

Pension means, a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the Secretary of State is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing them with retirement, benefits and, except in the case of such a lump sum which had been paid to the employee, that:

- (1) the scheme or arrangements is established by Act of Parliament or of Parliament of Northern Ireland, or other instrument having the force of law, or
- (2) the benefits under the scheme or arrangement are secured by an irrecoverable trust which is subject to the laws of any part of the Great Britain; or
- (3) the benefits under the scheme or arrangements are secured by a contract of assurance or an annuity contract which is made with:
 - (a) an insurance company to which the Insurance Companies Act, 1982 applies; or
 - (b) a registered friendly society; or
 - (c) an industrial and provident society registered under the Industrial and Provident Societies Act, 1965; or
- (4) the benefits under the scheme or arrangement are secured by any regulation or other instrument, not being a regulation or instrument having the force of law, made with the authority of a Minister of the Crown or with the consent of the Treasury for the purpose of authorizing the payment to persons not employed in the civil service of the State of such pensions, gratuities or other like benefits, as might have been granted to person so employed; or
- (5) the scheme or arrangement is established by an enactment or other instrument having the force of law in any part of the Commonwealth outside the United Kingdom;

and that the provision made to enable benefits to be paid, taking into account any additional resources which could and would be provided by the employer, or any

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person connected with the employer to meet any deficiency, is adequate to ensure payment in full of such benefits.

'Pension' includes any part of the pension, 'Pension' does not include:

- (i) a payment of an employee which consists of solely of a return of his own contributions, with or without interest;
- (ii) that part of a payment to an addition which is attributable solely to additional voluntary contributions by that employee made in accordance with the scheme or arrangement;
- (iii) a periodical payment or lump sum, insofar as that payment or lump sum represents compensation under statutory compensation scheme and is payable under a statutory provision whether made or passed before, on or after 31-7-1978.

If in any case the Secretary of State is satisfied that benefits under the scheme or arrangement are wholly or mainly provided for the benefit of persons not resident in Great Britain, he may, if he thinks fit and subject to such conditions, if any, as he thinks proper, waive the requirement contained in head (2) above in respect of a scheme or arrangement the benefits under which are secured by an irrecoverable trust or the requirements of heads 3(a), 3(b) or 3(c) above in the case of a scheme or arrangement the benefits under which are secured by a contract of assurance or an annuity contract.

26. In *Union of India v. P.N. Menon* this Court observed that not only in the matters of revising the pensionary benefits, but also in respect of revision of scales of pay a cut-off date on some rational or reasonable basis has to be and can be fixed for extending the benefits. The cut-off date may be justified on the ground that additional financial outlay is involved or the fact that under the terms of appointment the employee was not entitled to the benefit of the pension on retirement. (See *Union of India v. Lieut. E. Iacats.*) Depending upon financial conditions a cut-off date can be fixed when a new pension scheme is being introduced. (See *State of Rajas than v. Amrit Lal Gandhi.*)

From the aforesaid judgments of the Hon'ble Supreme Court, it is clear that the pension is a payment for the past services rendered by an employee and for the purpose of rendering service, the employee has to attain the status, which means, an employee has to be appointed in accordance with the provisions of Recruitment Rules.

23. The Division Bench of this Court in *Madhukar Talmale v. State of M.P. and Ors.* MANU/MP/0987/2003 : 2003 (4) MPLJ 282 has held that if the appointment of a work-charged employee is dehors the rules, then his service has to be counted from the date

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of regularization and not from the date of his initial appointment. The relevant findings of the Division Bench are as under:

Annexure-11 has been appended to the Schedule to the M.P. Workcharged and Contingency Employees Pay Revision Rules, 1984 as it has been under Rule 3. Under S. No. 3(B) the post of Time Keeper is mentioned. It stipulates that there would be 100% direct recruitment. It stipulates that incumbent must have passed Higher Secondary, mathematics being one of the subject. As the Petitioner was appointed in the year 1983, 1984 Rules would be applicable that governed the field then. The relaxation has been made in exercise of power under Rule 11. A general circular was issued on 13-11-1988 when the Petitioner's services had been regularized by taking recourse to Rule 11. If the said Rule is conjointly read with the circular in question, he cannot claim seniority from the date of his initial service in as much as he was appointed dehors to the Rules and therefore, his seniority has to be computed from the date of regularisation. No fallacy or infirmity in the order passed by the Tribunal.

24. On the basis of above discussion, we hold in regard to the substantial questions of law Nos. 2 and 3 that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules framed by the concerned department i.e. the Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.

25. In regard to substantial question of law No. 1. Earlier Division Bench of this Court in W.P. No. 1273/2000 State of Madhya Pradesh v. Ram Singh and Anr. has held that a daily wager employee would not fall within the definition of work-charged and contingency paid employee, hence his case would not be covered by Madhya Pradesh Work-charged and Contingency Paid Employees Pension Rules, 1979, has not been noticed by the subsequent Division Bench of this Court in Rahisha Begum v. State of M.P. and Ors. MANU/MP/0961/2010 : 2010 (4) MPLJ 332. However, in the subsequent case, the Division Bench has held that if an employee comes within the definition of work-charged and contingency paid employee as defined in the Pension Rules of 1979, then he is eligible to count his past service for the purpose of qualifying service in accordance with the Rules of 1979. In our opinion, there is no conflict between the Division Bench judgments, because the findings of the Division Benches are based, on different factual aspects. Accordingly, we answer the substantial question of law No. 1 that there is no conflict of opinion between the two Division Bench judgments. Hence, the decision of the Division

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HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Bench in the case of Rahisha Begum v. State of M.P. and Ors. MANU/MP/0961/2010 : 2010 (4) MPLJ 332. is not per incuriam. We answer substantial question of law No. 1 accordingly."

18- Keeping in view the aforesaid judgment, as in the present case, undisputedly no document has been filed to establish that the petitioner was appointed in accordance with the provisions of Recruitment Rules, there is no order declaring him a regular employee and therefore, in the considered opinion of this Court the question of grant of pension to the petitioner or to other identically placed employees does not arise.

19- The statutory provisions governing the field known as the Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 are quoted as under:-

**"THE MADHYA PRADESH (WORK CHARGED
AND CONTINGENCY PAID EMPLOYEES)
PENSION RULES, 1979**

[Notification No.FB/6/8/79/R-II/IV, dated 18th December, 1979].

As amended subsequently by the following:-

Notfn. Dated 13-9-1982, pub. In M.P.Rajpatra, Pt. IV(ga), dated 26-12-1982, p.133.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh hereby makes the following rules, namely :-

1. Short title. - (1) These rules may be called the Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979.

(2) They shall be deemed to have come into force with effect from the 1st January, 1974.

2. Definitions. - In these rules, unless the context otherwise requires,-

(a) "*Contingency paid employee*" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies excluding the employees who are employed for certain period only

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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in a year,

(b) "*Work-charged employee*" means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employee employed on the work;

(c) "*Permanent employee*" means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974.

[Provided that in respect of a contingency paid employee or a workcharged employee who has attained the age of superannuation on or after the First April 1981, permanent employee means an employee who has completed 10 years of service on or after the 1st January 1974.]

3. Scope and application. - These rules shall apply to every permanent member of the Work-charged and Contingency paid employees' service.

4. Regulation of amount of pension. - Notwithstanding anything contained in Rules 5 and 6, the payment of pension and gratuity of permanent employee shall be regulated as under, namely :-

(1) The Madhya Pradesh New Pension Rules, 1951, except Rule 5 thereof, shall apply to all permanent employees who have retired on or after the 1st January, 1974 but before the 1st June, 1976.

(2) The Madhya Pradesh Civil Services (Pension) Rules, 1976 except Rules 47 and 48 thereof, as amended from time to time, shall apply to all permanent employees who have retired on or after the 1st June, 1976.

[4A. Notwithstanding anything contained in rule 4 of the family of a permanent employee who dies while in service or after retirement on pension on or after the 1st April, 1981 shall be entitled to family pension at the rate of 30% of his/her pay drawn at the time of death/retirement subject to minimum of Rs.40/- per month and maximum of Rs.100/- per month subject to other conditions of rule 47 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 except sub-rule (3) of the said rule.]

5. Procedure for preparation of pension papers, sanction and payment of pension, etc. - The rules in Chapters VIII, XI and XII of the Madhya Pradesh Civil Services (Pension) Rules, 1976 shall apply *mutatis mutandis* in the case of employees including those who have retired on or after the 1st January, 1974 but prior to the 1st June, 1976.

6. Commencement of qualifying service. -

(1) Subject to the provisions of Chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 or Section IV of the Madhya Pradesh New Pension Rules, 1951 as the case may be,

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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for calculating qualifying service of a permanent employee who retires as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onwards shall be counted for pension as if such service was rendered in a regular post."

20- The petitioner's case is not at all covered under the Rules of 1979. He is a Daily Wager and by no stretch of imagination is entitled for pensionary dues in light of the judgment delivered in the case of **Mamuta Shukla** (Supra).

21- The Recruitment Rules governing the field known as Madhya Pradesh Public Works Department Workcharged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1976 provides for method of recruitment and promotion. It provides for maintenance of service record in respect of all employees appointed under the Rules of 1976. The petitioner is certainly not a member of service in question and his initial recruitment itself is not in accordance with the Rules of 1976 and therefore, in the considered opinion of this Court, the question of grant of pension to the petitioner does not arise.

22- It has also been argued that identically placed persons by virtue of orders passed by this Court are receiving pension and a judgment is placed on record delivered in the case of Lalsingh S/o Gangaram passed in Writ Petition No.11238/2012 (S) on 10/12/2013.

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HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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23- This Court has carefully gone through the judgment delivered in the case of Lalsingh S/o Gangaram and the fact remains that the judgment delivered in the case of **Mamta Shukla** (Supra) which is by Full Bench has not been considered at all and therefore, if a person is receiving pension on account of some order, it does not create any right in favour of the petitioner specially when the law has been crystallized in the case of **Mamta Shukla** (Supra). The petitioner cannot claim negative equality in the matter of grant of pension. The petitioner has to support his claim on the basis of statutory provisions and the judgments delivered from time to time. The statutory provisions governing the field does not support the petitioner at all and the judgment delivered in the case of **Mamta Shukla** (Supra) also does not entitled the petitioner for grant of pensionary dues.

24- In light of the aforesaid, present writ petition along with all other connected writ petitions are dismissed.

Certified copy as per rules.

(S. C. SHARMA)
JUDGE

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7068 OF 2022

SUNITA BURMAN

....

APPELLANT

Versus

THE COMMISSIONER, M.P. HOUSING AND
INFRASTRUCTURE DEVELOPMENT BOARD
AND OTHERS

.....

RESPONDENTS

JUDGMENT

HIMA KOHLI, J.

1. The appellant – widow of Late Munna Lal Burman, is aggrieved by the judgment dated 23rd January, 2020, passed by the Division Bench of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Appeal No. 1600 of 2018 reversing the order dated 06.09.2018, passed by the learned Single Judge in Writ Petition No. 95 of 2007 whereunder the respondent No. 1 – M.P. Housing and Infrastructure Development Board¹ was directed to pay family pension and other retiral dues to her on the demise of her husband.

2. The admitted facts of the case are that on 28th April, 1977, Munna Lal Burman, husband of the appellant was engaged by the respondent No. 1 – Housing Board as a Muster Roll employee on daily wages. Vide office order dated 29th October, 1997, he

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SUNITA BURMAN
ARORA
Date: 2022.10.14
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Reason:

¹ For short 'Housing Board'

was appointed in the work charged establishment of the Housing Board. While continuing to work in the establishment, Munna Lal Burman expired on 26th April, 2016. On 01st August, 2016 and 09th September, 2016, the appellant submitted applications to the respondent No. 1 – Housing Board for grant of family pension which were turned down *vide* letter dated 14th October, 2016, with an observation that there was no provision for grant of pension/family pension to employees working in the work charged establishment. Aggrieved by the said decision, the appellant filed a writ petition registered as Writ Petition No. 95 of 2017 before the High Court of Madhya Pradesh, Principal Seat at Jabalpur praying *inter alia* for grant of family pension, retiral dues, gratuity etc., on the demise of her husband. The said petition was allowed by the learned Single Judge, *vide* judgment dated 06th September, 2018 and the respondent No. 1 – Housing Board was directed to fix the retiral dues and family pension payable to the appellant in a time bound manner and release the arrears of family pension with interest. The reasons that weighed with the learned Single Judge for allowing the writ petition are as follows :-

"12. In the present matter, it is clear from the order of appointment dated 29.10.1997 that the provisions of M.P. Work-charged and Contingency Paid Employees Rules were made applicable in the case of Late Munnalal. Regulation 5(d) of M.P. Gruha Nirman Mandal Regulations, 1998 provides that grant of pension/family pension and death-cum-retirement benefits to the regular officers and employees of the Board with effect from 01.07.1973 shall be regulated in accordance with M.P. Civil Services (Pension) Rules, 1976.

13. The M.P. Housing and Infrastructure Development Board has adopted the Regulations, 2015, which has been approved and confirmed by the State Government *vide* order No.F.23- 3/15/18-6 Bhopal dated 17.04.2015. The regulations 5(e) of the 2015 Regulations provides that the order of grant of pension/family pension and death-cum-retirement benefit to the regular officers and employees of the Board with effect from 01.07.1973 shall be regulated in accordance with the M.P. Civil Services (Pension) Rules, 1976. However, the regular officers and servants of the Board who have been appointed, on or after

1st of January, 2005, shall be covered by new National Pension Scheme. Hence, it is clear that the National Pension Scheme was not applicable to the deceased employee, as he was not appointed on or after 1st January, 2005. Hence, the mistake committed by the respondent-Board in deduction of Rs.1940/- from the salary of late Munnalal under the National Pension Scheme, seems bonafide."

3. Aggrieved by the aforesaid decision, the respondent No. 1 – Housing Board preferred an appeal registered as Writ Appeal No.1600 of 2018 that was allowed by the Division Bench, *vide* judgment dated 23rd January, 2020 and it was held that the deceased husband of the appellant being a member of the work charged establishment, was not entitled to pension as he could not be treated at par with the regular employees of the respondent No. 1 – Housing Board.

4. Mr. S.K. Gangele, Senior Advocate appearing for the appellant argued that the High Court has fallen into an error by holding that the appellant's husband being a work charged employee of the respondent No. 1 – Housing Board, is not entitled to pension. Placing reliance on the office order dated 29th October, 1997 issued by the respondent No. 1 – Housing Board which refers to a decision taken to regularize Muster Roll employees as per their seniority, it was submitted that the name of the appellant's husband featured at serial No.5 of the tabulated statement forming a part of the aforesaid office order, which showed that he had become a regular employee of the Housing Board and was covered under the provisions of the M.P. Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1977. Learned counsel submitted that pension/family pension was payable to such an employee/his family under Regulation 5(d) of the M.P. Griha Nirman Mandal Regulations, 1998 and there

was no justification for reversing the judgment dated 06th September, 2018, passed by the learned Single Judge in favour of the appellant. Lastly, it was contended that the impugned judgment runs contrary to the principles of law laid down in **Prem Singh v. State of Uttar Pradesh and Others**².

5. Opposing the aforesaid submission, Mr. R.C. Mishra, learned Senior Advocate appearing for the respondent No.1 – Housing Board and its officers arrayed as respondents No. 2 to 5 and Mr. Saurabh Mishra, learned Additional Advocate General for the respondent No.6 – State of Madhya Pradesh supported the impugned judgment and asserted that the appellant's husband had not been regularized till the date of his demise and had remained a work charged employee. Alluding to the very same office order dated 28th October, 1997, relied on by learned counsel for the appellant, it was sought to be clarified that by virtue of the said order, Late Munna Lal Burman and other similarly placed daily wage Muster Roll employees working in the respondent No. 1 – Housing Board for the period between 26th May, 1974 and 30th June, 1981, had been appointed in the work charged establishment and in accordance with the terms and conditions of their appointment, M.P Work Charged and Contingency Paid Employees Recruitment and Service Rules was made applicable to such employees. Explaining that the work charged establishment where the deceased was appointed, was a non-pensionable establishment of the respondent No. 1 – Housing Board and he could have opted for the National Pension Scheme³ in terms of the order dated 02nd July, 2015 which he didn't, it was stated that the appellant is not entitled to receive family pension

² (2019)10 SCC 516

³ For short 'NPS'

and the judgment in the case of **Prem Singh (supra)** had no application to the facts of the instant case.

6. We have considered the submissions advanced by learned counsel for the parties and perused the records including the relevant rules and regulations. The only issue that arises for our consideration in the instant appeal is as to whether the deceased husband of the appellant was a regular employee of the respondent No. 1 – Housing Board and if not, would the appellant still be entitled to receive family pension if the deceased had remained a work charged employee in the establishment of the respondent No. 1- Housing Board till the date of his demise.

7. The respondent No.1 - Housing Board is a statutory and an autonomous body established under the Madhya Pradesh Housing & Infrastructure Development Board (Amendment) Act, 1972⁴ for implementation of housing schemes meant for the weaker sections/lower income groups of society on a 'no profit no loss basis'. Being a statutory and an autonomous body, the Housing Board forms its own rules and policies that govern the service conditions of its employees. The rules laid down by the State Government for its employees are not automatically applicable to the employees of the Housing Board unless specifically adopted by the Board. The same is demonstrable from a perusal of Sections 14, 15 and 17 of the Housing Board Act (that deal with appointment of officers and servants of the Board; lay down conditions of service of officers and servants and empowers the Board to make service regulations in respect of

⁴ For short 'the Housing Board Act'

its officers and servants) and on examining the M.P. Civil Services (Pension) Rules, 1976. Rule 2(ii) of the aforesaid Rules clearly provides that the said rules shall not apply to five categories of persons with '*persons in a work-charged establishment*' mentioned specifically in category (a) of the said Rule. Neither is there any provision made for grant of pension to work charged employees in the M.P. Griha Nirman Mandal Regulations, 1998 or in the Madhya Pradesh Housing and Infrastructure Development Board (Conduct of Business and Delegation of Powers) Regulation, 2015.

8. Being alive to the fact that there were no rules in place to regulate/govern the service conditions of employees working in the work charged establishments of the respondent No. 1 – Housing Board, the Board of Directors of the Housing Board had taken a conscious decision in its Meeting No. 229, held on 06th April, 2015, to adopt the following rules:

- i. Madhya Pradesh Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1975 (Excluding Rule 4 to 8);
- ii. Madhya Pradesh Work Charged and Contingency Paid Employees Leave Rules, 1977; and
- iii. Work Charged and Contingency Paid Employees Gratuity Benefit Rules, 1962.

9. For ready reference, the relevant abstract of the decision of the Board of Directors of the Housing Board held on 06th April, 2015, is extracted below:

"2. There is no rule or regulation framed or prescribed in relation to the regulation of services of said work charged employees in the Board. Due to non-

determination of separate conditions of service, difficulties arise in regulating their services.

3. Therefore in order to regulate the services of work charged personnel working in the Board adopting of the following rules notified by the Government it is proposed –

(i) Model Rule "Madhya Pradesh ----- Department Work-charged and Contingency Paid Employees (Recruitment and Conditions of Service) Rules, 1975" (all rules except rule no. 4 to 8) made through Circular ' no. D-34/444/1(three)/VOK/75 Bhopal dated 29.09.1975 of General Administration Department of Government of Madhya Pradesh. (Appendix-1)

(ii) "M.P. Work-Charged and Contingency Paid Employees Leave Rules, 1972". (Appendix-2)

(iii) "Work-Charged Staff and Contingency Paid Staff (Gratuity Benefits) Rules, 1962". (Appendix-3)

4. Work charged personnels working in the Board do not get the benefit of pension, while in other works department employees of Work-Charged establishment are getting pension under Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules, 1979. At present the said rules are not relevant to the employees of the Board. M.P. Daily Wage Employee (Condition of Rule), Rule 2013 (Appendix -4) has been adopted for the daily wage employees of the Board by which they have been brought within purview of National Pension Scheme regulated by PFRDA. For work charged employees also pension is proposed under PFRDA brief description of which is as follows:

(1) The National Pension Scheme initiated by PFRDA, which has been implemented in the State of Madhya Pradesh, with effect from 1st May, 2009 for the domiciles of Madhya Pradesh,

(2) The employee can opt to be a member under National Pension Scheme and can avail the benefit of pension.

(3) In case of an option given by the employee under sub-rule (2) above, a contribution equivalent to ten percent shall be deducted from his wages and the Government shall also contribute the equivalent amount and shall deposit it in the permanent account of the employcc and the consolidated amount and permissible interest thereon shall be paid on his superannuation."

10. It is clear from the above that the Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules, 1979 had not been adopted by the respondent No. 1 – Housing Board and the M.P. Civil Services (Pension) Rules, 1976 did not cover the workers working in work charged establishments of the Housing Board. The M.P. Work-charged and Contingency Paid Employees Pension Rules, 1979 was also not made applicable to the work charged employees of the respondent No. 1 –

Housing Board either in terms of the M.P. Griha Nirman Mandal Regulations, 1998 or under the Madhya Pradesh Housing and Infrastructure Development Board (Conduct of Business and Delegation of Powers) Regulation, 2015. Observing that the M.P. Daily Wage Employee (Condition of Rule), Rule 2013 had been adopted for the daily wage employees of the Housing Board thereby bringing them within the fold of the NPS, a decision was taken to extend the very same Scheme to work charged employees as well.

11. Pursuant to the aforesaid decision taken by the Board of Directors of the respondent No. 1 – Housing Board, an order dated 02nd July, 2015 was issued to regulate the services of the work charged employees by adopting the relevant rules of the State Government as mentioned above and bringing them within the purview of the NPS managed by the Pension Fund Regulatory and Development Authority⁵. Para 8 of the order dated 2nd July, 2015 is relevant and reproduced herein below for ready reference:

"8. National Pension Scheme, launched by P.F.R.D.A, has been made applicable to Madhya Pradesh, which is effective for the domiciles of Madhya Pradesh from 1 May 2009. Pension under the National Pension Scheme, regulated by P.F.R.D.A, shall be payable to Work-charged Employees of the Board as under, a brief description of which is as follows:-

1) The employee may opt for becoming member of National Pension Scheme and avail the benefit of pension.

2) In case of option given by an employee under the aforesaid Sub-Rule(1), contribution equal to 10% shall be deducted from his wages/salary, and an equal amount of contribution shall be made by the Board, and deposited in his permanent Account and the consolidated amount along with the permissible interest shall be payable to him upon his superannuation. The contribution to the pension shall be payable under Account Head-54."

12. In the course of arguments advanced before us on 19th September, 2020, we had specifically enquired from learned counsel for the respondents as to whether the

⁵ For short 'PFDRDA'

aforesaid Office Order was brought to the notice of the employees of the work charged establishments of the respondent No. 1 – Housing Board to enable them to exercise their option of becoming members of the NPS and whether the said employees including the deceased husband of the appellant had applied for availing of the benefit under the NPS. In response thereto, an affidavit dated 15th September, 2022 has been filed on behalf of the respondent no. 1 – Housing Board stating *inter alia* that the contents of the order dated 2nd July, 2015, providing for an option under the NPS to the work charged employees of the Housing Board was duly brought to the notice of all concerned, in accordance with the directions issued at serial No.12 of the endorsement at the foot of the said order that required the same to be displayed on the notice board. The affidavit further states that in response to the aforesaid order calling for requisite options from all the work charged employees of the Housing Board, out of 48 such employees, only 16 had opted to avail the benefit of NPS. Clause 8 of the said order clearly provides that if an employee wants to opt for pension, he can do so by giving his option and thereafter, 10% of his payable salary will be deducted on a monthly basis from his account and the respondent No. 1 – Housing Board will match the said amount by contributing its share on a monthly basis. Thus, the only option that was made available to the work charged employees of the respondent No. 1 – Housing Board was to exercise the option mentioned in para 8 of the order dated 02nd July, 2015, namely, the NPS. However, as per the records, during his life time, the appellant's husband did not opt for the said Scheme.

13. As for the decision in the case of **Prem Singh (supra)** cited on behalf of the appellant, the question raised in the said matter related to the validity of Rule 3(8) of the Uttar Pradesh Retirement Benefits Rules, 1961 and Regulation 370 of the Civil Services Regulations of Uttar Pradesh. In a backdrop where this Court had earlier affirmed the decision of the High Court of Punjab and Haryana in the case of **Kesar Chand v. State of Punjab**⁶, in relation to *pari materia* provisions enacted in the State of Punjab which excluded computation of the period of work charged services from qualifying service for grant of pension, a three Judge Bench of this Court examined several decisions on this aspect and on perusing the Note appended to Rule 3(8) of the Uttar Pradesh Retirement Benefits Rules, 1961 and Regulation 370 of the Civil Services Regulations, held that since the service of the appellant in the said case had been regularized on a vacant post, Rule 3(8) of the U.P. Retirement Benefits Rules, 1961 ought to be read down in respect of the services rendered by him even prior to his regularization and the period spent in the capacity of a charged employee/contingency paid fund employee or non-pensionable establishment employee ought to be counted towards the qualifying service for extending the benefit of pension to such employees.

14. The fact situation in the case in hand is entirely different. The deceased husband of the appellant had remained a work charged employee till the date of his demise on 26th April, 2016. His services had not been regularized. The Office Order dated 29th October, 1997 relied on by the appellant to urge that the services of the deceased husband of the appellant had been regularized, is being misread as can be discerned from the first para of the said order which states that daily wages Muster Roll employees

⁶ 1988 SCC OnLine P&H 338

working between 26th May, 1974 to 30th June, 1981 and named therein were being appointed in work charged establishments and further, that the M.P. Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1977 was made applicable to them. We have noticed above that the aforesaid rules were never adopted by the respondent No. 1 – Housing Board or extended to its work charged employees. Being cognizant of the vacuum relating to the service conditions of the employees working in its work charged establishments, the Board of Directors of the respondent No. 1 – Housing Board had deliberated over the matter and decided on 6th April, 2015 to extend the benefit of pension to the said employees by bringing them within the purview of the NPS and they were given an option to become a member of the said Scheme so as to avail the benefit of pension. As her deceased husband had elected not to opt for the said Scheme, the appellant cannot claim entitlement to payment of family pension on his demise.

15. We therefore hold that the deceased husband of the appellant was not a regular employee of the respondent No.1 – Housing Board. He had remained a work charged employee in the establishment of the Housing Board till the date of his demise. Even while serving in the said capacity, the appellant's deceased husband could have opted for pension under the NPS that was made available to the work charged employees of the respondent No.1 – Housing Board in terms of the order dated 02nd July, 2015. But he did not opt for the said Scheme. The appellant is, therefore, not entitled to receive family pension from the respondent No. 1 – Housing Board.

16. As a result of the aforesaid discussion, we do not find any reason to interfere with the impugned judgment, which is upheld. The present appeal is, accordingly, dismissed while leaving the parties to bear their own expenses.

..... J
[Dr Dhananjaya Y Chandrachud]

..... J
[Hima Kohli]

NEW DELHI,
OCTOBER 14, 2022

2023 LiveLaw (SC) 371

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., C.T. RAVIKUMAR; J.
APRIL 28, 2023

CIVIL APPEAL NO. 3155 OF 2023 (@ SLP (C) NO. 10653 OF 2018)
Uday Pratap Thakur and Anr. versus The State of Bihar and Ors.

CIVIL APPEAL NO. 3156 OF 2023 (@ SLP (C) NO. 26340 OF 2018)
Binod Kumar and Ors. versus The State of Bihar and Ors.

CIVIL APPEAL NO. 3157 OF 2023 (@ SLP (C) NO. 7215 OF 2019)
Ganga Prasad Singh and Ors. versus State of Bihar and Ors.

CIVIL APPEAL NOS. 3158-3159 OF 2023 (@ SLP (C) NOS. 8734-8735 OF 2023) (@ DIARY NO. 28954 OF 2020)
Maheshwar Pandey versus State of Bihar and Ors.

Pension - Qualifying service for pension – Service rendered as work charge – Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013 – Rule 5(v) – Dispute over counting of the period of work charged services for the purpose of computing pensionary benefits and the length of pensionable service - Entire service as work-charged employee cannot be counted towards pension – The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension or quantum of pension.

For Parties Mr. Bankey Bihari Sharma, AOR Mr. Navniti Prasad, Sr. Adv. Mr. Rohit R., Adv. Mr. Amit Pawan, AOR Mr. J.M. Sharma, Sr. Adv. Mr. Ajit Sharma, AOR Mr. Amrit Pradhan, Adv. Dr. Sandeep Singh, Adv. Mr. Akshat Sharma, Adv. Mr. A. Renganath, Adv. Mr. Abhinav Mukerji, AOR Mrs. Bihu Sharma, Adv. Ms. Pratishtha Vij, Adv. Mr. Akshay Shrivastava, Adv. Mr. Azmat Hayat Amanullah, AOR Mr. T. G. Shahi, Adv. Mrs. Madhvi Divan, A.S.G. Mr. Raj Bahadur Yadav AOR. Mr. Nachiketa Joshi, Adv. Mr. Amit Verma, Adv. Mrs. Vaishali Verma, Adv. Mr. Shiv Mangal Sharma, Adv.

J U D G M E N T**M.R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the High Court of judicature at Patna in respective letters patent appeals, the respective original writ petitioners – work charged employees, whose services were subsequently regularized as per the Work Charged Establishment Revised Service Conditions (Repealing) Rules, 2013 (hereinafter referred to as “Rules, 2013”), have preferred the present appeals.

2. For the sake of convenience, Civil Appeal Nos. 3158-3159 of 2023 (Maheshwar Pandey Vs. State of Bihar and Ors.) is being treated as the lead matter.

2.1 The issue involved in the present appeals is with respect to the counting of the period of work charged services for the purpose of computing pensionary benefits and the length of pensionable service.

2.2 A Larger Bench of the High Court by the impugned judgment and order while upholding Rule 5(v) of the Rules, 2013 has held that the period spent in the work charged establishment would be counted only to the extent of the shortfall in the qualifying period of service for grant of pension, which shall be made up by adding that period spent under

the work charged establishment and that the entire period spent under the work charged establishment would not be taken into account.

2.3 The respective original writ petitioners were initially appointed and working under the work charged establishment as work charged. The State Government came out with the Rules from time to time to regularize the services of the work charged employees and also how the work charged services to be counted / considered. Lastly, the State Government framed the Rules, 2013, under which the services of the original writ petitioners came to be regularized.

2.4 One of the clauses, namely, Clause 5(v) provided that old pension scheme will be applicable on these personnel. It further provided that granting the pension and gratuity benefits will be calculated with the recognition of regular service of one year for the work charged service of every five years and in spite of this, if the minimum pension paid service is not completed for pension acceptance under the old pension, the benefit of the pension will be given by adding minimum service to that extent.

2.5 Though the original writ petitioners were held to be entitled to the pension by taking into account the services rendered as work charged for the purpose of qualifying period of service for grant of pension, they challenged Rule 5(v) of the Rules, 2013 to the extent it provided that for the purpose of counting of pension, regular service of one year for the work charged service of every five years shall be taken into consideration. According to the original writ petitioners, the entire service rendered as work charged in the work charged establishment is required to be counted and/or considered for the purpose of pension.

2.6 There were differences of opinion in the two Division Bench judgments with respect to the counting of the period of work charged services for the purpose of computing pensionary benefits and the length of pensionable service, therefore, the matter was referred to the Larger Bench. The Larger Bench by the impugned judgment and order has answered the reference in following terms:-

“(a) With respect to addition of the number of years of service rendered in a work charged tenure to the service under regular establishment, for the purposes of making the service of such regular employees pensionable, there is practically no substantial difference in the pronouncements of the two Division Benches in the case of Sheela Devi (supra) and Binod Kumar (supra). (b) For the purposes of pension, only such period from the work-charged tenure would be added for making the service of an employee which has been regularized to qualify him for pension. (c) While adding such period of work-charged tenure, the modus would be of granting / counting one year for every five years of service rendered under work-charged establishment. If that also leaves some shortfall, then further number of years of work-charged tenure can be taken / added for making the service of the employee pensionable. (d) For the purposes of giving benefit to an employee for promotion on the selection grade and timebound promotion, the entire period of service rendered as workcharged employee can be counted. (e) The Rules and Circular of 2013 are valid as has been held in Binod Kumar (supra). (f) The Rules and Circular of 2013 are applicable to such work-charged employees who have been appointed after 22.10.1984 and prior to 11.12.1990.”

3. The learned counsel appearing on behalf of the appellants has vehemently submitted that in fact the respective appellants rendered services as work charged for approximately more than 30 to 35 years. It is submitted that they were also granted other benefits like MACP etc. while working as work charged under the work charged establishment. It is submitted that therefore, their earlier services rendered as work

charged employees shall not be wiped out and/or at-least cannot be ignored for the purpose of pension.

3.1 It is submitted that the respective appellants were as such appointed not on a particular project but the appointment was for a work, which was regular and periodical in nature for a monthly salary and they were working in the Government department. It is submitted that therefore, their services were not qualitatively different from regular employees.

3.2 It is submitted that it was unfair on the part of the State Government to take work from them for periods depriving them of their due emoluments. It is submitted that all the appellants were appointed after their names were called from the Employment Exchange.

3.3 It is submitted that as observed and held by this Court in the case of **Prem Singh Vs. State of Uttar Pradesh and Ors., (2019) 10 SCC 516**, the services rendered as work charged is to be counted for pensionary benefits. Learned counsel appearing on behalf of the appellants has heavily relied upon the paragraphs 29, 30, 31, 32 and 36 of the said decision.

4. Learned counsel appearing on behalf of the State while opposing the present appeals has vehemently submitted that in fact taking into consideration the fact that despite having worked for a longer period as work charged, thereafter when they were regularized and they were found short of qualifying service for pension and on that ground, they may not be denied the pension solely on the ground that they have not completed the qualifying service for pension, a conscious decision has been taken by the State in favour of such employees providing that for the purpose of qualifying service, the services rendered as work charged is to be counted to make them eligible for pension.

4.1 It is submitted that their services rendered as work charged cannot be counted for the purpose of actual pension, otherwise, there shall not be any difference between a regular employee and a work charged employee. It is submitted that till the work charged employee is regularized, he continues to be work charged employee. It is submitted that therefore, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee to qualify him for pension and while adding such period of work charged tenure, the modus operandi for counting would be one year for every five years of service rendered under work charged establishment and if that also leaves some shortfall, then further number of years of work charged tenure can be taken / added for making the service of the employee pensionable. It is submitted that therefore, the High Court has rightly upheld the vires of Rules, 2013.

4.2 It is submitted that insofar as the reliance placed upon the decision of this Court in the case of **Prem Singh (supra)** relied upon on behalf of the appellants is concerned, it is submitted that the said decision shall not be applicable at all as the reliance placed upon the said decision is absolutely misplaced.

4.3 It is submitted that in the said decision, this Hon'ble Court was considering Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, which specifically provided that the period of service in a work charged establishment shall not be counted for qualifying service for pension. It is submitted that to that this Hon'ble Court read down the said provision and has observed and held that service rendered as a work charged shall have to be counted as qualifying service for pension.

4.4 It is submitted that while considering the validity of Rule 3(8) of the said Rules, this Hon'ble Court observed that after rendering the service for number of years, they cannot be denied the pension on the ground that they have not rendered the qualifying service for pension and that the work charged service can be counted as qualifying service for pension. It is submitted that while considering the validity of Rule 3(8) of the aforesaid Rules, and denying total work charged service to be counted as qualifying service for pension, this Hon'ble Court has observed and held that it will be unfair, unjust and impermissible to deny them the pension and to that it is observed and held that the work charged service can be counted as qualifying service for pension.

4.5 It is submitted that in the said decision, this Hon'ble Court has not observed and held that their entire service rendered as a work charged shall be considered for the purpose of counting of the pension. It is submitted that the said decision shall be restricted to the period of service rendered as work charged to be counted as qualifying service for pension.

5. The short question, which is posed for consideration of this Court is:

"Whether the entire service rendered as work charged under the work charged establishment shall have to be counted and/or considered for the determination of the amount of pension after the work charged employees are regularized under the Rules, 2013?

6. It is required to be noted that the respective appellants were working as work charged under the work charged establishment in the State. Their services have been regularized under the Rules, 2013 and the follow up notification of the Finance Department vide Circular No. 10710 dated 17.10.2013. Rule 5(v) of the Circular reads as under:-

"5(v) Old pension rules shall be applied on these employees. The benefit pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Even then if the minimum requirement of 10 years of service for pension is not met under the old rules, then minimum service shall be added to give advantage thereof."

6.1 Rule 5(v) of the Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Therefore, Rule 5(v) as observed hereinabove, is beneficial also in favour of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be unfair and illegal and can be said to be exploitation. Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as work charged to be counted for the purpose of qualifying service for pension.

Under the circumstances, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension.

6.2 Insofar as the submission on behalf of the appellants that their entire services rendered as work charged should be considered and/or counted for the purpose of pension / quantum of pension is concerned, the same cannot be accepted. If the same is accepted, in that case, it would tantamount to regularizing their services from the initial appointment as work charged. As per the catena of decisions of this Court, there is always a difference and distinction between a regular employee appointed on a substantive post and a work charged employee working under work charged establishment. The work charged employees are not appointed on a substantive post. They are not appointed after due process of selection and as per the recruitment rules. Therefore, the services rendered as work charged cannot be counted for the purpose of pension / quantum of pension. However, at the same time, after rendering of service as work charged for number of years and thereafter when their services have been regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension. That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.

6.3 Now, insofar as the reliance placed upon the decision of this Court in the case of **Prem Singh (supra)** by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered / counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension / pension. The decision of this Court in the case of **Prem Singh (supra)**, therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.

7. In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed. It is observed and held that the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013.

Present appeals, thus, deserve to be dismissed and are accordingly dismissed. No costs.

Pending applications, if any, also stand disposed of.