

(2022) 04 MAN CK 0016
In the Manipur High Court
Case No : Writ Petition (C) No. 41 Of 2020

Ahanthem Abani Singh & Ors

APPELLANT

Vs

State Of Manipur & Ors

RESPONDENT

Date of Decision : 11-04-2022

Acts Referred:

Manipur Civil Service (Pension) Rules, 1977 — Rule 13
Constitution Of India, 1950 — Article 14, 16, 300A

Citation : (2022) 04 MAN CK 0016

Hon'ble Judges : MV Muralidaran, J

Bench : Single Bench

Advocate : A. Romenkumar, L. Monomala

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. This writ petition has been filed seeking a writ of mandamus directing the respondents to count the service of the petitioners commencing from the initial officiating appointment with effect from 3.2.1986 till the regularization for the purpose of pensionary benefits in terms of Rule 13 of Manipur Civil Service (Pension) Rules, 1977 [for short, "the Rules of 1977"] read with Office Memorandum dated 5.7.2003.

2. Heard Mr. A. Romenkumar, learned counsel for the petitioners and Mrs. L. Monomala, learned Government Advocate for the respondents.

3. The case of the petitioners is that on the recommendation of the duly constituted Departmental Promotion Committee (DPC), the petitioners were appointed as Fish Farm Assistant, Revenue Assistant, Gear Assistant, Fish Farm Attendant, Craft Assistant and Laboratory Assistant on officiating basis against the temporary posts lying vacant in the Fishery Department. The petitioners after appointment have been discharging their duties properly and effectively to the satisfaction of their superiors continuously without any break. However, they

were suddenly terminated from service without giving any opportunity. Thereafter, by the order dated 16.12.1998, the Director of Fisheries has reinstated two petitioners on officiating basis to the posts shown against their names. By the order dated 19.12.2011, the Director of Fisheries converted the officiating appointments to contract appointment by protecting their pay.

4. Further case of the petitioners is that the State Government has issued the Office Memorandum dated 5.7.2003 for linking up the service rendered as ad hoc/officiating etc. for counting the qualifying service for pension. On 3.1.2020, the first petitioner submitted a representation to the respondent authorities to count his service as valid qualifying service for the purpose of pensionary benefits, but no action has been taken by the respondent authorities.

5. According to the petitioners, their case is squarely covered by Rule 13 of the Rules of 1977 read with the provisions of the Office Memorandum dated 5.7.2003 and the petitioners are entitled to count the entire period of service commencing from the initial officiating appointment with effect from 3.2.1986 for the purpose of pensionary benefits.

6. The respondents filed affidavit-in-opposition stating that the petitioners were initially appointed on officiating basis followed by contract engagement and as such, the claim of the petitioners that their services have been regularized without any break from the date of their initial officiating appointment is without any legal. From a reading of the Office Memorandum dated 5.7.2003, it is clear that the initial officiating or temporary service shall be followed without interrupting by substantive appointment. However, in the case on hand, by the order dated 19.12.2011, the officiating services of the petitioners were converted into contract appointment and thus the officiating service of the petitioner was interrupted by the contract appointment before their subsequent regularization with effect from 13.12.2019. As such, the provisions for service link up for the purpose of pensionary benefits contained in the Office Memorandum dated 5.7.2003 are not applicable to the case of the petitioners and the same cannot also be extended to the petitioners.

7. It is stated that the State Government is not denying pension benefits to the petitioners. As a policy decision, the State Government has adopted the New Pension Scheme (NPS) for employees appointed after 1.1.2005 and in other words, all State Government employees appointed after 1.1.2005 have been enrolled under the NPS and the petitioners will also be enrolled under the NPS so as to enable them to enjoy the pension benefits.

8. The learned counsel for the petitioners submitted that the petitioners were initially appointed as Fish Farm Assistant, Revenue Assistant, Gear Assistant, Fish Farm Attendant, Craft Assistant and Laboratory Assistant respectively on officiating basis against the temporary posts lying vacant in the Fishery Department and subsequently, they were terminated on one fine morning without giving opportunity. He would submit that on 16.12.1998, the Director of

Fisheries Department passed an order reinstating two of the petitioners. Thereafter, by the order dated 19.12.2011, the Director of Fisheries converted the officiating appointment to contract appointment by protecting the pay of the petitioners.

9. The learned counsel further submitted that the State Government issued an order dated 13.12.2019 in two parts. The first part deals with creation of 74 supernumerary posts, though the petitioners were appointed on officiating basis against the temporary post lying vacant and the second part deals with the regularization. In fact, the State Government has issued an Office Memorandum dated 5.7.2003 for linking up the service rendered on ad hoc/officiating etc. for counting the qualifying service for pension. However, in the case on hand, the respondents are adopting pick and choose method by allowing similarly situated person to continue on officiating basis giving pension under the Rules of 1977.

10. The learned counsel then submitted that on 12.8.2009, the Director of Fisheries has notified the tentative seniority list of officiating Fish Farm Assistant/Craft Assistant/Revenue Assistant/Gear Assistant/Lab Assistant in the Fisheries Department. Out of 127 officiating employees of the above categories of posts, the name of one Babuyaima Singh appeared at Serial No.102 ignoring even the senior-most employee who is the first petitioner. According to learned counsel, the cherry-pick method adopted by the respondents clearly demonstrates the dilatory tactics of the respondent authorities with cool calculations to indulge in favouritism to put the fate of the petitioners in doldrums taking shelter behind the smoke screen of non-applicability of the Rules of 1977. The fact remains that similarly situated employees are granted pension on the basis of cut-off date.

11. The learned counsel next submitted that the petitioners were all appointed against the vacant posts on the recommendation by the DPC and thereafter, the respondents turned around and took the plea that there is no vacant post. Such flagrant mistake committed by the respondents cannot be an excuse to deny the right of the petitioners. The ad-hoc appointment of one Vivekananda was made after undergoing the process of open and competitive selection fulfilling the constitutional mandate under Article 16 of the Constitution of India, whereas the officiating appointment of the petitioners were made after following all the procedures for regular appointment.

12. The learned counsel further submitted that since the entire period of service has been converted into contract with the protection of pay from the initial appointment, their contract service has been treated as qualifying service for the benefit of pension in terms of the Civil Service Regulations. He would submit that in fact the service of the petitioners was not interrupted. Assuming arguendo, the service of the petitioners was interrupted, since their pay was protected, the question of interruption does not arise.

13. By placing reliance upon the decisions of the Hon'ble Supreme Court in the cases of (i) State of Karnataka v. Karnataka Administrative Tribunal, reported in

(2010) 5 SCC 473; (ii) Karan Singh v. Union of India, reported in 1988 SLR 316 (SC); (iii) State of Jharkhand v. Jitendra Kumar Srivastava, reported in (2013) 12 SCC 210; (iv) Habib Khan v. State of Uttarkhand, reported in (2019) 10 SCC 542, learned counsel for the petitioners submitted that the services rendered by the petitioners on officiating basis converting it to contract may be counted for the purpose of pension only; the petitioners who were appointed on officiating basis on the recommendation by DPC in the year 1986 have been converted on contract basis in the year 2011 by creating supernumerary posts and thus, they are entitled to claim pension on the supernumerary posts; the petitioners have earned the consequential benefit of pension by dint of long, continuous, faithful and unblemished service and such right is in the nature of right to property under Article 300A of the Constitution of India and thus they are entitled to reckon the period of work in the changed service for the purpose of computation of qualifying service for grant of pension. Thus, a prayer is made to allow the writ petition.

14. Per contra, the learned Government Advocate submitted that the petitioners' initial appointment on officiating basis was interrupted by the contract engagement and therefore, the claim of the petitioners that their services have been regularized without any break from the date of their initial officiating appointment is without any legal basis. He would submit that the Office Memorandum dated 5.7.2003 specifically provides that the initial officiating or temporary service shall be followed without interruption by the substantive appointment. However, in the case on hand, vide order dated 19.12.2011, the officiating services of the petitioners were converted into contract appointment and, in other words, the initial officiating service of the petitioners was interrupted by converting it into contract appointment before their subsequent regularization with effect from 13.12.2019. Therefore, the provision for service link up for the purpose of pensionary benefits stated in the Office Memorandum dated 5.7.2003 is not applicable to the petitioners.

15. The learned Government Pleader further submitted that the present case does not fall within the purview of the Rules of 1977 as there was break in officiating services rendered by the petitioners. 73 contract appointees, including the petitioners, have been regularized with effect from 13.12.2019 against the supernumerary posts created by the Government pursuant to the State Cabinet's decision dated 21.8.2019 and in compliance with the order passed in W.P.(C) No.1032 of 2015, dated 5.12.2016. Thus, the linking up of past services which the petitioners were rendering against no vacant posts is not acceptable. That apart, the petitioners are not similarly situated persons and they cannot claim similar benefit since their initial services were different.

16. The learned Government Pleader next submitted that the State Government employees appointed after 1.1.2005 have been enrolled under the NPS and the petitioners will also be enrolled under the NPS enabling them to enjoy the pension benefits and prayed for dismissal of the writ petition.

17. This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

18. The grievance of the petitioners is that they were appointed as Fish Farm Assistant, Revenue Assistant, Gear Assistant, Fish Attendant, Craft Assistant and Laboratory Assistant respectively in Fishery Department on officiating capacity against the temporary vacant posts on the recommendation of the duly constituted DPC. However, the State Government, in the year 2011, has converted the officiating appointment of the petitioners as contract appointment and on 13.12.2019, the State Government regularized the services of the petitioners after creating supernumerary posts. Thus, the petitioners prayed for counting their initial officiating appointment till their regularization for the purpose of pensionary benefit in terms of Rule 13 of the Rules of 1977.

19. On the other hand, it is the say of the respondents that the petitioners were initially appointed on officiating basis followed by contract engagement and thus their initial appointment was interrupted. As such the claim of the petitioners that their services ought to be regularized without any break from the date of their initial officiating appointment is without any legal basis.

20. As could be seen from the material produced by the parties, it is clear that on the recommendation of the duly constituted DPC, the petitioners were appointed in the year 1986 and while they were discharging their duties, the petitioners were terminated from service without giving any opportunity. Aggrieved by the order of termination, the first petitioner filed Civil Rule No.869 of 1992 before the Gauhati High Court and by the order dated 24.7.1992, the Gauhati High Court passed the following order:

"Heard Mr.S.Jayanta, learned counsel for the petitioner. Also heard Mr.Shyam Kishor Singh, learned Govt. Advocate.

It is not disputed that the present petition is covered by order dated 6.4.92 passed by this Court in C.R.No.106/92.

In view of the above, the petitioner is entitled to get similar relief.

Accordingly, we direct that the impugned termination order is set aside and petitioner shall be re-instated in service within a period of 15 days from to-day. But he shall not be entitled to get any back wages. The period from the date of termination till the petitioner is re-instated in service shall however be counted for other service benefits.

With the above direction, the petition is disposed of."

[emphasis supplied]

21. Pursuant to the direction of the Gauhati High Court dated 24.7.1992, the Director of Fisheries passed an order on 16.12.1998 reinstating two petitioners (Udoi Singh and Abani Singh) on officiating basis as Laboratory Assistant and Fish Farm Assistant respectively. On 19.12.2011 the Director of Fisheries passed

an order converting the officiating appointment of 128 employees in the Fisheries Department to contract appointment by protecting their pay as Rs.4000-100-6000; Rs.3050-75-3950-80-4590 and Rs.2550-55-2660- 60-3200 respectively. While so, the State Government had issued an order dated 13.12.2019 in two parts and the first part deals with the creation of 74 supernumerary posts though the petitioners were appointed on officiating basis against the temporary post lying vacant. In the second part, by way of addendum, regularization order has been issued to the effect that "consequently, services of the above employees (both Grade III and IV contract appointees/ former officiating appointees) have been regularized w.e.f. 13.12.2019 itself against the aforesaid 74 posts of supernumerary posts created by the State Government."

22. According to the petitioners, though the Director of Fisheries passed an order converting the officiating appointment of 128 employees in the Fisheries Department to contract appointment by protecting their pay, the contract appointment of one M.Babuyaima Singh has been regularized with retrospective effect from 4.6.1992 and he was allowed to withdraw pensionary benefit under the Rules of 1977 vide order dated 31.12.2016, but the petitioners were given regularization only on 13.12.2019 with immediate effect.

23. On a perusal of Annexure-A to the order dated 19.12.2011 of the Director of Fisheries, it is seen that the name of Babuyaima Singh appeared at Serial No.20 among 128 persons. However, by cherry-picking Babuyaima Singh, the Director of Fisheries had issued an order dated 31.12.2016 in his favour, regularizing his service with retrospective effect from 4.6.1992 against the post of Fish Farm Assistant vacated by one Maringchung Kabul (expired) or any other suitable vacant post and he was also allowed to draw pensionary benefits.

24. According to the petitioners, the said approach adopted by the respondents of picking and choosing a particular person, by leaving the petitioners, who are similarly situated, is untenable. To buttress the said stand, learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in the case of Santosh Kumar v. G.R.Chawla, reported in (2003) 10 SCC 513, wherein, it has been held as under:

"12. A perusal of the judgment adopting the policy of pick and choose from the merit list prepared by PSC. The High Court, after taking into consideration the principles laid down by this Court in a number of judgments, recorded a finding as follows:

"It is evident But the State Government adopted a policy of pick and choose, out of the list and wrongly allowed them to steal a march over the direct recruits in the matter of seniority which cannot be permitted."

Thus, as per the dictum laid down by the Hon'ble Supreme Court, the policy of pick and choose adopted by the respondent authorities is unacceptable.

25. It is also seen from the seniority list of officiating Fish Farm Assistant, Craft Assistant, Revenue Assistant, Gear Assistant and Lab Assistant in the Fisheries Department that out of the 127 officiating employees of the above categories of posts, the name of Babuyaima Singh is appearing at Serial No.102 and the first petitioner is senior to him. Such course adopted by the respondent authorities is clear classification of similarly situated employees in granting pension on the basis of cut-off date. That apart, the act of the respondent authorities is in violation of Articles 14 and 16 of the Constitution of India as the similarly situated Babuyaima Singh was granted retrospective regularization with effect from 4.6.1992, whereas the petitioners who are similarly placed persons were granted regularization only on 13.12.2019 with immediate effect.

26. Time and again, the Hon'ble Supreme Court held that classification of similarly situated employees in granting pension on the basis of cut-off date is not justified and violative of Articles 14 and 16 of the Constitution of India.

27. It is pertinent to point out that the State Government had issued an Office Memorandum dated 5.7.2003 for linking up the service rendered either ad-hoc or officiating or any other form for counting the qualifying service for pension. In the said Office Memorandum, in Paragraph 1(i), it has been stated as under:

"As per Rule 13 of the Manipur Civil Service (Pension) Rules, 1977, as amended, qualifying service of a Govt. servant for pension purpose commences from the date he takes charge of a post to which he is first appointed either substantively or in officiating or in temporary capacity provided that officiating or temporary service is followed without interrupting by substantive appointment in the same or another service or another post. Therefore, in cases where the above conditions are satisfied and Courts have directed for counting of qualifying services for pension benefits the Court orders may be complied with immediately without referring to Department of Personnel. As regards other benefits of seniority etc. action as per rules may be taken up."

28. Sub-clause (i) of paragraph 2 of the said Office Memorandum provides as under:

"(i) In case of employee's request for counting of interrupted service rendered in ad-hoc/officiating capacity just preceding their regular appointment as qualifying service only for pension purpose, the same may be agreed to in case of officiating service."

29. The employees who have rendered services on ad-hoc basis can have the benefit of past service for the purpose of pension provided the conditions mentioned in clauses (a) to (d) are fulfilled. Here, the petitioners have fulfilled the conditions stipulated in the Office Memorandum dated 5.7.2003 as they have been appointed based on the recommendation of the duly constituted DPC.

30. On 3.1.2020, the first petitioner submitted a representation to the Deputy Secretary, Fisheries Department requesting to count his officiating service with

effect from 3.2.1986 which is followed subsequently by regularization in terms of the Manipur Civil Service (Pension) Rules, 1977 read with the Office Memorandum dated 5.7.2003. Admittedly, the said representation has not been considered by the respondent authorities till date. One way or the other, the respondent authorities are duty bound to consider and dispose of the representation and communicate the decision thereon to the first petitioner.

31. According to the petitioners, on 4.3.2009, the Department of Forest and Environment has allowed linking up of service of one Ph. Vivekananda Sharma based on the Office Memorandum dated 5.7.2003. In the order dated 4.3.2009, the Principal Secretary, Forest Department linked up the service with effect from 23.6.1999 to 1.3.2007 only for the purpose of pensionary benefits and not for any other purposes including seniority. Highlighting the same, the petitioners prayed for similar benefit to them.

32. In reply, the learned Government Advocate argued that before regularization Ph.Vivekananda Sharma was serving as Data Analyst in the Forest and Environment Department on ad-hoc basis. However, in the case of petitioners, they were initially serving on officiating basis before it was converted into contract appointment. Therefore, the petitioners are not similarly situated with Ph. Vivekananda Sharma.

33. The learned Government Pleader further submitted that the service linkup in the case of Ph. Vivekananda Sharma was allowed as per the provision of the Office Memorandum dated 5.7.2003 and the petitioners cannot take the instance of Ph. Vivekananda Sharma as the petitioners' initial service conditions were totally different.

34. Admittedly, nothing has been produced by the respondents to show that the service conditions of Ph. Vivekananda Sharma and the petitioners are different. In the absence of any service conditions produced by the respondents in the case of Ph. Vivekananda Sharma, it cannot be contended that the service conditions of the petitioners and Ph. Vivekananda Sharma are different though working in two different departments. When the respondents, by relying upon the Office Memorandum dated 5.7.2003 extended the benefit to Ph. Vivekananda Sharma, the same benefit ought to have been given to the petitioners and the like.

35. It also appears that the ad-hoc appointment of Ph.Vivekananda Sharma was made after undergoing the process of open and competitive selection fulfilling the constitutional mandate under Article 16 of the Constitution of India, whereas the officiating appointment of the petitioners were made after following all the procedures for regular appointment and after undergoing the process of open and competitive selection fulfilling the constitutional mandate under Article 16 of the Constitution of India. Thus, this Court is of the view that the case of the petitioners is on a better footing in terms of the settled law than the case of Ph. Vivekananda Sharma.

36. The initial appointment orders of the petitioners clearly show that they were

appointed against the vacant posts on the recommendation made by the duly constituted DPC. Further, the supernumerary posts created by the State could have been from the date of initial officiating appointment since there is no extra financial involvement because the petitioners are already given protection of pay from the date of their initial appointment.

37. In *Karan Singh (supra)*, the Hon'ble Supreme Court held:

"1. We are, however, asked to give a direction that upon the re-fixation of seniority in accordance with the direction of the Tribunal referred to above, consequential benefit should be available to the appellant. Counsel appearing for the respondents suggests that in calling upon the Union of India to give effect regarding conferment of the consequential benefits, we should indicate that if as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions which would follow as a consequence, promotes in the higher grades are likely to be reverted, such officers may not be reverted and should continue in the higher posts by creating supernumerary posts to the extent as may be necessary. Such a direction appears to have been given by this Court in a similar situation in *Narinder Chadha and others v. Union of India and others*, 1986(1) SCR 211. We suggest to government that while complying with the direction for extending the consequential benefits to the appellant upon redrawing of the seniority list, it should keep this principle in view and give effect to our order. In the case of the petitioner before us who has now retired notional promotion may be granted so that the benefit which would accrue may be worked out. These consequential benefits should be worked out within six months from today."

38. In the instant case, the petitioners, who were appointed on officiating basis on the recommendation made by DPC in the year 1986, have been converted on contract basis in the year 2011 by creating supernumerary posts. The contract service is treated as temporary/ permanent and is counted for pension subject to the conditions laid down in pension rules.

39. The conditions of qualifying service contained in the Civil Service Regulations provides thus:

"The question in regard to the extent to which service on contract should count for pension has since been reviewed, and it has been decided by the President, in partial modification of the orders referred to above, that the contract service should be treated like any other service temporary & permanent, rendered in a pensionable establishment, and allowed to count for pension subject to the usual conditions laid down in the pension rules, irrespective of whether the officer concerned subscribed to the Contributory Provident Fund or not throughout the period of contract, provided that for the period during which he did not subscribe to the Contributory Provident Fund, he did not draw inflated rates of pay by reason of the absence of any retirement benefits."

40. It appears that the appointment of the petitioners has been converted from

the officiating appointments to contract service by the respondents authorities. The posts held by them are in pensionable establishments and at the same time, the petitioners did not draw the inflated rates of pay by reason of the absence of any retirement benefits.

41. As stated supra, since the entire period of service has been converted into contract with the protection of pay from the initial appointment, the petitioners' contract service has been treated as qualifying service for the benefit of pension in terms of Civil Service Regulations. The period of work-charged service can be reckoned for purpose of computation of qualifying service for grant of pension.

42. In Hahbib Khan (supra), the Hon'ble Supreme Court, while setting the order of the High Court, observed that "the appellants are entitled to reckon the period of work-charged service for purposes of computation of "qualifying service" for grant of pension. We order accordingly". Thus, the contention of the respondents that the service of the petitioners is interrupted cannot be countenanced. If really, the service of the petitioners was interrupted, their pay should not have been protected. As rightly argued by learned counsel for the petitioners, since there was no interruption, their pay has been protected".

43. In Madhukar v. State of Maharastra, reported in AIR 2014 SC 2206, the Hon'ble Supreme Court held as under:

"13. In the case of the appellant, there is notional break in service. He resigned from the Government service on 18.07.1960 and joined the post of Lecturer in Hislop College, Nagpur on the same day i.e. 18.07.1960. Further, higher authorities have recommended to add the earlier period of service for determination of pensionary benefit. Being so, in absence of a specific direction to the contrary in the service record, the interruption between two spells of service rendered by the appellant under the Government shall be treated as automatically condoned; the earlier service rendered by appellant is to be counted towards qualifying service."

44. In the light of the decision aforesaid and in view of the discussions held supra, in the present case, there is no interruption of service, the petitioners having been in the same department with pay protection. Therefore, the initial service on officiating basis shall be counted towards the qualifying service for pension. Furthermore, in the light of the decision in Karan Singh (supra), the petitioners are entitled to claim pension on the supernumerary posts.

45. It is trite that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service.

46. In Deokinandan Prasad v. State of Bihar, reported in (1971) 2 SCC 330, the Apex Court 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. Thus, the hard earned benefit, which accrues to an employee, is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300A of the Constitution of India. In the instant case, the petitioners have earned the consequential benefit of pension by dint of long, continuous, faithful and unblemished service. Such right is in the nature of right to property under Article 300A of the Constitution of India.

47. From the material produced by the petitioners it is clear that the services of the petitioners have been regularized without any break from the date of their initial officiating appointment with effect from 3.2.1986 and as such, the regularized service is the valid qualifying service for the purpose of pensionary benefit. That apart, the petitioners have also fulfilled the conditions stipulated in the Office Memorandum dated 5.7.2003 for counting of the qualifying service for pension benefits. It is also clear from the records that the case of the petitioners is squarely covered by Rule 13 of the Rules of 1977 read with the provisions of the Office Memorandum dated 5.7.2003.

48. The contentions of the respondents that the case of the petitioners does not fall within the purview of Rule 13 of the Rules of 1977 as there was break in the officiating services rendered by them before their subsequent regularization cannot be countenanced. Since the similarly placed persons have been given the benefit of regularization retrospectively, the same benefit should be extended to the petitioners also. The Office Memorandum dated 5.7.2003 has to be applied equally to all. However, in the instant case, the respondent authorities have not applied the said Office Memorandum which speaks about the retrospective regularization in case of officiating service also.

49. It is reiterated that though the Office Memorandum dated 5.7.2003 stipulates the initial officiating or temporary service shall be followed without interrupting by substantive appointment and though by the order dated 19.12.2011 the officiating services of the petitioners were converted into contract appointment and the officiating service of the petitioners was interrupted by the contract appointment before their subsequent regularization with effect from 13.12.2019 since their pay has been protected, the argument of the learned Government Advocate that the benefits contained in the Officer Memorandum dated 5.7.2003 are not applicable to the petitioners is discountenanced.

50. For the foregoing discussions, this Court is of the view that since the appointments of the petitioners have been made on the recommendation of a competent DPC, they can have the benefit of past services rendered by them. Accordingly, they are entitled to the relief sought for in the writ petition.

51. In the result, the writ petition is allowed. The respondents are directed to

count the service of the petitioners commencing from the initial officiating appointment with effect from 3.2.1986 till the regularization for the purpose of pensionary benefits in terms of Rule 13 of the Rules of 1977 read with the Office Memorandum dated 5.7.2003.