

(2017) 06 UK CK 0013
In the Uttarakhand High Court
Case No : 1142 of 16

Brahm Pal Singh

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a District or a Regional Council

Citation : (2017) 06 UK CK 0013

Hon'ble Judges : Rajiv Sharma

Bench : Single Bench

Advocate : M.C. Pant, Kishore Kumar, D.S. Mehta, M.C. Kandpal, Maneesh Bisht, S.S. Yadav, Bhagwat Mehra, Lalit Belwal, N.K. Papnoi, Harendra Belwal, Shivanand Bhatt, Amar Shukla, BPS Mer, Beena Pandey

Judgement

1. Since the common questions of law and facts are involved in all these petitions, the same have been taken up together and decided by this common judgment. However, for the sake of clarity, the facts of WPSS Nos.2178/2014 and 1142 of 2016 have been taken into consideration.

2. Key facts, necessary for the adjudication of this petition, are that in WPSS No.2178/14, petitioner was appointed on daily wage basis w.e.f. 1.12.1980. He was conferred the "work-charge" status on 24.4.1997 and his services were regularized on 21.8.2003. In WPSS No.1142/16, petitioner was appointed in the year 1975. He was retrenched in the year 1982 and was reinstated vide order dated 16.3.1993. He was made work charge employee on 8.5.2001 and was regularized on 19.1.2009. He retired on 31.10.2015.

3. Mr. M.C. Pant and other Advocates appearing for the petitioners, have vehemently argued that the respondent-Department has not counted the services rendered by the petitioners on work-charge status followed by

regularization. Petitioners have also challenged the vires of Regulation 370 of the Civil Service Regulations (CSR) being violative of Articles 14 and 16 of the Constitution of India.

4. Mr. Pant further argued that Articles 667, 668 and 669 of the Irrigation Manual have been deleted in the year 2000 in the Irrigation Department and in the Public Works Department vide order dated 10.12.2001. Thus, Regulation 370 of CSR has lost its efficacy. He further contended that as per the Industrial Employment (Standing Orders) Act, 1946, all the petitioners would be deemed to be in continuous service after completion of 240 days. He further contended that the petitioners were paid salary under the "Salary Head" and not under "Wages". His clients were never appointed under any specific Project/sub-work.

5. Learned State Counsel argued that the petitioners are not entitled to count their services rendered by them in the work charge capacity followed by regularization. According to him, petitioners were required to put in minimum 10 years regular service.

6. I have heard learned Counsel for all the parties and have gone through the pleadings very carefully.

7. Regulations 667, 668 and 669 contained in Irrigation Manual reads as under: -
"667. Work-charged establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision, of a specific work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in connection with such a work or subworks. When employees borne on the temporary establishment are employed on work of this nature their pay should, for the time being, be charges direct to the work. Notes.-(1) Persons who actually do the work with their hands, such as, beldars, masons, carpenters, fitters, mechanics, drivers, etc., should be engages only when works are carried out departmentally, and charged to works. In cases in which it is considered necessary, as a safeguard against damage to the Government Tools and Plant, such as road-rollers, concrete-mixtures, pumping-sets and other machinery, mechanics, drivers, etc., may be engages by the Department, or alternatively, if engaged by the contractor must be subject to approval by the department, whether the work is done departmentally or by contract.

2. Mistries and work-agents should, in all circumstances, whether they are employed on works executed departmentally or on contract, be charges to "works".

3. Subject to the general principles stated in Paras 665 and 667 being observed, the classes of establishment not covered by these definitions may be classified as "workcharged, or temporary", as the case may be, and the rule which prescribes that workcharged establishment must be employed upon a specific work waived, with the previous sanction of the Government and concurrence of the Accountant General. In such cases the Government shall also determine in consultation with

the AccountantGeneral, the proportions in which the cost of such establishment shall be allocated between the works concerned.

668. In all cases previous sanction of the competent authority is necessary, which would specify in respect of each appointment (1) the consolidated rate of pay, (2) the period of sanction and (3) the full name (as given in the estimate) of the work and the nature of the duties on which the person engaged would be employed. 669. Members of the work-charges establishment are not entitled to any pension or to leave salary or allowances except in the following cases:

(a) Wound and other extraordinary pensions and gratuities are in certain cases admissible in accordance with the rules in Part VI of the Civil Service Regulations.

(b) Travelling and daily allowance may be allowed by divisional officers for journeys performed within the State in the interest of work on which the persons are employed on the following conditions:

(i.) The journey should be sanctioned by the divisional officer or the subdivisional officer/assistant engineer specifically authorized for the purpose of the divisional officer;

(ii.) the concerned officer while sanctioning the journey should also certify that the journey is actually necessary and unavoidable in the interest of the work on which the person is employed;

(iii.) for the journeys so performed the work-charged employee may be allowed travelling and daily allowance at the same rates and on the same conditions as are applicable to a regular government servant of equivalent status."

8. It is not in dispute that Regulations 667, 668 and 669 have been deleted from the Irrigation Manual. Regulations 667, 668 and 669 have been deleted in the year 2000 in the Irrigation Department and in the Public Works Department vide letter dated 10.12.2001. The fact of deletion of these paragraphs would be that the petitioners would be deemed to have been appointed on regular/permanent basis.

9. Chapter XVI of Civil Service Regulations lays down the conditions of qualifying service. Regulations 358(a), 361-A, 368, 369 and 370 read as under: - "358. (a) Except for Compensation gratuity, an officer's service does not in the case of Superior and Inferior services qualify till he has completed twenty years of age. (b) In other cases, unless it be otherwise provided by special rule of contract the service of every officer begins when he takes charge of the office to which he is first appointed.

361-A. The Government of India may, however, in the case of service paid from General Revenues even though either or both of conditions (1) and (2) are not fulfilled:- (1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension; (2) in individual cases and subject to such conditions as it may think fit to impose in each case, allow service rendered

by an officer to count for pension.

Subject to such conditions as it may think fit to impose, the State Government may delegate its powers under this Article to the Heads of Departments. 368. Service does not qualify unless the officer holds a substantive office in a permanent establishment. 369. An establishment, the duties of which are not continuous but are limited to certain fixed periods in each year, is not a temporary establishment. Service in such an establishment, including the period during which the establishment is not employed, qualifies; but the concession of counting as service the period during which the establishment is not employed does not apply to an officer who was not on actual duty when the establishment was discharged, after completion of its work, or to an officer who was not on actual duty on the first day on which the establishment was again reemployed.

370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except-

- (i) periods of temporary or officiating service in nonpensionable establishment;
- (ii) periods of service in work-charged establishment; and
- (iii) periods of service in a post paid form contingencies."

10. It is evident from Regulation 361 that in order to get the pension, the incumbent is required to fulfill the following three conditions: - Firstly- The service must be under Government. Secondly- The employment must be substantive and permanent. Thirdly- The service must be paid by Government.

11. Petitioners have initially worked on daily wage basis. Thereafter, they were conferred the work-charge status and subsequently they were regularized. They are being paid by the government through "Salary Head". They have rendered more than 30 years of service. Their status cannot be termed as temporary. The State of Uttar Pradesh has taken a conscious decision to delete Regulations 667, 668 and 669. Even according to the definition contained in Regulation 667, the work-charge establishment was for a specific work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in connection with such a work or sub-works.

12. In the present case, the respondents have not even cited a single example that the appointment of the petitioners was in a specific project or specific work or sub-works. They have continuously been discharging their duties as regular employees without being deployed in a particular project.

13. Petitioners have challenged the vires of Regulation 370 being violative of Articles 14 and 16 of the Constitution of India. According to Regulation 370, the incumbent appointed on work-charge establishment is not entitled to pension. The work-charge status has been done away with in the year 2000 in the Irrigation Department and in the Public Works Department on the basis of letter

dated 10.12.2001. The petitioners were given the work charge status on 24.04.1997 and 8.5.2001. But now, on the basis of two letters issued in the year 2000 and 10.12.2001, the designation would also change from work-charge to regular. Regulation 370 of CSR has lost its efficacy and it is rendered otiose and nugatory after deletion of Clauses 667, 668 and 669 of the Irrigation Manual in the year 2000 in Irrigation Department and in the P.W.D. vide letter dated 10.12.2001.

14. The respondent-State is a welfare State. It cannot be permitted to keep the employees on daily wage basis for decades together and not to count their services for the purpose of pension. The petitioners have worked in a substantive/permanent capacity for an indefinite period.

15. Regulation 361-A of CSR empowers the Government to declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension and in individual cases, and subject to such conditions as it may think fit to impose in each case, allow service rendered by an officer to count for pension.

16. The respondents should have considered the case of petitioners under Regulation 361-A also.

17. A strong reliance has been placed by the State Government on the judgment rendered by the Full Bench of this Court in 2010 (1) U.D. 6 "Madan Mohan Chaudhary v. State of Uttaranchal & others". The question which was referred to the Full Bench reads as under: - "Whether the Government Order dated 1st July, 1989, referred in the judgment of the Division Bench (in Special Appeal No.225 of 2008, State of U.P. & another v. Pitamber Dutt Sanwal, arisen out of Writ Petition No.843 (S/S) of 2003) applies to work-charge employees, or not?"

18. However, no specific challenge was made to Regulation 370 of CSR. The effect of deletion of Regulations 667, 668 and 669 in the Irrigation Manual in the year 2000 in Irrigation Department and in Public Works Department vide order dated 10.12.2001 has not been taken into consideration in the judgment rendered by the Full Bench.

19. Mr. M.C. Pant, Advocate for the petitioners, has relied upon a judgment rendered by the Allahabad High Court in SPA No.1891 of 2013 on 24.9.2014. The relevant portion of the judgment reads as under: - "(2) The instant special appeal arises out of the judgment and order dated 22.10.2013 passed in Writ Petition No. 57788 of 2013 Parmatma Ram Vs. State of U.P. & 4 others by which the Writ Court has denied relief of pensionary benefits to the work charged employees. (6) The Appellant State aggrieved by the judgment and order dated 13.5.2013 passed in Special Appeal Defective No. 264 of 2013 filed an SLP No. 2770 of 2014 State of U.P and Ors. Vs. Prem Chandra & Ors before the Hon"ble Supreme Court, which was also dismissed vide judgment and order dated 17.01.2014. Thus, the dispute has attained finality to the extent that the work charged employees are entitled for pensionary benefits and other retiral dues as they have otherwise worked continuously for the qualifying period of 10 years or

more. (7) Learned Standing Counsel has fairly submitted that in view of the judgment rendered by the High Court, the judgement impugned in the instant appeal cannot be sustained. (8) In view of the above, the matter is no longer res-integra. The ratio has already been propounded by the Hon"ble Supreme Court that work charged employees are entitled for pensionary and other benefits if they have worked continuously for the qualifying period."

20. The S.L.P. was filed against the judgment dated 24.9.2014 and the same was dismissed by their Lordships of Hon. Supreme Court on 30.3.2015.

21. In 2003 Supreme (Guj.) 473, learned Single Judge of Gujarat High Court in the case of "Ismail Ibrahim v. Executive Engineer" S.C.A. No.6284 of 1999 decided on 26.8.2003, after taking into consideration Article 14 of the Constitution of India, has ordered for counting of qualifying service on work-charge basis. Learned Single Judge, in paragraph nos.7 to 11, has held as under: - "6. I have considered the averments made by the petitioner in the memo of petition as well as the affidavit in reply filed on behalf of respondent no.1. I have also considered the submissions made by the learned advocates for the parties. From the averments on record, it is not in dispute that the petitioner worked as daily wager from September, 1974 and from 19th June, 1984, he worked as a work charge employee and retired as such on 30th November, 1991. The respondent no.1 has not denied these facts but it is the case of the respondent no.1 that the period of service rendered by the petitioner as a daily wager from Sept. 1974 till 19th June, 1984 cannot be taken into consideration while considering the case of the petitioner for pension and considering the period of service rendered by the petitioner as work charge employee in the establishment of the first respondent, the petitioner is not completing ten years" qualifying service and, therefore, the respondents have rejected his case for pension. Therefore, if the entire period of service rendered by the petitioner, initially as a daily wager and then as work charge employee is taken into consideration, then, it is clear that the petitioner workman is completing ten years continuous service as defined under section 25B of the ID Act and also as per the GR dated 17.10.1988, and, therefore, the petitioner is entitled for the pensionary benefits. The decision which has been taken by the respondents denying such benefits to the petitioner is, therefore, illegal, arbitrary, contrary to the GR dated 17.10.1988 and also violative of Article 14 of the Constitution of India as the said Resolution is also not making any distinction between the services rendered by the employee as a daily wager and work charge employee. Said GR provides that the workman who has completed the continuous service of ten years within the meaning of section 25B of the ID Act, 1947 shall be entitled for pensionary benefits. There is no such distinction made in the said resolution and, therefore, according to my opinion, the petitioner is entitled for such benefits as per the GR dated 17.10.1988.

7. This aspect has been examined by this Court in the matter of CHHAGANBHAI RANCHHODBHAI RATHOD VERSUS DY. EXECUTIVE ENGINEER dated 6.8.1998 in

Letters Patent Appeal No. 1495 of 1997. The observations made by the Division Bench of this Court in the aforesaid matter are reproduced as under:

" As per the resolution dated October 17, 1988, daily wager worker who has put in service for more than 10 years as per section 25-B of the Industrial Disputes Act, 1947 is entitled for retiral benefits. Section 25B of the Industrial Disputes Act 1947 defines "continuous service". According to said provision, a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman. Sub section (2) of section 25- B introduces a deeming fiction and provides that where a workman is not in continuous service within the meaning of clause (i) for a period of one year or six months, he shall be deemed to be in continuous service under the circumstances mentioned in the said sub section. From the abstract which is produced by the learned Counsel for the respondents, there is no manner of doubt that in all for 14 years, the appellant had worked for more than 240 days. The Supreme Court, in the case of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, AIR 1986 SC 458, has ruled that continuous service is to be counted by including Sundays and other holidays, sickness or authorized leave and accident or strike which is not illegal or cessation which is not due to any fault on the part of the workman. The respondents have failed to produce any material on record of the case to indicate that in the year 1980-81, there was a cessation of work due to any fault on the part of the appellant. Therefore, the appellant had continuously served for a period of more than ten years within the meaning of resolution dated October 17, 1988. The submission made by the learned counsel for the respondents that the appellant had completed 240 days work in 8 years only which is less than 10 years and, therefore, the appellant is not entitled for pension, cannot be accepted. It is an admitted fact that while denying the claim of the appellant, Sundays and other holidays, sickness of authorized leave etc. were not taken into consideration by the respondents, nor the question was considered whether there was any cessation of work which was not due to any fault on the part of the appellant. It may be stated that the appellant served as a daily wager for about 21 years and retired from service on October 13, 1989. Having regard to the facts of the case, even there were some small breaks in service of the appellant which had taken place in the years 1980-81 and 1981-82, they have been condoned by the respondents for the purpose of retiral benefits. On the facts and in the circumstances of the case, we are of the opinion that as the appellant had completed 240 days work continuously in 10 years in which he had worked for more than 240 days, he is entitled to the benefit of pension. The learned Single Judge was not justified in rejecting the claim of the appellant on the ground that the appellant had not worked for 240 days continuously in 10 years and was, therefore, not entitled to pension. The appeal, therefore, deserves to be

accepted."

8. From the aforesaid decision of the Division Bench of this Court, it would appear that the workman concerned worked as daily wager with the employer for a period of about 21 years and this court has, after considering the decision in the matter of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation: AIR 1986 SC 458, and also considering section 25B and the deeming fiction of section 25B, has laid down that the workman therein is entitled for the pension. If the case of the present petitioner is considered, then, it is clear that initially he worked from Sept. 1974 till 1984 as rojamdard and thereafter worked as work charged employee till his retirement and the respondents rejected his claim for pension only on the ground that he has not worked for ten years as work charged employee and, therefore, not entitled for pension. In view of the aforesaid decision of the division bench of this court, it is clear that the respondents have wrongly denied such benefits in view of the provisions of the GR dated 17.10.88 as well as section 25B and the aforesaid decision of this court.

9. In the matter of MALEK UMARKHAN ALIKHAN Versus STATE OF GUJARAT decided by this Court on 16.7.2003 and reported in 2003 (2) G H C J 201 this Court has observed as under in para 16 and 17 of the judgment:

"16. In view of the above observations, the net effect of section 25-B sub section (1) is to the effect that if the daily wager has remained in continuous service for a period of one year and his service has not been interrupted by any reason mentioned in sub section (1), whatever kind of cessation of work which is not due to the fault of the daily wager, then, his service must have to be considered continuous for a period of one year irrespective of the fact whether such daily wager has completed 240 days actual work or not during this one year. Reason is that during the one year, though the daily wager has not completed 240 days continuous service, but during that period also, the services of such daily wager has not been terminated by the employer and in-between the relationship of the employer and employee was remaining in force which makes continuous service of one year and that period must be taken into consideration irrespective of the fact that 240 days actual work has been completed or not by such daily wager but such daily wager has remained in service with the employer on permanent employment and pensionable service. Similarly, in respect of sub section (2) of section 25B of the ID Act, if the daily wager is not remaining in service for a period of 12 calendar months but even less number of months but he completes 240 days working, then also, that less number of months may be considered for one year continuous service. This being two distinct and different situation incorporated by the legislature in sub section (1) and (2) of section 25B of the ID Act, if the daily wager is satisfying either of the one, then his services must have to be considered continuous for a period of one year within the meaning of section 25B of the Industrial Disputes Act, 1947.

17. I have minutely perused the Government Resolution dated 17.10.1988. This

Resolution has been issued by the State Government after having conscious decision and consulting all the respective departments of the State Government to give certain benefits similar to a permanent employee of the State Government to the daily wagers who are working in various departments. On the basis of the report submitted by the Committee, said resolution has been issued by the Government in favour of the daily wager for regularization of their services after number of years. Item No. 1 of the said Resolution is relating to the daily wagers who have put in the service of less than five years. Such daily wagers shall be paid their daily wages in accordance with the existing Minimum Wage Rules and after completion of one year service with 240 or more actual working days, such daily wagers will be eligible for weekly off with pay, medical facility and festival holidays with pay."

10. Therefore, in view of the aforesaid discussion and also in view of the aforesaid two decisions of this Court, one of the Division Bench of this Court and the another of this Court itself, it is clear that for considering the case of a workman for pensionary benefits as per the GR dated 17.10.1988, whole period of the service from the date of his entry till the date of his retirement in service, each year of his service wherein he has completed continuous service of one year as defined in section 25B of the ID Act is required to be taken into account for considering his case for pensionary benefits. In the instant case, if the respondent no.1 ought to have considered the whole period of service rendered by the petitioner initially as a daily wager and then as a work charge employee from the date of his entry till the date of his retirement. However, instead of that, the respondents have erroneously considered the period of his work charge employment alone for consecrating his case for pension and since the petitioner was not completing ten years qualifying service while considering his employment as work charge employee, have rejected his case for pensionary benefits. It was not submitted on behalf of the respondents that even if the whole period of service rendered by the petitioner is taken into consideration, the petitioner is not entitled for such benefit. Therefore, in view of the aforesaid legal position and also in view of the facts of the present case, the petitioner is entitled for the pensionary benefits from the date of his retirement.

11. Therefore, according to my opinion, service rendered by the petitioner as a daily wager also must be counted for considering his case for pension. The petitioner is entitled for the pensionary benefits according to the GR dated 17.10.1988 while including and considering his service as a daily wager and such benefit has wrongly been denied to the petitioner by the respondents on the erroneous technical ground without properly considering the G R dated 17 10 1988 which has deprived the petitioner from the pensionary benefits for such a long period. The respondents have not assigned any other just cause for denying the pension to the petitioner. In view of these peculiar facts of this case, I am of the opinion that the respondents are not justified in denying pension to the petitioner and also considering the present rate of interest and since it is also a matter of 1999, therefore, I am of the opinion that the petitioner should get

arrears of his pensionary benefits from the date of his retirement 31st October, 1991 till 31st August, 2003 with interest at the rate of 9 per cent per annum by way of damages as the respondents have deprived the petitioner from the source of his livelihood in the days of his retirement for such a pretty long period and have utilized the said amount of the petitioner for such a pretty long period."

22. Though, Regulation 370 is rendered otiose and nugatory after deletion of Regulations 668, 669 and 670, but the same is also violative of Articles 14 and 16 of the Constitution of India. The expression "work-charge establishment" is a misnomer. The persons who are continuously discharging the duties for more than 30 years, cannot be treated as work-charge employees and working on the work-charge establishments. The workcharge establishment is the establishment in which the work is for a limited period and the salary is also for a Project. Petitioners have worked continuously in the Irrigation Department and Public Works Department, and as held hereinabove, they were not appointed in a particular project for a particular time. Petitioners have worked in the Department and they were to be paid through the Treasury under the "Salary Head".

23. Persons who are working for more than 30 years are deemed to be appointed substantively/ permanently more particularly when they are working without any break. Petitioner and similarly situate persons, if had not been regularized, were entitled to gratuity after putting in five years of service as per the Payment of Gratuity Act. Now, the petitioners are required to put in 10 years" minimum service to get the gratuity.

24. India is a welfare State. The Hon. Supreme Court in Punjab State Electricity Board v. Jagjiwan Ram & others (2009 [3] SCC 661) has also approved counting of qualifying services of the workmen rendered in the work-charge capacity. Conditions of service of workmen should be humane as per the Directive Principles and there is no scope or room for exploitation.

25. Their Lordships of Hon"ble Supreme Court in (1979) 4 SCC Page 440 in the case of "Jaswant Singh & others vs. Union of India & others" have held that a workcharged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work. In paragraph nos.42 and 43, their Lordships have held as under: - "42. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-

head of the estimated cost of the work.

43. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees State Insurance Schemes."

26. In the present case, the petitioners were never engaged for execution of a special work. They were discharging the duties in the Department continuously.

27. Their Lordships of Hon"ble Supreme Court in (1980) 4 SCC 226 in the case of "Baleshwar Dass & others vs. State of U.P." have held that the substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. A person is said to hold a post in a substantive capacity when he holds it for a definite or temporary period or holds it on probation subject to confirmation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed for regular appointments have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity.

28. Their Lordships, in paragraph nos.21, 26, 29 to 32 of the aforesaid judgment, have held as under:- 21. While assessing the effect of the totality of the two sets of rules placed before us, we have to make the broad approach set out above and not become prisoners of the "official" meaning of abstruse expressions used in the rules which themselves have frequently changed with a view to "rationalisation". The two committees (the Lal Committee and the Shukla Committee) examined the entire matter but we have no idea, from the Government's affidavits, as to how far the rules have been intelligently moulded by these reports.

26. We see no reason to hold that when engineers are appointed to temporary posts but after fulfilment of all the tests for regular appointments, including consultation with the Public Service Commission, they are not appointments in a substantive capacity. In Service terminology perhaps, eye-brows may be raised when we say so, but then, we must remember that the State itself in its counteraffidavit has construed Rule 17 of the Rules as providing "that all persons appointed to the Service who are not already in the permanent employment of the Irrigation Department shall be placed on probation for four years" (since reduced to two years). This means that persons who are not permanently appointed but only temporarily appointed are also placed on probation and officers are not put on probation unless they are on their way to membership in

the Service on completion of probation. That is to say, although they are temporary appointees, if their probation is completed and other formalities fulfilled, they become members of the Service. It follows that merely because the person is a temporary appointee it cannot be said that he is not substantively appointed if he fulfils the necessary conditions for regular appointment such as probation and consultation with the Public Service Commission etc. From this stand of the State Government it follows that the temporary appointees, whose appointments have received the approval of the Public Service Commission and who have run out the two years of probation, must be deemed to be appointed in a substantive capacity. The only advantage for permanent appointees, i.e. Assistant Engineers who have been appointed to vacancies in the permanent cadre is what belongs to permanent public servants under various rules in different areas of official life.

29. Substantive capacity is a flexible expression which cannot be frozen by current officialese, nor by the conditions that obtained in the remote past when the rule was framed. On the contrary, its meaning must be consistent with Article 16 and must avoid the pitfalls of arbitrariness and irrational injustice. So viewed, we hold that the appointment need not necessarily be to a permanent post. It is sufficient even if it is to a temporary post of long duration. In a Department which had permanent posts and temporary posts of a quasi-permanent nature, there is not much to distinguish the quality of service as between the two.

31. What, in the context, is a substantive capacity vis-a-vis an appointment to a post ? In our view, the emphasis imparted by the adjective "substantive" is that a thing is substantive if it is "an essential part or constituent or relating to what is essential ". Black's Legal Dictionary, 4th Edn. p. 1597. We may describe a capacity as substantive if it has "independent existence" or is of "considerable amount or quantity". What is independent in a substantial measure may reasonably be described as substantive. Therefore, when a post is vacant, however designated in officialese, the capacity in which the person holds the post has to be ascertained by the State. Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. To approximate to the official diction used in this connection, we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contra distinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation.

32. Once we understand "substantive capacity" in the above sense, we may be able to rationalise the situation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity."

29. It is reiterated that the petitioners were continuously working for more than 30 years, initially on daily wages and thereafter, on work-charge and subsequently, on regular basis. Thus, they were holding the post in a substantive/permanent capacity and paid by the State Government from "Salary Head".

30. Their Lordships of Hon^{ble} Supreme Court in AIR 1982 SC 854 in the case of "Robert D'Souza vs. The Executive Engineer, Southern Railway and another" have explained the term "Work charge establishment". Their Lordships have held as under: - "11. In order to satisfactorily establish that the appellant belongs to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the mere absence, it must be shown that the appellant was employed in any of the categories set out in clause (b) of Rule 2501. What has been urged on behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective of duration would belong to the category of casual labour. That, however, does not mean that every construction work by itself becomes a work-charged project. On the contrary subclause (i) of clause (b) of Rule 2501 would clearly show that such of those persons belonging to the category of casual labour who continued to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. Similarly, seasonal labour sanctioned for specific works for less than six months" duration would belong to the category of casual labour. However, sub-clause (iii) of clause (b) of Rule 2501 provides that if such seasonal labour is shifted from one work to another of the same type, as for example, "relaying" and the total continuous period of such work at any one time is more than six months" duration, they should be treated as temporary after the expiry of six months of continuous employment. The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months" continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII.

20. Rule 2501(b)(i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501(b)(ii) which provides that labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this

provision it must be shown that for 20 years appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work-charged. The letter dated September 5, 1966, is by the Executive Engineer, Ernakulam, and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression "project" is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is belied by two facts: (i) that contrary to the provision in Rule 2501 that persons belonging to casual labour category cannot be transferred, the appellant was transferred on innumerable occasions as evidenced by orders Ext. P- 1 dated January 24, 1962, and Ext. P-2 dated August 25, 1964, and the transfer was in the office of the Executive Engineer (Construction); (ii) there is absolutely no reference to project in the letter, but the department is described as construction unit. If he became surplus on completion of project there was no necessity to absorb him. But the letter dated September 5, 1966, enquires from other Executive Engineers, not attached to projects, whether the surplus staff including appellant could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted. He belonged to the construction unit. He was transferred fairly often and he worked continuously for 20 years and when he questioned the bona fides of his transfer he had to be retransferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505.

31. Their Lordships have further held that permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway administration brings that part of the provision of the Manual and antediluvian, in conformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution. Their Lordships have held as under: - "22. We would be guilty of turning a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily-rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway Administration brings this part of the provision of the Manual, antequarian and antidiluvian, in conformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution. It may be necessary for a big

employer like the Railway to employ daily-rated workmen but even here it is made distinctly clear that in case of casual labour, the daily wage is fixed by dividing monthly minimum wage by 26 so as to provide a paid holiday. Maybe, for seasonal employment, or for other intermittent work daily-rated workmen may have to be employed. It may as well be that on projects work-charged staff may have to be employed because on the completion of the projects the staff may become surplus. That was at a time when planning and projects were foreign to the Indian economy. Today, Railways have perspective plans spreading over decades. If one project is complete another has to be taken over. Railway Administration has miles to go and promises to keep and this becomes clear from the fact that the appellant, a daily-rated workman, continued to render continuous service for 20 years which would imply that there was work for a daily-rated workman everyday for 20 years at a stretch without break and yet his status did not improve and continued to be treated as daily-rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fair play to the lowest and the lowliest in Railway Administration."

32. An employee who had completed 05 years" of continuous service, as per Section 4 of The Payment of Gratuity Act, 1972 is entitled to gratuity. However, in the present case, those employees who were given workcharge status and thereafter, regularized would get gratuity only after a period of 10 years. This is also unjust. The continuous service rendered by the employee should be reckoned for the purpose of gratuity as soon as confined it to regular service after giving regular status to the work-charge employee.

33. Their Lordships of Hon"ble Supreme Court in AIR 1992 SC 2130, in the case of "State of Haryana & others vs. Piara Singh & others", have held that efforts must be made to regularise work-charged employees and casual labour as early as possible subject to they being qualified and subject to availability of work. Their Lordships have further held that when the casual worked engaged for 2 to 3 years, presumption as to regular need for his services arises in the case of work-charged employees continuing two to three presumption as to regular need for his services. Their Lordships have held as under: - "25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee. Secondly, an ad hoc or

temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. An unqualified person ought to be appointed only when qualified persons are not available through the above processes. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour. We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one. These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein." In the instant case also, the petitioners were engaged initially on daily-

wage basis, thereafter, on work-charge basis and were regularized after they have put in 20 years of service. The fact that the petitioners worked for more than 30 years presumes that they were not regularized in their services. In view of this, they have to be treated as substantively appointed not merely work-charged or casual employees.

34. Their Lordships of Hon. Apex Court in (1987) 2 SCC 165 in the case of "Vincent Panikurlangara v. Union of India & others", have held that in a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Maintenance and improvement of public health have to be ranked high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which the Constitution makers envisaged. Their Lordships, in paragraph nos.13 and 16, have held as under: - "13. The issues raised in this petition are of vital importance as they relate to maintenance of approved standards of drugs in general; the writ petition involves the claim for withdrawal of 7000 fixed dose combinations and withdrawal of licences of manufacturers engaged in manufacture of about 30 drugs which have been licensed by the Drugs Control authorities; the issues that fall for consideration are not only relating to technical and specialised matters relating to therapeutic value, justification and harmful side effect of drugs but also involve examination of the correctness (sic) of action taken by the Respondents 1 and 2 on the basis of advice; the matter also involves the interest of manufacturers and traders of drugs as also the interest of patients who require drugs for their treatment. 16. A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khaludharma Sadhanam". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in *Bandhua Mukti Morcha v. Union of India*² aptly observed: (SCC p. 183. para 10) "It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin* case³ to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essentials." While endorsing what has been said above, we would refer to Article 47 in Part IV of the Constitution. That article provides: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary

duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." This article has laid stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. In *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*⁴ this Court has pointed out that: (SCC pp. 308-09, para 123) "The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a court of law.... It does not mean that directive principles are less important than fundamental rights or that they are not binding on the various organs of the State." In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top."

35. Their Lordships of the Hon^{ble} Supreme Court in 1992 Supp (1) SCC 664, in the case of *"All India Reserve Bank Retired Officers Assn. v. Union of India"*, have held that the pension is a deferred portion of compensation for past service. Their Lordships have held in paragraph no.5 as under: - "The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socioeconomic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. All the Bank employees who had retired prior to 1st November, 1990 were governed by the CPF scheme. However, by the introduction of the pension scheme under the Regulations those employees who retired on or after 1st January, 1986 have been given an option to switch over to the pension scheme provided they refund the employer's contribution to the CPF scheme together with interest thereon and further agree to pay interest at six per cent per annum from the date of receipt of the fund amount on superannuation till the repayment thereof. The grievance of the petitioners is that all employees who were governed by the CPF scheme on the date of their superannuation constituted a homogeneous class and the pension scheme introduced under the Regulations seeks to divide them between those

who retired on or before 31st December, 1985 and those who retired on and after 1st January, 1986; to the latter the benefit of the pension scheme is extended by option while to the former that benefit is denied altogether. This artificial division between members belonging to the same group, contend the petitioners, is a flagrant violation of Article 14 of the Constitution as held in Nakara's case."

36. Their Lordships of the Hon"ble Supreme Court in 1996 (7) SCC 113, in the case of "Yashwant Hari Katakhar vs. Union of India & others", have held that in absence of material on record to show as to why the employee had not been made permanent despite putting in almost 18½ years of service, he would be deemed to be permanent, hence entitled to pension. Their Lordships, in paragraph nos.2 and 3, have held as under: - "2. The appellant sought premature retirement from Government service after he had put in 18½ years of service in two different departments under the Central Government. Although a request for premature retirement could be made only after 20 years of Government service but the Union of India granted pre-mature retirement to the appellant at a stage when he had served the Government for 18½ years. The question for determination is whether the appellant is entitled to any pensionary benefits. The Central Administrative Tribunal rejected the claim of the appellant. 3. Dr. Anand Prakash, learned senior Advocate appearing for the Union of India, has contended that on March 7, 1980 when the appellant was pre-maturely retired he had put in 18½ years of quasipermanent service. According, to him to earn pension it was necessary to have minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasipermanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18½ years It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on" March 7, 1980 after serving the Government for 18½ years (more than 10 years as permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs."

37. Their Lordships of the Hon"ble Supreme Court in 2001 (1) SCC 637, in the case of "Ramesh K. Sharma & another vs. Rajasthan Civil Services & others", have held that in the service jurisprudence a post could be temporary or it could

be permanent at a definite period to meet a definite contingency. If an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment, no being either stopgap or fortuitous, could be held to be on substantive basis. The expression "substantive basis" is used in the service jurisprudence in contradistinction with ad hoc or purely stopgap or fortuitous. Their Lordships have held as under: - "4. In view of the rival submissions at the Bar, the crucial question that requires consideration is what is the meaning of the expression "substantive service" and whether the services of the private respondents under the Land and Building Tax Department from 1-3-1974, could be held to be substantive service. There is no dispute that the very post against which the private respondents were appointed temporarily w.e.f. 1-3-1974, became permanent by order dated 27-2-1981 and all these private respondents were also made permanent with effect from the very date, by order dated 1-9-1981. Rule 15 of the Absorption Rules, for better appreciation of the point in issue is extracted hereinbelow in extenso: "15. Seniority.-(1) The seniority of a surplus employee appointed substantively to a permanent post in the service or cadre in which he is absorbed shall be determined by the appointing authority concerned by placing him below the juniormost permanent employee of the new service or department who has a longer period of continuous substantive service on the post compared to the continuous substantive service of the surplus employee on equivalent or higher post. The seniority of a surplus employee who is absorbed on higher posts on officiating basis shall be determined only in respect of his permanent post: Provided that the seniority of the surplus employee whose length of continuous service in substantive or officiating capacity or in both such capacities is lesser than the length of continuous service in substantive or officiating capacity or in both such capacities of the juniormost permanent employee of the service or cadre of the new department in which such surplus employee has been absorbed, shall be determined by placing the surplus employee immediately below the said juniormost permanent employee in the service or cadre or the department in which the surplus employee has been absorbed. Provided further that inter se seniority of the surplus employees absorbed in a department/service/cadre or unit under an appointing authority and the employees of the service/cadre of the new department, for promotion to higher post in the service or cadre in which he has been absorbed shall be determined according to the date of continued officiation in a class or category of post concerned or an equivalent or higher post provided such officiation was not of the fortuitous nature or ad hoc or an urgent temporary appointment, notwithstanding their years of substantive appointment or date of confirmation or the length of continuous substantive service in the different cadre post or service. (2) The seniority of a surplus employee appointed to a new post in a temporary or ad hoc capacity shall, pending his appointment on a substantive basis, be determined in the following manner: - (a) In the case of a surplus employee appointed temporarily to a new post his seniority among the temporary employees holding same posts in the service or cadre in which he is absorbed shall be determined by placing him

immediately below the temporary employee of the new service or cadre who has rendered a longer period of continuous temporary service compared to the continuous temporary service of the surplus employee on same equivalent or higher post. (b) In the case of surplus employee appointed on ad hoc basis in a new post his seniority among the ad hoc employee holding same posts in the service or cadre in which he is absorbed shall be determined by placing him immediately below the ad hoc employee of the new service or cadre, who has rendered a longer period of continuous service on an ad hoc basis compared to the continuous ad hoc service of the surplus employee on same, equivalent or higher post: Provided that all substantive employees in a cadre or service including substantive surplus employees absorbed therein, shall rank senior to temporary employees appointed or absorbed under these rules in such cadre or service and all such temporary employees shall rank senior to all ad hoc employees appointed or absorbed under these rules or otherwise. Provided further that the seniority of the employee on a post in a cadre or service including surplus employees absorbed therein and who were substantive on such posts on or before 11-12-1969, shall be determined according to the provisions of the relevant Service Rules. (3) The seniority inter se of employees declared surplus from a service or cadre shall on their appointment to new posts in another service or cadre shall be the same as it existed in the former service or cadre." The private respondents having been absorbed as Commercial Tax Officer Grade II, their seniority in the cadre of Commercial Tax Officer Grade II will have to be determined on the basis of the aforesaid Rule 15(1). It is also not disputed that the post which these private respondents were holding under the Land and Building Tax Department were equivalent posts of the posts of Commercial Tax Inspector Grade II. The only question, therefore, requires adjudication is whether these private respondents were in continuous substantive service with effect from 1-3-1974 or they would be held in continuous substantive service only after they were made permanent with effect from 27-2-1981. In the service jurisprudence a post could be temporary or it could be permanent or it could be created for a definite period to meet a definite contingency. If an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment, not being either stopgap or fortuitous, could be held to be on substantive basis. But if the post itself is created only for a limited period to meet a particular contingency, and appointment thereto is made not through any process of selection but on a stopgap basis then such an appointment cannot be held to be on substantive basis. The expression "substantive basis" is used in the service jurisprudence in contradistinction with ad hoc or purely stopgap or fortuitous. In *Baleshwar Dass v. State of U.P.*² this Court held that when a person holds a post for an indefinite period especially for long duration in contradistinction to a person who holds it for a definite or temporary period or holds that on probation then it must be held that he held a post in a substantive capacity. Further if an appointment to the post is made by the proper authority after the person concerned passes the prescribed test and if a probation period has been prescribed therein, on completion of the probation

period his appointment is further approved then also it can be said that he held a post in substantive capacity. This decision in Baleshwar Dass case² was followed by this Court in O.P. Singla case. It is also quite apparent in service jurisprudence that there exists difference between a substantive post as contradistinguished from temporary post and appointment of an incumbent to these posts could be made either on substantive basis or on ad hoc or stopgap basis. This being the legal position and in the case in hand the initial appointment to the post in the Land and Building Tax Department of the private respondents having been made after subjecting the incumbent to the prescribed test and on being selected after initially making their appointments on probation and thereafter excluding the expression "probation" from the terms of appointment and continuing them against the temporarily-created post till the posts were made permanent and then the incumbents were also made permanent, it cannot but be held that these private respondents had continuously held a post in the Land and Building Tax Department on substantive basis, which post is equivalent to the post of Commercial Tax Inspectors Grade II in which these private respondents were absorbed, and consequently, for the purpose of determining the seniority of the appellants who were direct recruits to the post of Commercial Tax Inspector Grade II and the respondents who had held an equivalent post in the Land and Building Tax Department on substantive basis with effect from 1-3-1974 the continuous substantive service from that date will have to be reckoned. In fact in Malakar case who was also a temporary recruit in the Land and Building Tax Department along with the private respondents the High Court has recorded a finding that the said Shri Malakar was holding the post in the Land and Building Tax Department in substantive capacity with effect from 1-3-1974, and the said finding of the High Court was ultimately upheld by this Court in dismissing these special leave petitions against the same. In coming to the aforesaid conclusion the High Court had examined the substance of the matter, namely, the surrounding circumstances, the mode and manner and the term of appointment and all other relevant factors. In the case in hand it is not disputed by Dr Rajeev Dhavan, learned Senior Counsel appearing for the direct recruits/appellants that these private respondents had been appointed in the Land and Building Tax Department after a regular selection by a duly-constituted Committee. In the aforesaid premises, we unhesitatingly come to the conclusion that the appointment of the respondent in the Land and Building Tax Department with effect from 1- 3-1974 was on substantive basis. 5. Dr Rajeev Dhavan, no doubt, had raised the contention that the absorption of these respondents had not been made in accordance with the procedure prescribed for in the Absorption Rules, inasmuch as, no Absorption Committee had been constituted by the State Government in accordance with Rule 5 of the Absorption Rules, and the procedure prescribed for absorption in Rule 7 had not been followed. If these were the facts then the direct recruits could have assailed the very absorption of the private respondents in the cadre of Commercial Tax Officer Grade II but at no point of time the absorption of the private respondents had been assailed and what had been assailed is the determination of inter se seniority between the

direct recruits and such absorbed employees. That apart, having scrutinised the materials available on record, more particularly, the document dated 25-6-1982, issued by the Government of Rajasthan, Administrative Department, indicating the absorption of the surplus employees as well as the document of the said department dated 17-6-1982, for similar absorption wherein it has been clearly indicated that the Committee concerned has accepted the question of absorption of the surplus employees, we do not find any substance in the said submission of Dr Rajeev Dhavan, the learned Senior Counsel appearing for the appellants. In the present case, petitioner had been continuously worked for the last 30 years" and thus, their appointment falls within the expression "Substantive Basis".

38. Their Lordships of the Hon"ble Supreme Court in 2009 (3) SCC 661, in the case of "Punjab SEB & others vs. Jagjiwan Ram & others", have again reiterated that the work-charged employees are engaged for execution of a specified work or project. Their engagement comes to an end on completion of work or project. In paragraph no.9, their Lordships have held as under: - "9. We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees."

39. Their Lordships of Hon. Supreme Court in 2011 (11) SCC 702 in the case of "Pepsu Road Transport Corporation Patiala v. Mangal Singh & others" have held that the pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied. Their Lordships have held as under: - 39. Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependants of the deceased employee as a family pension. Pension is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behaviour. Like CPF, the

object of providing pensionary benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from the service. The Government's/employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee.

49. To sum up, we state that the concept of pension has been considered by this Court time and again and in a catena of cases it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied. (See *A.P. Srivastava v. Union of India*, *Vasant Gangaramsa Chandan v. State of Maharashtra*, *Subrata Sen v. Union of India*, *Union of India v. P.D. Yadav*, *Grid Corpn. of Orissa v. Rasananda Das* and *All India Reserve Bank Retired Officers Assn. v. Union of India*).

40. In 2013 (12) SCC 210 in the case of "State of Jharkhand and others vs. Jitendra Kumar Srivastava & another" their Lordships of Hon. Supreme Court have held that gratuity and pension are not bounties. This right to property cannot be taken away without the due process of law. Their Lordships have held as under: - "8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in *D.S. Nakara v. Union of India*⁴ by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20) "18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? 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*.⁷ It is thus a hard earned benefit which accrues to an employee and 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 300-A of the Constitution of India. 14. The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in *Deokinandan Prasad v. State of Bihar*, as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33) "27. The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same. 28. According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counteraffidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution. 29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein. 30. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in *Bhagwant Singh v. Union of India*.⁷ It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order

curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in *Union of India v. Bhagwant Singh*⁸ approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority. 31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. State of Punjab*. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant. 32. This Court in *State of M.P. v. Ranojirao Shinde*¹⁰ had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is

property". 33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law." 16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under: "300-A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

41. Their Lordships of the Hon"ble Supreme Court in 2014 (4) SCC 626 in the case of "Dinubhai Boghabhai Solanki vs. State of Gujarat & others" have held that ratio decidendi in a case is only an authority for what it actually decided, but not what logically follows. Their Lordships have held as under: "56. At this stage, we would like to reiterate the well-known principles on the basis of a previous judgment can be treated as a precedent. The most important principles have been culled out by this Court in Bank of India v. K. Mohandas²² as follows: (SCC pp. 335-36, paras 54-59) "54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in *Quinn v. Leatham*²³, is worth recapitulating first: (AC p. 506) "... before discussing ... *Allen v. Flood*²⁴ and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." This Court has in long line

of cases followed the aforesaid statement of law. 55. In *State of Orissa v. Sudhansu Sekhar Misra*²⁵ it was observed: (AIR p. 651, para 13) "13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it." 56. In the words of Lord Denning: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." 57. It was highlighted by this Court in *Ambica Quarry Works v. State of Gujarat*²⁶: (SCC p. 221, para 18) "18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it." 58. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*²⁷ this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. 59. This Court in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani*²⁸ emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases."

42. Their Lordships of the Hon^{ble} Supreme Court in 2015 (1) SCC 142 in the case of "*Delhi Gymkhana Club Limited vs. Employees*" *State Insurance Corporation*" have held that a narrow interpretation which will have the effect of defeating the objects of the Act is not to be adopted. Their Lordships have held as under: - "14. Let us now examine whether preparation of food items in the kitchen of the appellant Club amounts to "manufacturing process" bringing the Club within the purview of the definition of "factory". It has been consistently held by this Court that preparation of foodstuffs in hotels and restaurants amounts to manufacturing process, thereby invoking the applicability of the provisions of the ESI Act. This Court in *G.L. Hotels Ltd. v. T.C. Sarin*³ has affirmed the views of the High Court that: (SCC pp. 366-67, para 5) "5. Since the manufacturing process in the form of cooking and preparing food is carried on in the kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the said definition [of "Factory"]." 20. Even though the term "kitchen", "catering" of a club may not be called a factory in common parlance, having regard to the definition of "manufacturing process" and that the ESI Act is a beneficial legislation, a liberal interpretation has to be adopted. Therefore, so long as manufacturing process is

carried on with or without the aid of power by employing more than twenty persons for wages, it would come within the meaning of "factory" as defined under Section 2(12) of the ESI Act. The contention that the appellant Club is a non-profit-making organisation would not take away the same from the purview of the Act."

43. Their Lordships of the Hon^{ble} Supreme Court in 2015 (10) SCC 241 in the case of "Laxmi Devi vs. State of Bihar & others" have explained the principles for determining the ratio decidendi and obiter dicta. Their Lordships have held as under: - "21. Since heavy reliance has been placed by the State on Satendra Prasad Jain v. State of U.P.¹³ and Lt. Governor of H.P. v. Avinash Sharma¹⁴, we must sedulously determine their ratios. This would, therefore, be the apposite time and place for a brief discussion on the contours and connotations of the term "ratio decidendi", which in Latin means "the reason for deciding". According to Glanville Williams in *Learning the Law*, this maxim "is slightly ambiguous. It may mean either (1) rule that the Judge who decided the case intended to lay down and apply to the facts; or (2) the rule that a later court concedes him to have had the power to lay down". In G.W. Paton's *Jurisprudence*, ratio decidendi has been conceptualised in a novel manner, in that these words are "almost always used in contradistinction to obiter dictum. An obiter dictum, of course, is always something said by a Judge. It is frequently easier to show that something said in a judgment is obiter and has no binding authority. Clearly something said by a Judge about the law in his judgment, which is not part of the course of reasoning leading to the decision of some question or issue presented to him for resolution, has no binding authority however persuasive it may be, and it will be described as an obiter dictum". *Precedents in English Law* by Rupert Cross and J.W. Harris states-"First, it is necessary to determine all the facts of the case as seen by the Judge; secondly, it is necessary to discover which of those facts were treated as material by the Judge." *Black's Law Dictionary*, in a somewhat similar vein to the foregoing, bisects this concept, firstly, as the principle or rule of law on which a court's decision is founded and secondly, the rule of law on which a latter court thinks that a previous court founded its decision; a general rule without which a case must have been decided otherwise.

22. A Constitution Bench has also reflected on the true nature of ratio decidendi in *Krishena Kumar v. Union of India*¹⁵ as is discernable from the following passages: (SCC pp. 226-27, paras 19-20)

"19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required". This was what Lord Selborne said in *Caledonian Railway Co. v. Walker's Trustees*¹⁶ and Lord Halsbury in *Quinn v. Leathem*¹⁷. Sir Frederick Pollock has also said*:

"Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judgemade, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it." 23. The following paragraph from the determination of the threeJudge Bench in Sanjay Singh v. U.P. Public Service Commission¹⁸ is instructive and is reproduced for this reason: (SCC p. 732, para 10) "10. The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent."

24. We also commend a careful reading of the following paragraphs from the decision of the Constitution Bench in Islamic Academy of Education v. State of Karnataka¹⁹ which we shall reproduce for facility: (SCC pp. 771-72, paras 139-45)

"139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See Dhenkanal Minor Irrigation Division v. N.C. Budharaj²⁰.)

140. In Padma Sundara Rao v. State of T.N.²¹ it is stated: (SCC p. 540, para 9)

"9. ... There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board²² (sub nom British

Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

141. In General Electric Co. v. Renusagar Power Co.²⁴ it was held: (SCC p. 157, para 20)

"20. ... As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words "adjudication of the merits of the controversy in the suit" were used by this Court in State of U.P. v. Janki Saran Kailash Chandra²⁵ the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In Rajeswar Prasad Misra v. State of W.B.²⁶ it was held: (AIR p. 1891, para 8)

"8. ... No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact."

(See also Amar Nath Om Prakash v. State of Punjab²⁷ and Hameed Joharan v. Abdul Salam²⁸.)

143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties. 144. In Keshav Chandra Joshi v. Union of India²⁹ this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in Direct Recruit Class II Engg. Officers" Assn. v. State of Maharashtra³⁰ held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom."

44. Their Lordships of the Hon"ble Supreme Court in 2016 (10) SCC 28 in the case of "Union of India & another vs. Meghmani Organics Limited & others" have held that the ratio decidendi consists in the reasons formulated by the Court for

resolving an issue arising for determination and not in what may logically appear to flow from observations on non-issue.

45. Their Lordships of Hon^{ble} Supreme Court in 2016 (10) SCC 329 in the case of "Lanco Anpara Power Limited vs. State of Uttar Pradesh and others" have held that harmonious constructions of multiple such statutes, to obtain most beneficial result for the intended beneficiaries, is permitted. Their Lordships have held as under: - "39. The aforesaid meaning attributed to the exclusion clause of the definition is also in consonance with the objective and purpose which is sought to be achieved by the enactment of the BOCW Act and the Welfare Cess Act. As pointed out above, if the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of the BOCW Act/Welfare Cess Act. That could not have been the intention of the legislature. The BOCW Act and the Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers. 40. Purposive interpretation in a social amelioration legislation is an imperative, irrespective of anything else. This is so eloquently brought out in the following passage in *Atma Ram Mittal v. Ishwar Singh Punia*²²: (SCC p. 289, para 9)

"9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. See Commentaries on the Laws of England (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in *Poppatlal Shah v. State of Madras*²³ said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words* as was said by Lord Reid in *Black Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.*²⁴ We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law."

41. How labour legislations are to be interpreted has been stated and restated by this Court time and again. In *M.P. Mineral Industry Assn. v. Regl. Labour Commr. (Central)*²⁵, this Court while dealing with the provisions of the Minimum Wages Act, 1948, observed that this Act is intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. In *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*²⁶, this Court reminded that semantic luxuries are misplaced in the

interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

42. We would also like to reproduce a passage from *Workmen v. American Express International Banking Corp.*²⁷, which provides complete answer to the argument of the appellants based on literal construction: (SCC p. 76, para 4)

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights" legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*²⁸). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations."

43. In equal measure is the message contained in *Carew and Co. Ltd. v. Union of India*²⁹: (SCC p. 802, para 21)

"21. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate."

44. The sentiments were echoed in *Bombay Anand Bhavan Restaurant v. ESI Corp.*³⁰ in the following words: (SCC p. 66, para 20)

"20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects."

45. In taking the aforesaid view, we also agree with the learned counsel for the respondents that "superior purpose" contained in the BOCW Act and the Welfare Cess Act has to be kept in mind when two enactments - the Factories Act on the

one hand and the BOCW Act/Welfare Cess Act on the other hand, are involved, both of which are welfare legislations. [See Allahabad Bank v. Canara Bank, which has been followed in Pegasus Assets Reconstruction (P) Ltd. v. Haryana Concast Ltd. in the context of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 1956.] Here the concept of "felt necessity" would get triggered and as per the Statement of Objects and Reasons contained in the BOCW Act, since the purpose of this Act is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded. Here the doctrine of purposive interpretation also gets attracted which is explained in recent judgments of this Court in Richa Mishra v. State of Chhattisgarh (SCC p. 197, para 30) and Shailesh Dhairyawan v. Mohan Balkrishna Lulla (SCC p. 641, para 31)."

46. Their Lordships of Hon'ble Supreme Court in 2016 (11) SCC 313 in the case of "Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society Limited" have held that a judgment can be a binding precedent on a question of law which was canvassed before the court and decided.

47. In 2016(12) SCC Page 800 in the case of "Harijan Paniben Dudabhai v. State of Gujarat & others" their Lordships of Hon. Supreme Court have held as under: - "16. In appeal arising out of SLP(C) No. 8896 of 2010, the Appellant was appointed as a Peon on 4.4.1964 and in due course of time was promoted to the post of Sanitary Mukadam and later to the post of Octroi Clerk. He retired in the year 2001 after having put in 37 years of service and all through he was paid all the benefits including those under 4th Pay Commission as a regular employee would receive. His case was dealt with on the strength of the judgment in the lead matter by the High Court and since we have set aside the view taken by the High Court in the lead matter, this appeal also deserves to be allowed. While condoning the delay and allowing the appeal, the Respondents are directed to pay the arrears of pensionary benefits and the amount of gratuity to the Appellant along and gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment.

17. In appeal arising out of SLP(C) No. 9756 of 2011, the deceased husband of the present Appellant was appointed as Sanitary Inspector by Okha Gram Panchayat on 14.12.1964 and the said appointment was later confirmed by Development Commissioner vide order dated 5.4.1973. In accordance with the view taken by us in the lead matter, this appeal also deserves to be allowed. Allowing the appeal, we direct the Respondents to pay to the Appellant all the arrears of family pension and the amount of gratuity with simple interest at the rate of 9% per annum within two months from the date of this Judgment."

48. The provisions of Industrial Employment (Standing Orders) Act, 1946 r/w Model Standing Orders have also been overlooked by the State. Moreover, the Irrigation Department and the Public Works Department are the Industrial Establishments under the Industrial Disputes Act, 1947.

49. Petitioners are not paid from contingency fund. Even according to the Gratuity Act, a workman, who has completed five years of service, is entitled to gratuity. The provisions of Labour Laws must be read liberally advancing the cause of workmen.

50. Accordingly, all the writ petitions are allowed. Orders, under challenge therein, are quashed and set aside. Regulation 370(ii) of the Civil Service Regulations is struck down being ultra vires to Articles 14 and 16 of the Constitution of India. The respondents are directed to count the entire service of the petitioners/ workmen rendered in work-charge capacity followed by their regularization for the purpose of pensionary and other retiral benefits including gratuity and thereafter to release their pension and other retiral benefits including gratuity within a period of three months from today.

51. Pending applications, in all the petitions, also stand disposed of accordingly.