
(2018) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No.1160/2015, 207, 263, 1093, 1532, 1831, 1882, 1886, 2031, 4950, 5182, 5183, 5498, 6174, 7387, 7840/2016, 477, 579, 617, 745, 769, 877, 920, 1119, 1628, 1777, 1906, 1910, 1915, 1919, 1923, 1924, 1967, 2184, 2585, 2588, 2590, 2593, 3298, 417

Heeralal & Anr

APPELLANT

Vs

The State Of Madhya Pradesh

RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 23, 39(a), 309, 366(17)
Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 — Rule 2, 3, 5, 6
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 47

Citation : (2018) 08 MP CK 0038

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order,

they are being disposed of by this Court. Facts of Writ Petition No.1160/2015 (S) are narrated hereunder.

02- The petitioner before this Court has filed present petition for issuance of an appropriate writ, order or direction directing the respondents to pay

pension to the petitioner. The petitioner's contention is that he was appointed in the year 1998 on the post of Master Gang Collie. In other connected

cases, the petitioners were appointed on the post of Gangman (Daily Wagers) and other equivalent posts.

03- The petitioner's contention is that he was appointed in the year 1998 and has attained the age of superannuation on 30/04/2014. The petitioner's

further contention is that similarly situated employee Lalsingh S/o Gangaram has filed a writ petition before this Court i.e. Writ Petition No.11238/2012

(S) claiming pension and by an order dated 10/12/2013, this Court has extended the benefit of pension to the petitioner therein. The petitioner has

further stated that thereafter, he has submitted a representation to the Department claiming similar benefits, however, he has not been granted pension.

04- A reply has been filed in the matter and the stand of the State Government is that the petitioner was appointed as a Daily Wager on the post of

Gang Coolie and till his retirement he has not been regularized. From the date of his initial appointment till his retirement, the petitioner has not been

regularized and therefore, the petitioner is not entitled for pension.

05- The contention of learned counsel for the respondents is that the petitioner's case is not covered under the Madhya Pradesh Civil Services

(Pension) Rules, 1976 and the Madhya Pradesh (Work Charge and Contingency Paid Employees) Pension Rules, 1979 also do not provide for the

pension in such cases. The petitioner has not been appointed keeping in view the Recruitment Rules and has not completed requisite years of regular

service for grant of pension and therefore, he is not entitled for any pensionary dues. The respondents have prayed for dismissal of the writ petitions.

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

07- The undisputed facts reveal that the petitioner was appointed as a Daily Wager and has retired as a Daily Wager. There was no order passed by

the respondents regularizing the petitioner on a permanent post under the Work Charge and Contingency Paid Establishment. Regularization under the

Work Charge and Contingency Paid Establishment is done by passing an appropriate order and conferral of permanent status should not be mixed-up

with the issue of regularization. They are altogether two different things and the employees who have been conferred permanent status, are entitled

for grant of minimum of pay-scale.

08- It is a settled preposition of law that an employee who has been granted permanent status keeping in view the standing orders or keeping in view

the Madhya Pradesh Industrial Relations Act, 1960, shall be entitled for only minimum of the pay-scale, whereas an employee who is regularized, is

entitled for all consequential benefits. He gets regular pay-scale and after

completing minimum number of service as provided under the Madhya

Pradesh Work Charge and Contingency Paid Employee (Pension) Rules, 1976, he is also entitled for pension.

09- In the present case, there is no order brought to the notice of this Court regularizing the petitioner nor in other connected cases there is any order

on record to establish that the petitioners were regularized or they were appointed after following due process of law.

10- Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of Rahisha Begum W/o Late Ashraf Khan Vs. State

of M. P. & Others reported in 2010 (4) MPLJ 332 claiming pensionary dues. In the aforesaid case, the wife was claiming family pension on account

of death of her husband and a committee was constituted which has regularized the husband of the petitioner vide order dated 31/12/1998. In those

circumstances, the widow was held to be entitled for family pension, whereas in the present case, no such contingency is involved. The petitioner has

never been regularized by passing any order nor his appointment was in consonance with the statutory provisions governing the filed. He was a Daily

Wager and has attained the age of superannuation as a Daily Wager.

11- Heavy reliance has been placed again upon a judgment delivered in the case of Harijan Paniben Dudabhai Vs. State of Gujarat and Others

reported in Laws (SC) 2016 Pg.72. In the aforesaid case, the deceased has put in 33 years of service and died in harness. He was an employee of

Panchayat service under the Gujarat Stage. The apex Court was dealing with a case of an employee who was allocated to Gram Panchayat and in

the present case in the State of Madhya Pradesh there are specific statutory provisions governing the filed. The Pension Rules are very clear on the

subject and the petitioner has never been regularized by passing any order nor his appointment was as per the provisions of Recruitment Rules and

therefore, the judgment is of again no help to the petitioner.

12- Learned counsel for the petitioner has placed heavy reliance upon a judgment delivered by Full Bench of this Court in the case of Vishnu Mutiya

and Others Vs. State of M.P. and Others reported in 2006(1) SCT 532 (MP). It was a case where the Full Bench of this Court was dealing with

retirement of Gangman and even though the post of Gangman was not included in Schedule of Rules of 1976, they were given the benefit of

continuance up to the age of 62 years by treating them at par with the other identically placed employees. The aforesaid case has got nothing to do

with the grant of pensionary benefits and therefore, the judgment of Full Bench as it does not deal with the issue of pension, is also of no use to the petitioner.

13- Reliance has also been placed upon a judgment delivered in the case of Brahm Pal Singh Vs. State of Uttarakhand and Another passed in WPSS

No.1142/2016 and other connected cases on 05/06/2017 and the issue involved in the aforesaid case was counting of past services as work-charge

status followed by the regularization, whereas in the present case no such controversy involved.

14- On the other hand, learned counsel for the State of Madhya Pradesh has brought to the notice of this Court towards an order passed in Writ

Petition No.1174/2015 (Vijaysingh & Anr. Vs. State of Madhya Pradesh & Anr.) decided on 29/03/2016, wherein this Court has held that a person

who was appointed as a Daily Wager is not entitled for pension keeping in view the Pension Rules, 1976.

15- In the case of Kala Bai Prajapati Vs. State of Madhya Pradesh and Others reported in 2011 ILR 2319, the Division Bench of this Court while

dealing with similar issue in paragraphs No.5 to 7 has held as under:-

“5. We have given our anxious consideration to the above contention urged on behalf of the Appellant, but we are sorry, we have not been able to

persuade ourselves to agree with this submission. It may be mentioned that Rule 6 of the Contingency Rules of 1977 which contains provisions for

classification of the employees provides only two categories of employees, i.e. temporary and permanent. Contingency Rules of 1977 nowhere provide

for employment on muster roll basis and hence, in our opinion, employment of the late husband of the Appellant on muster roll basis during the period

from 01st May, 1973 to 09th April, 1991 does not fall within the ambit and scope of Contingency Rules of 1977.

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

as under:

24. On the basis of above discussion, we hold in regard to the substantial questions of law Nos. 2 and 3 that an employee is eligible to count his past

service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of

Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules of

1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of

1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.

7. In view of the above judgment of the Full Bench of this Court, the Appellant is not entitled to family pension because the employment of her late

husband on muster roll basis cannot be counted for counting the qualifying service required for grant of such pension to her. It is not the case of the

Appellant that her late husband had, after regularisation with effect from 09th April, 1991, put in the qualifying service required for grant of pension on

the day he died on 03rd August, 1997. His service on the date of his death fell short of qualifying service required under the Contingency Rules of

1977 for grant of family pension to his widow. Hence, in the opinion of this Court, there is no infirmity or illegality in the impugned order of the learned

Single Judge declining family pension to the Appellant, which may require our interference in exercise of our appellate jurisdiction in the present

appeal. This appeal is devoid of any merit and is, therefore, dismissed but with no order as to costs.â??

Inâ similarâ circumstances,â theâ writâ appealâ wasâ dismissed holding that Daily Wagers are not entitled for grant of pension even though

they might be receiving salary from the contingency fund.

16- The last judgment which concludes the issue, has been delivered by the Full Bench of this Court in the case of Mamta Shukla (Smt.) Vs. State of

M. P. and Ors. reported in ILR (2011) MP 1807, wherein this Court has dealt with the provisions of Madhya Pradesh (Work Charged and

Contingency Paid Employees) Pension Rules, 1979 and in similar circumstances has held that an employee is not entitled for pension unless and until

he is appointed in accordance with the provisions of Recruitment Rules and he is regularized. The reference which was made by the learned Single

Judge to Hon'ble the Chief Justice which resulted in constitution of Full Bench reads as under:-

â??(i) Whether the decision of the Division Bench in W.A. No. 725/2007 Smt.

Rahisha Begum v. State of M.P. and Ors. is not a good law in view of the decision of the earlier Division Bench of this Court vide order dated 18-7-2005, passed in W.P. No. 1273/2000 State of M.P. and Ors. v. Ram Singh and Anr.?

(ii) Whether an employee is eligible for the benefit of family pension in accordance with the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 after completing qualifying service in accordance with the provisions of Recruitment Rules framed by the concerned Department for work charged and contingency paid employees or in accordance with the definition of Rule 2 of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 in regard to ""contingency paid employee"", ""work-charged employee"" and permanent employee"?"

(iii) Whether for counting qualifying service of an employee for the purpose of grant of benefit of pension it is necessary that the employee has to be appointed in accordance with the provisions of contingency paid employees recruitment rules framed by the concerned department in regard to work charged and contingency paid employees?â??

17- The Full Bench after taking into account the relevant Pension Rules in paragraphs No.19 to 25 has held as under:-

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

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

From the aforesaid decision of the Hon'ble Supreme Court, it is clear that if an appointment is not made in terms of statutory rules or against a clear

vacancy or on any permanent post, the employee could not be declared or granted a permanent status in accordance with the provisions of Madhya Pradesh Industrial Relations Act, 1960.

20. A constitutional Bench of Hon'ble Supreme Court in Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 01 has held as

under in regard to regularization and absorption of the daily wage employees.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a

proper selection as recognised by the relevant rules of procedure, he is aware of the consequences of the appointment being temporary, casual or

contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the

post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission.

Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held

that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State

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

the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that

the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period

in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on

daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid.

Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been

regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be

treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for

claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced.

Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there

are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the Respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the

manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is

also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive

principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the

State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the

employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises

whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of

this Court in *Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College*. That case arose out of a refusal to promote the writ Petitioner

therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be

shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This

classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since

the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them

permanent.

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

procedure as enumerated in relevant Recruitment Rules and on ad hoc basis against any sanction post, could not get a status and hence on the basis of

the aforesaid principle of law, it has to be held that Rule 3 of the Pension Rules of 1979, which prescribes scope and application of the Pension Rules

of 1979, would be applicable to the 'work-charged and contingency paid employee', who comes within the definition of 'service' of the Recruitment

Rules of 1977.

21. The concept of 'pension' has also been considered in various judgments by

the Hon'ble Supreme Court. It is elaborately considered by the

Constitutional Bench of Hon'ble Supreme Court in D.S. Nakara and Ors. v. Union of India MANU/SC/0237/1982MANU/SC/0237/1982 : (1983) 1

SCC 305. The Hon'ble Supreme Court has also traced the history of concept of pension and held as under:

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public

purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so

as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a

right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in

Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the

discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was

further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to

service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the

officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh.

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-

contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this

class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons

of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till

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

22. In the course of transformation of society from feudal to welfare and as

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

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

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

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

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

26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must

provide that the pensioner would be able to live:

(i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit

the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in

retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano

after the cast is removed. When assured that he will, the patient replied, ""that is funny, I could not before"". It appears that determining the minimum

amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is

harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving

now than in the past. We owe it to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of

its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief

instruments where by the social policies are implemented and pension is paid according to rules which can be said to provide social security law by

which it is meant those legal mechanisms primarily concerned to ensure the

provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed.

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age

considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary

from country to country and from scheme to scheme. But broadly stated they are (1) as compensation to former members of the Armed Forces or

their dependents from old age, disability or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees,

and (iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service

programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in formed in one form or

another countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude.

There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general

welfare. But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service

rendered in the past. However, as held in *Douge v. Board of Education*, a pension is closely akin to wages in that it consists of payment provided by

an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the

nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a

broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental

prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give

your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been

judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments of one retired from

service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a

deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the

inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

22. The Hon'ble Supreme Court further in *Kerala State Road Transport Corporation v. K.O. Varghese and Ors.* (2003) 12 SCC 293 has considered

the concept and object of pension and held as under:

12. Before we deal with their respective contentions, it is necessary to appreciate the concept of pension. There are different classes of pensions and

different conditions govern their grant. It is almost in the nature of deferred compensation for services rendered. There is a definition of pension in

Article 366(17) of the Constitution of India, 1950 (in short "the Constitution"), but the definition is not all-pervasive. It is essentially a payment to a

person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost

in the twilight zone of his life.

13. A political society which has a goal to set up a welfare State, would introduce and has, in fact, introduced as a welfare measure wherein' the

retiral benefit is grounded on consideration of State obligation' to its citizens who having rendered service during the useful span of life must not be left

to penury in their old age. But, the evolving concept of social security is a later-day development, and this journey was over a rough terrain. To note

only one stage in 1856 a Royal Commission was set up to consider whether changes were necessary in the system established by the operative 1834

Act. The report of the Commission is known as "Northcote-Trevelyan Report". The report was pungent in its criticism when it says that:

in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong

inducement to the parents and friends of sickly youth to endeavour to obtain for

them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system". (See Gerald Rhodes: Public Sector Pensions, pp. 18-19.)

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

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

medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed. (See Social Security Law

by Prof. Hany Calvert, p. 1.)

16. Viewed in the light of the present-day notions, pension is a term applied to periodic money payments to a person who retires at a certain age

considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary

from country to country and from scheme to scheme. But broadly stated they are: (i) as compensation to former members of the armed forces or their

dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian, employees, and (iii)

as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the

country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries

for over a century but those coming under the third head are relatively of a recent origin, though they are of the greatest magnitude., There are other

views about pensions, such as charity, paternalism, deferred pay, reward for service rendered, or as a means of promoting general welfare (see

Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service

rendered in the past. However, as held in *Dodge v. Board of Education* a pension is closely akin to wages in that it consists of payment provided by an

employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to

our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

18. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a

broader significance, in that it is. a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental

powers start ebbing corresponding to the aging progress and therefore, one is required to fallback on savings. One such saving in kind is when you

gave your best in the heyday of life to your, employer, in days of invalidity,

economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

19. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them obscure (see American Jurisprudence 24.881).

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

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

22. In its strict sense a pension is not a matter of contract, and is not founded on any legal liability, it is a mere bounty or gratuity ""springing from the

appreciation and consciousness of the sovereign", and it may be given or withheld at the discretion of the sovereign. It may be bestowed on such

persons and on such terms as the law-making body of the Government prescribes, and it is, at the most, an expectancy granted by the law. The term

pension" has been compared and distinguished from "bonus", "compensation", "profits" and "retirement payment". A pension fund is to be distinguished

from an annuity fund derived in part from voluntary contributions under a statutory option to contribute or refrain from contributing.

In *State of Kerala v. M. Padmanabhan Nair* it was observed that pension and gratuity are no longer any bounty to be distributed by the Government to

its employees on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof

must be visited with the penalty of payment of interest at the current market rate till actual payment. The view was reiterated in *Uma Agrawal (Dr.)*

v. State of U.P.

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

some of the Western countries that the federal statute making the wrongful withholding of pension money a criminal offence must be strictly

construed. The purpose of the statute, it was held, is to protect the pensioner against fraud until the unconditional payment of the money to him.

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

Pension means, a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the Secretary of State is

satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of

persons serving in particular employments for providing them with retirement, benefits and, except in the case of such a lump sum which had been

paid to the employee, that:

(1) the scheme or arrangements is established by Act of Parliament or of Parliament of Northern Ireland, or other instrument having the force of law,

or

(2) the benefits under the scheme or arrangement are secured by an

irrecoverable trust which is subject to the laws of any part of the Great Britain;

or

(3) the benefits under the scheme or arrangements are secured by a contract of assurance or an annuity contract which is made with:

(a) an insurance company to which the Insurance Companies Act, 1982 applies;
or

(b) a registered friendly society; or

(c) an industrial and provident society registered under the Industrial and Provident Societies Act, 1965; or

(4) the benefits under the scheme or arrangement are secured by any regulation or other instrument, not being a regulation or instrument having the

force of law, made with the authority of a Minister of the Crown or with the consent of the Treasury for the purpose of authorizing the payment to

persons not employed in the civil service of the State of such pensions, gratuities or other like benefits, as might-have been granted to person so

employed; or

(5) the scheme or arrangement is established by an enactment or other instrument having the force of law in any part of the Commonwealth outside

the United Kingdom;

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

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

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

(i) a payment of an employee which consists of solely of a return of his own contributions, with or without interest;

(ii) that part of a payment to an addition which is attributable solely to additional voluntary contributions by that employee made in accordance with the
scheme or arrangement;

(iii) a periodical payment or lump sum, insofar as that payment or lump sum represents compensation under statutory compensation scheme and is

payable under a statutory provision whether made or passed before, on or after 31-7-1978.

If in any case the Secretary of State is satisfied that benefits under the scheme

or arrangement are wholly or mainly provided for the benefit of

persons not resident in Great Britain, he may, if he thinks fit and subject to such conditions, if any, as he thinks proper, waive the requirement

contained in head (2) above in respect of a scheme or arrangement the benefits under which are secured by an irrecoverable trust or the requirements

of heads 3(a), 3(b) or 3(c) above in the case of a scheme or arrangement the benefits under which are secured by a contract of assurance or an

annuity contract.

26. In *Union of India v. P.N. Menon* this Court observed that not only in the matters of revising the pensionary benefits, but also in respect of revision

of scales of pay a cut-off date on some rational or reasonable basis has to be and can be fixed for extending the benefits. The cut-off date may be

justified on the ground that additional financial outlay is involved or the fact that under the terms of appointment the employee was not entitled to the

benefit of the pension on retirement. (See *Union of India v. Lieut. E. Iacats.*) Depending upon financial conditions a cut-off date can be fixed when a

new pension scheme is being introduced. (See *State of Rajasthan v. Amrit Lal Gandhi.*)

From the aforesaid judgments of the Hon'ble Supreme Court, it is clear that the pension is a payment for the past services rendered by an employee

and for the purpose of rendering service, the employee has to attain the status, which means, an employee has to be appointed in accordance with the

provisions of Recruitment Rules.

23. The Division Bench of this Court in *Madhukar Talmale v. State of M.P.* and Ors. MANU/MP/0987/2003 : 2003 (4) MPLJ 282 has held that if the

appointment of a work-charged employee is dehors the rules, then his service has to be counted from the date of regularization and not from the date

of his initial appointment.

The relevant findings of the Division Bench are as under:

Annexure-11 has been appended to the Schedule to the M.P. Workcharged and Contingency Employees Pay Revision Rules, 1984 as it has been

under Rule 3. Under S. No. 3(B) the post of Time Keeper is mentioned. It stipulates that there would be 100% direct recruitment. It stipulates that

incumbent must have passed Higher Secondary, mathematics being one of the subject. As the Petitioner was appointed in the year 1983, 1984 Rules

would be applicable that governed the field then. The relaxation has been made in exercise of power under Rule 11. A general circular was issued on

13-11-1988 when the Petitioner's services had been regularized by taking recourse to Rule 11. If the said Rule is conjointly read with the circular in

question, he cannot claim seniority from the date of his initial service in as much as he was appointed de hors to the Rules and therefore, his seniority

has to be computed from the date of regularisation. No fallacy or infirmity in the order passed by the Tribunal.

24. On the basis of above discussion, we hold in regard to the substantial questions of law Nos. 2 and 3 that an employee is eligible to count his past

service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of

Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules framed

by the concerned department i.e. the Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of

grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.

25. In regard to substantial question of law No. 1. Earlier Division Bench of this Court in W.P. No. 1273/2000 State of Madhya Pradesh v. Ram Singh

and Anr. has held that a daily wager employee would not fall within the definition of work-charged and contingency paid employee, hence his case

would not be covered by Madhya Pradesh Work-charged and Contingency Paid Employees Pension Rules, 1979, has not been noticed by the

subsequent Division Bench of this Court in Rahisha Begum v. State of M.P. and Ors. MANU/MP/0961/2010 : 2010 (4) MPLJ 332. However, in the

subsequent case, the Division Bench has held that if an employee comes within the definition of work-charged and contingency paid employee as

defined in the Pension Rules of 1979, then he is eligible to count his past service for the purpose of qualifying service in accordance with the Rules of

1979. In our opinion, there is no conflict between the Division Bench judgments, because the findings of the Division Benches are based, on different

factual aspects. Accordingly, we answer the substantial question of law No. 1 that there is no conflict of opinion between the two Division Bench

judgments. Hence, the decision of the Division Bench in the case of Rahisha Begum v. State of M.P. and Ors. MANU/MP/0961/2010 : 2010 (4)

MPLJ 332. is not per incuriam. We answer substantial question of law No. 1 accordingly.â??

18- Keeping in view the aforesaid judgment, as in the present case, undisputedly no document has been filed to establish that the petitioner was

appointed in accordance with the provisions of Recruitment Rules, there is no order declaring him a regular employee and therefore, in the considered

opinion of this Court the question of grant of pension to the petitioner or to other identically placed employees does not arise.

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

1979 are quoted as under:-

â??THE MADHYA PRADESH (WORK CHARGED

AND CONTINGENCY PAID EMPLOYEES)

PENSION RULES, 1979

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

As amended subsequently by the following:â?

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

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh hereby makes the

following rules, namely :-

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

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

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

(a) ""Contingency paid employee"" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay

is charged to office contingencies excluding the employees who are employed for certain period only in a year,

(b) ""Work-charged employee"" means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon

subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work,

excluding the daily paid labour and muster-roll employee employed on the work;

(c) ""Permanent employee"" means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on

or after the 1st January, 1974.

[Provided that in respect of a contingency paid employee or a workcharged employee who has attained the age of superannuation on or after the First

April 1981, permanent employee means an employee who has completed 10 years of service on or after the 1st January 1974.]

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

4. Regulation of amount of pension. - Notwithstanding anything contained in Rules 5 and 6, the payment of pension and gratuity of permanent

employee shall be regulated as under, namely :-

(1) The Madhya Pradesh New Pension Rules, 1951, except Rule 5 thereof, shall apply to all permanent employees who have retired on or after the

1st January, 1974 but before the 1st June, 1976.

(2) The Madhya Pradesh Civil Services (Pension) Rules, 1976 except Rules 47 and 48 thereof, as amended from time to time, shall apply to all

permanent employees who have retired on or after the 1st June, 1976.

[4A. Notwithstanding anything contained in rule 4 of the family of a permanent employee who dies while in service or after retirement on pension on

or after the 1 st April, 1981 shall be entitled to family pension at the rate or 30% of his/her pay drawn at the time of death/retirement subject to

minimum of Rs.40/- per month and maximum of Rs.100/- per month subject to other conditions of rule 47 of the Madhya Pradesh Civil Services

(Pension) Rules, 1976 except sub-rule (3) of the said rule.]

5. Procedure for preparation of pension papers, sanction and payment of pension, etc. - The rules in Chapters VIII, XI and XII of the Madhya

Pradesh Civil Services (Pension) Rules, 1976 shall apply mutatis mutandis in the case of employees including those who have retired on or after the

1st January, 1974 but prior to the 1st June, 1976.

6. Commencement of qualifying service. -

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

Pension Rules, 1951 as the case may be, for calculating qualifying service of a permanent employee who retires as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

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

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

21- The Recruitment Rules governing the field known as Madhya Pradesh Public Works Department Workcharged and Contingency Paid Employees

Recruitment and Conditions of Service Rules, 1976 provides for method of recruitment and promotion. It provides for maintenance of service record in respect of all employees appointed under the Rules of 1976. The petitioner is certainly not a member of service in question and his initial recruitment

itself is not in accordance with the Rules of 1976 and therefore, in the considered opinion of this Court, the question of grant of pension to the petitioner does not arise.

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

23- This Court has carefully gone through the judgment delivered in the case of Lalsingh S/o Gangaram and the fact remains that the judgment

delivered in the case of Mamta Shukla (Supra) which is by Full Bench has not been considered at all and therefore, if a person is receiving pension on

account of some order, it does not create any right in favour of the petitioner specially when the law has been crystallized in the case of Mamta

Shukla (Supra). The petitioner cannot claim negative equality in the matter of grant of pension. The petitioner has to support his claim on the basis of

statutory provisions and the judgments delivered from time to time. The statutory provisions governing the field does not support the petitioner at all

and the judgment delivered in the case of Mamta Shukla (Supra) also does not entitle the petitioner for grant of pensionary dues.

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

Certified copy as per rules.