
(2017) 02 AHC CK 0187
In the Allahabad High Court
Case No : Misc. Bench No. 20486 of 2016

Krishna Kumar

APPELLANT

Vs

State of Uttar Pradesh Thru. Prin. Secy. Lok Nirman Vibhag

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2017) 1 LLN 620

Hon'ble Judges : Dilip B. Bhosale, CJ. and Rajan Roy, J.

Bench : Division Bench

Advocate : Anand Mani Tripathi, Advocate, for the Petitioner in Misc. Bench Nos. 529, 937, 988, 1464, 1474 2097, 2496, 3806, 3077, 3246, 3404, 3959, 3773, 3998, 4211, 4212, 4308, 4520, 4689, 4896, 5693, 5694, 20486 of 2016; C.S.C, for the Respondent in Misc. Bench Nos. 529, 937, 988, 1464, 1474 2097, 2496, 3806, 3077, 3246, 3404, 3959, 3773, 3998, 4211, 4212, 4308, 4520, 4689, 4896, 5693, 5694, 20486 of 2016

Final Decision : Dismissed

Judgement

Rajan Roy, J.— Heard Mr. Anand Mani Tripathi, Mr. A. P. Singh, Mr. Rakesh Srivastava, Mr. Saurabh Lavania, Mr. Pradeep Chandra, Mr. Vinod Kumar Shukla, Mohd. Ali, Mr. Amit Dwivedi, Mr. Arun Kumar Shukla, Mr. Alok Sharma, Mr. Shishir Chandra, Mr. M.M. Asthana, learned counsel for the petitioners and Mr. H.P. Srivastava, learned Additional Chief Standing Counsel for the respondents.

2. This is a bunch of writ petitions filed by regular employees working in the Public Works Department etc. of the Government of U.P., inter alia, challenging the viries of Rule 3 (8) of the U.P. Retirement Benefits Rules, 1961 (For short "the Rules, 1961") and Regulation 370 of the Civil Service Regulations, as also, claiming the benefit of services rendered by them in work-charged establishment, for the purposes of calculating qualifying service for pensionary benefits and also for grant of service benefits such as promotional pay-scale, as the case may be.

3. All these writ petitions involve common questions of fact and law, therefore, they have been heard together and are being decided by a common judgment. For convenience Writ Petition No. 20486(M/B) of 2016 and Writ Petition No. 7837(M/B) of 2015 have been treated as leading writ petitions.

4. Writ Petition No. 20486(M/B) of 2016 has been filed by personnel engaged in the Public Works Department on daily wages during the period of 1979 to 1988. Their services were allegedly transferred to work-charged establishment during the period 1989 to 2005. Subsequently, their services have been regularized against sanctioned posts during the period of 2006 to 2011. The prayers sought in the said writ petition are as under:-

"i) to issue, a writ, order or direction in the nature of MANDAMUS thereby commanding/ directing the opposite parties particularly the opposite party no. 1&2 being sanctioning and competent authority to consider and pay all service benefits to the petitioners including all increments, selection grade, promotional pay scale and Assured Career Progression (ACP) as and when the same falls due forthwith.

ii) to issue, a writ, order or direction in the nature of MANDAMUS thereby commanding/ directing the opposite parties to count the entire length of service of the petitioners rendered into the work charge establishment as qualifying service for all purposes and pay them all service benefits forthwith.

iii) to issue, a writ, order or direction thereby declaring regulation 370 of the Civil Service regulation as ultra vires and inoperative so far it relates to providing service benefits to the petitioners being violative of Article 14 of the Constitution of India."

5. Writ Petition No. 7837(M/B) of 2015 has been filed by personnel who were allegedly appointed as daily wagers in the Public Works Department during 1975 to 1982. Thereafter, they were inducted in the work-charged establishment during the years 1982 to 1996. Subsequently, during the years 2005 to 2011 their services were regularized against sanctioned posts. The relief sought in this writ petition is as under:-

"i) to issue a writ, order or direction in the nature of mandamus declaring the provisions contained in Regulation 370 of U.P. Civil Service Regulation Rule 3(8) of U.P. Retirement and Benefit Rules, 1961 and Government Order dated 22.06.1987 ultra virus and inoperative so far it relates for non counting of the period of work charge services for the purpose of grant of service benefits including pensionary benefits to the petitioners.

ii) to issue a writ, order or direction in the nature of Mandamus thereby commanding/ directing the opposite parties to count the period of services of the petitioners prior to regularization, which includes service in work charged establishment, and give service benefits including pensionary benefits to the petitioners."

6. The contention of learned counsel for petitioners was that having put in such a long period of service in the work-charge establishment followed by regularization it was unreasonable, unfair and arbitrarily not to count such work-charge services for the purposes of computing qualifying service for grant of service and pensionary benefits, specially in cases where, after regularization, regular qualifying service was short of the required 10 years, on account of which, they were being denied pensionary benefits. A parimateria provision existing in the relevant rules pertaining to the State of Punjab was struck down by a Full Bench of the Punjab and Haryana High Court in the case of Kesar Chand v. State of Punjab and Ors. reported in 1988 (5) SLR 27 (FB), which was upheld by the Supreme Court, therefore, for the reasons already mentioned in the said judgment, the provisions impugned herein are also liable to be declared ultra vires, specially as, the said decision was followed in the subsequent decision of the Supreme Court in the case of Punjab Electricity Board and another v. Narata Singh and others reported in (2010) 4 SCC 317 and also for the reason that a Full Bench of the Jharkhand High Court in the case of Ram Prasad Singh and another v. State of Jharkhand and others, 2005 (3) JCR 9 Jhar, had also taken the same view.

7. It was submitted that before the Full Bench of this Court in the case of Babu Ram v. State of U.P. and Ors. (2016) 34 LCD 1132 the vires of the provisions impugned herein was not under challenge, therefore, the observations made therein do not pose a hurdle in this case and also that the Full Bench had not considered the ratio of the Full Bench of Punjab and Haryana High Court in Kesar Chand's case (supra), but, had only made an observation that the factual scenario was different therein, although, it is not so.

8. Further more, it was contended that the provisions contained in Paragraph nos. 667, 668 and 669 of the Financial Handbook, Vol. VI relating to work-charge establishment had been rescinded vide Notification Dated 01.01.2000, therefore, the said provision did not come in the way and the petitioners were entitled to count their services rendered in the work-charge establishment for the aforesaid benefits.

9. In the alternative, it was contended that the provisions impugned herein give uncannelised and unbridled power, therefore, they should be read down in the light of the Full Bench decision in Kesar Chand's case (supra), as had been done by the Division Bench of this Court in Special Appeal Defective No. 264 of 2013, State of U.P. v. Prem Chandra and connected appeals vide judgment and order dated 13.05.2013 against which the Special Leave Petition had been dismissed by the Supreme Court, albeit, in limine.

10. It was asserted that some of the petitioners were eligible for being considered for regularization much earlier, but, on account of delay in such consideration, their regular service fell short of the required 10 years (for pensionary benefits), thereby, dis-entitling them to pension, for no fault of theirs, therefore, for this reason also, work-charge services are liable to be counted for

the said purpose. It was argued, if temporary and officiating service can be counted for qualifying service under Regulation 370 of the Civil Service Regulations there is no reason why work-charged services can not be counted.

11. Shri A. P. Singh, learned counsel appearing in one of the matters i.e. Writ Petition No. 6811(MB) of 2011 contended, that others similarly situated had been granted the said benefits for grant of promotional pay-scale, but, his clients had been discriminated.

12. Learned counsel for the State on the other hand took us through the relevant provisions of the Rules, 1961, the Civil Service Regulations, the Financial Handbook, Vol. VI pertaining to work-charged establishment employees and also the Full Bench decision of this Court in Babu Ram (supra), various decisions of the Supreme Court and this Court, including the judgment in the case of Raj Bala and others v. State of Haryana and others reported in (2016) 2 SCC 445 to contend that, the services under the work-charged establishment being distinct from the regular establishment and the terms and conditions of such service, including mode of recruitment etc., being different, benefit of the former can not be given for the purposes of grant of service and pensionary benefits in the latter establishment. More so, as it is against the express provision of the statute and Rules made thereunder. He also relied upon the case of Raj Bala (supra) to contend that vires of a legislative enactment can not be struck down on the ground of being violative of Article 14, therefore, on the same analogy a subordinate legislation can also not be struck down. He contended that there was no unreasonableness in the Rules impugned before this Court considering the legal position settled by the Supreme Court in a catena of decisions, as also, the Full Bench decision of this Court rendered in Babu Ram's case (supra), wherein, the regular and work-charged services have been held to be of a different kind and the nature of the establishment, wherein they are rendered, are also very distinct.

13. The provisions, vires of which, is under challenge before us, read as under:-

Rule 3 (8) of the U.P. Retirement Benefits Rules, 1961

"3. In these rules unless there is anything repugnant in the subject or context-

(1) ?????...

(2) ?????...

(3)??????.

(4)??????.

(5)??????.

(6)??????.

(7)??????.

(8) "Qualifying service" means service which qualifies for pension in accordance with the

provisions of Article 368 of the Civil Service Regulations: Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

- (i) periods of temporary or officiating service in a non-pensionable establishment,
- (ii) periods of service in a work-charged establishment, and
- (iii) periods of service in a post paid from contingencies, shall also count as qualifying service.

Note :- If service rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service."

Regulation 370 of the Civil Service Regulations:-

"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 non-pensionable establishment;
- (ii) periods of service in work-charged establishment, and
- (iii) periods of service in a post paid from contingencies."

14. Rule 3(8) of 1961 Rules is pari materia with Regulation 370, except that by an amendment, the note, as appearing in Rule 3(8), which also existed in Regulation 370, was omitted w.e.f 20.04.1977.

15. Certain other provisions which are relevant to the case are quoted herein below:-

The term "Officer" used in the U.P. Retirement Benefits Rules, 1961 is defined in Rule 3(6) as under:-

"3(6). "Officer" means a Government Servant (whether belonging to superior to inferior service) who holds a lien on a permanent pensionable post under the Government or would have held a lien on such a post had his lien not been suspended;"

16. Regulation 361 and 368 of the Civil Service Regulations reads as under:-

"361. The service of an officer does not qualify for pension unless it conforms to the following three conditions-

First - The service must be under Government.

Second - The employment must be substantive and permanent

Third - The service must be paid by Government.

These three conditions are fully explained in the following Section.

368. Service does not qualify unless the officer holds a substantive office on a permanent establishment."

17. Fundamental Rule 56 prescribes the age of superannuation of Government servants. Fundamental Rule 56(e) provides that a retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule.

18. Pensionary benefits are admissible to government employees in the State of U.P. in terms of the Rules, 1961 and the application of the Civil Service Regulations is also in terms of the said Rules vide Rule 2(2) thereof, subject to conditions mentioned therein, therefore, the writ petitions wherein the vires of Regulation 370 alone has been challenged strictly speaking are not properly framed in absence of a challenge to Rule 3 (8) of the Rules, 1961, nevertheless, as, the said Rule has been challenged in one of the writ petitions i.e. Writ Petition No. 7837(M/B) of 2015, and all the matters are similar, we proceed to consider all the matters accordingly.

19. The questions which fall for consideration in this bunch of petitions are as under:-

"1. Whether Rule 3(8) of the Rules, 1961 and Regulation 370 of the Civil Service Regulations are unreasonable, arbitrary, therefore, hit by Article 14 of the Constitution of India?

2. Whether long services rendered by the petitioners herein, say for 15 to 26 years, in the work-charged establishment, are liable to be counted for calculating qualifying service for pensionary benefits?

3. Whether long services rendered by the petitioners herein, say for 15 to 26 years, in the work-charged establishment, are liable to be counted for calculating qualifying service for grant of service benefits, such as, promotional pay-scale, for which, a minimum satisfactory regular service, is a pre-condition?"

20. As regards the first question framed by us, herein above, the vires of a legislative enactment or for that matter sub-ordinate legislation can be questioned on the ground of jurisdictional incompetence or violation of any constitutional or statutory provision. As far as jurisdictional competence is concerned, no such argument was advanced on behalf of the petitioners that the State was not competent to frame Rule 3 (8) of the Rules, 1961 or Regulation 370 of the Civil Service Regulation. Even otherwise, the jurisdictional

competence of the State Government in this regard is beyond doubt in view of the provisions contained in Article 309 of the Constitution of India in the absence of a legislative enactment on the subject of conditions of services of its employees, over which, the State legislature is empowered to legislate.

21. As for as the contention that the provisions impugned are unreasonable and arbitrary therefore hit by Article 14 of the Constitution of India is concerned, in a recent judgment in *Raj Bala's case* (supra) the Supreme Court after considering its earlier judgments has expressed the view that a legislative enactment can not be struck down on the ground it is arbitrary and unreasonable, thus, hit by Article 14. Reference may be made in this regard to Paragraph No. 58 to 65 of the said judgment. Thus, in view of the said dictum and on the same analogy, a subordinate legislation would also not be liable to be struck down on the ground that it is unreasonable and arbitrary. Per contra *Shri Lavania* has relied upon an earlier judgment of the Supreme Court in the case of *State of Tamil Nadu and others v. K. Shyam Sunder and others*, 2011 (4) CTC 874 (SC): Civil Appeal No. 6015-6027 of 2011 to contend otherwise.

22. This apart, even when we examine the viries of the impugned Rules on the said ground, we do not find any unreasonableness and arbitrariness in the same for the simple reason that the work-charged Establishment and Regular establishment, as also, the services rendered therein, the source of their recruitment and conditions of service, are quite distinct, therefore, the two categories can not be treated alike. Not much labour is required on this issue for the reason the same has been settled by the Supreme Court in a catena of decisions. Reference may be made in this regard to the pronouncement rendered in the case of *Jaswant Singh and Ors. v. Union of India and Ors.* reported in (1979) 4 SCC 440, wherein, it was observed that 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 works. 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.

23. In *State of Rajasthan v. Kunji Raman* reported in (1997) 2 SCC 517, declining the claim of the work-charged employee to similar benefits as regular employees, the Supreme Court noticed that a work-charged establishment, thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for exceeding it. It also noticed that so far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of

establishments and the persons employed on those employments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it can not be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has power to frame different rules for different classes of employees. It thus, opined that a work-charged establishment is materially and qualitatively different from a regular establishment.

24. Again in the case of Punjab State Electricity Board and others v. Jagjeevan Ram and others reported in (2009) 3 SCC 661 the Supreme Court noticed the distinction between work-charged employee and a regular employee. In this case, the claim before the Supreme Court was that the work-charged services should be counted for the purposes of grant of time bound promotional scale for which regular qualifying service was stipulated. In paragraph 10 of the report, the Supreme Court categorically held that services of such work-charged employees of the work-charged establishment can not be clubbed with service in a regular establishment unless a specific provision to that effect is made either in relevant statutory Rules or the scheme of regularization. In other words, if the statute or scheme under which service of work- charged employee is regularized, does not provide for counting of past service, the work-charged employee can not claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scale, grant of increments etc. Noticing the earlier judgments of the Supreme Court in Kunji Raman's case (supra) and Jaswant Singh's case (supra), it held, in paragraph 14 of the report, that the ratio of the above mentioned judgments is that work-charged employees constitute a distinct class and they can not be equated with any other category or class of employees, much less, regular employees and further that the work-charged employees are not entitled to the service benefits which are admissible to regular employees under the relevant Rules or Policy framed by the employer.

25. It is not out of place to mention that in these petitions it is not the case of the petitioners that there is any Rule or a Condition of Regularization to the effect that the work-charged services rendered by the petitioners would be counted for grant of service or pensionary benefits in the regular establishment, rather, as will be noticed herein after, the Rule is to the contrary, but, for the moment, the above discussion has been made to emphasize the distinction between two kinds of establishments, the Work charged and the Regular, to meet the argument of the petitioners that by excluding the serviced rendered in a work-charged establishment, Rule 3 (8) and Regulation 370 are arbitrary and unreasonable, as, the nature of the establishments and the conditions of service therein being different it can not be said that the Rule making authority while excluding the said services from the purview of qualifying service for grant of service benefits or for pensionary benefits under Rule 3 (8) of the Rules, 1961 or

the Civil Service Regulations, acted arbitrarily and unreasonably, as, unlike can not be treated alike.

26. Based on the distinction noticed herein above, a differential treatment of the services rendered in the work-charged establishment vis-a-vis the regular establishment for grant of service and pensionary benefits can not be said to be arbitrarily or hit by Article 14 of the Constitution of India.

27. Reference may also be made in this regard to the provisions of the Financial Handbook, Vol.-VI relating to engagement of employees in the work-charged establishment. Paragraph 667 to 669 of Chapter XXI of the said Financial Handbook, Vol. VI are quoted herein below:-

"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 sub-works. When employees borne on the temporary establishment are employed on work of this nature their pay should for the time being, be charged direct to the work.

Notes.---(1) Persons who actually do the work with their hands, such as, beldars, masons, oarpenters, fitters, mechanics, drivers, etc., should be engaged 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-mixture, pumping-sets and other machinery, mechanics, drivers, etc., may be engaged 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 charged to "works".

(3) Subject to the general principles stated in Paras 665 to 667 being observed, the classes of establishment not covered by these definitions may be classified as "work-charged, or temporary", as the case may be, and the rule which prescribes that work-charged 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 Accountant- General, 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 as laid down in Vol. I of the Handbook or in the departmental manuals of orders is necessary, which should 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-charged 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 sub-divisional officer/assistant engineer specifically authorised for the purpose by 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.

4. All facilities and concessions admissible to workmen of factories registered under the Factories Act, 1948, are also admissible to the employees of the registered State Workshops and Factories."

28. The aforesaid provisions under which work-charged employees are engaged in the State of U.P., corroborate the observations of the Supreme Court already noticed herein above. Paragraph 669 quoted herein above leaves no manner of doubt that the said Financial Handbook itself categorically provides that the members of the work-charged establishment are not entitled to any pension or to leave salary or allowances except in the eventualities mentioned therein, none of which are attracted to the claim of the petitioners herein. Importantly, the aforesaid provisions are not under challenge before us. Therefore, not only on account of the provisions contained therein, but, also in absence of any challenge to the same, the claim of the petitioners is without any factual and legal basis.

29. As far as reliance placed by the petitioners upon the Full Bench decision of the Punjab and Haryana High Court in Kesar Chand's case (supra) is concerned, with respect, the Full Bench of the said High Court did not have the benefit of the subsequent judgments of the Supreme Court which have been considered and referred herein above, secondly, before the said High Court the scheme of the Rules as existing in the State of U.P. and noticed herein above especially para 669 of the Financial Handbook, Vol-VI was neither placed nor considered, which makes a material difference to the fate of the petitioners herein.

30. As far as Narata Singh's case (supra) is concerned, the same is based

merely on the fact the relevant provision had already been struck down by the Full Bench in Kesar Chand's case (supra) and the Special Leave Petition against it had been dismissed, but, there is no consideration in the said case of the issues involved herein, independently. Therefore, the said judgment does not help the petitioners. The Full Bench decision in Babu Ram's case (supra) has already considered this aspect of the matter, therefore, in view of the reasons already discussed, no benefit can be extended to the petitioners of the Full Bench decision of Punjab and Haryana High Court in Kesar Chand's case (supra). Relevant extract of the Full Bench decision in Babu Ram's case (supra) is quoted herein below:-

"21. We had at the beginning noted that Panchu had been duly considered in Jai Prakash (2014 (2) ALJ 462) as well as Ram Nagina Lal Srivastava and Navrang Lal Srivastava. The Division Bench of this Court in Ram Nagina Lal Srivastava (2016 (1) ALJ 277) dealt with Panchu in the following terms:

"The last judgment of this Court which struck a discordant note and which must be noticed is that rendered by the Division Bench in Panchu (supra). It is apposite to note here that Panchu was also taken in appeal to the Supreme Court where the Special Leave Petition 18 came to be dismissed on 28 March, 2014 in the following terms:

"The special leave petition is dismissed. The question of law relating to counting the period of work charge establishment is left open for determination in an appropriate case. The impugned judgment passed by the High Court cannot be cited as a precedent in any other case."

From the above narration of facts and the various judgments rendered on the issue, it is apparent that the judgments of this Court which held that the service rendered by a person in a work charged establishment was eligible for inclusion in the period of qualifying service proceeded on the basis that the judgment rendered in Narata Singh applied and failed to notice the distinguishing features upon which it came to be rendered. The law subsequently has been authoritatively pronounced and ruled upon in both Jai Prakash and Navrang Lal Srivastava, and in judgments of the Hon'ble Supreme Court noticed earlier."

The learned Single Judge however while referring the matter to the Full Bench has inadvertently failed to notice that Panchu stood duly explained in light of the subsequent pronouncements in Jai Prakash (2014 (2) ALJ 462), Ram Nagina (2016 (1) ALJ 277) and Navrang Lal Srivastava (2016 (1) ALJ 282). Since Panchu had been taken note of in the aforementioned judgments, the issue of a conflict did not arise at all.

22. We accordingly conclude that the judgments of this Court which proceeded to follow Narata Singh failed to bear in mind the distinguishing features of the statutory regime in the backdrop of which it came to be delivered. As noted above, Rule 3.17(ii) of the Punjab Civil Service Rules had been struck down. The absence of Rule 3.17(ii) from the statute book formed the bedrock upon which

Narata Singh (AIR 2010 SC 1467) was decided. Significantly, Regulation 370 continues to govern the field and in clear and unambiguous terms provides that the period of service rendered in a work charged establishment is liable to be excluded while computing qualifying service.

23. We therefore hold that the period of service spent in a work charged establishment is not liable to be countenanced for the purposes of computing qualifying service. The law in this regard stands correctly declared and elucidated in Jai Prakash (2014 (2) ALJ 462), Navrang Lal Srivastava (2016 (1) ALJ 282) and Ram Nagina (2016 (1) ALJ 277). The decision in Panchu and the other judgments of this Court which have followed the line of reasoning adopted therein shall accordingly stand overruled.

24. Before concluding, we may only refer to three judgments cited before us in support of the contention that the period of service rendered in a work-charged establishment was liable to be counted while computing qualifying service. These were (a) Dakshin Haryana Bijli Vitran Nigam & Others v. Bachan Singh, 2009 (4) LLN 132 (SC): C.A. No. 4903 of 2009, dated 30th July 2009;; (b) Amarkant Rai v. State of Bihar & Others, 2015 (2) LLN 273 (SC): C.A. 2835 of 2015, dated 13th March 2015; and (c) Secretary, Minor Irrigation Deptt. & R.E.S. v. Narendra Kumar Tripathi, 2015 (3) LLN 273 (SC) : C.A. 3348 of 2015 with Civil Appeal No. 3349, dated on 7th April 2015. Dakshin Haryana Bijli Vitran Nigam was a matter which arose from a judgment rendered by the Punjab & Haryana High Court and was again based upon the judgment rendered by the Full Bench of that High Court in Kesar Chand (AIR 1988 P&H 265). Amarkant Rai dealt with the regularization of the appellant who was working on daily wages. It obviously has no relevance to the issue which falls for our consideration. Similarly, Narendra Kumar Tripathi was dealing with an issue as to whether the period of service as rendered on ad hoc basis was liable to be counted for the purposes of seniority. This judgment too has no application to the issue which stands referred to this Full Bench.

25. We accordingly answer the reference by holding that the period of service spent by a person in a work charged establishment is not liable to be counted for the purposes of computing qualifying service. Regulation 370 of the Civil Service Regulations continues to govern and hold the field. The factual backdrop in which Narata Singh (AIR 2010 SC 1467) came to be rendered escaped the attention of the various Division Benches which followed it despite the existence of the unambiguous command of Regulation 370. Jai Prakash (2014 (2) ALJ 462) and the subsequent pronouncements following it and referred to above represent the correct position in law. The matter shall now be placed before the learned Single Judge for a decision on the writ petition in the light of what has been held above."

31. Considering the nature of the work-charged establishment and the difference in the conditions of services vis-a-vis a regular establishment, the Rules impugned before us can not be faulted for excluding the period of service in a work-charged establishment from the purview of qualifying service for

pensionary benefits nor can the State be faulted for excluding such services for calculation of qualifying service for the purposes grant of promotional pay-scale etc. Neither violation of any constitutional nor of any statutory provision is involved, therefore, there is no reason for us to declare the impugned Rules as ultra- vires, specially as, a co-ordinate Bench of this Court has already held the same to be ultra vires vide their judgment dated 08.04.2016 passed in Writ Petition No. 6783(M/B) of 2016. Another Division Bench has also done so in the case of Navrang Lal Srivastava v. State of U.P. and others reported in (2015) 33 LCD 2338. Further more, a Single Judge Bench of this Court had the occasion to consider the same in the case of Shri Ram Shanker Pandey (Seenchpal) v. State of U.P. and Ors. reported in (2013) 3 UPLBEC 2610 and uphold the same. Relying solely upon it another petition bearing Writ-A No. 26763 of 2012 was dismissed. Against this dismissal an Intra Court Appeal was filed i.e. Jai Prakash v. State of U.P. and others; Special Appeal Defective No. 23 of 2014, wherein, the Division Bench sustained the impugned judgment and the judgment in Shri Ram Shankar Pandey (supra). The special leave petition against it was dismissed on 05.09.2014. Another Single Judge Bench of this Court in the case of Hind Lal v. State of U.P. reported in (2011) 4 UPLBEC 3056, has also uphold the viries of Article/ Regulation 370 of CSR. We see no reason to take a different view on this issue.

32. Question no. 1 aforesaid, is answered accordingly.

33. Once the challenge to the viries of the Rules fails no elaborate discussion is required with regard to other two questions framed by us, as, bereft of a positive answer to question no. 1, the claim of the petitioners for counting of the work-charged services for pensionary benefits is untenable in view of Rule 3 (8) of the Rules, 1961 and Regulation 370 of the Civil Service Regulations read with Para 669 of the Financial Handbook, Vol.-VI and the discussion already made herein above.

34. A perusal of the Rules/Regulations quoted earlier indicates that for the purposes of calculating minimum qualifying service, which is 10 years (Regulation 474), only such services are liable to be counted as are mentioned in the aforesaid Rules, which, specifically exclude the "period of service in a work-charged establishment". The services in a work-charged establishment are neither substantive nor permanent which is also one of the preconditions for being entitled to pension under Regulation 361 of the Civil Service Regulations. As per Regulation 368 service does not qualify unless the officer holds a substantive office on a permanent establishment. Work charge establishment is not a permanent establishment nor does a work-charged employee hold a substantive office.

35. Much reliance was placed by the learned counsel for the petitioners upon the judgment of the Supreme Court in the case of Raj Narain Prasad and others v. State of U.P. and others reported in (1998) 8 SCC 473 which pertained to the Irrigation Department, State of U.P., wherein, certain observations were made for

reviewing the cadre strength from year to year, so that, the work-charged employees who had been on the establishment for long period could avail the benefit of re-regularization in reasonable good number, so that, at the end when they are relieved from services on their attaining the age of superannuation, they may have remaining something to fall back on. Consequently, certain directions were issued to the State to undertake a review of the cadre strength by March of the said year and thereafter in December every year, so that, the budgetary support could be provided for in the next financial year for the added strength to the cadre and with these observations and recommendations the Supreme Court approved the re-regularization scheme with a further observation to observe the spirit of the judgment in Pyara Singh's case.

36. In this regard, we are of the view firstly, this judgment was rendered prior to the Constitution Bench judgment rendered in case of State of Karnataka v. Uma Devi reported in (2006) 4 SCC 1, which has taken away the precedentiary value of the earlier judgments on the question of re-regularization, This apart, the said judgment fell for consideration before the Supreme Court in the case of Prabhu Narain and others v. State of U.P. and others reported in (2004) 13 SCC 662, wherein, the Supreme Court noticed the assertion made in paragraph 11 of the counter affidavit before it that the services of the work-charged employees are somewhat different from the services of the regular employees. The services of the work-charged employees are governed by Financial Handbook, Vol. VI paras 458 to 463 and 669 to 669, read with Articles 361 and 370 of the Civil Services Regulations. It noticed the stand of the State that the petitioners are not entitled to any pensionary benefits. Thereafter, referring to the earlier judgment in Raj Narain's case (supra) in para 3 of the report it noticed the contention of the learned counsel for the petitioners, based thereon, that having regard to the length of their services and taking note that they had satisfied the requirement of the scheme, merely because the respondents left over or delayed regularization of their services, they can not be denied the pensionary benefits and in the succeeding paragraphs of the report, it held, that from the averments made in the writ petition the petitioners have not shown as to what is the basis for their claim of pension. It observed that, there are two things: one is the claim for regularization of their services and the other is the claim for grant of pension. The earlier judgment of this Court in the case of Raj Narian (supra) aforementioned relates only to regularization of services. If the petitioners had any grievance regarding regularization of their services and if their services were not regularized early or ignoring their claim services of any juniors were considered, it is open to them to seek appropriate relief based on the judgment of this Court claiming regularization of their services from a particular date. That is not the claim made in the writ petition. No details or particular are given as to who are those juniors whose services were regularized in preference to the services of the petitioners. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be.

37. Thus, a similar claim was declined by the Supreme Court. In the present cases also the same deficiencies exist as noticed in Prabhu Narain's case (supra).

38. The claim of the petitioners is also unsustainable as this issue is squarely covered by the Full Bench decision of this Court in Babu Ram (supra) wherein a similar claim for counting work-charged services for pensionary benefits has already been turned down relying upon various decisions of the Supreme Court, some of which have been noticed by us also, herein above.

39. As regards the contention that Fundamental Rule 56 Vol.-II, Part-II to IV includes all kinds of employees including temporary employees, with respect, the Financial Hand Book, Vol.-VI, makes a clear distinction between temporary establishment and work-charged establishment, as do the Civil Service Regulations. Paras 665, 666 deal with temporary establishment, whereas, Paras 667 to 669 thereof relate to work-charged establishment. Temporary or officiating service in a non pensionable establishment is also excluded under Regulation 370, therefore, reliance placed upon Fundamental Rule 56 is absolutely misconceived.

40. As far as the contention raised on behalf of the petitioners based on the alleged notification dated 01.01.2000 is concerned, the said Government Order, which is prospective, merely states that the Government had taken a decision to abolish the arrangement of appointments in the work-charged establishment under Para 667, 668, 669 of the Financial Handbook, Vol.-VI which does not mean that work-charged services rendered under such establishment were liable to be counted for service/ pensionary benefits, in respect of persons engaged prior to 01.01.2000. Para 669 referred herein above categorically barred the benefit of pension to members of work-charged establishment, consequently, also to the benefit of services rendered in the work-charged establishment for pensionary benefits. Even otherwise, for the reasons already discussed herein above the two establishments being distinct, the work-charged services are not liable to be counted for pensionary benefits in the regular establishment.

41. In this context, it is not out of place to refer to the order of the Supreme Court dated 05.09.2014 passed while dismissing the Special Leave Petition against the Division Bench judgment of this Court in Jai Prakash Singh's case (supra), wherein it observed as under:-

"There is nothing on the record to suggest that any Rule or Scheme framed by the State to count the work-charge period for the purpose of pension in the regular establishment. In absence, of any such Rule or Scheme, we find no merit to interfere with the impugned judgment.

The special leave petition is dismissed."

42. This order of the Supreme Court as also the judgment in Prabhu Narain (supra) and the Full Bench decision in Babu Ram (supra) veritably clinche the issue as far as question no. 2 is concerned.

43. As regards the claim for counting the said services for service benefits such as, promotional pay-scale/ financial up gradation under ACP Scheme is concerned, there are various Government Orders dated 02.12.2000 and those issued in 2010 and thereafter, prescribing specified periods of "regular" satisfactory service as a pre-condition for grant of such benefits and as work-charged service is not regular service in regular establishment and as this issue is squarely covered by the judgment of the Supreme Court in Jaswant Singh's case (supra), therefore, in view of the said judgment and for the reasons already discussed herein above, this claim is also not tenable.

44. For the reasons aforesaid, questions no. 1, 2 and 3 as framed by us are answered in the negative. Consequently, the writ petitions fail and are accordingly, dismissed.