

(2011) 04 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2902 of 2009 (S) (Gwalior)

Mamta Shukla (Smt.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 23, 309
Industrial Disputes Act, 1947 — Section 17(1), 17(2), 18(1)
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 4, 47, 48, 6
Madhya Pradesh Irrigation Department Work Charged and Contingency Paid
Employees Recruitment and Conditions of Service Rules, 1977 — Rule 2, 6
Madhya Pradesh New Pension Rules, 1951 — Rule 5
Madhya Pradesh Work Charged and Contingency Paid Employees Revision of Pay
Rules, 1984 — Rule 11, 3
Madhya Pradesh/Chhattisgarh (Work Charged and Contingency Paid Employees)
Pension Rules, 1977 — Rule 12, 13, 14, 15, 2

Citation : (2011) ILR (MP) 1807 : (2011) 2 JLJ 94 : (2011) 3 MPHT 81

Hon'ble Judges : S.K. Gangele, J;Rajendra Menon, J;Anil Kumar Sharma, J

Bench : Full Bench

Advocate : M.K. Sharma, for the Appellant; M.P.S. Raghuvanshi, Addl. A.G. and Vivek Khedkar, G.A., for the Respondent

Judgement

S.K. Gangele, J.—On a reference by the learned Single Judge, Hon'ble the Chief Justice has constituted this Full Bench to answer the following reference:

(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?

2. Before answering the reference, it would be appropriate to consider the facts which have resulted in making the present reference. Petitioner Mamta Shukla filed a petition before this Court in regard to grant of family pension on the basis of 19 years" qualifying service rendered by her husband late Rajkumar Shukla. The husband of the Petitioner was engaged in the year 1981 on daily wages basis. He was regularized vide order dated 31/12/1996 on the post of Helper in work charged and contingency paid establishment in the pay-scale of Rs. 870-15-945. He was missing, hence a report of Gumsudgi was lodged at police station Kotwali on 02/04/2000. Thereafter, the Petitioner instituted a suit for declaration that the husband of the Petitioner be declared dead as "civil death" with effect from 02/04/2000. The trial Court vide order dated 01st February, 2008 decreed the suit and declared the civil death of husband of the Petitioner with effect from 02/04/2000.

3. The Petitioner submitted an application for grant of family pension, that was turned down by the department. Hence, she filed a petition before the High Court claiming family pension on account of civil death of her husband in accordance with the provisions of Madhya Pradesh (Work-Charged Contingency Paid Employees) Pension Rules, 1979 (hereinafter referred to as "the Pension Rules of 1979"). She further claimed that she is entitled to receive pension after counting the total years of service of her husband i.e. 19 years from the date of his initial engagement upto the date of declaration of his civil death i.e. 02/04/2000.

4. The Respondents/State controverted the facts in regard to entitlement of the Petitioner to receive pension in accordance with the Pension Rules, 1979 on the ground that husband of the Petitioner was engaged initially in the year 1981 on daily wages basis and subsequently he was regularized on the post of un-skilled Helper in work-charged and contingency paid establishment with effect from 31 /12/1996, hence, he had not completed six years of qualifying service for the purpose of grant of family pension in accordance with the Pension Rules, 1979. The Respondents further pleaded that earlier period of the husband of the Petitioner from the date of initial engagement as daily wagger upto the date of his regularization i.e. 31/12/1996, could not be counted as qualifying service for the purpose of grant of pension, because the husband of the Petitioner was a daily wagger employee.

5. The learned Counsel appearing for the Petitioner at the time of argument

contended that in accordance with the definition of Rule 2 of the Pension Rules 1979, the husband of the Petitioner was a contingency and work-charged employee from the date of initial appointment, hence the entire service rendered by him upto the period of his civil death has to be treated as qualifying service for the purpose of grant of pension in accordance with Pension Rules 1979. In support of his contentions, the learned Counsel relied on Division Bench's judgment of this Court in the case of *Rahisha Begum v. State of M.P. and Ors.* reported in 2010 (4) M.P.L.J. 332. Contrary to this, learned Additional Advocate General appearing for the Respondents/State contended that the husband of the Petitioner was engaged initially as daily wager and he was regularized in work-charged establishment on the post of un-skilled Helper vide order dated 31/12/1996. Hence, his service prior to 31/12/1996 rendered as daily wager employee could not be counted for the purpose of qualifying service in accordance with the Rule 6 of the Pension Rules, 1979. The learned Additional Advocate General further submitted that in order to get benefit of pension in accordance with, the provisions of Pension Rules, 1979, the work-charged or contingency paid employee has to be appointed in accordance with the provisions of Work Charged and Contingency Paid Employees Recruitment and Conditions Service Rules, 1977 (hereinafter called as "Recruitment Rules of 1977"). In support of his contention, the learned Counsel relied on unreported judgment of Division Bench of this Court passed in W.P. No. 1273/ 02 State of M.P. v. Ram Singh and Anr.

6. Looking to the general importance of the law involved in the case and some conflict in the decisions between two Division Benches of this Court, learned Single Judge referred the matter after formulation of substantial questions of law to the Hon"ble Chief Justice under the provisions of Madhya Pradesh High Court Rules, 2008 and consequently, the Hon"ble the Chief Justice has constituted this Full Bench to answer the reference.

7. The learned Counsel appearing on behalf of the Petitioner have contended that the law laid down by the Division Bench of this Court in the case of *Rahisha Begum (supra)* is in accordance with law. The Pension Rules, 1979 are independent in nature and the contingency paid employees and work-charged employees have been defined under Rule 2 of the Pension Rules of 1979 and looking to the object of the "pension", a liberal interpretation has to be accorded to the Pension Rules of 1979 and if an employee comes within the definition of contingency paid employee or work-charged employee, then he is entitled to receive pension counting his entire length of service as qualifying service. In support of contentions, the learned Counsel relied on the following judgments:

- (i) *Shrikrishna Shrivastava v. State of M.P. and Ors.* 2003 (4) MPLJ 376.
- (ii) *Samim Begum v. State of M.P. and Ors.* 2006 (4) MPLJ 112;
- (iii) *Surendra Kumar Chaturvedi v. State of M.P. and Ors.* 2005 (3) MPLJ 85;
- (iv) *Gopi Pillai v. M.P.E.B.* 2002 (2) MPLJ 278;

- (v) Som Prakash Rekhi v. Union of India and Anr. (1981) 1 SCC 449.
- (vi) Ram Kumar Agrawal Vs. State of M.P and others, 1995 Supp (3) SCC 67
- (vii) Jagbandhan Prasad v. State of M.P., W.P. No. 10628/2009; and
- (viii) Jabalpur Bus Operator Association v. State of M.P. ILR (2003) MP 1127.

8. Contrary to this, learned Additional Advocate General appearing for the Respondents/State has contended that the Pension Rules of 1979 have to be read in consonance with the Recruitment Rules of 1977 and for the purpose of counting the qualifying service of an employee, he has to fulfill the conditions of Recruitment Rules of 1977, meaning thereby, his appointment must be in accordance with the Recruitment Rules of 1977. The adhoc and daily wages period of an employee de hors the Recruitment Rules could not be counted as qualifying service for the purpose of granting pension in accordance with the Pension Rules of 1979. The learned Additional Advocate General further submitted that the Pension Rules of 1979 have to be read in consonance with the Recruitment Rules of 1977. The Recruitment Rules of 1977 would prevail in the matter of recruitment and conditions of service and also for the purpose of determining the qualifying service of work-charged and contingency paid employee. The learned Counsel further submitted that the subsequent Division Bench of this Court in the case of Rahisha Begum (supra) has not considered the earlier Division Bench judgment of this Court, hence, it is per incuriam. In support of his contentions, the learned Additional Advocate General relied on the following judgments:

- (i) State of Haryana Vs. Haryana Veternaty and A.H.T.S. Asson. and Another,
- (ii) Chandra Mohan Pandurang Kajbaje v. State of Maharashtra and Ors. 2008 SCW 619;
- (iii) Punjab State Electricity Board and Another Vs. Narata Singh and Another,
- (iv) State of M.P., and Ors. v. Lalit Kumar Verma 2007 SCW 70; and
- (v) Union of India and Another Vs. P.D. Yadav,

9. For the sake of convenience, in our opinion, it would be just and appropriate to consider the substantial questions of law Nos. 2 and 3, first.

10. The Governor of State of Madhya Pradesh in exercise of powers conferred under Article 309 of the Constitution of India has made Rules regulating the recruitment and conditions of service of work charge and contingency paid employees in Irrigation Department named as Madhya Pradesh Irrigation Department Work Charged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1977 (hereinafter called as "Recruitment Rules of 1977"). These rules came into force with effect from 01st January, 1974. Rule 2(b) defines contingency paid employee and Rule 2(h) defines work charged employee, which are as under:

(b) "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.

(h) "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.

Rule 2(f) defines service which is as under:

(f) "Service" means the Madhya Pradesh workcharged contingency paid employees service.

Rule 7 prescribes "recruitment and promotion". Rule 8 prescribes physical fitness, age of superannuation, Rule 9 prescribes maintenance of seniority list, Rule 12 prescribes conduct and Rule 13 prescribes penalties. Rule 14 prescribes procedure for imposing penalty and Rule 15 prescribes appeals.

11. The Governor of Madhya Pradesh in exercise of power conferred by the proviso to Article 309 of the Constitution of India made the Rules named as Madhya Pradesh (Work-charged and Contingency Paid Employees) Pension Rules, 1979 (hereinafter called as "Pension Rules, 1979"). These Rules came into force with effect from 01" January, 1974.

Rule 2 defines definitions, which is as under:

(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.

Rule 3 defines "Scope and application", which is as under:

These rules shall apply to every permanent member of the workcharged and contingency paid employees.

Rule 4 defines "Regulation of amount of pension", which is as under:

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 1 St January, 1974 but before the 1 st 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."

[4 A. Notwithstanding anything contained in Rule 4 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 of 30% of his/her pay drawn 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.]

Rule 6 defines Commencement of qualifying service, which is as under:

(1) Subject to the provisions of chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 of section IV of 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 1 st 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 render in a regular post.

(3) On absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1 St January, 1974 onwards, if such service is not of less than six years shall be counted for pension as if such service was rendered in a regular post.

In accordance with Rule 3 of Pension Rules, 1979, the rules shall apply to every permanent member of the work- charged and contingency paid employees" service. Rule 2(c) defines a permanent employee, which is as under:

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 1 st January, 1974.

Provided that in respect of a contingency paid employee who has attained the

age of superannuation on or after 1-4-1981 permanent employee means an employee who has completed ten years of service on or after the 1st January, 1974.

In accordance with Rule 2(f) of the Recruitment Rules of 1977, "service" means Madhya Pradesh Work-charged and Contingency Paid employee's service and in Rule 6 of Rules of 1977 under the head of categorization, the permanent and temporary categories of employees have been defined, which is as under:

6. Categorization:(1) Workcharged contingency paid employees shall for the purpose of these rules be divided into the following two categories namely:

(i) Permanent; and

(ii) Temporary.

(2) The employee-

(a) who had completed not less than ten years of service on the 1st January, 1974;

(b) appointed prior to the said date but had not completed ten years of service on the 1st January, 1974.

(c) appointed after the said date shall be in case of (a) above on the 1st January, 1974 and in case of (b) and (c) on the completion of ten years of continuous service, be eligible for the status of permanent workcharged contingency paid employees.

12. The Pension Rules of 1979 are not independent Rules in regard to regulating the condition of service of work- charged and contingency paid employees. There are specific rules i.e. Recruitment Rules of 1977 in regard to condition of service including appointment, qualification, procedure for recruitment and promotion, seniority list, conduct and procedure for imposing penalty. Hence, the Pension Rules of 1979 be read in consonance with the Recruitment Rules of 1977, because the object of Pension Rules, 1979 is to provide benefit of pension to certain class of employees and that has to be construed to employees who have been recruited in accordance with the provisions of Recruitment Rules of 1977, because if the Pension Rules of 1979 be read in isolation or independently then the Recruitment Rules of 1977 would become redundant.

13. It is well settled principle of law that if there is a conflict between two enactments, then the harmonious construction has to be applied in resolving the conflict between two enactments or rules. The Hon'ble Supreme Court in the case of N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, has held as under in regard to harmonious construction of statute:

It is no doubt true that if on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law. But when on a construction of a statute,

two views are possible, one which results in an anomaly and the other not, it is the duty of a Court to adopt the latter and not the former, seeking consolation in thought that the law bristles with anomalies.

14. The Hon'ble Supreme Court in *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, has resolved the conflict between mandatory provisions of Section 17(1) and Section 18(1) of the Industrial Dispute Act, 1947. The learned author Hon'ble Justice Shri G.P. Singh, in *Principles of Statutory Interpretation* has referred the decision as under:

An interesting question relating to a conflict between two equally mandatory provisions, viz. Sections 17(1) and 18(1) of the Industrial Disputes Act, 1947, is a good illustration of the importance of the principle that every effort should be made to give effect to all the provisions of an Act by harmonising any apparent conflict between two or more of its provisions. Section 17(1) of the Act requires the Government to publish every award of a Labour Tribunal within thirty days of its receipt and by Sub-section (2) of Section 17 of the award on its publication becomes final. Section 18(1) of the Act provides that a settlement between employer and workmen shall be binding on the parties to the agreement. In a case where a settlement was arrived at after receipt of the award of a Labour Tribunal by the Government but before its publication, the question was whether the Government was still required by Section 17(1) to publish the award. In construing these two equally mandatory provisions, the Supreme Court held that the only way to resolve the conflict was to hold that by the settlement, which becomes effective from the date of signing, the industrial dispute comes to an end and the award becomes infructuous and the Government cannot publish it.

15. The Hon'ble Supreme Court in the case of *Bhatia International Vs. Bulk Trading S.A. and Another*, has held as under in regard to interpretation of statute:

15. The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

Hence, in our opinion, in resolving the apparent conflict between two Rules i.e. Recruitment Rules of 1977 and the Pension Rules of 1979, it would be just and proper to hold that in accordance with Rule 3 of Pension Rules of 1979, the rules shall apply to a permanent member of work-charged and contingency paid employees service, who is appointed in accordance with the provisions of Recruitment Rules of 1977.

16. The question has to be considered from another angle also. If, it is held that the Pension Rules of 1979 would be applicable independently to the employees, as per the definition of work-charged and contingency paid employees as defined in the Pension Rules of 1979 then, the employees who were not eligible or who were appointed on muster-roll basis or daily wager without following the procedure of Recruitment Rules of 1977, would also be eligible to get pension from the date of their initial engagement.

17. The Hon''ble Supreme Court in *State of Haryana and Others Vs. Shakuntla Devi*, has held as under in regard to status of an employee:

21. The primary question, therefore, is who would be a Government employee within the meaning of the said Scheme.

We will advert to this a little later. The second question would be, can the Scheme be read independent of the Rules.

Answer thereto must be rendered in the negative. We say so because in terms of the Rules, the following conditions precedent must be fulfilled before the benefit of family pension can be extended:

1. The employee must be a Government employee.
2. He must be employed in a pensionable. establishment.
3. He must have become eligible to derive the benefit thereof.

22. Chapter II of Volume II of the Rules provides for different provisions relating to grant of pension. The distinction between a pensionable establishment and a provident fund establishment must, therefore, be borne in mind. Pension although is not a bounty, the entitlement thereto is only under a statute. Only when the conditions precedent provided for in the statute are fulfilled, an employee would be entitled thereto.

23. We would begin our discussions with the status of an employee. A Government employee enjoying a status indisputably must be recruited in accordance with Rules. The offers of appointment made in favour of the employees in no uncertain terms show that they were appointed on an ad hoc basis. The appointment was not regular, although in relation to the case of *Balwant Singh*, the names were said to have been called for from the Employment Exchange. Nothing has been placed on record to show as to what was the cadre strength in the posts to which they were appointed.

No material has been brought on records to show that the equality clause contained in Articles 14 and 16 had been complied with. Any recruitment made in violation of the constitutional scheme, as adumbrated therein as also the Recruitment Rules framed by the State would render the same illegal and invalid.

24. The very fact, that a regularization scheme was framed by the State is a clear pointer to show that the concerned employees were not regularly

employed. They had sought for regularization of their service and at least in one case, as noticed hereinbefore, for one reason or the other, the said request was turned down. The validity thereof was not questioned. It attained finality.

In the case of Rama Devi, a contention was raised in the writ petition that the offer of appointment in law was not for a period of six months but for an indefinite period. Such a contention cannot be upheld. If the initial appointment was for a fixed period and the appointment could be terminated without any notice and without assigning any reason, such appointment cannot be said to be an appointment on a permanent post or a temporary sanctioned post. Unless and until the post itself is a permanent or a temporary one, the same would not answer the description of a substantive and permanent employment, in this case, it had been shown that the services of Karan Singh was being renewed for a period of six months on the expiry of the original or extended tenure.

18. The Hon"ble Supreme Court further in Deokinandan Prasad Vs. The State of Bihar and Others, has held that right to receive pension flows by virtue of the rules The relevant findings of the Hon"ble Supreme Court are as under:

We are not inclined to accept the contention of the learned Counsel for the Respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the Petitioner to receive pension under the circumstances mentioned therein.

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 adhoc 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 Others Vs. Union of India (UOI), 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 Corpn. Vs. K.O. Varghese and Others*, 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 "Northoote-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.* 2003 (4) MPLJ 282 has held that if the appointment of a work-charged employee is de hors 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. 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. 2010 (4) MPLJ 332. is not per incuriam. We answer substantial question of law No. 1 accordingly.

Order accordingly.