

(2024) 01 CAL CK 0019
In the Calcutta High Court
Case No : WPA No. 7333 Of 2022

Uday Singh & Ors.

APPELLANT

Vs

Damodar Valley Corporation & Ors.

RESPONDENT

Date of Decision : 08-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 141
Central Civil Service (Pension) Rules, 1972 — Rule 2(q), 13, 14, 17
Work Charge Establishment Revised Service Conditions (Repealing) Rules, 2013 — Rule 5(v)
U.P. Retirement Benefit Rules, 1961 — Rule 3(8)

Citation : (2024) 01 CAL CK 0019

Hon'ble Judges : Partha Sarathi Chatterjee, J

Bench : Single Bench

Advocate : Durga Prasad Dutta, Souvik Sen. Sumanta Ganguly, Achinta Banerjee, Dipankar Ghosh

Final Decision : Disposed Of

Judgement

Partha Sarathi Chatterjee, J

1. The present writ petition was preferred praying for issue of a writ of mandamus directing the concerned authorities of Damodar Valley Corporation (in short, DVC) to extend the benefits of GPF as well as coverage under the old pension scheme governed by the Central Civil Service (Pension) Rules, 1972 (in short, the Pension Rules, 1972) with effect from their date of joining in DVC i.e. from 1986 in place of National Pension Scheme (in short, NPS) adopted by DVC in terms of Office Memorandum dated 22.10.2020 and fix the petitioners' pay and release their arrear salaries w.e.f. 31.03.2010 in terms of the order dated 04.11.2019 passed by the Hon'ble Supreme Court in SLP(Civil) no. 26224-26225/2019 and SLP(Civil) No. 26226-26227 of 2019.

2. The case has a chequered history and hence, before going to delve into the contour of the controversy hovers around the writ petition, it would be profitable

to advert to the necessitous facts frescoed in the writ petition. The petitioners joined in various departments of DVC in between 1985 to 1986 as casual workers (highly skilled category) against sanctioned posts/vacancies pursuant to an order issued by the Deputy Director of Personnel and Ex-Officio Under-Secretary of DVC. In 1986, the competent authority of DVC publish a combined panel of 111 casual workers belonging to General, SC, ST and OBC candidates and the names of the petitioners appeared against serial nos. 85, 92, 89, 95 and 81 respectively in the panel. In 1988, another panel of 11 casual workers belonging to only SC and ST candidates were published.

3. In 2001, some casual workers including the petitioner nos. 1 to 4 herein moved a writ petition being W.P. no. 8747(W) of 2001 before this Court inter alia praying for direction for their regularization in Group-D or other equivalent posts. By an order dated 6.7.2001, the aforesaid writ petition was disposed of by a coordinate Bench of this Court directing the concerned authorities of DVC to decide the representation within the time specified in therein. Accordingly, the Chairman passed an order dated 1.11.2001 indicating that 74 empanelled casual workers had been appointed at the Headquarters of DVC on the basis of 1:1 quota and the case of regularization of the rest 37 empanelled casual workers would be considered against future vacancies. In 2007, challenging inaction on the part of the concerned authorities of DVC to absorb the casual workers in existing vacancies, a writ petition being W.P. no. 20139(w) of 2007 was instituted which was disposed of by an order dated 26.1.2009 holding inter alia that a substantial numbers of listed casual workers had been given regular employment and a small numbers of casual workers were waiting for that benefit and accordingly, the Chairman concerned was asked to consider the case of regular employment of the petitioners therein within the time stipulated therein.

4. In obedience to the order dated 26.1.2009, the Chairman by his order dated 12.03.2010 constituted a committee to assess the actual manpower requirement in Group-D posts both in the Head quarter and in field formation. The order dated 12.03.2010 was called in question by some of empanelled casual workers by preferring a W.P. no. 22988(W) of 2010. By an order dated 28.08.2014, the writ petition being W.P. no. 22988(W) of 2010 were disposed of with following directions:

- "i) not to fill up any permanent vacancy, except the first considering the case of the petitioners therein, subject to the educational and other qualifications of such petitioners vis-à-vis the vacancy available ;
- ii) to disclose the position and status of the petitioner in the panel after the latest absorption;
- iii) if any vacancy arises in future and if the respondents decide to absorb any casual employee for the panel , they shall not do it without considering the cases of the empanelled candidates according to their rank in the panel".

5. The petitioners came to learn that one Dipak Pradhan and one Kriti Madhav

whose names appeared against serial nos. 104 and 94 (OBC category) respectively in the panel were regularized in 1999 and even 86 casual workers from the panel consisting of 122 casual workers were absorbed but the petitioners' case had not been considered in terms of the order dated 28.08.2014. Hence, a contempt petition being C.P.A.N. 267 of 2015 was taken out by the petitioners. During pendency of the contempt petition, eleven numbers of canteen workers of DVC, Chandrapura had been absorbed as regular employees of DVC w.e.f. 1.10.2008 in terms of the order passed by the Hon'ble Supreme Court in S.L.P. (C) no. 21541 of 2015 though their names were not included in the panel. However, by an order dated 07.07.2017, the contempt petitioner being CPAN 267 of 2015 was dismissed.

6. Challenging the order dated 07.07.2017 passed in CPAN 267 of 2015, two special leave petitions being SLP(C) nos. 26224-26225 of 2019 and 26226-26277 of 2019 were preferred before the Hon'ble Supreme Court which were disposed of by an order dated 04.11.2019. The operative part of the order 04.11.2019 is reproduced as follows:

"If vacancies are already available, which means that permanent vacancy has arisen and yet the petitioners therein are continually employed as casual employees, the Corporation is obliged to absorb the concerned eligible candidate as per seniority in the said list.

We are inclined to say so because this Court on November, 23, 2015 in Civil Appeal no. 13766 of 2015 titled "Murli Gope and Ors. -Vs-Damodar Valley Corporation and Ors", had issued directions to the Corporation to regularize the casual canteen workers. Applying the same principle, the Corporation must comply with the direction(s) given by the High Court, referred to above, in right earnest in the same manner."

7. While dealing with the two applications preferred by the respondents seeking modification of the order dated 04.11.2019, the Hon'ble Apex Court by passing an order dated 05.02.2020 observed that at that time there were 38 vacancies in which the petitioners must be adjusted. The operative part of the order dated 05.02.2020 is quoted as follows:

"Our attention is invited to the report submitted by the five member committee on Manpower Requirement in Group-C & D post in DVC, which unambiguously states that on the date of making of that report, at the relevant point of time, total sanctioned strength of Group-C & D was 260 and total existing strength was 222 and as such there were 38 numbers of posts lying vacant. If that is so, the claim of the non-applicant(s)/petitioner(s) must be adjusted against those existing vacancies.

We direct the Director (HR)/Senior authorized officer of the applicant(s)/respondent(s) to file affidavit to clearly state as to whether at the relevant point of time (as on 31.03.2010), vacancies were available against which the claim of the non-applicant(s)/petitioner(s) could be considered. That affidavit must be

filed two weeks from today.”

8. In deference to the order dated 05.02.2020, an affidavit was filed on behalf of DVC but the order dated 05.02.2020 was not complied with. On 02.03.2020, the aforesaid applications were again taken up for hearing when taking note of the fact that order dated 05.02.2020 was not complied with, the Hon’ble Court observed that stand taken by the DVC, to say the least, is preposterous and an attempt to circumvent the directions issued by the Hon’ble Court on 04.11.2019 which was further clarified vide. order dated 05.02.2020 and directed the concerned authorities of DVC to comply with the order dated 04.11.2019 making further observation that failure to comply with the order dated 04.11.2019 would result in having committed aggravated contempt of court which would be viewed sternly. Ultimately, both the applications were dismissed by Hon’ble Court by the order passed on 02.03.2020.

9. Lastly, the petitioners were accepted as regular employees of DVC by issuing letters of appointment in their favour on 16.03.2020. The petitioners joined in their respective posts on 18.03.2020. By the letters of appointment, the petitioners were asked to remain on probation for a period of 1(one) year. The letters of appointment, which were issued in terms of the Orders of the Hon’ble Supreme Court, were prospective in nature though it was clear as day that as on 31.03.2010, there were 38 vacancies to accommodate the petitioners. In such conspectus, the petitioners took out a contempt petition being Contempt Petition (C) Nos. 220-221 of 2021 before the Hon’ble Supreme Court alleging deliberate violation of the orders dated 4.11.2019, 05.02.2020 and 02.03.2020 passed by the Hon’ble Supreme Court in S.L.P. (Civil) no. 26226-26227 of 2019 which was disposed of by an order dated 23.08.2021 holding that since appointment letters were issued in terms of the orders of the Hon’ble Supreme Court, the same was not a case for precipitating contempt action.

10. On 17.02.2020, an Office Memorandum was issued by the Department of Pension and PW, Government of India, inter alia, declaring that consequent on introduction of National Pension System, all the government servants appointed on or after 01.01.2004 to the posts in the Central Government Services (except armed forces) are mandatorily covered under the National Pension System vide. Ministry of Finance (Department of Economic Affairs) Notification NO. 5/7/2003-ECB & PR dated 22.12.2003. Subsequently, by an Office Memorandum dated 22.10.2020 issued by the Executive Director (HR) of DVC, the Office Memorandum dated 27.02.2020 (i.e. NPS) was adopted by the DVC with a condition that the employees whose selection for appointment was finalized before 01.01.2004 but who joined service on or after 01.01.2004, have been allowed coverage under Old Pension Scheme (in short, OPS) governed under Central Civil Service(Pension) Rules, 1972 in place of National Pension Scheme (in short, NPS) subject to their one time written option to be exercised within a period of three months (i.e. up to 31.05.2020) and sent through proper channel to the Executive Director(HR) within 21.01.2021.

11. The petitioner nos. 1 and 5 are due to retire in 2024 whereas the petitioner nos. 3 and 4 will retire in 2027 and the petitioner no. 2 will attain the age of superannuation in 2028. The petitioners made a joint representation, which was duly received by the authority concerned on 27.12.2021, requesting the authority concerned to extend the benefits of GPF and coverage of OPS in place of NPS. The petitioners came to learn that such benefits have been extended to one Dipak Pradhan although name of Mr. Pradhan appeared against the serial number 104 of the panel. Since despite receipt of representation of the petitioners, the respondents maintained deceptive silence, the petitioner has been constrained to knock on the door of this court by preferring this writ petition.

12. The parties have exchanged their affidavits, as directed. Record reveals that during pendency of this writ petition, the petitioners were provided an option form by DVC to exercise option to avail of pension. On 05.04.2023, when this writ petition was taken up for hearing, the petitioners were granted leave by a coordinate bench of this court to state their date of joining in DVC in the said option form as 2004 without prejudice to their rights and contentions.

13. Mr. Dutta, learned advocate for the petitioners contends that petitioners had been working as casual workers in DVC since 1986. A panel of 122 casual workers who were working in DVC since 1986 was prepared. He asserts that the petitioners acquired temporary status. He submits that from the order of Chairman dated 12.03.2010, it was explicit that there were 251 and 09 sanctioned posts under Group-C and Group-D category respectively and out of those sanctioned posts, 38 posts were vacant. In such conspectus, the W.P. no. 22988(W) of 2010 was disposed of by directing the DVC that "if any permanent vacancy arises in future or if the respondent decides to absorb any casual employee from the panel, they shall not do it without considering the cases of the empanelled according to the rank in the panel". Mr. Dutta further contends that the matter went up to the Hon'ble Supreme Court and in S.L.P. (Civil) Diary no. 41315/2017 the Hon'ble Supreme Court directed that if permanent vacancies were available, the DVC was obliged to absorb the casual employees from the panel according to their seniority. In the order dated 5.2.2020 passed in Misc. application no(s) 2625-2626/2019 in S.L.P.(C) Nos. 26224-26225/2019, the Hon'ble Supreme Court observed that out of 260 posts of Group-C/D posts, 222 posts were filled in by DVC and 38 vacancies were available and hence, direction was given to DVC to submit vacancy-statement of Group-C/D posts of DVC as on 31.03.2010 and in the order dated 2.3.2020, the Hon'ble Court was constrained to observe that the stand taken by DVC was preposterous and an attempt was made by DVC to circumvent the directions of the Hon'ble Supreme Court and hence, the Hon'ble Court directed the DVC to comply with the order dated 05.02.2020.

14. Mr. Dutta submits that lastly, in compliance with the order dated 5.2.2020, petitioners were given employment but the DVC forced the petitioners to remain

on probation for one year only to give the employment a shape of a new appointment. He submits that the petitioners have been asked to exercise option to avail of benefits of NPS adopted by the DVC in 2020 in place of extending benefits of coverage under Old Pension Scheme of 1972. He asserts that the period the petitioners worked as casual workers in DVC is to be taken into account while commuting qualifying service of the petitioners. To invigorate such contentions, he places reliance upon the judgments delivered in case of Prem Singh -vs- State of U.P. & Ors. , reported in (2019) 10 SCC 516, State of Uttarakhand & Ors. -vs- Habib Khan & Ors., (2019) 10 SCC 542, Ram Deo Tiwari -vs- State of U.P. & Ors., reported in (2019) 10 SCC 546.

15. In response, Mr. Banerjee, learned advocate for the DVC argues that as per the law laid down in the judgment of Uma Devi reported in (2004) 4 SCC 1, the employees like the petitioners cannot claim regularization. Mr. Banerjee made an attempt to interpret the order of the Hon'ble Supreme Court passed on 5.2.2020 claiming that such order was based on the judgment of Murli Gope (supra). According to Mr. Banerjee, in the judgment of Murli Gope (supra), no ratio has been laid down and hence, such judgment cannot be stated to be judgment pronounced under Article 141 of the Constitution of India. In elaboration of his such contention, he makes deliberation on the doctrine of precedent and in support of his such contention, he places his reliance upon the judgment of Brij Mohan Lal-vs- Union of India & Ors., reported in (2012)6 SCC 502.

16. Mr. Banerjee argues that the vacancies are not static in any establishment. He asserts that when vacancies arose, the petitioners were given appointment in the posts. He asserts that the petitioners have accepted their appointment and now, they cannot turn around. Taking inspiration from the decision rendered in case of Mrigank Johri & Ors. vs. Union of India & Ors., reported in (2017)8 SCC 256 he strenuously contends that the petitioners cannot claim benefits of their past services. He further argues that it is not clear when the petitioners acquired temporary status. He contends that the petitioners cannot claim to be governed under the old pension scheme. Lastly, he makes attempt to distinguish the judgment of Prem Singh (supra) claiming that this judgment was pronounced basing upon the Rule 5(v) of the Work Charge Establishment Revised Service Conditions (Repealing) Rules, 2013 and Rule 3(8) of U.P. Retirement Benefit Rules, 1961. In his view, the petitioners are not governed by those two rules and hence, the judgment of Prem Singh (supra) has got no applicability in the case at hand. By referring the judgment of Uday Pratap Thakur and Anr. -v. The State of Bihar & Ors. reported in AIR 2023 SC 2971, he contends that in this judgment, it has been observed that the judgment of Prem Singh (supra) shall be restricted to the counting of service rendered as work charged for qualifying service for pension. He contends that generally, in case of any short fall, in every 5 years' service, only one year is counted for the purpose of computation of qualifying service for pension.

17. Undoubtedly, the posts in which the petitioners were accommodated have

not been filled up following any selection procedure. At the cost of reiteration, it may be mentioned that by the order dated 28.08.2014 passed in W.P. no. 22988(W) of 2010, a coordinate Bench of this Court directed the DVC to absorb the petitioners and in S.L.P. (Civil) Diary No.(s) 41315/2017, the Hon'ble Supreme Court directed the competent authorities of DVC to comply with the direction given by this Court on 28.08.2014 in W.P. no. 22988(W) of 2010 but instead of taking steps to absorb the petitioners, the petitioners were given appointment and even, the petitioners were forced to remain on probation for one year. From the order of the Chairman dated 12.03.2010, it was explicit that on that date, 38 posts were lying vacant. Even, on 05.02.2020, the Hon'ble Supreme Court while dealing with Misc. Application nos. 2625-2626/2019 filed in S.L.P. (C) nos. 26224-26225/2019 observed that 38 number of posts were lying vacant and hence, direction was given to the competent authority of DVC to file affidavit to state whether as on 31.03.2010 there were vacancies to consider the claim of the petitioner and on 02.03.2020, the Hon'ble Court was constrained to observe that the stand taken by the DVC was preposterous and an attempt to circumvent the directions given by the Hon'ble Supreme Court on 4.11.2019 which was further clarified on 5.2.2020. Lastly, in deference to the order dated 02.03.2020, the petitioners were offered employment in the post of Jr. Messenger (Group-C/D post) on 16.03.2020. Admittedly, the petitioner accepted such offer by joining in the post on 18.03.2020 and it is also admitted position that since the appointments given to the petitioner were made prospective in nature, the petitioners and other identically circumstanced candidates took out the contempt petitions being Contempt Petition (C) nos. 220-221 and 222-223 of 2021 and on 23.08.2021, the Hon'ble Supreme Court disposed of the contempt petitions making an observation that the orders had been complied with and the same was not a case for precipitating contempt petition.

18. Having considered the contentions canvassed by the learned advocates for the respective parties, the questions which fall for determination are –i) whether the service rendered by the petitioners as casual workers before being appointed in the post shall be reckoned for the purpose of commutation of qualifying service for pension and ii) whether the petitioners shall be entitled to claim coverage under the Old Pension Scheme i.e. under Central Civil Services (Pension) Rules, 1972.

19. Undoubtedly, the DVC did not disclose the vacancy statement as on 31.03.2010 and materials brought on record are sufficient enough to prompt any prudent man to infer that even as on 31.03.2010, there were sufficient vacancies to accommodate the petitioners. All these actions namely, suppression of this fact, taking preposterous stand before the Hon'ble Apex Court and giving appointment to the petitioner instead of absorbing them in the post are nothing but a desperate attempt to ensure so that the petitioners cannot claim any benefit from their past service.

20. Casual Labourers (Grant of Temporary Status and Regularization) Scheme of

Government of India, 1993, which came into effect from 1.9.1993, postulates that temporary status shall be conferred on all casual labourers who were in employment on the date of issue of this OM i.e. on 1.9.1993 and who have rendered continuous service of at least one year, which means that they have been for a period of at least 240 days (206 days in the offices observing 5 days a week) and such conferment of temporary status would be without reference to creation/availability of regular Group-D posts and 50% of the service rendered would be counted for the purpose of retirement benefits after their regularization. The respondents did not produce any scheme of their own to confer temporary status upon its casual employee and DVC follow all the rules, regulations applicable for the employee of the Government of India. Petitioners had worked for almost 34 years without any break and even a penal consisting of casual employees was prepared and as and when vacancy arose, appointment in substantive post was given from the panel and hence, in such conspectus, DVC, which has enjoyed uninterrupted service of the petitioners for long 34 years, should not be allowed to take a stand that it is not known to them when the petitioners acquired temporary status.

21. The Fifth Central Pay Commission in its report had recommended that distinction between temporary and permanent Government servant having rendered a qualifying service of less than ten years may be done away with regard to payment of terminal benefits and the Commission made recommendation that the temporary employees absorbed in an autonomous body before completion of ten years of continuous service shall be eligible to gratuity on the same scales and rates as are applicable to the permanent employee under the Provisions of Central Civil Service (Pension) Rules, 1972 (in short, Pension Rules, 1972) and it goes without saying that the Central Government accepted such recommendation. There is repetitive pronouncements on the proposition that following the principle of 'equal pay for equal work', one temporary employee is entitled to get same benefit like one regular employee if their nature of job is equal. The pension of the employees of the DVC is governed by the Central Civil Services (Pension) Rules, 1972. The Rule 2(q) of the Pension Rules, 1972 defines the expression 'qualifying service' saying that it means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under the rules. Rules 13 & 14 of the 1972 Rules, which are relevant for deciding the controversy in the present case, read as under:

"13. Commencement of qualifying service - Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post: Provided further that - (a) in the case of a Government servant in a Group 'D'.....

(b) in the case of a Government servant not covered by clause (a),....

14. Conditions subject to which service qualifies:

(1) The service of a Government servant shall not qualify, unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify : Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply."

22. Therefore, as per these rules, the temporary service followed by substantive appointment shall be reckoned for computation of the qualifying service for pension.

23. Rule 17 of Pension Rules, 1972 also lays down that a person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty would be entitled to get pensionary benefits as per the Pension Rules, 1972 and his past service shall be taken in account and Clause 15 of the Central Civil Services (Pension) Rules, 2021 also lays down that fifty percent of the service rendered in 'temporary status' capacity by a Government Servant, who was conferred temporary status on or before 31st December, 2003 and was subsequently regularized in Govt. Service, in accordance with the aforesaid scheme of 1993, shall count as qualifying service for the purpose of these rules. Therefore, it is quite vivid and luminescent that in the Pension Rules, the Central Government itself mandates to reckon the service rendered by the employee who was conferred temporary status and who has been appointed subsequently on substantive post while granting retirement benefits to such employee.

24. In the judgment of Prem Singh (supra), a three Judges' Bench of the Hon'ble Supreme Court ruled that work-charged status followed by regular appointment has to be counted for qualifying service for the purpose of pension and other retiral benefits and such view has been echoed in the judgments of Ram Deo

Tiwari (supra) and Habib Khan (supra). In the judgment of Uday Pratap Thakur & Anr. (supra), Hon'ble Division Bench of the Hon'ble Supreme Court held that the decision of the Hon'ble Supreme Court in case Prem Singh (supra) would be restricted to the counting of service rendered as work charged for qualifying service for pension and not for the quantum of pension. In case of Nirmal Kumar Basuli –vs- Union of India, reported in 2014(1) CHN (Cal) 374, the appellant worked for 27 years as Extra Departmental agent before his regularisation and after his regularisation, he worked for 5 years and 9 months. In such conspectus, the Hon'ble Division Bench of this Court directed the respondents to take note of 27 years of service of the appellant for reckoning the qualifying service for pension. In case of Punjab State Electricity Board & Ors. vs- Narata Singh reported in (2010)4 SCC 317, same view was reiterated by the Hon'ble Apex Court. I am unable to approve the view of Mr. Banerjee that the principles and/or the law laid down in the judgments of Murli Gope & Ors (supra) and Prem Singh (supra) have no binding effect.

25. It is trite law that Articles 14 and 16 of the Constitution of India strike at arbitrariness in State action and ensure fairness and equality of treatment. Article 14 and 16 prohibit discrimination and it mandate that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. In an affidavit filed before the Hon'ble Apex Court, appointment of Dipak Pradhan was sought to be justified taking a stand that Mr. Pradhan was appointed in a guest house in Darjeeling and since Mr. Pradhan was a local person, he was appointed therein. This justification and/or classification cannot be accepted to be based on intelligent differentia. Indisputably, no denial of the factual assertion that Mr. Pradhan has been given coverage under the Old Pension Scheme i.e. under the Pension Rules of 1972 has been made by the DVC.

26. In Deoki Nandan Prasad v. State of Bihar, reported in AIR 1971 SC 1409, it was authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the employer but is governed by the rules and an employee coming within those rules is entitled to claim pension. In celebrated decision of D.S. Nakara –vs- Union of India reported in (1983) 1 SCC 305, the Hon'ble Constitutional Bench was pleased to hold that '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 inane'. In case of Yashwant Hari Katakhar –vs-Union of India, reported in (1996)7 SCC 113, it was held that an employee cannot be denied the benefit of qualifying service by reason of default on the part of the Government in making him permanent.

27. Hence, as a sequitur to the foregoing discussion, it is held that at least half of the service rendered by the petitioners as casual employees shall be reckoned for the purpose of commutation of qualifying service for pension.

28. As regards that issue of coverage of old Pension Scheme, 1972, it can be

stated as per the Office Memorandum dated 17.02.2020 issued by the Department of Pension and PW and in terms of the Officer Memorandum dated 22.10.2020 issued by the competent authority of DVC, the employees whose selection was finalized before 01.01.2004 but who joined Government service after 1.1.2004 shall be governed by the old pension scheme i.e. the Central Civil Services (Pension) Rules of 1972. The petitioners were empanelled in 1986 and since 1986 to 2020 i.e. for long 34 years, the petitioners have rendered their service as quasi-permanent employees of the DVC without any interruption and even in 2001, 74 casual employees were given regular appointment from the panel and hence, in 2001, direction was given to decide the representation of the petitioners wherein prayer for their absorption was made and a coordinate bench of this Court and the Hon'ble Supreme Court directed the competent authorities of DVC to absorb the petitioners from the panel. A casual employee who was junior in the rank of the panel has been extended the benefits of OPS. Therefore, the cause of action for seeking regular appointment was accrued to the petitioner prior to 2004 and there is no quarrel on the issue that the petitioners have not been appointed following any further selection process and hence, the petitioners should be categorised as the employees whose selection was made before 01.01.2004 but joined the service after that date i.e. after 01.01.2004. Accordingly, the petitioners are entitled to benefits of coverage under the Central Civil Services (Pension) Rules, 1972 in view of the aforesaid two Office Memoranda. Suffice it to observe that there is no scintilla of doubt regarding binding effect of the judgments relied upon by Mr. Banerjee but those are distinguishable on facts.

29. Admittedly, the petitioners accepted their appointments and they have not challenged such appointment in any forum. The petitioners did not hold substantive post in DVC before their appointment and moreover, taking note of such appointment, the Hon'ble Supreme Court did not interfere in the contempt petitions taken out by the petitioners. Hence, for these reasons, petitioners' prayer for a direction upon the DVC to fix the pay of the petitioners and release arrear salary w.e.f. 31.03.2010 cannot be acceded to.

30. Ex consequenti, the respondents are directed to reckon half of the service rendered by the petitioners as casual employees before their appointment for the purpose of computation of the qualifying service for pension and the respondents are further directed to disburse the pension and other retirement benefits of the petitioners as per the Central Civil Services (Pension) Rules, 1972. The respondents are directed to allow the petitioners to exercise option so as to entitle them to enjoy the benefits of coverage under Old Pension Scheme i.e. under the Central Civil Services (Pension) Rules, 1972.

31. With these observation and order, the writ petition being WPA 7333 of 2022 is disposed of, however, without any order as to the costs.

32. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

33. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.