
(2011) 09 RAJ CK 0039

In the Rajasthan High Court

Case No : Special Appeal (Writ) No's. 292 and 1060 of 2011

University of Rajasthan and Another

APPELLANT

Vs

Prem Lata Agarwal

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974
— Section 3(3)

Citation : (2012) 3 RLW 1987

Hon'ble Judges : Arun Mishra, C.J; Bela M Trivedi, J

Bench : Division Bench

Advocate : Ajeet Kumar Sharma, with Rachit Sharma, for the Appellant; Ashok Gaur, with Shailesh Prakash Sharma and N.K. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Arun Mishra, CJ.

1. The appellant-University of Rajasthan ha put into question legality of the orders passed by the Single Bench in Civil Writ Petitions No. 2240/2010 and 6014/2008 on 1.2.2011 and 23.5.2011 respectively directing the University of Rajasthan to extend the pensionary benefits to the petitioners within the framework of the University Pension Regulations, 1990 (hereinafter referred to as "the Pension Regulations of 1990"). The petitioners, namely, Prem Lata Agarwal, after rendering continuous service for more than 20 years, retired from the post of Assistant Professor (Lecturer), Chemistry w.e.f. 30.6.2001 on attaining the age of superannuation. Similar, petitioner, Dr. Janki D. Moorjani was appointed as Assistant Professor (Lecturer) in the Department of Psychology, University of Rajasthan vide order dated 20/21.8.1985 and after rendering continuous service for about 22 years, she was retired w.e.f. 30.6.2007 on attaining the age of superannuation.

2. It was submitted that petitioner-Prem Lata Agarwal was appointed in the year 1981 as Assistant Professor (Lecturer), Chemistry after following due process of

selection. The applications were invited by issuing advertisement and having found suitable for the post, she was appointed vide order dated 5.1.1981 in accordance with the provisions of Section 3(3) of the Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974, later amended by the Rajasthan Universities Teachers and Officers (Special Conditions of Service) (Amendment) Act, 1984 (Act N. 18 of 1984) to be cited as the "Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 (hereinafter referred to as "the Act of 1974"). Similarly, the appointment order of petitioner-Dr. Janki D. Moorjani mentions that she was appointed under the provisions of Section 3(23) of the Act of 1974. The appointment was made on adhoc basis upto the last working day of the current academic session or till further orders whichever was earlier. However, the fact remains that both the petitioners continued to serve uninterruptedly till they attained the age of superannuation. On coming into force of Pension Regulations of 1990, options were invited from the employees. The petitioners-respondents were asked to opt either for pension under the Pension Regulations of 1990 or to continue in the Contributory Provident Fund Scheme (for short "the CPF Scheme"). Both the petitioners-respondents had opted for pension and thereafter, they retired after rendering services for more than 20 and 22 years respectively. Though the age of retirement of Prem Lata Agarwal fell on 25.3.2001, however, considering the provisions of the Rajasthan Universities Teachers (Absorption of Temporary Teachers) Ordinance, 2008 (hereinafter referred to as "the Ordinance of 2008"), she was retired w.e.f. 30.6.2001 at the end of the academic session. Similarly, Dr. Janki D. Moorjani was retired w.e.f. 30.6.2007, though as per date of birth, she attained the age of superannuation on 15.6.2007. In the pay slips, it was mentioned that they have opted for pension scheme. The pay slip of Dr. Janki D. Moorjani for the month of June 2007 (Ann.9) and that of Prem Lata Agarwal for the month of February 2001 (Ann.2) in writ petitions Nos. 6014/2008 and 2740/2010 respectively have been placed on record.

3. The petitioners have submitted that the benefits of regular lecturers were extended to them. Increments were added every year and the benefit of pay scale was also given to them. Prem Lata Agarwal has done M.Sc. in Chemistry in the year 1966 with specialization in Inorganic Chemistry. She did Ph.D. in the year 1971. she worked with famous academicians. There is a long list of her publication work, refreshers/orientation courses, post doctoral research, prizes/scholarship/fellowship. Before joining the University of Rajasthan she has also worked as Lecturer in Chemistry in Women's College, Banaras Hindu University, Varanasi from 1970 to 1976. Thereafter, she has joined the service in the University of Rajasthan. The petitioners-respondents were made to suffer stagnation on the post of Assistant Professor. Their cases were not considered for subsequent promotion under the Career Advancement Scheme. However, order of their retirement from service was passed on attaining the age of superannuation. Still they were deprived of the retiral benefits, though they had completed the formalities. As needful was not done and due pensionary benefits

were not paid, a legal notice was served upon the appellants and despite that, when nothing was done and their grievances were not redressed by the appellants, the writ applications were filed before the Single Bench. It was submitted in the writ applications that they are entitled for the pensionary benefits under the Pension Regulations of 1990. Even they have also been deprived from the benefit of CPF Scheme. Their appointments were made as per the provisions of the Act of 1974. After coming into force of the Pension Regulations of 1990, options were invited and both petitioners have opted for pension scheme, which is evident from the pay slips also and thus, when they had exercised option to avail benefit of the pension scheme, the University was not justified in denying pensionary benefits. The University could not turn round and say that the petitioners were not entitled to pensionary benefits, especially when University has also contributed the amount payable towards the CPF in Pension Scheme. As per proviso (c) to Regulation 2(ii) of the Pension Regulations of 1990, appointments of the petitioners-respondents should be treated as regular one. Ordinance of 2008 also provides for regularization of services of such employees who have continued in service for such a long period. Even in the case of services as work-charge employees, as per the State Government guidelines, ten years' service has to be treated as qualifying service towards pensionary benefits. The employees, who have rendered service for 10 or more years, are deemed to be absorbed in the University of Rajasthan. Proviso (b) to Regulation 2 of Pension Regulations of 1990 is not applicable to the case of petitioners.

4. The University of Rajasthan in its return contended that Pension Regulations of 1990 are not applicable to the case of the petitioners as they were not appointed on substantive basis and their appointment was on adhoc basis u/s 3(3) of the Act of 1974 as the applications were invited for appointment on the post of Assistant Professor on adhoc basis. The term of adhoc appointment was extended from time to time. The Pension scheme was introduced in the year 1990, as such, options were invited from all the employees including temporary/adhoc employees. The Ordinance of 2008 for regularizing services of such employees came into force subsequent to the retirement of petitioners and thus, services of the petitioners could have been regularized as per Ordinance of 2008. Mere exercise of option does not create any right in their favour for grant of pension. The contribution of the petitioners made towards provident fund has been paid to them. Writ applications have been filed with delay. Hence, the petitioners were not entitled for the benefits prayed for.

5. The Single Bench has allowed the writ applications. The main order has been passed in the case of Prem Lata Agarwal, which has been followed in the case of Dr. Janki D. Moorjani. Hence, the University of Rajasthan has preferred the intra court appeals.

6. Shri Ajeet Kumar Sharma, learned Senior Counsel appearing with Mr. Rachit Sharma on behalf of the University of Rajasthan has contended that the

appointments of petitioners were illegal and on adhoc basis and therefore, the Pension Regulations of 1990 are not applicable to them. The appointment made on adhoc basis u/s 3(3) of the Act of 1974 could not have been continued beyond the period of one year. Merely because the petitioners have exercised the option of pension under the Pension Regulations of 1990, it does not confer any right on the petitioners to claim pension nor it creates estoppel against the University as under the Pension Scheme, the petitioners were not entitled for payment of the pension. The petitioners cannot be treated as regular employees in view of the decision of the Apex Court in *Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors.* (2006) 4 SCC I. He has further submitted that it is open to the University to take the services on adhoc basis and it is not unconstitutional act. The University is ready to pay its contribution towards provident fund scheme to the petitioners and more than that, the petitioners are not entitled for any other relief. The direction issued by Single Bench to make the payment of pensionary benefits is illegal. Learned Senior Counsel has also attracted the attention of this Court towards pension Regulations of 1990. 7. Shri Ashok Gaur, learned Senior Counsel appearing with Mr. Shailesh Prakash Sharma and Mr. N.K. Bhatt on behalf of the petitioners/respondents has submitted that the case of the petitioners is covered within the purview of the Pension Regulations of 1990. The appointments of petitioners were made after issuance of advertisement and following due procedure prescribed under the Act of 1974 and thus, they were regularly appointed under the Act of 1974 and they have rendered services for 20-22 years. Hence, their appointments cannot in any manner be said to be illegal. It was further submitted that earlier the amount was deducted under the CPF Scheme and thereafter, on floating the pension scheme under the Pension Regulations of 1990, options were invited to opt for the pension scheme or to continue in the CPF scheme. The petitioners had opted for the pension scheme and the University had also deposited its contribution payable towards CPF in the pension scheme. The benefit of pay scale was extended to the petitioners. Increment used to be added every year. Thus, they were treated as regular employees for all the purposes. After taking services from them, they have been denied their just dues, on attaining the age of superannuation. They are highly qualified and had rendered services to the satisfaction of the University. Various important jobs were assigned to them from time to time and the University had adopted the approach of not appointing on permanent basis virtually for three decades. After 1984, not even a single substantive appointment has been made and all the appointments have been made u/s 3(3) of the Act of 1974 itself. They have relied upon the decision the Apex Court in *Jagdish Prasad vs. State of Rajasthan & Ors.*, 2011 AIR SCW 4449. Reliance has also been placed on the decisions of this Court in *Ismail Khan Vs. State of Rajasthan and Another*, ; *Haji Mohd. Ibrahim vs. State of Rajasthan & Ors.*, RLW 2004(1) 124; *Bhanwar Lal Tated vs. State of Rajasthan & ors.* (Writ Petition No. 10022/2007, decided on 25.8.2010); *Abdul Aziz Qureshi Vs. University of Rajasthan*, and *Smt. Sonu Bhatia vs. Union of India & Ors.*, RLW 2008(4) Raj. 3181.

8. It is admitted fact in the instant cases that in the University of Rajasthan, not even a single substantive appointment has been made after 1984. We are in the year 2011. Now virtually for three decades, not even a single substantive appointment has been made. The case poses extra-ordinary situation and the flagrant violation of the provisions which envisage substantive appointments to be made. The petitioners have been appointed under the provisions of Section 3(3) of the Act of 1974 after following due selection process i.e. issuing the advertisement and inviting applications from the open market. Thus, their appointments were made in accordance with the provisions of the Act of 1974 for the academic year or till further orders. It is not disputed that the appointments have continued uninterruptedly for 20-22 years respectively. It is also not in dispute that the benefit of pay scale was also given to the petitioners. Increments were added every year. Before floating the Pension Regulations of 1990, contribution towards CPF used to be deducted. However, it is also not in dispute that the options were invited from the petitioners and all other similarly situated employees to opt for pension scheme or to continue in the CPF scheme. The petitioners have opted for the pension scheme and the University had deposited its contribution in pension scheme which was payable by it in the CPF. As apparent from the orders, the respondents have retired on attaining the age of superannuation on completion of the academic session in accordance with the provisions of the relevant statute.

9. The action of University is wholly unjustifiable and unsustainable. They have acted arbitrarily. It is default on their part not to appoint even a single person in services of the University of Rajasthan on substantive basis virtually for three decades. The petitioners were given the understanding that they are entitled for the pension. Otherwise also, pension scheme was applicable to them. The option were invited from them by the University and the University had deposited its monthly contribution towards C.P.F. in the pension scheme and the amount so deducted from the petitioners was also deposited every month in the pension scheme and they had opted out for CPF scheme in the year 1990.

10. Firstly, we are of the opinion that under the Pension Regulations of 1990, the petitioners are entitled for the benefit of pension considering the nature of their appointment u/s 3(3) of the Act of 1974 and they have continuously rendered the services for more than 22/22 years. Secondly, the University has treated the service on regular basis for all the purposes. The appointments could not be said to be illegal in any manner, but they were made legally under the provisions of the Act of 1974. Thus they were regular appointees inasmuch as they were appointed under the provisions of Section 3(3) of the Act of 1974 for academic session and the appointments had continued for more than two decades.

11. Coming to the first aspect whether the respondents are entitled for the pensionary benefits within framework of the Pension Regulations of 1990. Regulation 2 of the Pension Regulations, 1990 deals with the scope and application of the Pension Regulations of 1990. Regulations are made applicable

to all the persons regularly appointed to the service of the University of Rajasthan. The expression used is not substantively appointed. Regulation 2(ii) makes it further clear that the Pension Regulations of 1990 shall apply to all the existing employees both teaching and non-teaching who opt for pension scheme under the Regulations within the period specified in the Regulation for exercising option. Proviso containing exceptions has been added which makes it clear that the regulations shall not apply to persons employed on contract part-time basis, persons on deputation to the University, purely temporary and daily wages staff, re-employed pensioners. Regulation 2 of the Pension Regulations of 1990 is quoted below :-

Reg. 2 : Scope and Application :

(i) These regulations shall also apply to all persons regularly appointed to the service of the University of Rajasthan on or after 1.1.1990.

(ii) These regulations shall also apply to all existing employees both teaching and non-teaching who opt for pension scheme under these regulations within the period specified in Reg. for exercising option. In the case of employees who do not exercise option within the specified period it will be deemed that the concerned employee has opted for the pension scheme under these regulations.

Provided that these regulations shall not apply to:

- (a) Persons employed on contract or part-time basis.
- (b) Persons on deputation to the University.
- (c) Purely temporary and daily wages staff.
- (d) Re-employed pensioners.

12. It was submitted by Shri Ajeet Kumar Sharma, learned Senior Counsel that proviso (c) to Regulation 2 ousts purely temporary staff from the benefit of pension scheme. He has further submitted that the services of the respondents were purely temporary as such Pension Regulations of 1990 are not applicable as provided in Regulation 2. We are unable to accept the submission raised by the learned Senior Counsel. Services of the respondents could not be said to be purely temporary and on daily wage basis. According to P. Ramanath Aiyar's Advance Law Lexicon (Third Edition), the word "temporary" means lasting for a time only; existing or continuing for a limited time; not of long duration; not permanent; transitory; changing; and lasting for a short time. Thus, when the services have continued for 20 and 22 years without any interruption, the services could not be said to be purely temporary. Even otherwise, the appointments could not be said to be "purely temporary" which is used in company with daily wages which is for short duration. Temporary services are covered in Regulation 22 of the Pension Scheme. Admittedly, the University has not appointed even a single person on substantive basis w.e.f. 1984. Even otherwise in the projected facts of the instant cases, the appointments could not

be termed to be purely temporary. Thus we are of the considered opinion that the appointments having been made as per Section 3(3) of the Act of 1974 and Regulation 2(H) makes the regulation applicable to "all existing employees" and the proviso ousts the category of persons mentioned in (a) to (d), the case of the respondents-employees is not covered in any of the exceptions contained in the aforesaid proviso. Admittedly, the petitioners are not the persons employed on contract or part-time basis nor they are on deputation or re-employed pensioners and in our opinion, they could not have been treated as "purely temporary and daily wages staff". The words "all existing employees" are wide enough to cover the employees like the respondents. That is why, the options were invited under the said Pension Regulations. The University was aware of the state-of-affairs prevailing in the University. Thus, the University has not ousted such kind of employees from the purview of the Pension Regulations and had made the Regulations applicable to all the employees like the petitioners as all the appointments were made for decades by the University in the aforesaid manner only. Regulation 2(i) also deals with all the persons regularly appointed by the University of Rajasthan "on or after 1.1.1990". The petitioners had been appointed before 1.1.1990 as such, the Regulation 2(i) is not applicable to them. Even otherwise, the words used in Regulation 2(i) are "regularly appointed to the service of the University". The expression "permanently appointed" or in substantive capacity has not been used even in Regulation 2(i).

13. Pension fund has been defined in Regulation 3(5), which is quoted below :-

Reg. 3 : Definitions : (5) "Pension Fund" means the fund created for purpose of transferring the total accumulated amount of University contribution in C.P.F. (including the amount of loan taken out of it) and interest there on as on date of commencement of these regulations and monthly contribution made thereafter in respect of such employees who opted or are deemed to have opted the pension scheme under these regulations. The pension paid to the retired employees shall be charged to this Fund.

14. It is not in dispute that the petitioners were contributing in pension fund and the University's monthly contribution towards CPF was also deposited every month in the pension fund. Regulation 16 which deals with condition of grant, provides that a superannuation pension shall be granted to an employee who is required to retire from service on attaining the prescribed age of retirement. Regulation 22 deals with the conditions of qualifying service. It covers service on officiating basis as well as temporary. It provides that the service of an employee does not qualify for pension unless it is a paid service of a regularly appointed employee under the University and the employment is in substantive, temporary or officiating capacity. Regulation 22 is quoted below:

Reg. 22 : Conditions of Qualifying Service :

The service of an employee does not qualify for pension unless it conforms to the following conditions:

(1) It is a paid service of a regularly appointed employee under the University.

(2) The employment is in substantive, temporary or officiating capacity.

15. The words used in Regulations 2(i) and 22(1) are "regularly appointed". The expression "regularly appointed" has not been defined under the Act of 1974. In the instant cases, the appointments of petitioners were made u/s 3(3) of the Act of 1974. Regulation 2(ii) is applicable to all existing employees except the persons appointed on contract or part-time basis; persons on deputation; purely temporary and daily wages staff; and reemployed pensioners. The case of the petitioners is not covered under any of the aforesaid four categories. Even otherwise, it cannot be said that appointments of the petitioners were made as stopgap arrangements. They have continued for more than two decades and therefore, they cannot in any manner be termed as "purely temporary". Also the word "purely temporary" contained in Regulation 2(ii)(c) is used in company with daily wages staff and there is distinction in concept of purely temporary and temporary as provided in Regulations 2 and 22 of the Pension Scheme purely temporary is not covered whereas temporary or officiating appointment is covered under the purview of the Pension Regulations. Since the appointments of petitioners were in accordance with the provisions of the Act of 1974, the same cannot be said to be dehors the provisions of the Act, or to be purely temporary and daily wages staff, according to Black's Law Dictionary (Fifth Edition), the ordinary meaning of the word "regular" is conformable to law; steady or uniform in course, practice or occurrence; not subject to unexplained or irrational variation; made according to rule, duly authorized and formed after uniform type. Following is the meaning of word "regular" given in Black's Law Dictionary (Fifth Edition):

Regular. Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. Usual, customary or general. *Gerald vs. American Cas. Co. of Reading, Pa., D.C.N.C., 249 F. Supp. 355, 357.* Made according to rule, duly authorized formed after uniform type; built or arranged according to established plan, law, or principle....

Thus, regular appointment means that it was made according to rule. Since the appointments of petitioners were made in accordance with the provisions of the Act of 1974, they have to be treated as regular one and it was not by way of a stopgap arrangement as appointments had continued for 20/22 years. Hence, in our opinion, conditions of qualifying service mentioned in Regulation 22 of Pension Scheme are satisfied. Even the employment on temporary or officiating capacity is included, towards qualifying service for the purpose of pension. The service for more than 20 years, thus, has to be counted towards pensionable service.

16. Regulation 23 of the Pension Regulation of 1990 has also been relied upon by Shri Sharma, learned Senior counsel appearing on behalf of the University, which is quoted below :

Reg. 23 :

(a) The service of an employee transferred from a temporary to permanent post shall be counted if the post was as first created experimentally or temporarily.

(b) The officiating services of an employee, without a substantive appointment, in a post which is vacant or the permanent incumbent of which does not draw any part of the pay or count service, shall be counted if he is confirmed without interruption in his service.

17. A bare reading of the aforesaid Regulation 23 makes it clear that the service of an employee transferred from a temporary to permanent post shall be counted. Apart from that, officiating services of employees without a substantive appointment on such a post which is a vacant post are also to be counted. The services of petitioners shall be deemed to have been confirmed in the instant cases as it is not the case of the University that their services were not satisfactory. They were given benefit of pay scale and increments. They were serving again substantive posts. They had been assigned various important jobs, such as, under supervision/guidance of petitioner-Dr. Janki D. Moorjani, seven candidates were pursuing Ph.D. She was appointed as Additional Assistant Warden, Annie Besant Hostel; Warden, Malviya Hostel, Jaipur; Warden, Laxmi Bai Hostel and was also appointed as Additional Superintendent of Annual Examinations, 2005 held at the school of Humanities Centre. Similar duties were assigned to other petitioner also. They were treated as confirmed employees. The confirmation is one of the inglorious uncertainties in the service. In the instant cases, appointments were made u/s 3(3) of the Act of 1974. Not even a single substantive appointment has been made by the University since 1984. The arbitrary practice adopted by the University, thus, cannot come in the way of the petitioners to deny them just dues. As for all practical purposes, they served as permanent employee. In our considered opinion, to the employees who have opted for the Pension Scheme on options being invited from them and had contributed towards pension scheme w.e.f. 1990, benefit of the pension scheme ought to have been extended to them. In *S.B. Patwardhan and Another Vs. State of Maharashtra and Others*, , the Apex Court has laid down that the confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. Relevant portion of para 39 of the said judgment is quoted below:

39. Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set of rules and whether an employee should be confirmed or not depends on the

sweet will and pleasure of the government.

In the aforesaid judgment, the Apex Court has also noted a glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. The Apex Court has further considered that the officiating Deputy Engineer were not confirmed even though substantive vacancies were available on which they could have been confirmed. It shows that confirmation depends only on the sweet-will and pleasure of the government. In the instant case, it is not in dispute that the petitioners were working against substantive vacancies. Their appointments had continued for more than two decades. Thus confirmation cannot come in their way in claiming the pensionary relief as they have rendered qualifying service which is pensionable in the University.

18. Regulation 47 of the Pension Regulations of 1990 deals with creation of the pension fund. It provides that in case of all such employees who opt for the pension scheme and are governed under these regulations, the total accumulated amount of University contribution in C.P.F. and interest thereon as on 1.1.1990 will be transferred to the pension fund created under the Pension Regulations. Thereafter, the University shall deposit monthly contribution in respect of all such employees in the pension fund every month. In the instant cases, pension fund was created and the petitioners have opted for pension scheme. The University has also contributed towards it. Thus, the University cannot be permitted to turn round and take the advantage of the fact that it has not chosen to appoint any person on substantive basis w.e.f. 1984. When the employees have served in heydays of their life, they were highly qualified and have rendered satisfactory services, it is the corresponding obligation casts upon the employer to look after them when they become old. The concept of protection from cradle to grave, as laid down by the Apex Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, is inviolable in the facts of instant cases. The pensionary benefits ought to have been extended by the University to the employees like the petitioners.

19. This Court in *Abdul Aziz Qureshi (supra)* has considered Regulations 22 and 29 of the Pension Regulations of 1990 of the University of Rajasthan. It has been held that the services rendered by the petitioner on temporary basis from 17.9.1988 till 9.2.1996 be treated as qualifying service for the purpose of granting retiral benefits. This Court in *Ismail Khan (supra)*, considering Rules 179 and 180 of the Rajasthan Service Rules has laid down that there is distinction between casual and temporary labour. Temporary employees are entitled to get the right under Rule 179 of the Rajasthan Service Rules, which provides that the service of an officer does not qualify for pension unless it conforms to the three conditions, namely, (i) service must be under the government, (ii) the service may be paid by the government and (iii) the employment may be substantive/permanent/temporary or officiating. The Rule does not provide about the work-

charge employees. It has been held by this Court that the temporary employees are entitled to get right under Rule 179. Casual labour means a person who has been appointed towards an unforeseen and unanticipated work for a particular work only. If the work has been anticipated earlier, then the person employed does not fall within the capacity of a casual labour, but may fall within the definition of a temporary labour. In *Haji Mohd. Ibrahim (supra)* also, this Court has considered the issue of qualifying service, in which reliance was placed on the decision in *State of Rajasthan vs. Vasu Deo (S.B. Civil Special Appeal No. 283/1996)* in which this Court has held that an employee appointed on daily wages towards anticipated work would also be deemed to be eligible to treat the services rendered by him as a daily wage for computing the qualifying service for pension within the meaning of Rule 179 of the Rajasthan Service Rules, 1951.

20. Reliance has also been placed by Shri Sharma, learned Senior Counsel on decision rendered by the Apex Court in *Umadevi (supra)* in which the Apex Court has dealt with concept of absorption, regularization or permanent and continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment. The Apex Court has held that issuance of directions for staying the regular recruitment process for the posts concerned are impermissible. It is the need for addressing concerns of equity for all and not of just the few before the Court by upholding of constitutional scheme of public employment. The Court should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme. In the instant cases, the constitutional scheme of public employment has been followed. Advertisements were issued and selections were made in accordance with the provisions of the Act of 1974. However, it was submitted by the University that as the State has directed not to appoint the incumbents on substantive basis, the incumbents were not appointed on substantive basis. The said action of the University is contrary to the constitutional scheme as envisaged by the Constitution. The appointments have continued for more than two decades. They were made members of the pension scheme. It is not the case of absorption or regularization or illegal appointments, but the appointments have been made in accordance with the provisions of the Act of 1974. Even otherwise, the Apex Court in *Umadevi* has directed that the appointments continued for more than ten years, have to be regularized. In the instant cases also, ultimately the State Government in 2008 has made such provision. Merely by the fact that the petitioners have retired earlier, they cannot be denied benefit of pension scheme, for which they are otherwise also entitled. Decision of the Apex in *Umadevi (supra)* does not come in the way of petitioners in the instant cases.

21. It was submitted on the strength of the decision in *Umadevi (supra)* that a sovereign Government is not precluded from making temporary appointments or engaging workers on daily wages, there is no dispute about the aforesaid proposition of law. Temporary appointments can be made and engagement of the

workers on daily wages is also open. But the question in the instant cases is whether the employees like the petitioners can be denied pensionary benefits under the pension scheme framed by the University.

22. it was also submitted that illegal, irregular or improper entrants cannot be ordered to be absorbed in service as laid down by the Apex Court in Umadevi (supra). The instant cases is not of the irregular, illegal or improper entrants. In the instant cases, appointments were made after following due process of law. the appointments were not intended to defeat the constitutional scheme. Equality of opportunity has not been denied in the instant cases. It is not a case where the University is being denied the right to engage persons in various capacities for a duration or until the work in a particular project is completed, the appointments were not "purely temporary and daily wage basis.

23. It was also submitted that the State has directed, considering the financial stringency and taking economic aspect into consideration, not to appoint any person on permanent basis. Reliance has also been placed on the observation made by the Apex Court in para 19 of the report in Umadevi (supra) wherein the Apex Court has observed that the State works out the scheme taking into consideration the financial implications and the economic aspects. Can the Court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? In the instant cases, the persons employed have virtually served like permanently appointed regular employees. They were appointed against substantive posts. No such direction has been placed on record preventing the University from making single appointment on substantive/permanent basis for more than three decades. Thus the action of the University of Rajasthan is illegal and arbitrary.

24. It was also submitted by Shri Sharma, learned Senior Counsel that as laid down by the Apex Court in Umadevi (supra), unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It was also submitted hat merely because a temporary employee is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent on the strength of such continuance, it the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

25. In the instant cases, the original appointment was made following the due process of selection as envisaged under the Act of 1974. Thus, the decision of the Apex Court in Umadevi (supra) cannot be invoked so as to defeat the claim of the petitioners in the instant cases. The Apex Court in Umadevi (supra) has laid down thus :

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N.

Nanjundappa, and B.N. Nagarajan, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed, the process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

26. In view of the aforesaid decision as well as the provisions of Pension Regulations of 1990 and the aforesaid discussion, we find that it is incumbent upon the University of Rajasthan to grant pensionary benefits of the pension scheme to such employees. They cannot be denied the benefit of the pension scheme. Petitioners were illegally deprived of the benefit of the Pension Scheme, 1990. Let the benefit be now extended by the University forthwith. Resultantly, the intra Court appeals being meritless deserve dismissal and are hereby dismissed. No costs. Stay applications are also dismissed.