

Court No. - 39

Case :- WRIT - A No. - 10505 of 2023

Petitioner :- Union Of India And 2 Others

Respondent :- Heera Lal And Another

Counsel for Petitioner :- Ashish Kumar

Counsel for Respondent :- Suresh Kumar Pandey

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri S. P. Singh, learned Additional Solicitor General of India along with Sri Ashish Kumar, learned counsel for the petitioner and Sri S. K. Pandey, learned counsel for the private respondent.

2. Present writ petition is directed against the order dated 19th July, 2019 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 1513 of 2012 (Heera Lal Vs. Union of India and two others). That Original Application was filed for the following relief:-

“(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to treat the services of the applicant as regular for all purposes and release the terminal benefits including Pension, Provident Fund, Leave Encashment etc. forthwith alongwith 18% penal interest

(ii) Issue any other writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iii) The cost of the application may also be awarded in favour of the applicant.”

3. Since much submissions have been advanced by both sides with reference to the earlier orders of this Court in the case of **Union of India and others Vs. Chandi Lal; 2007:AHC:2752-DB** and **Union of India Vs. Shyam Lal Shukla; 2011:AHC:175055-DB**, on which the Tribunal has placed reliance, we consider it proper to quote the entire reasoning given by the Tribunal:-

“6. The applicant by placing reliance upon para 154(a) of the Manual of appointment and Allowances of Officers of the Indian Posts and Telegraphs Department contended that he is entitled for all retiral benefits as may be admissible to comparable staff in the regular group ‘D’ employee. He relied upon the following judgments in support of his arguments-

“(i) O.A. No. 917/04-Chandi Lal Vs. U.O.I. and Ors. Decided on 2.9.2015 by CAT, Allahabad Bench.

(ii) O.A. No. 1626/05- shyam Lal Shukla Vs. U.O.I. and Ors decided on 28.7.2009 by CAT, Allahabad Bench.”

Rule 154(A) of the Manual reads as under:-

“154(a) Selected categories of whole-time contingency paid staff, such as Sweepers, Bhisties, Chowkidars, Chobdars, Malis or Gardeners, Khalassis and such other categories as are expected to work side by side with regular employees or with employees in work-charged establishments, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as “regular” employees. The other contingency staff who do not fulfil these conditions, e.g., Dhobis, Tailors, Syccs, Grass Cutters, etc., should continue on the existing basis and should be treated to be “Casual employees”. Part-time employees of “regular” categories, as also employees of “Casual” categories who are not brought on the regular establishment, will continue, as at present, to be paid from contingencies.

From the perusal of Rule 154(A) of Manual it is manifestly clear that the Chowkidar, Sweepers, Malis, Khalassis who worked side by side with regular or with employees in Work Charge Establishment should be brought on regular Establishment and should be treated ‘regular employees’. The rule itself has used the work ‘regular employee’ without any reference to formal order of regularisation.

I have also gone through the judgments referred by the learned counsel for the applicant. In the case of Chandi Lal (Supra), the applicant was working in the Department of Posts on work charge establishment w.e.f. 15.4.1982. He was granted temporary status w.e.f. 29.11.1989 and thereafter, he was brought on the pay scale of Group ‘D’ employee and also accorded service benefits admissible to the Group ‘D’ employee. Though no formal order of the regularisation was issued in the said case but the Tribunal held the applicant entitled to pension treating him a Group ‘D’ regular employee. The Writ Petition No. 11297/ 2006 filed against the said order was dismissed by Hon’ble Allahabad High Court vide order dated 02.03.2007 and Hon’ble Supreme Court also upheld the order of Tribunal and High Court vide order dated 03.03.2008 passed in SLP (Civil)-----/2008 (CC 3248/2008).

8. In the case of Shyam Lal Shukla (supra), the applicant was initially appointed as full time CP Chowkidar and was granted temporary status w.e.f. 29.11.1989. No formal order of regularisation was ever issued. In this case, the applicant was deemed to be regularised, treated as ‘regular employee’ of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force. The Writ Petition No. 60272/2009 filed against the said order of Tribunal, was dismissed by Hon’ble Allahabad High Court vide order dated 23.12.2011 and Hon’ble Supreme Court also upheld the order of Tribunal and High Court vide order dated 06.08.2012.

9. The facts and circumstances of above noted cases are almost similar to the case in hand. In the instant case, the applicant was appointed as C.P. Chowkidar on 01.07.1978 and he was extended temporary status w.e.f. 29.11.1989 and thereafter he was accorded the benefits of Group ‘D’ employees. The Cases of Chandi Lal and Shyam Lal Shukla went up to Hon’ble Supreme Court and it has been settled that such employees shall deemed to have been regularised and consequently required to be treated as regular employees of the respondents’ department and consequently they are entitled to all pensionary benefits.

10. Accordingly, the O.A. stands allowed. The respondents are directed to ensure payment of pension and other post retiral benefits alongwith interest @ 7% per anum from the date it becomes due till the date of actual payment as

expeditiously as possible within a period of three months from the date of receipt of copy of this order. No order as to costs."

4. Undisputedly, the private respondent was engaged as Contingency Paid Chowkidar (C P Chowkidar in short) at Postal Division, Gorakhpur. That engagement of the private respondent Heera Lal first arose on 01.02.1978. He continued to work in that capacity without break. Admittedly, the services of the respondent were not regularised.

5. Similar situation prevailed with many such persons, thus engaged. At the same time, a scheme for regularisation came to be framed and enforced in the context of similarly situated persons thus engaged by the Telecom Department. Taking note of such development, the Supreme Court in ***Jagrit Mazdoor Union and others Vs. Mahanagar Telephone Nigam Limited and others; 1990 Supp SCC 113*** made the following pertinent observations:-

"4. The two petitions have been opposed by the relevant Ministry by filing counter-affidavits where the stand taken is that RTPTOs are a special class by themselves with their own incidents of service and they cannot be treated at par with regular employees. The differences between the two services have been highlighted in the counter-affidavits. It is also the stand of the respondents that the order of this Court referred to above dated 28.7.1986 finally disposed of the major claim raised in the two petitions of the employees of the two Telephone Nigams and fresh action was not appropriate. It is also pointed out that on February 10, 1986, there was an agreement of settlement and the present petition was an attempt to reopen the matter. On January 31, 1989, when Writ Petition No. 1276 of 1986 came up for hearing before this Court, the following order was made:

"Learned counsel for the petitioners concedes that the regularisation of 21,000 employees in the Department of Telecommunications has been effected but complains that no such proceeding has taken place in respect of the postal employees. He states that there is pressing need for a parity of service conditions including pay, house rent allowance and other allowances between the temporary employees and the regular employees covered by this category. The learned Additional Solicitor General of India assures us that the scheme will be finalised latest by first week of April, 1989 and that complete position will be placed before the Court at that stage"

5. The scheme known as Casual Labourers (Grant of Temporary Status in Regularisation) Scheme has been formulated and put into operation from October 1, 1989 and a copy thereof has been placed for our consideration. We find that the scheme is comprehensive and apart from provision for conferment of temporary status, it also specifies the benefits available on conferment of such status. Counsel for the respondent- Nigams have told us that the scheme will be given full effect and other benefits contemplated by the scheme shall be worked out. In these circumstances, no further specific direction is necessary in the two applications relating to the two Nigams of Bombay and Delhi except

calling upon the respondents to implement every term of the scheme at an early date.

6. The two remaining writ petitions relate to the Department of Posts. Though an assurance had been held out by the learned Additional Solicitor General that a separate scheme for the postal employees would be prepared and placed before the Court within a time frame, that has not been done. At the hearing, a note containing tentative proposals and a statement as to what has been done by way of improving the conditions of service have, however, been placed before the Court. The statement relating to improvements brought about indicates that after April, 1986, about seven thousand RTPs have been absorbed. Since the RTP category is no more expanding, only about 2,900 of them remain to be absorbed. We have been told by learned counsel for the Department that equal number of justified and supernumerary posts are being created and the Ministry's proposal is in the hands of the Ministry of Finance for approval and is expected to be finalised soon. This has to be done within a time frame and we direct the posts of both the categories to be created by the end of January, 1990, and the process of absorption to be completed by March 31, 1990. With such absorption made, the RTPs will become regular employees. All their claims would, thereafter, be regulated on the basis of entitlement in accordance with extant rules."

6. The above directions issued by the Supreme Court were given effect by the Central Government inasmuch as it framed Scheme dated 12.04.1991 described as the Casual Labour (Grant of Temporary Status in Regularization) Scheme, 1991 (hereinafter referred to as 'the Scheme'). Clause 1, 6, 7, 8, 10, 12, 15, 16 and 17 of the Scheme read as below:-

"1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.02 and who continuous to be currently employed and have rendered continuous service of at list one year During the yoarthoy must have been engaged for a period of 240 days (206 days in the case of officer observing five days weeks).

6. 50% of the service rendered under Temporary status would be granted for the purpose of retirement benefits after regularisation as a regular Group 'D' official.

7. Conferment of temporary status does not automatically imply that the casual labourers would be appointed as regular Group 'D' employees with any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees.

8. After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

10. Temporary status does not debar dispensing with the services of a casual labouror after following the duo procedure.

12. Casual labourers may be regularised in units other than recruiting units also, subject to availability of vacancies.

15. *The engagement of the casual labourers will continue to be on daily rates of pay on need basis.*

16. *The conferment of temporary status has no rotation to availability of sanctioned regular Group 'D' posts.*

17. *No recruitment from open market for Group 'D' post except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question."*

7. Thereafter, vide communication dated 14.06.1991 issued on behalf of the Government of India, Temporary Status was conferred amongst others on the private respondent. However, before the services of the private respondent could be regularised in terms of the Scheme, he attained the age of superannuation on 08.01.2010. Thus he never acquired status of a regular employee.

8. In the above fact background the claim made by the private respondent to be paid pension was rejected by the Union of India. That benefit arising under the CCS (Pension Rules, 1972) (hereinafter referred as 'the Rules') was opined to be applicable to regular Government Servants excluding casual and daily rated employees and persons paid from contingencies. Referring to Rule 2, Rule 3 (1) (q), Rule 13 and Rule 14 of the Rules it has been vehemently urged, neither by virtue of status conferred nor by virtue of Rules that contemplate beginning of qualifying service, the respondent ever became eligible to receive pensionary benefits.

9. At the same time, the claim for pension made by the private respondent is further opposed as not available on the strength of paragraph 154(a) of the Manual of Appointments and Allowances of Officers of the Indian Post and Telegraph Department (hereinafter referred to as 'the Manual'). That is described to be not enforceable. Administrative Instructions thus issued on 18.08.1969 could not override the Rules, that always enjoyed statutory force. The Administrative Instructions are described to be subservient and inferior to the Rules. Therefore, they are also described to be unenforceable in face of the Rules framed under Article 309 of the Constitution of India. Further, it has been submitted if paragraph 154(a) of the Manual were *per-se* enforceable in law, there never would have existed any need to frame the Scheme. No direction would have been required to be issued by the Supreme Court to frame the Scheme.

10. The Tribunal on its part has reasoned that the case of the private respondent was similar to that of Chandi Lal and Shyam Lal Shukla. Since relief granted to those persons by the Tribunal was maintained by this Court in **Chandi Lal (supra)** and **Shyam Lal Shukla (supra)** where-against no contrary order came to be passed by the Supreme Court, the Tribunal has found the private respondent entitled to the same relief.

11. Assailing the order of the Tribunal, Sri Ashish Kumar, who has led the submissions (with the Additional Solicitor General of India), has vehemently urged, the decision of the coordinate bench of this Court in **Chandi Lal (supra)** does not lay down any law. In that decision the coordinate bench declined to offer interference solely for reason of Chandi Lal having worked for many years. Thus judicial review claimed by the Union of India was declined without adjudicating the issue on merits. For ready reference the order passed by the coordinate bench in **Chandi Lal (supra)** is quoted below:-

“This is a writ petition against the order dated 2.9.2005 passed by Central Administrative Tribunal directing the petitioners to pay the post retiral benefits to the respondent no.1.

We have heard learned counsel for the petitioners and Sri L.M. Singh counsel for respondent no.1.

Learned counsel for the petitioners submitted that the respondent no.1 is not a regular employee. As such he is not entitled for the post retiral benefits. There seems to be substance in the submissions made by learned counsel for the petitioner. However, in view of the fact that the respondent no.1 has worked in the office of petitioner for a long period, we find no ground to interfere in the matter under Article 226 of the Constitution.

The writ petition is dismissed.”

12. As to the decision of **Shyam Lal Shukla (supra)**, learned counsel for the Union of India has submitted, the said decision does not lay down the correct law. He would submit, the coordinate bench completely erred in placing faith on the enforceability of paragraph 154(a) of the Manual. It totally escaped the attention of the coordinate bench that the said Administrative Instruction could not and in fact it did not enforce any law contrary to the Rules. At most, the said Administrative Instructions only expressed a policy decision of the Union of India to bring on regular establishment C P Chowkidar and some others. However, that policy decision was not enforceable in law, on its own. It was only

a policy decision that may have needed the body of the Rules to be made enforceable i.e. before any substantive rights may have vested in the respondent.

13. Temporary Status was granted under the Scheme by a conscious application of mind. That first step was taken vide communication dated 14.06.1991. Since no further order of regularisation in service came to be passed in favour of the respondent till he attained the age of superannuation, no further substantive right ever arose in favour of the said respondent. Therefore, he could not claim absorption on the regular establishment in the spirit of the policy decision contained in paragraph 154(a) of the Manual. In short, it has been submitted, the coordinate bench erred in reading the Manual/Administrative Instructions as part of the Rule. In view of conflict between the two, only the Rule would prevail.

14. According to Sri Ashish Kumar, the decision of the another coordinate bench of this court in **Union of India and others Vs. Krishna Pal Singh; 2018:AHC:7150-DB**, also does not lay down the correct law. In the first place, the dismissal of Special Leave Petition, without assigning any reason, neither gave rise to merger nor any statement of law was made by the Supreme Court under Article 141 of the Constitution of India.

15. It has been vehemently urged, the coordinate bench has misapplied the ratio of the decision of the Supreme Court in **Kunhayammed and others Vs. State of Kerela and another (2000) 6 SCC 359**. In that regard, strong reliance has been placed on the ratio of that decision of the Supreme Court, as contained in paragraph 40 of the report:-

“40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the Court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the apex court of the country and so on. The expression often employed by this Court while disposing of such petitions are “heard and dismissed”, “dismissed”, “dismissed as barred by time” and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioners prayer seeking leave to file an appeal and having formed an opinion may say “dismissed on merits”. Such an order may be passed even ex-parte, that is, in the absence of the opposite party. In any case, the

dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 of the C.P.C. or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 of the C.P.C. act as guidelines) are not necessarily the same on which this court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.”

16. As to the substantive right to pension claim, it has been submitted, the same would best vest in a regular Government Servant. Relying on the ratio in **State of Uttaranchal and Ors. Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad (2007) 12 SCC 483**, it has been submitted in face of Rules framed under Article 309 of the Constitution of India, no right to be regularised in service arose to the respondent in exercise of the executive power of the Government of India under Article 162 of the Constitution of India. Relying on **Union of India and another Vs. K. N. Shivadas and Ors. (1997) 7 SCC 30**, it has been urged, the same Scheme was examined by the Supreme Court though in the context of Reserve Trained Pool under the Post and Telegraph Department. Therein it was clearly observed, there is no automatic regularisation in service. Therefore, it has been submitted that the decisions of the coordinate bench of this Court in **Chandi Lal (supra)** and **Shyam Lal Shukla (supra)** are per incuriam, being decisions rendered in ignorance of binding legal effect caused by the Rules. To that extent the Tribunal has erred in applying/ following those decisions. Since substantive right of regularisation in service

never vested in the respondent, consequentially, he could not claim further substantive right to receive pension. The respondent never became eligible to claim that right.

17. Last it has been submitted, though it is true, barring the case of **Ranjeet Mishra Vs. Union of India and Ors.; 2020: AHC: 63242**, numerous coordinate bench decisions exist in favour of the respondent and though it is further true that none of those decisions were upturned or reversed by the Supreme Court, on occasions the Supreme Court dismissed the Special Leave Petitions leaving the question of law open. Relying on the principle laid down by the **Kunhayammed (supra)**, it has been submitted, it remains open to the Union of India to raise that issue in the present case.

18. Responding to the above submission, Sri S. K. Pandey, learned counsel for private respondent has submitted, in the first place the present respondent had also worked for 32 years, 5 months and 29 days, continuously, for the establishment of Union of India, before attaining the age of superannuation. Also, he worked for not less than 18 years after acquiring Temporary Status under the Scheme. The purpose of the Scheme was to regularise C P Chowkidars in a graded manner, in order of their inter se seniority. There is no doubt that the spirit of the Scheme was to ensure that all eligible C P Chowkidars such as the present respondent be regularised in service. It is so because in the first place, the Scheme provided for grant of Temporary Status; thereafter benefits of Group 'D' employees after completion of three years of service as Temporary Status employee and, thereafter regularisation in service as and when vacancies arise and in the second the Scheme placed a complete embargo on fresh appointments till regularisation of all beneficiaries under the Scheme.

19. Eighteen years is a long time and more than reasonable time availed by the Union of India to regularise the service of the respondent after he had acquired Temporary Status. The spirit of the Scheme being to regularise such employees, it is wholly unbelievable that no vacancy arose at the establishment such as the Postal Department where-against the respondent may have been regularised during that long period. In any case, the Union of India did not prove beyond

doubt that no such vacancy ever arose. In such circumstance, it has been submitted that there is no difference of material fact or circumstance in the case of present respondent and that of **Chandi Lal (supra)**. The respondent having worked for more than 30 years for the Union of India and having not worked for any other establishment or employer during his productive years in light, it would be too harsh to deprive him parity with **Chandi Lal (supra)**.

20. Second, it has been emphasised, merely because a single petition may not have been filed by all similarly situated persons, and further merely because all exactly similar petitions involving exactly similar facts and rights have not been decided by the Tribunal by a common order, it may not allow the Union of India to invidiously discriminate between exactly similarly situated employees of the Union of India. If such discrimination is practised, it would itself cause travesty of justice where similarly situated citizens would stand discriminated solely on the basis of different dates of decision by the Tribunal. In fact that would be a discrimination attributable to the act of this Court. Here reliance has been placed on a recent decision of a coordinate bench of this Court in **State of U.P. and 3 Ors. Vs. Mahesh Narayan Mishra and 89 others; 2023: AHC:155290-DB**.

21. To emphasise the above point, Sri S. K. Pandey, learned counsel for private respondent has amongst others, referred to the following earlier orders of this Court all granting relief in terms of **Chandi Lal (supra)**. Details of the same are noted below:-

Sr. Nos	Name of CP Chaukidars	Bench Constitution
1.	Chandi Lal	Mr. Yatindra Singh and Mr. Ran Vijai Singh, JJ.
2.	Shyam Lal Shukla	Mr. Vineet Saran and Mr. P.K.S. Baghel, JJ.
3.	Ram Das	Mr. Devi Prasad Singh and Mr. Zaki Ullah Khan, JJ.
4.	Haider Hussain	Mr. Dilip Gupta and Mr. Shri Narayan Shukla, JJ.
5.	Krishna Pal Singh	Mr. Amreshwar Pratap Sahi and Mr. Rajeev Misra, JJ.
6.	Hari Ram	Mr. Sudhir Agarwal and Mr. Ifaqt Ali Khan, JJ.
7.	Naresh Chandra Prajapati	Mr. B. Amit Sthalekar and Mr. Jayant Banerji, JJ.
8.	Ganga Deen	Mr. Shashi Kant Gupta and Mrs. Vijay Lakshmi, JJ.
9.	Shree Niwas	Ms. Bharti Sapru and Mr. Saurabh Shyam Shamsheeryi, JJ.

22. Thus it has been submitted, over a long period of 16 years, by way of consistent view of this Court expressed by not less than nine author judges all speaking for coordinate benches of this Court, the reasoning laid down in the first decision in **Chandi Lal (supra)** and **Shyam Lal Shukla (supra)**, has been followed. Barring the aberration in **Ranjeet Mishra (supra)** there is no other contrary decision delivered by this Court, over two decades.

23. All the above decisions passed in favour of the employees have attained finality inasmuch as the successive Special Leave Petitions filed by the Union of India against each such judgment were dismissed. The Supreme Court did not grant leave to the Union of India in a single case. Merely because it may have left the question open, it would cause no legal effect in the present facts. Here, the respondent being identically situated to Chandi Lal and Shyam Lal Shukla and all other employees in whose favour different coordinate benches of this Court have ruled, no different conclusion may be drawn.

24. Having heard learned counsel for the parties and having perused the records, we may first note that there is no fact difference brought to our notice- in the facts of the present case and those involved in Chandi Lal or Shyam Lal Shukla. Neither the private respondent nor Chandi Lal nor Shyam Lal Shukla nor any other employee, who has been granted pensionary benefits (as noted above), was ever regularised under the Scheme. All such persons retired from service as a Temporary Status employee. All such persons continuously worked for the Postal Department for the entire length of their productive years.

25. In view of that exact fact similarity, the first decision of the Court passed in the case of Chandi Lal assumes importance. Though it is true that the coordinate bench did not examine the issue on merits and only noted that there was some strength in the submission advanced on behalf of the Union of India, it declined to exercise judicial review purely for reason of length of service rendered by the private respondent (in that case). Perusal of the order passed by the Tribunal in the case of **Chandi Lal (supra)** (which has also been brought on record), reveals that the Tribunal treated Chandi Lal as regularised on a deemed basis. It is also true, Chandi Lal acquired Temporary Status on 29.11.1989 i.e.

barely two years prior to the private respondent. Here it may be noted that according to Sri S. K. Pandey, learned counsel for the private respondent the private respondent was also regularised in the year 1989. Even if the private respondent was regularised two years after Chandi Lal that would not make material difference. It is undisputed to the petitioner-Union of India that the respondent remained continuously engaged from 1978 to 2010.

26. A citizen having been made to work for so long, in the hope of regularisation under the statutory Scheme and having waited for regularisation for not less than 18 years after he acquired Temporary Status may not be discriminated against for reason of two years delay in grant of Temporary Status as compared to Chandi Lal. Here it may also be noted that Chandi Lal attained the age of superannuation in the year 2003. Thus he rendered service on Temporary Status, for a duration of 14 years, whereas the respondent here rendered such service for a period of 19 years i.e. more than Chandi Lal.

27. That primary view taken by the coordinate bench in Chandi Lal has permeated through various decisions made by different coordinate benches over a long period of 16 years. While reasons have been added in the subsequent decisions primarily **Shyam Lal Shukla (supra)** and **Krishna Pal Singh (supra)** which reasoning has been strongly doubted by Sri Ashish Kumar, learned counsel for the petitioner, we are not inclined to rule on the correctness of the same as it could not be denied that the primary consideration that arose with the first coordinate bench that dealt with the matter in **Chandi Lal (supra)**, has survived. It equally applies to the present facts. It resonates well with us. Once the coordinate bench that first dealt with the matter felt disinclined to offer judicial review with respect to the order of the Tribunal for reason of length of service rendered by Chandi Lal, we remain equally disinclined to offer any consideration in exercise of our jurisdiction of judicial review, in the case of similarly situated private respondent.

28. To offer such consideration may remain academic, if we reach the same conclusion. On the other hand, if we differ, it may cause discrimination to be practised amongst citizens, who are undisputedly exactly similarly situated. In

State of U.P. and 3 Ors. Vs. Shiv Jag Sharma and 9 others; 2023:AHC:155290- DB, similar issue had arisen for consideration. Taking note of the decision of the Supreme Court specially in **Kunhayammed and Ors. (supra); Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association Vs. National Textile Corporation Limited 2021 SCC OnLine SC 972** and, **State of U.P. and others Vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347**, it was observed as below:-

29. We thus prefer to look through the filter of principle to be applied to the undisputed rather, admitted facts. To the extent, we find no fault in exactly similar citizens being treated similarly (on the force of an earlier division bench decision of this Court, that was not upturned in the challenge raised to it before the Supreme Court), at the cost of the respondent-State, that is otherwise sworn to pursue the constitutional ideology of a welfarism. The beneficiaries of that equality being affirmed through the agency of equitable relief granted, being individual workmen who had been engaged by the State Government, we find no error of principle applied by the learned single judge, in granting them the relief, following the earlier decision of the coordinate bench in Gorakh Nath Pandey (supra).

30. Thus, in the present facts, we decline to examine if an industrial workman (appointed with that status by the State Government), would hold the status equivalent to that of a Government Servant or a Civil Servant. We are inclined to affirm the decision of the learned single judge that is found based on the decision of the co-ordinate Bench in Gorakh Nath Pandey (supra). In the peculiar facts of the present case namely noted above we find no error of principle applied by the learned single judge, in allowing the writ petition in terms of Gorakh Nath Pandey (supra).

31. As noted above, that conscious and beneficial decision was taken by the State Government. It is not the case of the State Government that the said Executive Order was in conflict with any statutory or other law, that Executive Order created the force of law, to the extent the State Government may not be permitted to either ignore it or to exercise whims or to pick and choose between exactly similarly situated persons – to grant its benefit to some to deny it to others. To that extent the Executive Order remains enforceable, and in any case lays down an administrative principle that may be applied universally, to all persons falling within its ambit, without any element of arbitrariness.

32. Coming to the order of the Supreme Court, we find, no exaggerated intent may be drawn from the use of the phraseology in that order, either to the words "peculiar facts in this case" or "leaving the question of law open" or "impugned judgement may not be treated as precedent". It is settled law that an order of the Supreme Court dismissing Special Leave Petition does not itself lay down any law as was observed by the Supreme Court in V.M. Salgaocar & Bros. (P) Ltd. v. CIT, (2000) 5 SCC 373, observed as under:

“8. Different considerations apply when a special leave petition under Article 136 of the Constitution is simply dismissed by saying “dismissed” and an appeal provided under Article 133 is dismissed also with the words “the appeal is dismissed”. In the former case it has been laid by this Court that when a special leave petition is dismissed this Court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the Court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article

136 of the Constitution. That certainly could not be so when an appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of Article 133. This doctrine of merger does not apply in the case of dismissal of a special leave petition under Article 136. When an appeal is dismissed the order of the High Court is merged with that of the Supreme Court. We quote the following paragraph from the judgment of this Court in the case of *Supreme Court Employees' Welfare Assn. v. Union of India* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] : (SCC pp. 206-07, para 22)

“22. It has been already noticed that the special leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well-settled principle of law that when a special leave petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In *Indian Oil Corpn. Ltd. v. State of Bihar* [(1986) 4 SCC 146 : 1986 SCC (L&S) 740] it has been held by this Court that the dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted. In *Union of India v. All India Services Pensioners' Assn.* [(1988) 2 SCC 580 : 1988 SCC (L&S) 651 : (1988) 7 ATC 449] this Court has given reasons for dismissing the special leave petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a special leave petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution.”

33. Then, in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, the Supreme Court further explained the effect of dismissal of a Special Leave to Appeal petition, thus:

27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be

binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are — “heard and dismissed”, “dismissed”, “dismissed as barred by time” and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say “dismissed on merits”. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or

law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

44. To sum up, our conclusions are:

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(emphasis supplied)

34. Insofar as no reason has been ascribed in the order of the Supreme Court dated 1.5.2018, there is no merger and no law declared under Article 141 of the Constitution of India. Then, the further observation of the Supreme Court, that the law declared by the coordinate bench of this Court, would not have precedential value, only amounts to leaving this Court completely free to take a contrary view, in any other case, if facts so justify. At the same time, in absence of any reason whatsoever, given by the Supreme Court, while deciding that Special Leave to Appeal, it did not lay down any principle of law to be applied to such other case. Therefore, the learned single judge may not have erred in principle, in following the earlier coordinate bench decision of this Court, in Gorakh Nath Pandey (supra).

35. Therefore, to us, the order of the Supreme Court maintained the fact conclusions reached by the coordinate bench leading to the relief granted by it, in those facts. To that extent, the order of the Supreme Court is not an order negating or disapproving the fact reasoning given by the coordinate bench. Rather, it grants finality to that decision. There is no doubt that the said decision of the coordinate bench has attained finality. No review application or other proceedings was instituted by the State before the Supreme Court, or this Court, in that matter.

36. As to the peculiar facts in which the Supreme Court passed the above order, we are inclined to accept the submission of the learned counsel for the petitioners-respondents that that exact peculiarity of facts exists and obtains in the present set of proceedings, as well. It is not in dispute that the petitioners-respondents were initially engaged as workmen by the State Government to work at its industrial establishment namely - Churk and Dala Cement Factories. It is also not in dispute that the petitioners-respondents continued to work in that capacity for a period of 10 years or more, allowing them to describe themselves as persons who had rendered qualifying service for the purposes of eligibility to claim pension. It is also not in dispute that the petitioners-respondents have not claimed any pension for any length of service rendered by them as employees of the U.P. Cement Corporation.

Those exact facts existed in the case of Gorakh Nath Pandey (supra). There is not the slightest difference in essential facts in these two sets of proceedings.

37. It is on those facts that the decision of the learned single judge arose in the first set of cases, namely, Gorakh Nath Pandey (supra), that was confirmed by the coordinate bench of this Court. Unless some distinct fact feature was shown to exist, the writ Court which remains a Court of equity may not reach a different fact conclusion and thus lead itself to treat equals, unequally. In Azam Jahi Mill Workers Association (supra), a group of workers of the said mill were granted voluntary retirement. Of that group, one set of workers vacated their official quarters earlier, voluntarily. Another set of workers continued in occupation. Later, to secure the possession of the premises thus illegally occupied by its retired employees, the management floated a scheme to provide for allotment of alternative land, to secure the vacant possession of its premises. The first set of retired employees who had voluntarily vacated the premises were denied that benefit. In that context, proceedings arose, and the Supreme Court made the following pertinent observations in that regard:

"9.3 The concept of equality before the law and equal protection of the laws emerges from the fundamental right expressed in Article 14 of the Constitution. Equality is a definite concept.

The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is therefore to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear in just and rational relation to the object sought to be achieved.

In a given case Article 14 of the Constitution may permit a valid classification. However, a classification to be followed must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another must have a reasonable nexus to the objects sought to be achieved. In the present case allotment of 200 Sq. Yards free of cost to 134 employees was to avoid undue hardship to the ex-employees and as a welfare measure. As observed hereinabove those 318 ex-employees who are denied the benefit of allotment of 200 Sq. Yards of plots free of cost are similarly placed persons with that of 134 employees who are allotted 200 Sq. Yards plots free of cost. There is no rationale justification in providing differential treatment to one class of ex-employees similarly placed with another class of ex-employees who are allotted the plots."

38. The decisions referred to and relied upon by the learned Additional Advocate General ruling in favour of principle, law would prevail over simple equity, are not apposite to the present facts. That principle may have been applied, if there did not exist any Government Order dated 18.04.1972 and 01.07.1989 and further, if conscious decision had not been made by the State Government itself on 02.08.1985, to grant pensionary benefits to all its erstwhile employees who had been appointed at the Cement Factories, Dala and Churk, without specifically excluding the workmen. More critically, that principle in law may have been applied if this Court had not found Gorakh Nath Pandey and other exactly similarly situated persons entitled to the relief of pensionary benefits. That equalization with civil/government servants, granted to industrial workmen of the cement factories of the State Government at Dala and Churk, even if granted on the peculiar facts found in that case, strongly commends that the learned single judge did not err in granting that relief to the petitioners-respondents, on the own strength and force of equity.

39. Having failed to establish any distinction before the co-ordinate bench, in *Gorakh Nath Pandey (surpa)*, and that decision having not been upturned by the Supreme Court, we do not find this a fit case to interfere on the submission advanced by the learned Additional Advocate General that the basic difference in status between a civil servant and an industrial workman, must always maintain. The respondent-appellant/State may not be permitted to re-agitate that issue, in these proceedings. That exercise, if permitted, may only lead to absolute equals being treated unequally by the writ Court. Thus, we do not find the equities being pitted against the law; rather, we find, in the present facts, the equities are running parallel to the result that arose in law i.e., upon dismissal of the Special Leave Petition in *Gorakh Nath Pandey (supra)*.

40. Since the equality claimed was to a final order of a coordinate bench that has attained finality, it is that 'law' that the present set of petitioners-appellants sought benefit of, on an equitable principle. It has been granted by the learned single judge in exercise of the extraordinary discretionary jurisdiction of the Court under Article 226 of the Constitution of India.

41. In the context of service jurisprudence, the normal rule remains i.e. when a particular set of employees is given relief by the Court, all other identically situated persons are to be treated alike by extending that benefit. Not extending that benefit would itself amount to discrimination in violation of Article 14 of the Constitution of India. That principle was recognized in *State of U.P. and others Vs. Arvind Kumar Srivastava and others* (2015) 1 SCC 347. However, the exception to that rule arising from gross delay and laches was also recognized and applied in that decision. Since there were unexplained delay and laches, such relief granted by the Tribunal as was confirmed by the High Court, was reversed by the High Court. However, the discussion as to the rule and its exception insofar as it is relevant case, contained in paragraph-22, is quoted hereinbelow :

“22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (1997) 6 SCC 721 : 1998 SCC (L&S) 226. On the other hand, if the judgment of the Court was in

personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of 27 the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

29. As noted above, in the present case, Special Leave to Appeal filed in the case of **Chandi Lal (supra)**, was dismissed. Same fate was met by all other Special Leave Petitions filed by the Union arising from subsequent judgments passed by the subsequent coordinate benches, taking the same view over a long period of time. In not one case, leave to appeal was granted. It is also undisputed to the petitioner-Union of India that the facts of the present case are exactly identical to that of **Chandi Lal (supra)**. Referring to the order of **Chandi Lal (supra)**, it has been stated that only Temporary Status had been granted to Chandi Lal before he attained the age of superannuation. Neither any order of regularisation was passed in his favour nor consequence of deemed regularisation arose in his favour. Same facts obtained in all other cases noted in paragraph-21 above. Still other cases were also decided similarly, by coordinate benches of this Court. Barring the aberration in **Ranjit Mishra (supra)**, in no other case grant of pensionary benefits to similarly situated persons, was ever denied. Therefore, we are persuaded to accept that the consistent view of this Court has remained that Temporary Status employee who had served as a CP Chowkidar from before introduction of the Scheme till he attained the age of superannuation, over a long period of time i.e. for his entire productive phase of human life, he would remain entitled to pensionary benefits as otherwise, it is difficult to believe that no vacancy ever arose over a long period of 18 years since grant of Temporary Status to the private respondent on a Group-D post as may have allowed for regularisation of the said respondent on such post in view of dual stipulations contained in the scheme i.e. a right to be regularised and embargo on fresh recruitment till all Temporary Status employees stood regularised. In any case, petitioner is not seen to have proven any fact to the contrary i.e. no vacancy arose over such long duration of 18 years. That being a special fact known to the petitioner-Union of India, the burden to prove the same remained undischarged. Accordingly, it has to be assumed that vacancies would have arisen on Group-D

post during period of 18 years when respondent continued to serve as Temporary Status employee. However, his services were not regularised, for reasons best known to the petitioner-Union of India.

30. In **Sundarjas Kanyalal Bhatia & Ors. Vs. Collector, Thane, Maharashtra; (1989) 3 SCC 396**, the Supreme Court observed that the judicial process should remain tuned to make the law more productive. Though not by way of *ratio decidendi*, the following passage of the said decision makes a pertinent point :

"21. Chief Justice Pathak, in a recent decision stressed the need for a clear and consistent enunciation of legal principle in the decisions of a court. Speaking for the Constitution Bench (Union of India v. Raghubir Singh [(1989) 2 SCC 754]) learned Chief Justice said: (SCC p. 766, para 9)

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

23. Judge Learned Hand has referred to the tendency of some judges "who win the game by sweeping all the chessmen off the table" [The Spirit of Liberty, Alfred A. Knopf, New York, p. 131 (1953)] . This is indeed to be deprecated. It is needless to state that the judgment of superior courts and Tribunals must be written only after deep travail and positive vein. One should never let a decision so until he is absolutely sure it is right. The law must be made clear, certain and consistent. But certitude is not the test of certainty and consistency does not mean that there should be no word of new content. The principle of law may develop side by side with new content but not with inconsistencies. There could be waxing and waning the principle depending upon the pragmatic needs and moral yearnings. Such development of law particularly, is inevitable in our developing country. In Raghubir Singh case [(1989) 2 SCC 754] , learned Chief Justice Pathak had this to say: (SCC p. 767, para 11)

"Legal compulsions cannot be limited by existing legal propositions, because, there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted value of present time and place, relevant to the dispensing of justice within the new parameters."

25. Holmes tells us [The Common Law, Oliver Wendell Holmes, p. 36 (1881)] :

"The truth is, that the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at the end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to grow."

26. Apart from that the judges with profound responsibility could ill-afford to take stolid satisfaction of a single postulate past or present in any case. We think, it was Cicero who said about someone: "He saw life clearly and he saw it whole". The Judges have to have a little bit of that in every case while construing and applying the law."

31. Incorrect enunciation of the law may not create binding precedent and any wrong decision may require to be referred to a larger bench to straighten crease in law arising from wrong enunciation of the law. At the same time, there does exist a rule in favour of consistency of judicial pronouncement. Though in the context of a bail application by a co-accused, the following pertinent observation was made by a coordinate bench of this Court in **Nanha Vs. State of U.P., 1992 SCC Online All 871** :

'49. In the light of the discussion made in the preceding paragraphs, the view expressed by K.K. Chaubey, J. does not hold ground. Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all it is settled law that judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths of despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the public. Hence for the sake of uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same footing. If the contrary course is adopted the public will lose confidence in the administration of justice."

32. We however do note that the submission being advanced by Sri Ashish Kumar as to whether a statutory framed rule would prevail over Administrative Instructions and whether regularisation could ever arise in absence of specific order, would remain open to be contested in a case different on facts i.e. not involving C P Chowkidar.

33. As to the further submission advanced by Sri Ashish Kumar, learned counsel for the petitioner that in **Krishna Pal Singh (supra)** the coordinate bench erred in reading the ratio of **Kunhayammed (supra)**, we find ourselves in complete agreement with the submission so advanced. Since Leave to Appeal was never granted by the Supreme Court with respect to any earlier decisions of this Court, and those Special Leave Petitions were dismissed *in limine*, there never arose an occasion where any order passed by this Court may have merged in the order passed by the Supreme Court. In absence of any proceeding of Civil Appeal having arisen before the Supreme Court, the stage to apply the principle of merger never existed. Also, we are in agreement, since no reason was ever

ascribed by the Supreme Court to dismiss any Special Leave Petition, no principle of law came to be enunciated by the Supreme Court as may be applied by way of law laid down under Article 141 of the Constitution of India. Yet, finality was attained in each of those proceedings, upon dismissal of special leave petition filed by Union of India.

34. Since **Kunhayammed (supra)** is the binding law declared by the Supreme Court, the different view expressed by the coordinate bench in **Krishna Pal Singh (supra)**, does not commend reference to a larger bench. The principle of law laid down therein would remain unenforceable in face of **Kunhayammed (supra)**.

35. Thus, we are not inclined to offer any interference under Article 226 of the Constitution of India on the principle of consistency that must be maintained in the interest of predictability and faith in justice dispensation system. Adopting the view taken by this Court in **Chandi Lal (supra)** we refuse to exercise discretion for reason of length of engagement of the private respondent. That view is also seen to have been consistently applied in the State of Uttar Pradesh over a long period of 16 years. We consider that period of time and the finality attained by all decisions of this Court following **Chandi Lal (supra)**, to be decisive. We cannot look to differentiate or test the empirical correctness of the decision in **Chandi Lal (supra)** or **Shyam Lal Shukla (supra)** or **Krishan Pal Singh (supra)**. To do that would be to bring uncertainty and in judicial decision making and to unsettle the adjudication already made, which has also attained finality in the case of exactly similarly situated persons.

36. In exercise of powers of judicial review, this Court does not have any positive powers like those vested in the Supreme Court - to pass any order to do complete justice. However, it is a well settled principle - jurisdiction under Article 226 of the Constitution is both extraordinary and discretionary besides being equitable. It may not be readily invoked by a litigant, and it may not be mechanically exercised by the Court, at every illegality shown to exist. To that extent, it may be a part reflection of the spirit of Article 142 of the Constitution of

India, commending to this Court to go slow where its intervention may cause more injustice than curing it.

37. We are also mindful of the fact that no such exercise is required to be made in the present facts as the respondent and others are individual citizens, pitted against the almighty State that too none other than the Union of India. A citizen who has given all his productive life to Union of India, may not be outwitted on legal niceties and procedural technicalities at the behest of the Union of India. The respondent has no option available to survive in life or to do any thing other than what he did for more than 30 years i.e. to serve the Union of India. His productive years are lost. Accordingly, interference is declined. Writ petition is accordingly **dismissed**. No order as to costs.

38. Let all pensionary dues be computed and paid out to the respondent within next three months, in any case not later than 31.03.2024, failing which the same may attract interest @ 6 % per annum.

Order Date :- 1.12.2023

Abhishek Singh

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)