

**High Court of Judicature at Allahabad
Lucknow**

Neutral Citation No. - 2024:AHC-LKO:84232-DB

Court No. - 1

1. **Case :-** WRIT - A No. - 11709 of 2024
Petitioner :- Union Of India Thru. Secy. Ministry Post Telecommunication Govt. New Delhi And 4 Others
Respondent :- Nebboo Lal
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Rajendra Prasad Shukla
2. **Case :-** WRIT - A No. - 11712 of 2024
Petitioner :- U.O.I Thru. The Secy, Ministry Of Post And Telegraph, Ministry Of Telecommunications New Delhi
Respondent :- Jai Shanker Prasad
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Rajendra Prasad Shukla
3. **Case :-** WRIT - A No. - 4401 of 2023
Petitioner :- Union Of India Thru. Secy. Ministry Of Communication And It , Deptt. Of Posts, New Delhi And Others
Respondent :- Om Prakash Shukla
Counsel for Petitioner :- Varun Pandey, Sr. Advocate
Counsel for Respondent :- Suresh Kumar Upadhyay
4. **Case :-** WRIT - A No. - 4471 of 2023
Petitioner :- Union Of India Thru. The Secy. , Ministry Of Communication Deptt. New Delhi And Others
Respondent :- Balram Maurya
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Ajay Pratap Singh
5. **Case :-** WRIT - A No. - 4484 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Posts Govt. Of India, New Delhi And Others
Respondent :- Sheetla Prasad Shukla And Another
Counsel for Petitioner :- Varun Pandey, Sr. Advocate
Counsel for Respondent :- Prashant Kumar Singh, Anurudh Kumar Singh
6. **Case :-** WRIT - A No. - 4485 of 2023
Petitioner :- Union Of India Thru. Secy. Communication Deptt. Of Posts Govt. Of India , New Delhi And Others
Respondent :- Smt. Pushp Lata Srivastava
Counsel for Petitioner :- Varun Pandey, Sr. Advocate

7. **Case :-** WRIT - A No. - 4811 of 2023
Petitioner :- Union Of India Thru. Secy. Ministry
Communication Deptt. Of Posts Govt. India, New Delhi
And Others
Respondent :- Ram Prasad
Counsel for Petitioner :- Varun Pandey
8. **Case :-** WRIT - A No. - 4816 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Posts, Govt.
India , New Delhi And Others
Respondent :- Raj Pati Pal (Dead) Substituted By Draupadi
And Another
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Himanshu Vaish
9. **Case :-** WRIT - A No. - 4820 of 2023
Petitioner :- Union Of India Thru. The Secy. Ministry Of
Communication Deptt. Of Post , New Delhi And Others
Respondent :- Smt. Ram Kali
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
10. **Case :-** WRIT - A No. - 4821 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Posts, New
Delhi And Others
Respondent :- Smt. Shanti Devi
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
11. **Case :-** WRIT - A No. - 4822 of 2023
Petitioner :- Union Of India Thru. Chief Post Master
General U.P. Circle, Lucknow And Another
Respondent :- Dukh Ram
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Praveen Kumar
12. **Case :-** WRIT - A No. - 4823 of 2023
Petitioner :- Union Of India Thru. Chief Post Master
General U.P. Circle Lko And Another
Respondent :- Jagdish Prasad
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Praveen Kumar
13. **Case :-** WRIT - A No. - 4824 of 2023
Petitioner :- Union Of India Thru. The Secy. Ministry Of
Communication Deptt. Of Posts, New Delhi And Others
Respondent :- Smt. Phoolkala
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Dharmendra Kumar
Awasthi,Himanshu Vaish

14. **Case :-** WRIT - A No. - 4825 of 2023
Petitioner :- Union Of India Thru. Chief Post Master General U.P. Circle, Lucknow And Another
Respondent :- Deo Narayan Yadav
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Praveen Kumar
15. **Case :-** WRIT - A No. - 4827 of 2023
Petitioner :- Union Of India Thru. The Secy. Ministry Of Communication, Deptt. Of Post, New Delhi And Others
Respondent :- Sheo Balak
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Dharmendra Kumar Awasthi,Himanshu Vaish
16. **Case :-** WRIT - A No. - 4829 of 2023
Petitioner :- Union Of India Thru. The Secy. Ministry Of Communication Deptt. Of Posts, New Delhi And Others
Respondent :- Smt. Adab Kumari
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
17. **Case :-** WRIT - A No. - 4830 of 2023
Petitioner :- Union Of India Thru. Secy. Ministry Of Communication, Deptt. Of Posts, New Delhi And Others
Respondent :- Buddhi Prakash Srivastava (Deceased) Substituted By Smt. Geeta And Others
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Dharmendra Kumar Awasthi,Himanshu Vaish
18. **Case :-** WRIT - A No. - 4835 of 2023
Petitioner :- Union Of India Thru. Chief Posts Master General U.P. Lko. And Others
Respondent :- Shew Mohan Pandey
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Deepak Shukla
19. **Case :-** WRIT - A No. - 4837 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Posts , New Delhi And Others
Respondent :- Paras Nath Mishra
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Praveen Kumar
20. **Case :-** WRIT - A No. - 4851 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Posts, New Delhi And Others
Respondent :- Sudhakar Pandey

Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Niranjana Singh

21. **Case :-** WRIT - A No. - 4853 of 2023
Petitioner :- Union Of India Thru. Ministry Of Communication Deptt. Posts, New Delhi And Others
Respondent :- Ram Jag
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Awadhesh Kumar Tiwari
22. **Case :-** WRIT - A No. - 4865 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Posts , New Delhi And Others
Respondent :- Jagdeo Prasad
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
23. **Case :-** WRIT - A No. - 4904 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Posts New Delhi And 3 Others
Respondent :- Shyam Raj Maurya
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Himanshu Vaish
24. **Case :-** WRIT - A No. - 4957 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Post New Delhi And 3 Others
Respondent :- Magdum Prasad Gupta
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Himanshu Vaish
25. **Case :-** WRIT - A No. - 5052 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt Of Post And Tele. Ministry Of Telecommunication And 4 Others
Respondent :- Om Prakash Shukla
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Saloni Jaiswal,Rajendra Prasad Shukla
26. **Case :-** WRIT - A No. - 5054 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt Of Post And Tele. Ministry Of Telecommunication And 4 Others
Respondent :- Sita Ram
Counsel for Petitioner :- Varun Pandey,Sr. Advocate
Counsel for Respondent :- Saloni Jaiswal,Rajendra Prasad Shukla
27. **Case :-** WRIT - A No. - 5057 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Post And Telegraph, Ministry Of Telecommunication And 4 Others
Respondent :- Rajendra Prasad

Counsel for Petitioner :- Varun Pandey, Sr. Advocate
Counsel for Respondent :- Saloni Jaiswal, Rajendra Prasad Shukla

28. **Case :-** WRIT - A No. - 5060 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Post New Delhi And 4 Others
Respondent :- Udai Chand
Counsel for Petitioner :- Varun Pandey, Sr. Advocate
Counsel for Respondent :- Girish Kumar
29. **Case :-** WRIT - A No. - 5063 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Of Post And Telegraph Ministry Of Telecommunication And 3 Others
Respondent :- Sita Ram
Counsel for Petitioner :- Varun Pandey, Sr. Advocate
Counsel for Respondent :- Saloni Jaiswal, Rajendra Prasad Shukla
30. **Case :-** WRIT - A No. - 8604 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Posts , New Delhi And Others
Respondent :- Smt. Ranjana Srivastava And Another
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Chandra Mohan, D.P. Dutt Tiwari
31. **Case :-** WRIT - A No. - 8635 of 2023
Petitioner :- Union Of India Thru. Secy. Deptt. Posts, New Delhi And Others
Respondent :- Pradeep Kumar Srivastava
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Girish Kumar
32. **Case :-** WRIT - A No. - 8941 of 2023
Petitioner :- Union Of India Thru. Secy. Ministry Of Communication Deptt. Of Posts , New Delhi And Others
Respondent :- Smt. Lilawati
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Rakesh Kumar Modanwal
33. **Case :-** WRIT - A No. - 2851 of 2024
Petitioner :- Union Of India Thru. Secy. Ministry Of Post Telecommunication And It Deptt. Post, New Delhi And Others
Respondent :- Mitthu Lal
Counsel for Petitioner :- Varun Pandey
Counsel for Respondent :- Rajendra Prasad Shukla

AND**34 Case :-** WRIT - A No. - 4924 of 2024**Petitioner :-** Union Of India Thru. The Secy. Ministry Of
Post , New Delhi And Others**Respondent :-** Urmila Devi**Counsel for Petitioner :-** Varun Pandey**Hon'ble Attau Rahman Masoodi,J.****Hon'ble Subhash Vidyarthi,J.**

(1) All these writ petitions have been filed by the petitioners-Union of India and its officers challenging the similar orders passed in various original applications filed by the respondents herein before the Central Administrative Tribunal, Lucknow Bench, Lucknow (here-in-after referred to as '**Tribunal**'). Original Application Nos.332/ 00414/ 2019, 332/ 00234/ 2021, 332/ 00292/ 2022, 332/ 00443/ 2019, 332/ 00444/ 2019, 332/ 00107/ 2020, 332/ 00106/ 2020, 332/ 00273/ 2018, 332/ 00174/ 2021, 332/ 00173/ 2020, 332/ 00015/ 2019, 332/ 00016/ 2019, 332/ 00298/ 2020, 332/ 00534/ 2022, 332/ 00539/ 2022, 332/ 00217/ 2016, 332/ 00247/ 2020 and 332/ 00200/ 2016 have been decided by means of a common judgment and order dated 06.12.2022 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow which has been challenged through the aforesaid bunch of the writ petitions. Original Application No. 332/00024/2023 has been decided by means of a separate order dated 04.07.2024 in terms of the order dated 06.12.2022 passed in O. A. No. 332/00414/2019 and other connected matters, therefore, all these writ petitions are being decided by this common judgment and order.

(2) All the aforesaid Original Applications were filed seeking pensionary benefits as per the provisions contained in Central Civil Services (Pension) Rules, 1972 (here-in-after referred to as '**the Rules of 1972**'). All the applicants in the Original Applications (respondents in the writ petition filed before this Court) have been engaged as whole-time contingency paid staff on the posts of

Sweeper/ Mali/ Chaukidar/ Mail Career/ Casual Labour on different dates. They were given temporary status at par with Group-D employees. They retired after having served the department for various periods ranging between 22 to 42 years.

(3) The claim of the respondents was opposed by the Union of India on the ground that the service rendered by them as contingency paid staff, which was not regularized, can not be treated as qualifying service for payment of pension.

(4) Writ Petition (S/B) No.1413 of 2013, Writ Petition No.26696 (S/B) of 2021 and Writ Petition No.18482 (S/B) of 2019, had been filed by the Union of India against the orders passed by the Tribunal holding similarly situated employees to be entitled to receive pension and all the aforesaid Writ Petitions had been dismissed by this Court by means of judgments dated 01.02.2016, 17.11.2021 and 08.07.2019 respectively and the order of the Tribunal directing payment of pension to similarly situated employees was affirmed by this Court.

(5) The Tribunal referred to Paragraph 154(a) of the Post & Telegraphs Ministerial Manual Establishment Rules (here-in-referred to as 'the **Manual**'), which provides 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 establishment, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as "regular"employees."

(6) The Tribunal has held that Sweeper/ Mali/ Chaukidar/ Mail Career/Casual Labour, who worked side by side with the employees in work charge establishment, are entitled to be brought on regular establishment and should be treated as 'regular employees' as per

the aforesaid Paragraph 154 (a) of the Manual. The Tribunal concluded by holding that it is bound by the law laid down by this Court in various judgments referred to above and, therefore, the Union of India has been directed to grant pensionary benefits to the applicants of all the Original Applications.

(7) The learned counsel for the opposite parties have submitted that a similar issue has been decided by a coordinate Bench of this Court at Allahabad in the case of *Union of India and two others vs. Heera Lal and another, 2023:AHC:228061-DB*.

(8) The coordinate Bench while deciding the case of Heera Lal (supra) has referred to the followings judgments:-

(i) Union of India and others Vs. Chandi Lal; 2007:AHC:2752-DB,

(ii) Union of India Vs. Shyam Lal Shukla; 2011:AHC:175055-DB,

(iii) Jagrit Mazdoor Union and others Vs. Mahanagar Telephone Nigam Limited and others; 1990 Supp SCC 113,

(iv) Union of India and others Vs. Krishna Pal Singh; 2018:AHC:7150-DB,

(v) Kunhayammed and others Vs. State of Kerela and another (2000) 6 SCC 359,

(vi) State of Uttaranchal and Ors. Vs. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad (2007) 12 SCC 483,

(vii) Union of India and another Vs. K. N. Shivadas and Ors. (1997) 7 SCC 30,

(viii) Ranjeet Mishra Vs. Union of India and Ors.; 2020: AHC: 63242,

(ix) State of U.P. and 3 Ors. Vs. Mahesh Narayan Mishra and 89 others; 2023: AHC:155290-DB,

(x) State of U.P. and 3 Ors. Vs. Shiv Jag Sharma and 9 others; 2023:AHC:155290- DB

(xi) 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.

(9) The coordinate Bench of this Court at Allahabad has also noted the fact that special leave petitions were filed against the judgment passed in the cases of ***Chandi Lal and other similar cases***, all of which were dismissed by the Hon'ble Supreme Court and the judgments passed by this Court have attained the finality. After referring to the aforesaid cases, coordinate Bench of this Court has held in the case of ***Heera Lal (supra)*** as follows:-

"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."

(10) Accordingly, the writ petitions filed by the Union of India against **Heera Lal and others** was dismissed and order passed by the Tribunal holding the employees to be entitled to receive pensionary benefits was upheld.

(11) The learned counsel for the petitioners has fairly conceded that the facts of the present case are similar to the facts on the basis whereof the coordinate Bench of this Court has decided the case of **Heera Lal (supra)**. He has, however, submitted that the judgment in the case of **Heera Lal (supra)** has been rendered without taking into consideration the provisions contained in Rule 11 of the Rules, 2021 (here-in-after referred to as '**the Rules of 2021**') and therefore, the said judgment would fall within the exceptions to the rule of binding precedent.

(12) We proceed to examine this limited submission placed by the learned counsel for the Union of India.

(13) Rule 11 of the Rules, 2021 is quoted here-in-below:-

"11. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed

either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that service rendered before attaining the age of eighteen years shall not count, except in the cases of counting of military service for civil pension under rule 20."

(14) The following passage from the judgment in the case of ***Heera Lal (supra)*** indicates that although the judgment does not make a specific reference to Rule 11 of the Rules of 2021, the submission based on the aforesaid rule has been noted by the coordinate Bench. Paras 7 and 8 of the judgment in the case of ***Heera Lal (supra)*** record this submission in the following words:-

"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."

(15) The conclusion drawn by the coordinate Bench after taking into consideration the submissions made and case laws relied upon by the parties, is recorded in the following paragraphs:-

"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."

(16) Therefore, we find no force in the submissions of the learned counsel for the petitioners that Rule 11 of the Rules, 2021 has not been considered in the case of ***Heera Lal (supra)*** and that it is not a binding precedent. The said submission is accordingly turned down.

(17) The learned counsel for the petitioners next submitted that it is specifically mentioned in the judgment in the case of ***Heera Lal (supra)*** that the question as to whether a statutory rule would prevail over administrative instructions and whether regularization could ever arise in absence of a specific order, would remain open to be contested in a subsequent case and therefore this question should be decided in the present case.

(18) In this regard, it will be appropriate to reproduce the following passage from the judgment in the case of ***Heera Lal (supra)***;

"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."

(19) A bare perusal of the aforesaid passage indicates that the aforesaid question has been left open to be contested in a case "different on facts i.e. not involving C P Chaukidar". The present case involves claim of pensionary benefits to contingency paid chaukidars and other similarly placed persons and therefore, this question is not open to be contested in the present case.

(20) In view of the foregoing discussion, we are of the considered view that the Tribunal has rightly held that the claimants before it (respondents in various writ petitions filed before this Court) having served as contingency paid staff on the post of Sweeper/Mali/Chaukidar/Mail Career/Casual Labour for very long period of time, are entitled to get pensionary benefits in view of the various previous judgments which have decided this point. The judgments passed by the Tribunal do not suffer from any illegality warranting any interference by this Court in exercise of its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

(21) Accordingly, in view of what has been discussed above, all the writ petitions are **dismissed**.

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(Subhash Vidyarthi, J.) (Attau Rahman Masoodi, J.)

Order Date :- 16.12.2024
akhilesh/-