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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 17th April, 2023*

+ W.P.(C) 2843/2021

SHAFIQR RAHMAN KIDWAI ASSOCIATION

(SRKA) AND ANOTHER Petitioners

Through: Mr. Shanker Raju, Mr. Nilansh Gaur and Ms. Anubha Bhardwaj, Advocates.

versus

UNION OF INDIA AND OTHERS Respondents

Through: Ms. Pratima N. Lakra, Central Government Standing Counsel with Ms. Vanya Bajaj, Advocate for R-1.

Mr. Apoorv Kurup, Ms. Aparna Arun and Ms. Nidhi Mittal, Advocates for R-2.

Mr. Pritish Sabharwal, Standing Counsel with Ms. Shweta Singh and Mr. Sanjeet, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioners seek quashing of order dated 18.11.2019 as also a direction to the Respondents to count their entire service before regularization as qualifying service for grant of GPF and pension under the Old Pension Scheme ('OPS') i.e. under the CCS (Pension) Rules, 1972 ('Pension Rules') and for a declaration to discontinue the applicability of National Pension System ('NPS'), with all consequential benefits. Relief is also sought to ante-date the regularization of the Petitioners premised on Resolution of Executive Council dated 05.07.2004 as done for similarly situated employees.

2. Facts to the extent necessary and relevant are that Petitioner No.1 is an Association of Jamia Millia Islamia, representing non-

teaching staff employed in different capacities in Jamia Millia Islamia (hereinafter referred to as 'the University') and Petitioner No.2 is an employee of the University. 76 members of the Petitioner Association (hereinafter referred to as 'Petitioners') were appointed on daily wages between the years 1993-97 and one in the year 2000. DoPT issued O.M dated 10.09.1993, formulating a Scheme known as "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993" (hereinafter referred to as the '1993 Scheme'), effective from 01.09.1993, which provided for conferring temporary status on all casual labourers, who were in employment on the date of issue of the O.M and had rendered a continuous service of at least one year i.e at least 240 days and this was without reference to the creation /availability of regular Group 'D' posts. Petitioners made a representation for grant of temporary status but for want of completion of required number of days, the same was not conferred on them and granted to those eligible under the said Scheme.

3. A five-member Committee was constituted by the University vide order dated 04.02.2004 to consider regularization of the staff working on daily wages and the Committee recommended regularization of those employees who were fulfilling essential qualifications and had passed the trade test. Executive Council accepted the recommendations and regularised those had been working against permanent sanctioned posts for a long time, but this was independent of the 1993 Scheme. Petitioners were not regularized at that stage, though University revised the pay scales of the daily wagers on 01.12.2008. Meanwhile, OPS was discontinued and the concept of a Contributory Fund Scheme i.e. NPS was introduced w.e.f. 01.01.2004.

4. Petitioners were subsequently regularised pursuant to the recommendations of the Selection Committee of the University on

different dates between the years 2013 to 2015. Pursuant to issue of O.Ms. dated 26.02.2016 and 28.07.2016 by DoPT, benefit of GPF and OPS was extended only to those daily wagers who were covered and granted temporary status under the 1993 Scheme and whose services were regularized on or after 01.01.2004. Representation was made to the University on 22.08.2017 to include the entire service of the Petitioners rendered on daily wages even without temporary status for regularization, however, there was no response.

5. In the meeting held on 12.09.2018, between the Association and Management of the University, it was agreed that 50% of the service rendered by the Petitioners as daily wagers would be counted as qualifying service for pensionary benefits under the Pension Rules. Petitioners did not, however, accept this in totality and sought counting of the entire service from the date of appointment as daily wagers as also for discontinuing the NPS, citing judgments of the Supreme Court and this Court.

6. On 18.11.2019, on the representation of the Petitioners, the Establishment Committee on approval of the Executive Council, passed an order counting only 50% of the daily wages service of employees regularized on or after 01.01.2004, but NPS continued to govern them for the purpose of pensionary benefits. It is this order which is impugned in the present petition. A consequential order was passed on 04.02.2020 in respect of the Petitioners, counting 50% of their service and this period ranges from 7-11 years for different Petitioners. This led to the Petitioners again voicing their grievances by representing on 12.01.2021, but to no avail.

7. Assailing the impugned order, learned counsel for the Petitioners submits that Jamia Millia Islamia Act, 1988 by virtue of Section 23(f) provides for regulating service conditions of its employees including pension, PF etc. and Section 39 provides for

framing of Ordinances while Section 40 deals with Regulations. By a Notification dated 09.11.2017, terms and conditions of the employees other than Teachers, Registrars, Finance Officers have been formulated by Ordinance 6(VI). Since there is no provision under the said Act or Regulations framed thereunder, Pension Rules as well as DoPT instructions, issued from time to time regulate the grant of pension to the employees, save and except, those governed by the Notification dated 09.11.2017.

8. Since Pension Rules are applicable, the definition of qualifying service under Rule 3(q) will be applicable as per which qualifying service means service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under the Rules. Rule 14(1) provides that service of a Government Servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government and “service” under sub-Rule (2) is service under the Government and paid from the Consolidated Fund of India or Local Fund administered by that Government. Rule 14 allows continuous service to be treated as qualifying service even if it is temporary service or service rendered as a daily wager/casual worker, provided it is without interruption and followed by substantive appointment and is a service against sanctioned post on a defined pay scale. Therefore, the service rendered by the Petitioners from the date of their appointment as daily wagers would be treated as qualifying service and since it commenced prior to 01.01.2004, their service conditions will be governed by OPS and not by NPS.

9. It was contended that whether or not Petitioners were accorded temporary status before regularization is inconsequential since the University has itself counted 50% of their service as daily wagers and the services had been regularized after an uninterrupted spell of nearly

two decades for each of the Petitioners. Without prejudice, it was also contended that in case of some of the Petitioners who were regularized in 2013 and 2014, even going by the counting of 50% of their service as casual employees, their service would commence prior to 01.01.2004 and on this score alone, they are entitled to pension under the OPS.

10. Reliance was placed on the judgment of the Supreme Court in *Union of India and Others v. Rakesh Kumar and Others, (2017) 13 SCC 388*, to contend that considering a para materia provision, the Supreme Court held that casual workers appointed in temporary capacity are entitled to reckon entire period from the date of taking charge and thus entitled to GPF and pension. Petitioners have been discriminated even in the matter of regularization since identically placed employees were regularized from 05.07.2004, retrospectively and/or granted temporary status prior to 01.01.2004. If this action of the University is corrected and/or regularization is granted to the Petitioners at par with their counter-parts from a date prior to 01.01.2004, the NPS cannot be made applicable to them. It is undisputed that Petitioners were appointed against permanent vacancies through a regular process of selection and had completed nearly 10 years as on 01.01.2004 and cannot be made to suffer for the laxity of the University in delaying their regularization.

11. It was further contended that even if for the sake of arguments, Petitioners are treated to be regularized after 01.01.2004, the date from which NPS came into force, they cannot be governed by the said Scheme and for this, reliance was placed on the judgment of the Madras High Court in *Union of India and Another v. K. Punniyakoti and Others, 2014 SCC OnLine Mad 695*, wherein the High Court has held that the NPS is applicable to ‘new entrants’ of Central

Government Service, which expression means and connotes “a person,

who enters recently” and therefore, a person already in service, working either as a contingent or temporary staff and absorbed in permanent established on or after 01.01.2004, cannot be termed as a “new entrants” into service. NPS can be applied only to persons appointed for the first time as casual or temporary or permanent on or after 01.01.2004.

12. *Per contra*, counsel for the University contended that Jamia Millia Islamia is a Central University governed by Jamia Millia Islamia Act, 1988. The present petition has been filed by the Petitioners seeking direction to the University to consider them under the OPS instead of the NPS as well as for retrospective regularization of their services from 05.07.2004, however, none of the reliefs are permissible under law. 1993 Scheme was introduced by DoPT for the purpose of grant of temporary status to casual labourers, who were in service on the said date and had completed 240 days on the date of issue of this Scheme and on this basis the University granted temporary status in 1998 to the workers who were eligible and fulfilled the conditions laid down in the said Scheme.

13. University constituted a Committee for recommending regularization of temporary/ad-hoc/daily wagers and it recommended regularization of those who possessed essential qualifications and had passed the trade test and these employees were regularized from 05.07.2004 and covered under the OPS. Since there were no recommendations qua the Petitioners, they were not regularized at that stage, but later as and when the vacancies arose after 01.01.2004, Petitioners were regularized and are thus covered under NPS. Merely because the University has counted 50% of the services of the Petitioners as daily wagers cannot be a ground to switch over from NPS to OPS.

14. DoPT issued an O.M. dated 26.02.2016, para 8 whereof specifically provides that benefit of temporary status is available only to those casual labourers who were in employment on 10.09.1993 and were otherwise eligible, i.e. completed 240 days as on that date. The O.M. further provides that casual labourers who have been granted temporary status under the 1993 Scheme and have completed 3 years of continuous service after that, are entitled to contribute to GPF. Subsequently, the DoPT issued O.M. dated 28.07.2016 clarifying the position with respect to contribution of GPF and pension under OPS and reiterated that benefit of GPF and OPS is applicable to only those casual labourers who are covered under the 1993 Scheme and further that the benefit will be available even if they have been regularized on or after 01.01.2004. In para 3, DoPT has issued strict directions to all Ministries/Departments to ensure that the benefits of OPS and GPF are not demanded by regularly recruited fresh employees appointed on or after 01.01.2004. Therefore, under the two O.Ms., employees who are not covered by the 1993 Scheme, cannot be granted benefits under OPS and it is not disputed that Petitioners were never granted temporary status under the said Scheme and continued as daily wagers till they were regularized, post 01.01.2004. Government of India has issued Consolidated Instructions on casual labourers vide DoPT O.M. dated 13.02.2020, wherein it is provided that all previous instructions and guidelines issued from time to time, regarding casual labourers will continue to apply and must be brought to the notice of all concerned. Since Petitioners are covered under the NPS, issue of counting past service is irrelevant and the writ petition deserves to be dismissed.
15. I have heard learned counsels for the parties and examined their aforesaid submissions.

16. The first contention that this Court is required to deal with is the grant of temporary status and retrospective regularization to the Petitioners. 1993 Scheme came into force w.e.f. 01.09.1993 and provided that temporary status would be conferred on all casual labourers who were in employment on the date of issue of the said O.M. dated 10.09.1993 'and' had rendered continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days. Petitioners have annexed a chart along with the writ petition as a part of Annexure P-2, indicating their respective dates of appointments and regularizations. From the chart, it is palpably clear that the earliest appointment was 22.02.1993 and therefore, beyond a doubt, none of them had completed 240 days as on 10.09.1993. Therefore, Petitioners cannot claim temporary status under the 1993 Scheme and this contention merits rejection.

17. Insofar as the claim for retrospective regularization w.e.f. 05.07.2004, on the ground that similarly placed employees were regularized from the said date is concerned, it is a categorical case of the University, on an affidavit, that casual labourers who were regularized in 2004 were those who had been granted temporary status and in respect of whom Selection Committee had made recommendations for regularization, but there were no recommendations in favour of the Petitioners. Factually this position is not controverted by the Petitioners. It is true that subsequently, as and when the Selection Committee recommended and vacancies arose, Petitioners were regularized. In this view, retrospective regularization cannot be granted to the Petitioners and perhaps understanding this to be the correct position in law, Petitioners did not stress on this issue during the course of hearing.

18. Petitioners have also asserted that their entire past service from the dates of initial appointments as casual labourers be counted for the

purpose of qualifying service, which would cover them under the umbrella of OPS. I am afraid this contention cannot be accepted in light of the judgement of the Supreme Court in **Rakesh Kumar (supra)**. In the said case the Supreme Court was dealing with Rule 31 of Railway Services (Pension) Rules, 1993, which is extracted hereunder for ready reference:-

“31. Counting of service paid from contingencies.—In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following condition, namely—

(a) the service paid from contingencies has been in a job involving whole-time employment;

(b) the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c) the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishments;

(d) the service paid from contingencies has been continuous and followed by absorption in regular employment without a break:

Provided that the weightage for past service paid from contingencies shall be limited to the period after 1-1-1961 subject to the condition that authentic records of service such as pay bill, leave record or service book is available.

Note.—(1) The provisions of this Rule shall also apply to casual labour paid from contingencies.

(2) The expression “absorption in regular employment” means absorption against a regular post.”

19. After analysing Rule 31 and a plethora of earlier judgments, the Supreme Court held that only 50% of the service rendered by a casual labourer prior to grant of temporary status will be counted for the purpose of pensionary benefits. Thus the case of the Petitioners, who were not conferred the temporary status, cannot be placed on a higher pedestal and they are only entitled to count 50% of their daily wage service, which benefit has been admittedly granted to them.

20. The last plank of the argument of the Petitioners that needs examination is that they are entitled to pension under the OPS and cannot be governed by NPS, which came into force much after they were appointed *albeit* as casual/daily wagers. The Government of India vide an O.M. dated 22.12.2003 introduced a new re-structured defined contribution pension system applicable to all Central Government Employees who were ‘new recruits’ from 01.01.2004, save and except, the Armed Forces in the first stage. The NPS came into force w.e.f. 01.01.2004 and therefore, the only question that this Court is called upon to decide is whether the Petitioners have been rightly covered under the NPS or they are entitled to be governed by OPS.

21. The answer to the question, in my view, lies in the Scheme itself which begins by providing that “new recruits” appointed on or after 01.01.2004 shall be governed by the NPS. In Cambridge dictionary, the word “new” means ‘recently created or having started to exist recently’ and the word “recruit” means ‘to become a new member of an organization’. Even in the common parlance, the expression “new recruit” connotes ‘someone who has freshly or recently joined service/organization/institution etc.’ In this context, I may refer to the relevant part of the NPS as follows:-

“F. No. 5/7/2003-ECB & PR.- The Government approved on 23rd August, 2003 the proposal to implement the budget announcement of 2003-2004 relating to introducing a new restructured defined contribution pension system for new entrants to Central Government service, except to Armed Forces, in the first stage, replacing the existing system of defined benefit pension system.

(i) The system would be mandatory for all new recruits to the central Government service from 1st of January 2004 (except the armed forces in the first stage). The monthly contribution would be 10 percent of the salary and DA to be paid by the employee and matched by the Central Government. However, there will be no contribution from the Government in respect of individuals who are not Government employees. The contributions and investment returns would be deposited in a non-withdrawable pension tier-I account. The existing provisions of defined benefit pension and GPF

would not be available to the new recruits in the central Government service.”

22. It is, therefore, clear from a plain reading of the words used in the Scheme that it would apply to those employees who enter into a particular employment/service post 01.01.2004. In this context, learned counsel for the Petitioners is right that the case of the Petitioners is squarely covered by the judgment of the Division Bench of the Madras High Court in ***K. Punniyakoti (supra)***. The issue that arose for consideration before the Madras High Court was “whether New Pension Scheme, which came into force from 01.01.2004, is applicable to persons, who were already in employment either on daily wages or as temporary employees and whether they are entitled to get pension under CCS (Pension) Rules, 1972 on being absorbed in permanent establishment after 01.01.2004”. The Court examined Rule 14 of the Pension Rules, relevant part of which is extracted hereunder:-

“14. Conditions subject to which service qualifies

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

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

(3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.”

23. The Court also referred to the DoPT O.M. dated 14.05.1968, relevant part of which is as follows:-

“(a) Service paid from contingencies should have been in a job involving whole-time employment (and no part-time for a portion of the day).

(b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., Malis, Chowkidars, Khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.”

24. From conjoint reading of Rule 14(2) and the Government of India Instructions issued thereunder, the Madras High Court observed as under:-

“16.

Thus, it is clear that persons appointed as contingent staff either on temporary basis or on daily wage basis, who served not as a part-timer and received salary every month, are entitled to count 50% of their service for pension on their regularisation/absorption in regular establishment. The new Pension Scheme, which is called Contribution Pension Scheme, came into force from 1.1.2004 and the same is applicable to all new entrants of Central Government service as per the Scheme, and the Respondents 1 to 16 cannot be treated as new entrants in the Central Government service/IGCAR.

17. The word “new entrant” has got a definite meaning, “a person, who enters recently”. A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 1.1.2004, cannot be termed as “new entrant” into service. The new Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 1.1.2004.

(emphasis supplied)

18. Similar issue was considered by one of us (N.P.V., J.) in W.P. Nos. 26933 & 26934 of 2007, Order dated 23.4.2008. In the said case, the order of the Government of Tamil Nadu dated 6.8.2004 introducing new Pension Scheme with effect from 1.4.2003 came up for consideration and it was held that persons appointed/recruited

after 1.4.2003 are not governed under the Tamil Nadu Pension Rules, 1978 and the persons appointed prior to the said date even in consolidated salary, or whose appointments as Secondary Grade Teachers were approved subsequently with time scale pay after passing Child Psychology Training, whose earlier services were ordered to be counted by the Division Bench of this Court. In the said case the Teachers were not paid salary before passing of Child Psychology Training, and they were ordered to be treated under the Tamil Nadu Pension Rules, 1978 as their initial appointment was prior to 1.4.2003, and the said order was implemented.

19. *In W.P.(MD) No. 14369 of 2010 one of us (N.P.V., J.) considered similar issue, wherein the Petitioner was appointed as Noon-Meal Organiser on consolidated pay from 23.8.1988 to 16.7.2004 and he was appointed in regular service as B.T. Assistant from 17.7.2004 and retired as B.T. Assistant on 31.5.2008. The claim of the Petitioner therein was that new Pension Scheme came into force in the State of Tamil Nadu from 1.4.2003 insofar as the State Government employees are concerned, cannot be applied to him. The contention of the State was that 50% service of the Petitioner rendered from 23.8.1988 to 16.7.2004 cannot be counted as he was absorbed in regular service only on 17.7.2004. The said contention was negatived and, it was held that the initial appointment being 23.8.1988, though consolidated salary was paid upto 16.7.2004, the Petitioner was brought in regular service from 17.7.2004 without any break in service, he was entitled to be treated under Tamil Nadu Pension Rules, 1978 and 50% of the earlier service as Noon-Meal Organiser is to be counted along with regular service as B.T. Assistant for Pension purpose under Rule 11(2) of the Tamil Nadu Pension Rules, 1978. No Appeal was preferred against the said order and the said order was also implemented.*

20. *Number of similar cases were considered in respect of the State Government employee under the Tamil Nadu Pension Rules, 1978, wherein also Rule 11(2) of the Tamil Nadu Pension Rules, 1978 provides counting of 50% of the contingency service on similar terms and conditions as enumerated under the above Rule 14(2) of CCS (Pension) Rules, 1972. In the said case Plot Watcher of Forest Department, appointed on daily wage basis from 1.9.1982, without interruption was absorbed in regular service from 24.8.2005 and he retired on 31.7.2011. Applying Rule 11(2) of Tamil Nadu Pension Rules, 1978, 50% of the service from 1.9.1982 till 23.8.2005 was ordered to be counted along with the regular service from 24.8.2005 till 31.7.2011 and ordered sanction of eligible pension and other benefits. In the said case also, regularisation was granted after the new Pension Scheme was introduced with effect from 1.4.2003 by the State Government. The said Order was made in W.P. No. 8205 of 2011 dated 19.4.2011, which was confirmed in W.A. No. 27 of 2012 dated 13.2.2012 as well as in S.L.P. No. 16119 of 2012 dated 10.5.2012 and in W.P. No. 14987 of 2012 dated 14.6.2012.*

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23. *The right of Government servants to receive Pension is not a bounty, and it is a statutory right conferred under the Pension Rules applicable from the date when the Government servant was appointed, either on daily wage/temporary/permanent basis. Permanent absorption having been ordered considering the temporary service rendered earlier, under any stretch of imagination the persons who, were already in employment prior to 1.1.2004 cannot be treated as 'fresh appointees' for the purpose of applying new Pension Scheme, which came into force from 1.1.2004.*

24. *The Hon'ble Supreme Court in the decision reported in State of Jharkhand v. Jitendra Kumar Srivastava, 2013 (4) LLN 56 (SC) : AIR 2013 SC 3383, held that the right to receive Pension, Gratuity or Leave Encashment can be treated as right to property in terms of Article 300-A of the Constitution of India. If a person eligible to get Pensionary benefit on retirement, if denied by giving narrow interpretation of Rules, it will definitely be in violation of Article 300-A of the Constitution of India.*

25. *Considering the overall aspects in the matter as well as the undisputed fact that the Respondents 1 to 16 have been appointed as Casual Labourers and subsequently conferred temporary status from 31.12.1999, merely because they have been absorbed permanently in the year 2005 in Group 'D' service, they cannot be denied of their statutory right. The Tribunal has approached the issue in a proper perspective and we confirm the said findings of the Tribunal.*

26. *In the result, the Writ Petition is dismissed. No costs. Consequently, M.P. No. 1 of 2014 is closed."*

25. Therefore, it is clear that the Madras High Court has interpreted the word "new recruit" and held that a person already in service, in whatever capacity, whether as contingent or temporary staff who has worked continuously, though absorbed on or after 01.01.2004, is not 'a new entrant' into service and NPS can be applied only to those who are, for the first time, appointed as casual/temporary/permanent employees on or after 01.01.2004. Seen in light of the interpretation given to the expression "new recruit" under NPS by the Madras High Court in **K. Punniyakoti (supra)**, there can be no dispute that having been appointed before 01.01.2004 *albeit* as casual workers, Petitioners cannot be governed by NPS.

26. The defence of the University premised on DoPT O.Ms dated 26.02.2016 and 28.07.2016, in my view, is unsustainable in law.

Insofar as the O.M. dated 26.02.2016 is concerned, it provides that temporary status will be granted to casual employees who had completed 240 days on 10.09.1993 and after completing 3 years, they would be entitled to contribute to GPF. Therefore, in a nut-shell, the O.M. only deals with the conditions which are required to be fulfilled for grant of temporary status and has no connection with the applicability or otherwise of NPS. Insofar as O.M. dated 28.07.2016 is concerned, it is stipulated therein that benefit of GPF and OPS is applicable to those casual labourers who are covered under the 1993 Scheme even though regularized on or after 01.01.2004 and cannot apply to those regularly recruited fresh employees appointed on or after 01.01.2004. Clearly, the Madras High Court has interpreted the expression “new recruit” in the NPS to state that those appointed even as casual labourers prior to 01.01.2004 will not be governed by NPS and only those appointed post the operative date of the Scheme, in whatever capacity, will come under the provisions of NPS. Hence the yardstick for applicability of NPS is the date of appointment and not the nature of appointment.

27. The only question that remains for consideration is whether Petitioners would be entitled to pension under the OPS. Petitioners have correctly flagged that the Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others*, (2017) 1 SCC 148 has *albeit* in the context of ‘equal pay for equal work’ treated casual employees at the same level as contractual/work charged/daily wagers employees and grouped them under one umbrella of temporary employees. This apart it also needs to be noticed that there is no distinction between those casual employees who were granted temporary status and the Petitioners, insofar as the nature of work or even pay scales are concerned and admittedly 50% of the daily wage service of the Petitioners has been counted towards qualifying service and they have

been regularised. Reading of the impugned order shows that none of the above aspects have received consideration before taking the final decision. Therefore, in my view, it would be appropriate to direct the University to re-visit and re-consider the issue whether the Petitioners are entitled to pension under the OPS, in the first instance and needless to state the decision shall be taken in accordance with law but keeping background the judgments aforementioned, especially the judgment of the Supreme Court in *Jagjit Singh (supra)* and the Madras High Court in *K. Punniyakoti (supra)*, as well as Rule 14 of the Pension Rules and the DoPT O.M. dated 14.05.1968. The University shall take a considered decision within a period of three months from today. The decision so taken shall be communicated to the Petitioners, who shall be at liberty to take recourse to legal remedies available to them, in case of any surviving grievance(s), if so advised.

28. Writ petition stands disposed of, in the aforesaid terms.

JYOTI SINGH, J

APRIL 17, 2023/