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

% *Date of Decision: 19th May, 2023*

+ W.P.(C) 2060/2019

DR. RAVINDRA NARAYAN MISHRA Petitioner
Through: Dr. Amar Nath and Mr. Santosh
Kumra Sahu, Advocates.
versus

SRI GURU TEGH BAHADUR
KHALSA COLLEGE AND ORS. Respondents
Through: Mr. Santosh Kumar and Mr. Mohit
Aggarwal, Advocates for R-2.
Mr. Arjun Harkauli and Ms. Neha Verma,
Advocates for R-3.

+ W.P.(C) 9832/2018

AJAY JAISWAL Petitioner
Through: Dr. Amar Nath and Mr. Santosh
Kumra Sahu, Advocates.
versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. Santosh Kumar and Mr. Mohit
Aggarwal, Advocates for R-1.
Mr. Mohinder J.S. Rupal and Ms. Shaifali Jain,
Advocates for R-2.

+ W.P.(C) 7007/2015

DR. ROOPESH TEHRI & ORS. Petitioners
Through: Mr. Shanker Raju, Mr. Nilansh Gaur
and Mr. Rajesh Sachdeva, Advocates.
versus

UNIVERSITY OF DELHI & ORS. Respondents
Through: Mr. Santosh Kumar and Mr. Mohit
Aggarwal, Advocate for R-1.
Ms. Beenashaw N. Soni and Mr. Bhupesh
Pandotra, Advocate for R-2.
Mr. Ravinder Aggarwal, Advocate for R-4.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present writ petitions have been filed by the Petitioners seeking directions to the Respondents to retain/cover the Petitioners in the General Provident Fund ('GPF')/Old Pension Scheme ('OPS') and not to treat them as employees covered under the New Pension Scheme ('NPS'). On account of similitude of the legal issues in the three writ petitions, they were heard together and are being decided by this common judgment. The differences in the facts are being adverted to separately hereinafter.

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2. Petitioner was initially appointed on 21.10.1992 as ad-hoc Lecturer in Khalsa College for two months followed by ad-hoc appointment in Satyawati College between 1994-1995 and again as ad-hoc lecturer in Khalsa College, where he worked from 1995 to 30.04.2003. Pursuant to recommendation of a duly constituted Selection Committee, Petitioner was appointed as Lecturer on 13.03.2003 on temporary basis against the lien vacancy of Dr. (Mrs.) Jitinder Kaur and joined on 16.07.2003. Petitioner rendered continuous service till 27.08.2004 without any interruption.

3. Petitioner was absorbed on permanent basis in the college with effect from 27.08.2004 on the post being vacated by Dr. (Mrs.) Jitinder Kaur, who joined Bhagat Singh College as Principal. In 2007, Petitioner was approved for promotion as a Lecturer in Senior Scale pursuant to Selection Committee's recommendations and on 22.04.2010, Respondent No. 2/ Delhi University intimated its approval for fixing Petitioner's pay in Reader's Grade under MPS-1998.

4. Till 2014, Petitioner was treated as an employee under the OPS, however, on 23.06.2014 Respondent No. 2 wrote to the College that GPF number was erroneously granted to the Petitioner and he should be covered under NPS. On 05.08.2014, College requested Respondent No. 2 to reconsider the matter but Respondent No. 2 refused to reverse its decision. Petitioner made a representation to Respondent No. 2 on 22.01.2015, requesting restoration of his status to OPS, but to no avail.

5. Petitioner once again wrote to Respondent No. 2 on 12.07.2017 to retain him in OPS/GPF but the request was turned down vide order dated 26.04.2018 and an Office Memorandum was issued by Respondent No.1 on 15/21.06.2018 advising the Petitioner to open the PRAN under NPS to enable the College to transfer his accumulated contributions to Central Recordkeeping Agency, Mumbai, which led to filing of the present Petition.

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6. Petitioner was appointed as Lecturer of Computer Science in Acharya Narendra Dev College on 30.10.2000, pursuant to recommendations of duly constituted committee and his appointment was temporary only for the reason he had not cleared NET at the relevant time. Otherwise, the appointment of the Petitioner was on a substantive post and later in 2003, he cleared NET and was also conferred Doctorate by JNU in Computer Science in 2013. On 23.06.2001, Shaheed Sukhdev College of Business Studies/Respondent No. 2 issued an advertisement inviting applications for several posts of lecturers including 5 permanent posts of lecturers in Computer Science. Petitioner was selected by a Selection Committee from amongst several candidates, who had participated in the selection process and he joined on 07.09.2001. Respondent No. 1/ University of Delhi accorded its approval vide letter dated 17.04.2002 for

fixation of pay of the Petitioner in pay-scale of Rs. 8000-13500, retaining previous date of increment falling on 01.11.2001 and the subsequent dates of increments on 1st November each year.

7. On 27.02.2013, Petitioner made representation to the college to place him in OPS as per the University of Delhi Ordinance, Statute 28-A. Representation was considered by the Governing Body of the College on 27.02.2013 and case of the Petitioner was approved, directing the administration to deduct provident fund from the date of his appointment in the College i.e. 07.09.2001. The College addressed a communication dated 25.09.2013 to Respondent No. 1 requesting for according approval for placing the Petitioner under OPS. On 20.02.2014, Respondent No. 1 conveyed its approval to count the temporary service of the Petitioner from 19.11.2000 to 06.09.2001 rendered at Acharya Narendra Dev College, for the purpose of pensionary benefits as per Statute 28-A Clause 1(h) and further w.e.f. 07.09.2001 to 03.11.2004 in Shaheed Sukhdev College of Business Studies. However, on 23.06.2014, Respondent No. 1 issued the impugned communication withdrawing the decision to cover the Petitioner under OPS, on the ground that faculty members recruited after 01.01.2004 through a fresh recruitment process will not be covered under the OPS, irrespective of their previous temporary/ad-hoc service.

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8. Petitioner No. 1 was initially appointed against a permanent post as temporary Lecturer (Mathematics) after recommendations of a duly constituted Selection Committee in 2000 in a pay-scale of Rs. 8,000-13,500 and continued without any break. On 06.11.2006, Petitioner No. 1 was appointed on the same post on substantive basis and placed on probation protecting his erstwhile pay and was subsequently promoted in senior scale followed by Reader's grade and finally as Assistant Professor, on which

post he continues to work till date. College has also deducted provident fund from November, 2000 onwards over the years deeming him to be covered under OPS in terms of Statute 28-A.

9. Petitioner No. 2 has worked as a Lecturer in Commerce without break in service against a permanent post after being appointed on recommendations of a duly constituted Selection Committee for more than a year on temporary basis and was later granted the senior scale and Reader's grade and is currently working as an Associate Professor. Substantive appointment of Petitioner No. 2 as lecturer in Commerce dates back to 06.03.2006 and he has been deemed to be under OPS as his erstwhile service was treated as qualifying service from September, 2003 for the purpose of deducting Provident Fund.

10. Petitioner No. 3 was appointed as Lecturer (Computer Science) on 14.09.2000 on temporary basis and was granted senior scale and is presently working as Assistant Professor. Her erstwhile service has not been reckoned as qualifying service for deduction of Provident Fund but promotions have been granted calculating this service for eligibility under UGC Notification, 1998. Substantive appointment of Petitioner No. 3 dates back to 25.09.2006.

11. Petitioner No. 4 was appointed as a temporary employee against a permanent post by duly constituted Selection Committee as lecturer (Commerce) with effect from 15.09.2003 and substantive appointment dates back to 06.03.2006, whereafter she was given senior scale and is currently working as Assistant Professor. Her Provident Fund has been deducted consistently, deeming the Petitioner to be an employee under OPS.

12. Petitioner No. 5 was appointed as Lecturer (Chemistry) against a permanent post with effect from 06.09.2000 on temporary basis and was

substantively appointed on 22.02.2005. Petitioner No. 5 was granted senior scale and Reader's grade and is currently working as Associate Professor. The erstwhile service of Petitioner No. 5 has been treated as eligible service for promotion as also qualifying and Provident Fund has been deducted by the college.

13. Petitioners made several requests to the College to count their temporary service and extend the benefit of OPS. On 21.02.2011, the Governing Body of the College, in the light of continuous services of the Petitioners, without any break on temporary basis and in view of the fact that GPF was deducted retrospectively for their temporary service, approved counting of temporary service for the purpose of OPS. However, when an intimation to this effect was sent to the University, the impugned communication dated 23.06.2014 was issued by the University, informing the College that faculty members recruited after 01.01.2004 through fresh recruitment process shall not be covered under OPS, despite the previous temporary/ad-hoc service and directed the College to withdraw/reverse the decision, in case anyone was covered under OPS having been appointed as a fresh recruit post 01.01.2004. Representations made by the Petitioners were rejected vide order dated 22.05.2015.

**COMMON CONTENTIONS ON BEHALF OF THE PETITIONERS
IN THE THREE WRIT PETITIONS:-**

14. NPS is not applicable to the Petitioners as the Scheme applies only to a 'new entrant'. Petitioners were not appointed in the Delhi University after the cut-off date i.e. 01.01.2004 from which NPS came into force and cannot be termed as new entrants/appointees. 'New entrant' is not defined in NPS, however, it can only mean and connote a person who has entered service for the first time after 01.01.2004, from open market. Unlike in the case of fresh/direct appointments, Petitioners were not subjected to medical

examination or character and *antecedent* verification at the time of regularizing/absorbing them and cannot be treated at par with fresh appointees.

15. Petitioners were appointed prior to the introduction of NPS and after a due selection process undertaken by a duly constituted Selection Committees and against permanent posts *albeit* as temporary lecturers and were also drawing annual increments with deduction of GPF, similar to the permanent teachers. Their temporary services have been counted for pay protection at the time of substantive appointments and were also reckoned as eligibility service for grant of promotions under the 1998 UGC Scheme. All components of regular selection existed even at the time of their initial temporary appointments and they have worked uninterruptedly till their regularization. Services rendered over the years cannot be wiped out or ignored and Petitioners cannot be treated as new entrants so as to deprive them the benefits of OPS.

16. Clause 1(h) of Statute 28-A defines 'qualifying service' as service rendered in a substantive capacity. The Statute further provides that all service rendered in the University on a full-time basis in temporary capacity without interruption followed by confirmation in the equal post shall count as qualifying service. There is no distinction between a temporary and permanent employee for grant of pension in Statute 28-A and the Governing Body had taken a correct decision to count temporary service from the date of initial appointment for extension of OPS, in consonance with the Statute. The impugned decision to reverse the earlier decision and cover the Petitioners under NPS is in the teeth of Statute 28-A and the provisions of NPS itself and cannot be sustained. Statute 28-A is *pari materia* to Rule 13 of CCS (Pension) Rules, 1972 (hereinafter referred to as the 'Pension Rules'), which provides that commencement of

qualifying service starts from the date the incumbent takes charge of the post to which he is appointed in temporary capacity, provided it is followed without interruption by substantive appointment in the same post. All the Petitioners herein have worked against permanent posts in different disciplines on temporary basis without any break or interruption till their substantive appointments and thus the services rendered will be counted towards qualifying service and Petitioners will be governed by OPS.

17. It cannot be disputed by the Respondents that even during their temporary service, Petitioners were at par with regular incumbents not only with respect to pay-scales but their provident fund was also deducted under GPF-cum-Pension Scheme. DoPT vide O.M. dated 11.06.2020 has stipulated that those employees who joined Central Government/Central Autonomous Bodies under NPS during 01.01.2004 to 28.10.2009 after submitting technical resignations from their erstwhile employments in similar institutions and fulfil conditions for counting of past service in terms of O.M. dated 28.10.2009 be given an option for induction in OPS and to get their past service counted for pension. This is recognition of the fact that past service cannot be wiped out and employees who have rendered service in whatever capacity, including temporary and had entered service prior to the introduction of NPS, would be covered only under OPS.

18. In ***Union of India & Another v. Dalip Kumar, 2010 SCC OnLine Del 311***, a Division Bench of this Court, relying on Rule 13 of Pension Rules, held that NPS is applicable to all those who entered Government service post 01.01.2004 and that rights of those who were appointed prior to 31.12.2003, even though in a temporary capacity, cannot be taken away by depriving them of pension under OPS. Madras High Court in ***Union of India and Another v. K. Punniyakoti and Others, 2014 SCC OnLine Mad***

695, held that the expression ‘new entrant’ will not include a person already in service even though in temporary capacity and statutory rights cannot be denied only because an employee though appointed prior to 01.01.2004, is permanently absorbed post the said date. In *Harbans Lal v. The State of Punjab and Others, 2010 SCC OnLine P&H 8181*, the High Court of Punjab and Haryana held that entire daily wage service of the Petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension and he will be deemed to be in Government service prior to 01.01.2004. Against the said decision, SLP(C) No. 23578/2012 was dismissed by the Supreme Court on 30.07.2012. With regard to employees appointed on ad-hoc basis in PGIMER Chandigarh, the Central Administrative Tribunal (hereinafter referred to as ‘the Tribunal’) in O.A. 105/2018 decided on 13.03.2018 held that ad-hoc appointees appointed after following due process of selection would be covered by OPS, prevalent at the time of their appointment. The order of the Tribunal was challenged before the High Court of Punjab and Haryana in *CWP No. 26482/2018, Union of India v. Dr. Neelam Aggarwal & Ors.* and the High Court, upholding the order of the Tribunal, held that Respondents cannot be treated as ‘fresh appointees’, appointed on or after 01.01.2004 by ignoring their initial ad-hoc service and deprivation of pensionary benefits under OPS was not justified. SLP(C) Diary No.43765/2019, challenging the judgment of the High Court was dismissed by the Supreme Court on 10.01.2020 on the ground of delay, leaving the question of law open.

**COMMON CONTENTIONS ON BEHALF OF THE RESPONDENTS
IN THE THREE WRIT PETITIONS:-**

19. University Grant Commission (‘UGC’) vide letter dated 31.08.2004 communicated to the University a copy of Government of India’s new

defined contribution pension scheme introduced vide Government of India, Ministry of Finance, Department of Economic Affairs Notification O.M. dated 22.12.2003 and Government of India, Ministry of Finance O.M. dated 07.01.2004 read with O.M. dated 04.02.2004, replacing the existing pension system. By this communication, University was informed that NPS would come into operation w.e.f. 01.01.2004 and will be applicable to all “new entrants” who joined the University on or after the said date. Petitioners were no doubt appointed prior to coming into force of NPS, however, these appointments were purely temporary and this fact was duly noted in the respective Minutes of the Selection Committee’s meetings and well known to the Petitioners. Each of the Petitioners were regularized/ appointed substantively on permanent basis post 01.01.2004 and would therefore be covered under the expression ‘new entrants’ under NPS and cannot seek the benefit of pension under OPS.

20. As per Clause 3(2) Ordinance XII of University of Delhi, an appointment of a teacher can be made for a specified period against a sanctioned post or against a leave vacancy of another teacher, but the appointments are temporary and bestow no right for counting the said service and such appointments are liable to be terminated on the expiry of the said period. No right can be asserted on the basis of temporary appointments as only a permanent appointment can be reckoned for the purposes of determining whether Petitioners would fall under OPS or NPS. At the time of appointments, Petitioners have signed on agreements with their respective colleges agreeing to be governed by Provident Fund Rules of Government of India. Petitioners cannot plead estoppel against the Respondents only because for some of the Petitioners were initially covered under OPS as there can be no estoppel against law. Matter was re-examined by the University and it was decided that Petitioners cannot be

covered under GPF/CPF as per law and the decision to cover them under OPS was recalled.

21. Reliance of the Petitioners on Statue 28-A and Clause 1(h) thereof, which defines ‘qualifying service’ is completely misplaced. Statue 28-A is not applicable to the Petitioners since they were appointed on permanent basis only after 01.01.2004 and are new entrants to the service. Appointment of the Petitioners post 01.01.2004 is in the nature of a fresh appointment and is not absorption or regularisation. *Arguendo*, even if Statue 28-A was to apply, Clause 3 of Statue 28-A would keep temporary employees out of OPS/GPF. Moreover, Clause 1(h), only defines “qualifying service” for pension, which was 10 years under the old scheme and does not deal with the issue of eligibility for coverage under OPS. In any event, some of the Petitioners were not confirmed in the same post on which they were recruited at the initial stage.

22. Petitioners cannot take advantage of their promotions under the UGC Notification 1998 as this issue is wholly unrelated or unconnected to grant of Provident Fund or pension. Experience of a teacher as a temporary employee or in an ad-hoc capacity may count for eligibility for appointment, but is irrelevant for coverage under OPS/NPS.

23. Reliance was placed on the judgment of a Division Bench of this Court in *Satya Dev Prajapati and Others v. Delhi High Court, through its Registrar General and Another, 2022 SCC OnLine Del 3911*, wherein the Court has held that date of an advertisement inviting applications for appointment to various posts, cannot be determinative of the terms and conditions that shall be applicable to the appointees and the decision of the Government to fix a cut-off for application of NPS, based on date of appointment, cannot be faulted as being arbitrary or unreasonable. Absence of any agreement to the contrary, terms and conditions of service, as

invoked on the date when the employer and employee entered into contract of employment, would be applicable and not the date when the selection process commences. Reliance was also placed on the judgment in *Dr. Rehan Ahmed Khan v. Jamia Milia Islamia Central University & Anr., 2015 SCC OnLine Del 7939*, wherein the Court held that appointment on purely temporary basis in 2002 will not give any service benefit, save and except, those stipulated in the appointment letter and any other benefit over and above that would only inure from the date of regular appointment to the post i.e. from Petitioner's confirmation as a lecturer w.e.f. 27.10.2006 and thus Petitioner can only be covered under NPS. Reliance was also placed on *Ram Ashrey Yadav v. State of U.P. and Others, Special Appeal No. 2114/2011*, a judgment of Allahabad High Court, where the Court held that Appellant's service could only be counted from the date it was made substantive under the Rules and no rights can be asserted based on service rendered for any anterior period, when he was working as a daily wager. Subsequent regularisation is a fresh appointment under the Rules and thus no claim can be laid for coverage under OPS, with consequential benefits. In *State of Haryana and Others v. Vijay Singh and Others, (2012) 8 SCC 633*, the Supreme Court reaffirmed the age old principle that service rendered on ad-hoc or stop-gap arrangement cannot be treated as regular service.

24. Distinguishing the judgment relied upon by the Petitioners in *Harbans Lal (supra)*, it was urged that the reliance is totally misplaced as the Rules applicable in the said case were different from the ones in the present case and that difference alone will make the ratio inapplicable to the present case. The Statute of University of Delhi keeps temporary employees out of the OPS/GPF and further the Supreme Court in *Union of India and Others vs. Rakesh Kumar and Others, (2017) 13 SCC 388*, had

noted the difference in the statutory Rules applicable in the case of *Harbans Lal (supra)*. Judgment in *K. Punniyakoti (supra)* is also distinguishable since the Madras High Court was dealing with a case where there was a substantial delay in regularisation of the appointees which was directly attributable to the inaction of the Competent Authority.

SUBMISSIONS ON BEHALF OF UGC IN THE THREE WRIT PETITIONS:-

25. UGC was constituted under the provisions of University Grants Commission Act, 1956 and Section 12 of the Act deals with co-ordination and determination of standards in Universities. UGC has been statutorily entrusted with duties to take steps, as it may think fit, for promotion of education and maintaining standards of teaching, examination and research in the Universities. To achieve these objectives, UGC has been vested with powers to inquire into financial needs of the Universities, allocate and disburse funds of the Commission, provide grants to Universities established or incorporated by or under a Central Act for maintenance and development or for any other general or specified purpose, to allocate and disburse such grants to other Universities as it may deem necessary for appropriate development activities. By virtue of Section 20 of the said Act, Commission shall be guided by such directions on questions of policies relating to National purposes, as may be given to it by the Central Government and in case of any dispute, decision of the Central Government shall be final. Matters of appointments and pension of the staff of the colleges, come under the purview of the University and the respective colleges.

26. Government of India by Notification dated 22.12.2003 introduced the NPS which came into force from 01.01.2004. All new entrants/recruits joining the Central Government post 01.01.2004, were mandatorily covered

under the said Scheme. Accordingly, UGC vide letter dated 16.12.2004 issued instructions to all Central Universities and funded colleges to operate NPS w.e.f. 01.01.2004 and ensure that all persons joining the University/college on or after the cut-off date are compulsorily covered under NPS. It was further directed that it must be ensured that appointment orders issued to new recruits mention the applicability of NPS. Petitioners have been rightly covered under NPS and can lay no claim to the benefits under OPS, having been substantively appointed only after coming into force of NPS.

ANALYSIS AND FINDINGS

27. The factual matrix obtaining in the writ petitions shows that Petitioners were appointed on ad-hoc/temporary posts in the respective colleges on different dates between 1995 to 2003. It is an undisputed fact that all Petitioners have been regularised/absorbed as permanent employees *albeit* post 01.01.2004 and are working as Lecturers (permanent)/Assistant Professors/Associate Professors in their respective colleges. In the intervening period, Government of India introduced the NPS which was made effective and operative from 01.01.2004. On account of introduction of NPS, Respondents sought to bring the Petitioners under NPS and be it noted that in some cases, till 2014 Petitioners were covered under OPS and were subsequently brought under NPS. Petitioners resist their coverage under NPS on the ground that they had been in service of the Respondents prior to coming into force of NPS and cannot be treated as new entrants or new recruits under the Scheme. Stand of the Respondent broadly understood is that Petitioners were appointed on regular basis against substantive posts after 01.01.2004 and can only be treated as fresh appointees, falling under the expression “new recruits” and cannot claim the benefit of OPS. It is also the case of the Respondents that they are

bound by the directives issued by the Government of India and the UGC and have no autonomy to exercise discretion to place the Petitioners under OPS and moreover, Petitioners cannot seek the benefit of the temporary/ad-hoc service, when they had with open eyes entered into agreements that they will not claim regularisation.

28. To buttress their respective contentions, both sides have relied on several judgments, which I shall advert to in the later part of this judgment. The moot point that arises for consideration before this Court is whether the Petitioners are covered under OPS or NPS, given the fact that their appointments as temporary or ad-hoc employees are prior to 01.01.2004, while they have been regularised/permanently appointed post 01.01.2004 and this would entail examining and interpreting the expression 'new entrants' in NPS. Be it ingenerated that insofar as interpretation of the expression 'new entrants' is concerned, this issue need not detain this Court as it stands decided by the Madras High Court in *K. Punniyakoti (supra)*. In the said case, the Respondents before the High Court, being 16 in number were granted temporary status but could not be brought on permanent establishment till 2005, when regular vacancies arose. As per the prevalent Scheme pertaining to temporary status, 50% of the service rendered under temporary status was to be counted towards retiral benefits, after regularisation of the temporary employees. Before the Respondents could be absorbed, NPS came into force and the Respondents were brought under the said Scheme. Contention of the Respondents was that their initial date of appointments in whatever capacity should be taken as date of appointment and since 50% of their temporary service was counted for pension and the absorption was delayed beyond 01.01.2004, they cannot be treated as fresh appointees appointed on or after 01.01.2004 for the purpose of NPS. Petitioners before the High Court contended that after introduction

of NPS, counting of 50% of temporary service was of no avail as no deduction towards GPF would take place after 01.01.2004. It was the case of the Petitioners that having been substantively appointed after introduction of NPS, Respondents cannot seek to cover themselves under OPS.

29. The Madras High Court posed to itself a question as to whether NPS will apply to the Respondents who were already in employment, either as daily wagers or as temporary employees and whether they were entitled to get pension under Pension Rules, on being absorbed in permanent establishment post 01.01.2004. Examining the issue at hand, the Madras High Court referred to Pension Rules, more particularly Rule 14, and observed that from a reading of the said Rule, it was clear that persons appointed as contingent staff either on temporary or on daily wage basis, who served not as part-timers and received salary every month, are entitled to count 50% of their services for pension on their regularisation/absorption in regular establishment. NPS, which is called contribution pension scheme, came into force on 01.01.2004 and the same is applicable to all new entrants of Central Government services. The expression 'new entrants', the Court observed, means a person who enters recently. The Court further held that a person already in service either as contingent or temporary staff working continuously and absorbed in permanent establishment on or after 01.01.2004 cannot be termed as 'new entrant' into service. NPS can be applied only to persons appointed for the first time as casual/temporary or permanent employees on or after 01.01.2004. Having so held, the Court ruled in favour of the Respondents and dismissed the writ petition filed by the Department and ruled that Respondents though appointed as casual labourers and granted temporary status subsequently from 31.12.1999 cannot be denied the benefit of OPS only because they

were absorbed permanently in 2005. Relevant paras of the judgment are as follows:-

“16. Rule 14 of CCS (Pension) Rules, 1972 stipulate conditions, subject to which qualifying service for pension can be computed. Under Rule 14(2) it is stated that employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit, brought on to regular establishment, and 50% of their services shall be counted for the purpose of pension, subject to the following conditions:

“(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.

[G.I., M.F., O.M. No. F. 12(1)-E. V/68, dated the 14th May, 1968]”

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.

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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.”*

30. A similar issue came up before a Division Bench of this Court in ***Dalip Kumar (supra)***. In the said case, Respondent before this Court filed an Original Application before the Central Administrative Tribunal, seeking benefit of Pension Rules. Tribunal allowed T.A. No.444/2009 directing Union of India to grant him benefit of Pension Rules as applicable when he entered into service. Union of India challenged the order of the Tribunal before this Court and contended that since the Respondent was appointed on the substantive post only on 29.06.2004, he was rightly

covered under NPS. Respondent, on the other hand, urged that he had acquired temporary status in 1997 and continued in the said post without any break or interruption till 29.06.2004, when he was regularised and appointed in a substantive capacity. Since he was not an appointee post 01.01.2004, it was not open to the Petitioner to place him under NPS and deprive him of pension under the pension rules. This Court upheld the order of the Tribunal, placing reliance on Rule 13 of Pension Rules, which categorically stipulates that qualifying service of a Government servant commences from the date he joins in a temporary capacity provided the temporary service is followed without interruption by substantive appointment in the same or another service or post. Court agreed with the Tribunal that Rule 13 obligates commencement of qualifying service from the date an employee takes charge of the post on substantive appointment, after continuous service on the temporary post and the service relates back to the initial date of temporary appointment. It was held that though NPS was introduced from 01.01.2004, Rule 13 of Pension Rules was not abrogated by NPS and that the said Scheme is applicable only to new entrants to Government service and cannot take away the rights of old entrants prior to 31.12.2003. The Court found no reason to interfere with the order of the Tribunal and observed that the impugned order could not be faulted with.

31. It will be relevant to refer to a judgment of the High Court of Punjab & Haryana in ***Dr. Neelam Aggarwal and Ors. (supra)***, where the issue was grant of benefit of GPF-cum-OPS to the Respondents, which was the Scheme prevalent at the time of their initial appointment on ad-hoc basis. Respondents in the said case were appointed on ad-hoc basis in PGIMER on different dates between 12.06.1996 to 24.12.2003 as lecturers, which post was redesignated as Assistant Professors. Respondents were

regularised on various dates between 21.12.2005 to 23.04.2011. Since in the meantime, NPS was introduced, new employees of PGIMER were also covered under the said Scheme. Respondents represented for grant of benefit of OPS and the governing body recommended in their favour. The decision was subject to approval of the Government of India and by a letter dated 05.11.2013, a proposal to cover the Respondents under OPS was rejected by the Government. Aggrieved by the rejection, Respondents approached the Tribunal, which allowed their Original Application, holding that Respondents would be covered by OPS as that was the Scheme prevalent at the time of their initial appointments. The decision of the Tribunal was challenged before the Punjab & Haryana High Court in ***Dr. Neelam Aggarwal and Ors. (supra)***, and the contention of Union of India was that Respondents were appointed on regular basis only after 01.04.2004 and were thus covered by NPS as new entrants. Reliance was also placed on the conditions of the appointment letters highlighting that their initial appointments were on ad-hoc basis and, therefore, it was not a case where the Respondents were regularised and in fact their appointments were in the nature of fresh appointments, post 01.04.2004.

32. The issue framed by the Court for its consideration was as follows:

“21. The framing of the issue would not govern the outcome of the case. The primary issue for consideration was whether in the peculiar facts and circumstances of the case, respondents who had been appointed on ad-hoc basis before 01.04.2004 could avail the benefit of OPS?”

33. This judgment is significant to the present petitions inasmuch as it deals with both the aspects arising in the present writ petitions i.e. initial appointments being temporary/ad-hoc followed by regularisation and criteria for coverage under OPS/NPS Scheme. The High Court observed that Respondents could not be treated as fresh appointees in *stricto-senso*.

As per the terms and conditions of the appointment letters, their services as ad-hoc appointees were not considered for purpose of their regularisation but on their successful appointment as regular employees, services rendered on ad-hoc basis were safeguarded for purpose of pay protection. Affirming the decision of the Tribunal, Court held that the Tribunal rightly came to a conclusion that Respondents would be governed by OPS. Relevant paras of the judgment are as follows:

“22. The Tribunal has examined the issue in two different ways. The relevant observation of the Tribunal on this aspect reads thus:-

“14. Ex-facie, the main celebrated arguments of the learned counsel for the respondents and their objections projected in the impugned orders, that since the PGIMER, Chandigarh, has not taken any approval of the Department of Personnel & Training (DoP&T) before extending the adhoc appointments, till the regular appointments of the applicants, so they are not entitled for the benefit of the GPF-cum-Old Pension Scheme, and if it is granted to them, then it will open floodgates of litigation, for other institutions, are not only devoid of merit, but mis-placed as well and deserve to be repelled for, more than one, (following) reasons.

15. At the first instance, it is not a matter of dispute, that having possessed the requisite qualifications and experience etc, in pursuance of the advertisement and having successfully completed the recruitment process as per statutory rules and regulations of the PGIMER, all the Doctors (applicants) were duly appointed as Assistant Professors, in their respective fields, during the period ranging from 1996 to 2003, by the Competent Authority. Since then, they are performing the same duties with devotion, which are performed by regular appointees. Similarly, the clinical duties of all the Doctors (applicants) are the same, as performed by regular incumbents. Subsequently, the PGIMER advertised the posts manned by the applicants, for filling on regular basis. The applicants, have requisite qualifications & experience, and were eligible for regular appointments against the said posts, as well. They were duly selected and appointed, on regular basis, without any interruption maintaining and protecting their continuity in service, pay scale and other service benefits, including the increments, which they were drawing as adhoc appointees.

16. In that eventuality, for the purpose of pensionary benefits, the qualifying service of the applicants shall commence from the date, they took charge of the posts, to which they were first

appointed, in temporary capacity, as that temporary service was followed, without interruption, by substantive permanent appointments in the same service/posts, as contemplated under Rule 13 (Chapter III) of the Central Civil Services (Pension) Rules, 1972 (Annexure A-28).

17. Not only that, as indicated hereinabove, the applicants continued working, as such, uninterruptedly and without any break. Even the Respondents No.2 & 3, have duly acknowledged the factual matrix, in this regard, in their written statement."

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23. In the same manner, the second feeble argument & ground to reject the claim of the applicants, vide impugned order, Annexure A-1, that if the request of faculty members of the Institute is allowed, then it will give rise and would open flood gates of litigation by a number of representations from various other Institutions/organizations, is again not, at all, tenable. Once, it is held that the applicants are legally entitled to the benefit of GPF-cum-Old Pension Scheme, as discussed here-in-above, then their claim cannot possibly be denied on the ground that it will give rise to a number of representations and would open flood gates of litigations, by various other Institutions/organizations for grant of similar relief. It is now well settled principle of law that the legitimate and legal right of the applicants cannot be denied to them, in the garb of plea of opening of Flood Gate Litigations.

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26. This is not the end of the matter. What cannot possibly be disputed is that in the wake of representations of the applicants, the Director of the PGIMER, vide letter dated 21.1.2010, favourably recommended their cases and forwarded it to be put up and the Governing Body of the PGIMER (Central Government), in its meeting, held in January, 2011, had constituted a 6 Member sub-Committee, to look into the grievance of the applicants. The Committee had also favourably recommended their case, vide letter dated 14.9.2011 (Annexure A-14). Then, the matter was considered by the Governing Body under Agenda No. F-6 on 28.04.2012 and it was resolved that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier.

27. Meaning thereby, had the meeting of the Governing Body was timely held, then the service of the applicants would have been regularized much prior thereto. In other words, since the respondents failed to convene the timely meeting of the Governing Body, so the applicants, cannot, possibly be blamed,

in any manner, in this regard. Concededly, the Governing Body appreciated the circumstances and after detailed discussion, agreed to approve the proposal to grant the benefit of GPF-cum-Old Pension Scheme, to the applicants, as a special case, vide Agenda Item No. F-6, in its meeting held on 28.4.2012, and it was resolved as under :-

“The matter was discussed in detail. The Governing Body was informed about the recommendations of the Committee under Joint Secretary (HR) of the Ministry and that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier. The Governing Body appreciated the circumstances but at the same time the fact remains that these faculty members were actually appointed on regular basis only after 01.01.2004. After detailed discussion, the Governing Body agreed to approve the proposal as a special case, which could not be cited as a precedence, subject to the approval of the government”.

28. Surprisingly enough, the Ministry of Health and the Competent Authority, without assigning any cogent reasons, and without any detailed discussion of legal /rule position and entitlement of the applicants, have taken a somersault, and rejected their claim, on speculative grounds. Admittedly, as per Regulation No. 61 of Schedule-I appended to PGIMER, Chandigarh Regulations, 1967, its Director has been empowered to appoint Faculty, on adhoc basis, for two years. It was duly acknowledged and explained by Respondents No.2&3 in their written statement that since, the meeting of the Governing Body, is held once or twice a year, so keeping in view the public interest, exigency of service and heavy rush of patients, the institute filled up these vacancies on adhoc basis, in various disciplines in various departments, as a stop gap arrangement, till final process of recruitment is made. As the applicants, continued on their respective posts, till their regular appointments, so the mere fact the PGIMER has not obtained the approval of the DoP&T, is not a ground, much less cogent, to deny the legitimate claims of the applicants, in this relevant connection, as contrary projected on behalf of the respondents. It was for the competent authorities to get alleged approval from the DoP&T (if any), and the applicants cannot possibly be blamed, in any manner, in this regard, and their legitimate right cannot be taken away. Thus, any such administrative instructions, requiring the approval of the DoP&T, for extension of adhoc service, pail into insignificance, in view of the failure of the authorities. The respondents, therefore, now cannot possibly be heard to say, rather estopped, from their own act and conduct, to deny the pointed benefits of GPF-cum-Old Pension Scheme to the applicants.”

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25. *It is a fact on record that the respondents were performing the same duties, which were being performed by regular appointees. Respondents continued without any interruption i.e. maintaining and protecting their continuity in service, pay scale and other service benefits, including the increments, as being drawn by them as ad-hoc appointees. The said fact is fortified by the conduct of their appointing authority as pay protection was allowed to them on their appointment on regular basis. However, in the case of fresh appointments they were given a pay scale of fresh appointee. At this stage it would be relevant to reproduce the minutes of Sub-Committee meeting held on 14.09.2011.*

“At the outset, the Chairman asked the details of the case from the Member Convener. It was informed to the members that there are about 23 faculty members who were appointed on adhoc basis (as per details in Annexure) without break prior to 01.01.2004 and have been working without break till their appointment on regular basis as Assistant Professors after 01.01.2004. They have represented for applicability of Old Pension Scheme in their case as they were appointed prior to 01.01.2004. It was also informed that the matter was earlier referred to the Govt. of India on 23.06.2009 and in response this Ministry of Health and Family Welfare, vide their letter dated 01.01.2010 intimated that the proposal was sent to DOPT and they have stated that “Since PGIMER, Chandigarh, in their offer of appointment had Stated that only NPS will apply in these cases, it is for them to resolve the matter”.

The matter was placed before the Governing Body on 17.01.2011, the Governing Body recommended that Sub-Committee to examine the issue may be constituted in the Ministry as to whether any departure from the NPS can be considered in PGIMER or other similar institutions on the ground that the initial ad hoc appointments have taken effect from a date earlier than 01.01.2004. Accordingly a Sub-Committee was constituted under the Chairmanship of JS (HR). The Committee was informed that all these faculty members have been appointed against the regular vacancies and pay protection was also allowed to them on their appointment on regular basis. After due deliberations the Committee considered that there is a case / ground for extending benefits of CCS (Pension) Rules, 1972 (Old Pension Scheme) to these 23 faculty members. The request is further strengthened on the grounds that the meeting of Standing Selection Committee for selecting them on regular basis could not be held regularly, which is beyond the knowledge and control of these 23 faculty members. The Committee, however, further observed that it should be a onetime measure and should not be quoted as precedent in

future. This committee recommends for extending the benefit of Old Pension Scheme to these 23 faculty members after approval by the Competent Authority”.

26. *For the reasons mentioned above, the respondents were not treated as fresh appointees in stricto sensu. As per the terms and conditions of the appointment letter their services as ad-hoc appointees were not considered for the purpose of their regularisation but on their successful appointment as regular employees the services rendered by them on ad-hoc basis were safeguarded for the purpose of pay protection. In view of above discussion the Tribunal rightly came to the conclusion that respondents would be governed by OPS prevalent at the time of their initial appointment.*

27. *Viewed from another angle, the respondents were denied benefit of OPS only on the ground that NPS would apply to employees who were appointed on or after 01.01.2004. It is undisputed that respondents were working against those very posts since 1999 onwards although initially on adhoc basis but that cannot be a ground to disentitle them from benefit of OPS.”*

34. In ***A.R.D. Nayagam Vs. The Director, Local fund Audit, Chennai-108 & Others, 2012 SCC OnLine Mad 5098***, Petitioner was appointed as Water Supply Attender on daily wages in 1980 and his service was regularised on 04.08.2006. On attaining the age of superannuation on 31.05.2009, he sought pensionary benefits. However, his request was declined on the ground that Petitioner was not entitled to regular pension but only to a contributory pension since his regular appointment was made after 01.04.2003 as contemplated under G.O.Ms. No.259 dated 08.08.2003. Upon filing the writ petition, Respondent contested the same and stated that Government of India introduced the Contributory Pension Scheme dated 08.08.2003 for employees who joined service on or before 01.04.2003 and therefore, those who joined on or after 01.04.2003 are not eligible for regular pension under Tamil Nadu Pension Rules. As Petitioner's service was regularised in the time scale of pay only w.e.f. 23.06.2006, he was not eligible to regular pension that existed prior to 01.04.2003. Negating the contention of the Respondent, the Madras High Court held as follows:

“7. When the very G.O. says that the new pension scheme, namely contributory pension scheme is applicable to persons, who are newly recruited after 01.04.2003, I fail to understand as to how the respondents are entitled to treat the petitioner as newly recruited person after 01.04.2003, merely because, his service was regularised on 23.06.2006. The respondents are not disputing the fact that the petitioner was originally appointed as Water Supply attender as early as on 27.02.1980. Certainly, the words ‘newly recruited’ cannot be construed to mean that it applies only to persons, whose services were regularised before 01.04.2003. New recruitment and regularisation are two different aspects and stages and therefore, the respondents are not entitled to put both together in the same boat and deny the benefit of pension under the general scheme to the petitioner.”

35. Recently, the High Court of Punjab & Haryana in the case of ***Union of India & another v. Dr. Sameer Aggarwal & another***, decided on 18.04.2022 in ***CWP No. 7694/2022***, relied on the earlier judgment in ***Dr. Neelam Aggarwal and Ors. (supra)*** and granted the same benefit as was granted to the Respondents in ***Dr. Neelam Aggarwal and Ors. (supra)*** and relevant paras of the judgment are as follows :

“It was also noticed by the Tribunal that the said judgment had been upheld by the Co-ordinate Bench in *Union of India & others Vs. Dr. Neelam Aggarwal & others*, 2019 (4) SCT 842 on 22.10.2018. Resultantly, the Senior Standing Counsel for Union of India could not dispute the fact that the application was allowed in the same terms and the applicant-respondent No.1 herein was granted the benefit of GPF-cum-Old Pension Scheme (OPS). It is pertinent to mention that the Tribunal did not grant any benefit for the past service rendered by him with Punjab Government but for the arrears towards his claim for pension. The said respondent has also not filed any cross-petition against that claim.

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A perusal of the earlier order of the Division Bench would also go on to show that it was noticed by the Division Bench that the similarly situated persons were working against those posts since 1996 and there was continuity of service and the services rendered by them were safeguarded for the purpose of pay-protection. It was also noticed that the PGIMER had extended the benefit of Old Pension Scheme to the similarly situated non-medical faculty and the same was not denied in the writ petition. Accordingly, we are of the considered opinion that respondent No.1 is identically situated and

there was no denial of the said fact in the pleadings before the Tribunal.

Another aspect which is to be noticed is that another Division Bench of this Court in Harbans Lal Vs. The State of Haryana & others, 2012 (3) SCT 362, was also noticed in the earlier decision of the Tribunal which had upheld the principle that once the services of work-charge employees were regularized then the earlier service was also liable to be considered for the purpose of pension and the entire service was to be counted back from the said date of his initial appointment. It is not disputed that the SLP No.23578 of 2012 filed by the State of Punjab was dismissed on 30.07.2012 and Review Petition No.2038/2013 was also dismissed on 04.11.2015. The relevant portion reads as under:

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularisation is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Restructured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.”

Accordingly, keeping in view the above discussion we are of the considered opinion that the present writ petition is liable to be dismissed since respondent No.1 is identically situated and placed with similarly situated faculty members of petitioner No.2-Institute. There is no justifiable reason for this Court to interfere on account of the fact that there was an admission regarding all these aspects in the pleadings itself by the petitioner No.2-Institute. Resultantly, the present writ petition is hereby dismissed.”

36. From a conspectus of the aforementioned judgments, it is palpably clear that Courts have repeatedly affirmed that if an employee enters service prior to 01.01.2004 i.e. the date of enforcement of NPS, in whatever capacity, whether as temporary or ad-hoc employee and renders continuous and uninterrupted service, followed by regularisation/absorption, the period of service shall count towards qualifying service for pension and such an

employee will be deemed to be in service prior to 01.01.2004 and thus governed by OPS. In view of the many judgements now covering the issue in favour of the Petitioners, it is hardly open to the Respondents to take a position that Petitioners are covered under the expression “new entrants/new recruits” envisaged under NPS, wiping out their entire past service and depriving them of pension under OPS. There is an added factor in favour of the Petitioners in the present case. Services of the Petitioners are indisputably governed by Statute 28A and ‘qualifying service’ is defined in Clause 1(h) thereof. Plain reading of the definition shows that it is *pari materia* to Rule 13 of the Pension Rules in terms of commencement of the service and inclusion of service rendered in temporary capacity. In ***Dalip Kumar (supra)***, a Division Bench of this Court relying on Rule 13 clearly held that temporary service which is uninterrupted and followed by regularisation would count towards qualifying service and the said Rule is not abrogated by NPS. The judgment would therefore squarely apply to this case on account of a *pari materia* provision, Clause 1(h) which reads as follows:-

“1....

(h) ‘Qualifying Service’ means service rendered by a person in a substantive capacity including periods spent on probation. All service rendered to the University on a full time basis in a temporary or officiating capacity followed without interruption by confirmation in the same or , another post shall count as qualifying service except in respect of periods of service paid from ‘Contingencies’.”

37. For the sake of comparison, it would be pertinent to extract Rule 13 of the Pension Rules hereunder:-

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

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

service or post:

Provided further that - (a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.

38. Provisions of Rule 13 provide that qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed, either in a substantive or officiating or temporary capacity. Therefore, for the purpose of qualifying service, Pension Rules do not envisage exclusion of the service rendered on temporary or ad-hoc basis as long as the same is uninterrupted and culminates into absorption/regularization. The period of service so rendered is, therefore, liable to be counted towards qualifying service for pensionary benefits and once that is done, it would be wholly illogical to treat such an employee as a fresh appointee post 01.01.2004, if the entire temporary/ad-hoc service was prior to the cut-off date of 01.01.2004. Rule 14(2) further clarifies the expression "service" to mean service under the Government and paid by that Government from the Consolidated Fund of India or local fund administered by the Government. Applying the same analogy in view of Clause 1(h) of Statute 28A to the present petitions, there can be no doubt that uninterrupted services of the Petitioners herein *albeit* rendered in temporary capacity, followed by regularisation cannot be wiped out and it would be unjust and unfair to treat them as new recruits appointed for the first time to service post 01.01.2004, depriving them of the benefit of OPS. NPS, as held in several judgments aforementioned, can

only apply to new entrants post 01.01.2004 and cannot take away the rights of old entrants prior to 01.01.2004. In view of the wealth of judicial precedents governing the issue, the claim of the Petitioners hereby succeeds and it is held that Petitioners will be governed by the provisions of OPS. Insofar as Petitioner in W.P. (C) 2060/2019 is concerned, the narrative of facts indicates that he was appointed on temporary basis as a Lecturer with the Respondent college on 13.03.2003 and would also be covered under the OPS from the said date. However, as far as the prior period of ad-hoc appointment from 21.10.1992 with 2 different Colleges is concerned, it is left open to the Petitioner to represent to the concerned Respondents to treat the said period as qualifying service for pension and other service benefits.

39. Coming to the judgements relied upon by the Respondents during the hearing of the writ petitions, in my view, none of them aid the Respondents. In ***Dr. Rehan Ahmed Khan (supra)***, Petitioner was appointed purely on temporary basis on 16.07.2002 against leave vacancy of a permanent employee and was subsequently placed on probation w.e.f. 27.10.2005 and confirmed w.e.f. 27.10.2006. A perusal of the judgment shows that the interpretation of the expression 'new entrant' in the NPS was neither urged nor adjudicated upon by the Court. The various judgments of the Division Benches of different High Courts including of this Court in ***Dalip Kumar (supra)***, were not placed before the Court in which it is held that temporary uninterrupted service followed by substantive appointment will be treated as qualifying service and in such an event the employee will fall under the OPS. Rule 13 of the Pension Rules was also not brought to the notice of the Court. In ***Ram Ashrey Yadav (supra)***, the issue before the Allahabad High Court was whether services rendered by the Appellant as a daily wager could be taken into

consideration for the purpose of calculating salary and other benefits. Contention of the Appellant was that the entire length of service from 16.08.1988 as a daily wager should be taken into account while fixing the salary in the regular pay scale as on 11.08.2006 instead of fixation as was done at the minimum of the pay scale on the said date. The other contention was that Appellant was employed on the pensionable establishment of the State Government prior to 01.04.2005 and was not an appointee, appointed to the Government service for the first time on 11.08.2006 i.e. the date of his regularization and should be covered under OPS. Appellant was appointed as Junior Engineer on daily wages and in the earlier round of litigation, the Court had directed the Respondents to consider his case for regularization under the Uttar Pradesh Regularisation of Ad hoc Appointment (On Posts within the Purview of Public Service Commission) Rules, 1979. The issue crystallized by the Court for consideration essentially related to the date from which the Appellant would be treated as having become member of the service so as to calculate commencement of 10 years of regular service for the purpose of pension. From a reading of the judgment, it is clear that the Rules governing the parties in the said case were totally different from Statute 28-A which is applicable in the present case and governs the parties. There is no provision akin to Statute 28A which is explicitly clear and provides in Clause 1(h) that service rendered by a person on full-time basis in the University in a temporary capacity also without interruption and followed by confirmation shall count as qualifying service. Moreover, the prime issue arising in the said case was relating to regularization and fixation of salary in the regular pay scale of an ad-hoc employee, which is not the issue involved in the present writ petitions.

40. The judgment in *Satya Dev Prajapati (supra)*, also does not inure to

the advantage of the Respondents. The issue involved in the two writ petitions decided by the Division Bench was whether the Petitioners who had applied for employment pursuant to advertisements inviting applications issued prior to 31.12.2003 and where the selection process had commenced prior to the said date, were entitled to be covered under OPS given the factual situation that their appointment letters were issued after coming into force of NPS w.e.f. 01.01.2004. While the contention of the Petitioners was that because the selection process was initiated prior to the cut-off date, the appointments post the said date could not deprive them of the benefit of OPS, contention of the Respondents was that by the time the appointments were made NPS had come into force and thus Petitioners could not seek the benefit of OPS, having been appointed post 01.01.2004. Relying on an earlier judgment of the Division Bench in ***Shailendra Kumar v. Delhi High Court (Through Registrar General), 2012 SCC OnLine Del 2562***, the Court held that the controversy had been put to rest that wherever a candidate joins employment after 01.01.2004, he would not be covered under OPS, subject to certain exceptions which the Court has enumerated in the judgment. Having given a thoughtful consideration, in my view, the judgment is clearly distinguishable as in the present case, none of the Petitioners were appointed post 01.01.2004 and the neat legal nodus that arises is consideration of service rendered as temporary employees prior to 01.01.2004, which is uninterrupted and confirmed subsequently *albeit* post 01.01.2004. In ***Vijay Singh (supra)***, the Supreme Court was not in seisin of a dispute pertaining to coverage of the employees under OPS or NPS and the limited dispute was counting of ad-hoc service for the purpose of seniority.

41. For all the aforesaid reasons, this Court comes to the irresistible conclusion that the entire services of the Petitioners from the date of initial

appointments on temporary basis till the date of regularisation shall be counted as qualifying service for the purpose of pension and they will be deemed to be in service prior to 01.01.2004 and governed by OPS. Needless to state that NPS will be inapplicable to the Petitioners and accordingly, necessary and corrective orders shall be issued by the Respondents in this regard.

42. Writ petitions are allowed in the aforesaid terms.

MAY 19, 2023/shivam

JYOTI SINGH, J

