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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 26th November, 2024*

+ W.P.(C) 3806/2022 and CM APPL. Nos. 52983/2024 and 65961/2024

DR. ANITA AGARWAL

.....Petitioner

Through: Mr. Saurav Agrawal, Mr. Shantanu Agarwal, Ms. Chandreyee Maitra, Ms. Asmita Srivastav, Mr. Ajay Sharma and Mr. Shivam Chaudhary, Advocates.

versus

UNIVERSITY OF DELHI & ORS.

.....Respondents

Through: Mr. Santosh Kumar, Ms. Nidhi Rani and Mr. Adithya Ramani, Advocates for Respondent No.1.

Mr. Jitender Verma, Advocate for Respondent No.2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a declaration that Petitioner is entitled to pension as per the Old Pension Scheme (OPS) under Central Civil Service (Pension) Rules, 1972.

2. Factual matrix to the extent relevant and as emerging from the writ petition is that Petitioner served as a Lecturer on *ad hoc* basis in different Colleges of Respondent No. 1/University of Delhi ('University') between 1995 to 1999. She was appointed as a Lecturer on temporary basis in Satyawati College/Respondent No. 2 ('College') vide letter dated



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11.10.1999. Petitioner avers that she was performing duties of teaching and research like any other regular lecturer in the College and her tenure continued uninterruptedly without any extension. Petitioner was granted leaves and increments etc. at par with regular lecturers.

3. By an Office Order dated 29.03.2007 issued by the College, Petitioner was informed that her service as a Lecturer in the Department of English was confirmed w.e.f. 13.01.2006 and she would be treated as a permanent employee. By letter dated 27.01.2009, University approved Petitioner's promotion as Lecturer (Senior Scale), upon completion of 04 years of service w.e.f. 13.01.2006, which coincided with the date when she was confirmed as a Lecturer, under the Merit Promotion Scheme, 1998 (Scheme 1998),

4. It is averred that based on Selection Committee's recommendations, the Governing Body of the College in its meeting held on 05.06.2021 approved Petitioner's further promotions *albeit* belatedly and vide Office Order dated 02.08.2021 she was promoted to the post of Reader (Stage-III) w.e.f. 17.03.2006 and to the post of Associate Professor (Stage-IV) in Academic Level 13A w.e.f. 17.03.2009. Petitioner thus served the University for a long period of over 24 years commencing from 31.08.1995, before she retired on 31.12.2021.

5. Learned counsel for the Petitioner submits that Government of India introduced the National Pension Scheme ('NPS') vide Notification dated 22.12.2003, making the Scheme effective from 01.01.2004 for the new entrants who joined service on or after the said date. Petitioner has been in employment of the College from 1999 and cannot be treated as a new entrant under the NPS. Respondents are treating the Petitioner as a new



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entrant under the assumption that her date of appointment is 13.01.2006 i.e. the date she was appointed through an open recruitment process, overlooking the fact that Petitioner has been in employment prior to 01.01.2004, the date of enforcement of NPS. Despite several representations, Respondents are not acceding to Petitioner's request to grant her pension under the OPS, which is wholly arbitrary and illegal.

6. The impugned action of the Respondents is in the teeth of their own Office Orders wherein they have granted promotion to the Petitioner as Lecturer (Senior Scale) w.e.f. 13.01.2006 which demonstrates that her past service was counted since as per Scheme 1998 promotion to Lecturer (Senior Scale) can only be after completion of 04 years of service. Similarly, vide Office Order dated 02.08.2021, Petitioner was further promoted to Reader (Stage-III) w.e.f. 17.03.2006 and to Associate Professor (Stage-IV) w.e.f. 17.03.2009 and this was on completion of eligibility period of total service of not less than 09 years for the post of Reader (Stage-III) and on completion of 03 years of service as Reader (Stage-III) for the post of Associate Professor (Stage-IV). In light of this, Petitioner cannot be treated as a new entrant from 13.01.2006.

7. Learned counsel for the Petitioner submits that NPS is not applicable to the Petitioner as the scheme applies only to 'new entrant' and though the said expression is not defined in NPS, it can only mean and connote a person who has entered service after 01.01.2004. It is submitted that commencement of qualifying service starts from the date incumbent takes charge of the post and this can even be in a temporary capacity, provided it is followed, without interruption, by substantive appointment in the same post. This is the essence of Rule 13 of CCS (Pension) Rules, 1972 which



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applies across the Government of India and Petitioner has been working against permanent post without a break or interruption till she was confirmed w.e.f. 13.01.2006. It is urged that the case of the Petitioner is covered on all four corners with respect to applicability of NPS by judgments of this Court in ***Chandi Prasad and Others v. Union of India and Others, 2024 SCC OnLine Del 7958, Dr. Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College and Others, 2023 SCC OnLine Del 3057 and Dr. Archana Verma v. University of Delhi and Another, 2024 SCC OnLine Del 5778.***

8. Learned counsels for the Respondents, *per contra*, opposes the writ petition on the ground that Petitioner was selected initially on temporary basis which is reflected from her appointment letter. She applied against a fresh advertisement in 2005 vide application dated 05.07.2005 and was selected pursuant to recommendations of the Selection Committee against a permanent vacancy and a fresh appointment letter was issued on 13.01.2006. Petitioner joined on 13.01.2006 and she was informed vide letter dated 06.02.2006 that her appointment was approved by the Governing Body in its meeting held on 03.02.2006. By a subsequent letter dated 05.03.2007, Petitioner was informed that her services were confirmed by the Governing Body in its meeting held on 01.03.2007 after completion of probation period. Therefore, for all purposes, Petitioner is a fresh appointee after 01.01.2004 and her pension can be regulated only by NPS. Heavy reliance is placed by learned counsel on the judgment of the Supreme Court in ***State of Gujarat v. Public Works Department and Forest Employees Union and Others, (2019) 15 SCC 248***, more particularly paragraph 15 thereof, where the Supreme Court has held that the daily wagers who became entitled to the



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status of regular/permanent employees before the cut off date of NPS have to be given the benefit of GPF but conversely put, those who acquired the said status post the cut off date shall be governed by CPF Scheme/NPS.

9. Heard learned counsels for the parties and examined their rival contentions.

10. The moot question that arises for consideration before this Court is whether Petitioner is entitled to the benefit of OPS under the Pension Rules or would be covered under NPS. It is not disputed that Petitioner was appointed as a Lecturer with the College in 1999, pursuant to an advertisement for 02 vacancies against permanent posts of Lecturer in the Department of English, one for general category and the other for reserved category as a temporary employed. Prior thereto she was working with different colleges of the University from 1995. Petitioner applied vide application dated 05.07.2005 for the post of Lecturer (English) pursuant to an advertisement dated 20.06.2005 and was offered appointment on 13.01.2006. While Petitioner claims that she cannot be treated as a new entrant under the NPS by virtue of this appointment since this was only confirmation of her temporary service and counting her past service from 1995 she was given 03 promotions, Respondents contend that this appointment was a fresh recruitment through open recruitment process and therefore Petitioner being a 'new entrant' is covered under NPS.

11. There is no dispute insofar as criteria for promotions under Scheme 1998 is concerned. For promotion to Lecturer (Senior Scale), eligibility period is 04 years service as Lecturer for candidates with Ph.D. For promotion as Reader (Stage-III), not less than 09 years total service is required for an incumbent with Ph.D. degree. As far as promotion to the post



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of Associate Professor (Stage-IV) is concerned, as per the criteria, 03 years service is required in the post of Reader (Stage-III) in order to be eligible. As per the submission of the Petitioner, Respondents have counted the service of the Petitioner from 31.08.1995 to 16.03.2009 failing which Petitioner would not have been eligible for either of the 03 promotions. This position is uncontroverted. In this light, it is crystal clear that Petitioner has not been treated as a new entrant from 13.01.2006, by the college itself.

12. Petitioner contends that her case is squarely covered by the judgment of this Court in ***Dr. Ravindra Narayan Mishra (supra)***. Before advertng to the said judgment, it is relevant to note that in the counter affidavit filed by the University on 08.10.2022, it was stated in paragraph 2 that a similar writ petition being W.P. (C) 2060/2019 titled '***Dr. Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College and Others***' is pending adjudication. It is this very writ petition which was decided by this Court on 19.05.2023 and on which now the Petitioner places heavy reliance. Be it noted that against this judgment, an appeal is pending before the Division Bench but the Division Bench categorically declined to stay the judgment and permitted the Respondents therein to seek implementation of the same and therefore, in my view, Petitioner correctly relies on the said judgment.

13. Be it ingeminated that insofar as interpretation of the expression 'new entrants' is concerned, this issue stands decided by the Madras High Court in ***Union of India and Another v. K. Punniyakoti and Others, 2014 SCC OnLine Mad 695***. 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



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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.

14. 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 and went on to hold 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 observing 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 paragraphs 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



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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."

15. A similar issue came up before a Division Bench of this Court in ***Union of India & Another v. Dalip Kumar, 2010 SCC OnLine Del 311***. 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



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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.

16. It will be relevant to refer to a judgment of the High Court of Punjab & Haryana in CWP No.26482/2018 titled *Union of India & Others v. Dr. Neelam Aggarwal and Others*, decided on 22.10.2018, 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 Others (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. 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?”

17. 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 paragraphs 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-I, 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-1 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.”

18. 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."

19. 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 paragraphs 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.”

20. 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 Petitioner, it is hardly open to the Respondents to take a position that Petitioner is covered under the expression “new entrants/new recruits” envisaged under NPS, wiping out her entire past service and depriving her of pension under OPS, when she has been given the benefit of her past service for 03 promotions, as aforementioned.

21. There is an added factor in favour of the Petitioner in the present case. Rule 13 of the Pension Rules provides 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 substantively or in an officiating or temporary capacity provided the service is followed without interruption by substantive appointment in the same or another service or post. Rule 13 is extracted hereunder, for ready reference:-

“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.



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

22. Rule 13 provides 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 is followed by substantive appointment. 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 case, there can be no doubt that uninterrupted service of the Petitioner *albeit* rendered in temporary capacity, followed by substantive appointment, cannot be wiped out and it would be unjust and unfair to treat her as new recruit appointed for the first time to service post 01.01.2004, depriving her of the benefit of OPS. The judgment of the Supreme Court relied upon by the Respondents will be inapplicable to the facts of this case since the Respondents have themselves counted the service of the Petitioner from 1995 for the purpose of eligibility period for granting her promotions to the posts of Lecturer (Senior Scale), Reader (Stage-III) and Associate Professor (Stage-IV).



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23. For all the aforesaid reasons, this Court comes to the irresistible conclusion that the entire service of the Petitioner from the date of initial appointment on temporary basis till the date of substantive appointment on 13.01.2006 shall be counted as qualifying service for the purpose of pension and she 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 Petitioner and accordingly, necessary and corrective order shall be issued by the Respondents in this regard.

24. Writ petition is allowed and disposed of in the aforesaid terms. Pending applications also stand disposed of.

JYOTI SINGH, J

NOVEMBER 26, 2024

B.S. Rohella/shivam