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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 25th July, 2024

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W.P.(C) 12597/2019

DR. ARCHANA VERMA

.....Petitioner

Through: Mr. R.V. Sinha, Advocate.

versus

UNIVERSITY OF DELHI AND ORS.

.....Respondents

Through: Mr. Mohinder J.S. Rupal and
Mr.Hardik Rupal, Advocates for Respondent
No.1/DU.

None for Respondent No.2/Hindu College.

Mr. Apoorv Kurup, Ms. Nidhi Mittal and
Ms.Jagjiet Pahwa, Advocates for Respondent
No.3/UGC.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner seeking the following reliefs:

“(i) Call for the records and issue a writ of certiorari or any other appropriate writ, and or direction in the nature of certiorari to quash and set aside the decisions dated 23.06.2014 [Annexure P-18 (Colly)], 17.08.2018 [Annexure P-18 (Colly)] & 17.01.2019 [Annexure P-20];

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing Respondent No. 1 to treat the Petitioner as beneficiary of Old Pension Scheme (GPF-cum-Pension) and extend all the benefits of Old Pension Scheme with consequences to the Petitioner; and

(iii) Any other relief, order or directions which this Hon'ble Court considers just and fit in the facts and circumstances of the case, may also be passed in be interest of justice.”



2. Before advertizing to the legal issues arising in the present writ petition it would be useful to have a look at the factual matrix emerging from the writ petition. Petitioner applied on 01.08.2000 for the post of Lecturer in the Department of History pursuant to an advertisement published by Hindu College/Respondent No.2 on 20.06.2000. Two posts were advertised by the College out of which one was permanent and the other was referred to as temporary being against a leave vacancy of Mrs. Leshma Srivastava but was a permanent post. Petitioner was appointed against the leave vacancy for a period commencing from 01.08.2000 to 08.11.2000 or till such time Mrs. Srivastava rejoined, whichever was earlier. Tenure of the Petitioner, however, continued from 08.11.2000 till 01.09.2004, without any break.

3. Petitioner avers that on 03.08.2004, College once again invited applications against one permanent post of Lecturer in the Department of History. Petitioner applied and was recommended for appointment by a duly constituted Selection Committee. Since the process of appointment was underway, in the interregnum, the college further extended the temporary appointment of the Petitioner up to 23.12.2004 vide communication dated 01.09.2004. Petitioner was appointed as a permanent Lecturer on 22.12.2004 and vide letter dated 23.12.2004, Petitioner accepted the appointment and joined duty on the same day. On 23.12.2005, Petitioner completed the one-year probation period and was confirmed by the Governing Body of the College in its meeting held on 25.04.2006.

4. It is further averred that Petitioner was designated as a Senior Lecturer w.e.f. 23.12.2004 pursuant to recommendations of the Selection Committee convened on 06.12.2007, with the approval of the Chairman, Governing Body of the College. Petitioner's past service from 01.12.2000 to



23.12.2004 was counted for her designation as a Senior Lecturer. Later, on 02.01.2012, Petitioner was appointed as Associate Professor w.e.f. 25.07.2008 on recommendations of the Selection Committee in its meeting held on 30.08.2011 with the approval by the Chairman, Governing Body of the College.

5. It is stated that on 20.09.2017, Petitioner learnt from her colleagues that past service was not being counted by the Delhi University/Respondent No.1 for the purpose of pensionary benefits and on this, Petitioner addressed a communication to the Deputy Registrar (Colleges) through the channel of the Principal of the College, requesting that her past service be counted, which was without any break in service. College supported this request in its communication dated 27.12.2017 to the University, however, the University informed the College vide letter dated 17.08.2018 that in terms of a previous communication dated 23.06.2014, faculty members recruited w.e.f. 01.01.2004 through a fresh recruitment process would not be covered under the Old Pension Scheme ('OPS') irrespective of their previous temporary/*ad-hoc* services but would fall under the New Pension Scheme ('NPS'). Representations made by the Petitioner were of no avail as the University was consistent in its stand and Petitioner then approached this Court.

CONTENTIONS ON BEHALF OF THE PETITIONER:-

6. NPS is not applicable to the Petitioner as the Scheme applies only to a 'new entrant'. Petitioner was 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 a new entrant/appointee. 'New entrant' is not defined in NPS, however, it can only mean and connote a person who has entered service for



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the first time after 01.01.2004, from open market. Unlike in the case of fresh/direct appointments, Petitioner was not subjected to medical examination or character and antecedents verification at the time of regularising/absorbing her and cannot be treated at par with fresh appointees.

7. Petitioner was appointed prior to the introduction of NPS and after a due selection process undertaken by a duly constituted Selection Committee and against a permanent post *albeit* as a temporary Lecturer, since it was a leave vacancy. The advertisement against which the Petitioner was initially appointed was an open advertisement and the appointment continued till 01.09.2004 on temporary basis but it is relevant to note that in the meantime, Petitioner was recommended for appointment as a permanent Lecturer by a duly constituted Selection Committee on 22.12.2004, which she accepted and joined on 23.12.2004 on probation, which was confirmed after one year. Thereafter, Petitioner was appointed as Senior Lecturer and Associate Professor and there was no break in service from the date of her initial appointment commencing from 01.08.2000. Service benefits such as Annual increments during her tenure as full-time temporary Lecturer in the pay scale of Rs.8000-13500, were granted to the Petitioner along with four higher increments for Ph.D. and M.Phil. at the time of initial appointment, apart from pay protection on being appointed as a permanent Lecturer. Appointment order dated 22.12.2004 provided that '*on confirmation in your appointment, you will be entitled to retirement benefits in terms of the Delhi University Colleges Retirement Benefit Rules, 1970, as amended from time to time*'; and '*In all matters relating to leave and conditions of service, you will be governed by the Ordinances and the Rules in force in the Delhi*



University from time to time'. Petitioner cannot be treated as a new entrant under the NPS and her past service is to be reckoned, which if done would bring the Petitioner under the OPS. Petitioner's temporary service has been counted for pay protection at the time of substantive appointment and was also reckoned as eligibility service for grant of promotions. All components of regular selection existed even at the time of her initial temporary appointment and she has worked uninterruptedly till regularisation. Services rendered over the years cannot be wiped out or ignored.

8. 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 a 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 under Statute 28-A and the College had correctly recommended her case for extension of OPS, in consonance with the Statute. The impugned decision to cover the Petitioner 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. Petitioner worked against a permanent post even when her appointment was termed as temporary and without a break or interruption till permanent appointment and the services rendered ought to be counted towards qualifying service to bring her case



under OPS.

9. It cannot be disputed by the University that even during her temporary service, Petitioner was at par with regular incumbents not only with respect to pay-scales but her 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 fulfill 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. The case of the Petitioner is squarely covered by the judgment of this Court in *Dr. Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College and Others*, 2023 SCC OnLine Del 3057. Mr. Sinha fairly points out that the matter is pending before the Division Bench in LPA Nos. 680/2023, 687/2023, 690/2023 but the Division Bench categorically declined to grant stay and permitted the Respondents therein to seek implementation of the judgment.

CONTENTIONS ON BEHALF OF THE RESPONDENTS:-

10. Insofar as the College is concerned, its stand supports the Petitioner. University urges that 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



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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. Petitioner was, no doubt, appointed prior to coming into force of NPS, however, the appointment was purely temporary and Petitioner was regularised/appointed substantively on permanent basis on 23.12.2004 and would, therefore, be covered under the expression 'new entrants' under NPS and cannot seek the benefit of pension under OPS.

11. As per Clause 3(2) of 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 Petitioner falls under OPS or NPS.

12. Reliance by the Petitioner on Statute 28-A and Clause 1(h) thereof, which defines 'qualifying service' is completely misplaced. Statute 28-A is not applicable to the Petitioner since she was appointed on permanent basis only after 01.01.2004 and is a new entrant to the service. Appointment of the Petitioner post 01.01.2004 is in the nature of a fresh appointment and is not absorption or regularisation. *Arguendo*, even if Statute 28-A was to apply, Clause 3 of Statute 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. 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. Judgment in ***Dr. Ravindra Narayan Mishra (supra)*** is distinguishable inasmuch as in the said case, the Court had not considered the effect of Statute 28(3).

ANALYSIS AND FINDINGS

13. The factual matrix obtaining in the writ petition shows that Petitioner was appointed against a leave vacancy against a permanent post in the Department of History in the College for the period commencing 01.08.2000 to 08.11.2000 or till such time the Lecturer on leave rejoined, whichever was earlier. It is an undisputed fact that her tenure continued without any break till 01.09.2004 and on recommendations of a duly constituted Selection Committee, pursuant to an advertisement, she was appointed as a permanent Lecturer and joined on 23.12.2004 on the said post. The appointment of the Petitioner continued to be temporary between 01.09.2004 till 23.12.2004 but there was no break in service. On 23.12.2004, Petitioner was placed on one year probation on which she was confirmed and thereafter earned two promotions as Senior Lecturer and Associate Professor.

14. 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, University sought to bring the Petitioner under NPS, which was resisted both by the Petitioner and the College on the ground that she had been in service of the College prior to coming into force of NPS and cannot be treated as new entrant or new recruit under the Scheme. Stand of the University, broadly understood, is that Petitioner was appointed on



regular basis against substantive posts after 01.01.2004 and can only be treated as fresh appointee, falling under the expression “new recruits” and cannot claim the benefit of OPS. It is also the case of the University that it is bound by the directives issued by the Government of India and the UGC and has no autonomy to exercise discretion to place the Petitioner under OPS.

15. To buttress his contentions, Mr. Sinha has relied on 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 Petitioner is covered under OPS or NPS, given the fact that her initial appointment is prior to 01.01.2004 and she was permanently appointed post 01.01.2004 and this would entail examining and interpreting the expression ‘new entrants’ in NPS. Be it ingeminated 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 *Union of India and Anr. 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 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.

16. 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) 12 SCC 210 : (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.”*

17. A similar issue came up before a Division Bench of this Court in ***Union of India and 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 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.

18. It will be relevant to refer to a judgment of the High Court of Punjab



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& Haryana in CWP No.26482/2018 titled *Union of India & Others v. Dr. Neelam Aggarwal and Others*, 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 Lecturer, which post was redesignated as Assistant Professor. 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 (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.

19. 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?”

20. This judgment is significant for the present petition inasmuch as it deals with both the aspects arising herein i.e. initial appointment 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-sensu*. 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-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.”*

21. **In *A.R.D. Nayagam v. The Director, Local fund Audit, Chennai-108 and 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.”

22. 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 (supra)*** and granted the same benefit as was granted to the Respondents in ***Dr. Neelam Aggarwal (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 v. Dr. Neelam Aggarwal, 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 v. The State of Haryana, 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.”

23. 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 judgments, now covering the issue in favour of the Petitioner, it is hardly open to the University 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. There is an added factor in favour of the Petitioner in the present case. Service of the Petitioner is indisputably governed by Statute 28-A and ‘qualifying service’ is defined in Clause 1(h) thereof. Plain reading of the definition shows that it is *pari materia* with 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’.”

24. 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.”

25. 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/regularisation. The period of service so rendered is, therefore, liable to be counted towards qualifying service for pensionary benefits and once this 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 the 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 28-A to the present petition, there can be no doubt that uninterrupted service of the Petitioner *albeit* rendered in a temporary capacity, followed by regularisation 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. 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, claim of the Petitioner hereby succeeds and it is held that Petitioner will be governed by the provisions of OPS. Reliance by Mr. Rupal on Statute 28(3) is wholly misplaced in view of the aforesaid judgments, as the same does not deal with the issue arising in the present case, i.e. whether the Petitioner will be covered under OPS or NPS.

26. Mr. Sinha has additionally relied on a recent judgment of the Supreme Court in *State of Himachal Pradesh and Another v. Sheela Devi, 2023 SCC OnLine SC 1272*, where the Supreme Court was examining the judgment of the Himachal Pradesh High Court granting relief to the writ petitioners, whose claims were that as they were initially appointed prior to 01.01.2004 *albeit* on contract basis, they were entitled to reckon the period of contractual service for pension *de hors* the fact their regularisation was



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post 01.01.2004. The State contested the judgment of the High Court on the ground that the regular appointments of the writ petitioners were post 01.01.2004 and thus they were mandatorily covered under the NPS and their contractual service could not be counted for pension. Repelling the contention of the State, the Supreme Court agreed with the writ petitioners and observed that the past services of the contractual employees will be taken into account for pension and they will be covered under the OPS. Mr. Sinha is also right in his submission that the case of the Petitioner is squarely covered by the judgment of this Court in ***Dr. Ravindra Narayan Mishra (supra)***, although this Court is conscious of the fact that appeals are pending before the Division Bench but the Court has categorically declined to stay the operation of the judgment and permitted the Respondents to seek implementation of the judgment.

27. 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 permanent appointment/regularisation 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 orders shall be issued by the University/College in this regard.

28. Writ petition is allowed in the aforesaid terms.

JYOTI SINGH, J

JULY 25, 2024/B.S. Rohella