

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

WPCT 224 of 2016

Biswajit Das and others

Vs.

Union of India & Ors.

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CPAN 816 of 2017

+

WPCRC 45 of 2017 (CPAN 239 of 2017)

+

**IA No.CAN 2 of 2017 (Old No.CAN 7737 of 2017, CAN 3 of 2022,
CAN 5 of 2025**

With

WPCT 78 of 2017

Tania Banerjee (Palit) & others

vs.

Union of India & Ors.

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IA NO.CAN 1 of 2020 (Old No.CAN 1876 of 2020)

With

WPCT 80 of 2017

Union of India & Ors.

Vs.

Biswajit Das & others

Appearance:-

For the Petitioners :

in WPCT 224 of 2016

Mr. Soumya Majumder, Sr. Adv.

Mr. Victor Chatterjee, Adv.

Ms. Shreya Bhattacharjee, Adv.

For Petitioners :

in WPCT 78 of 2017

Mr. Probal Kumar Mukherjee, Sr. Adv.

Mr. Rajat Dutta, Adv.

Mr. Aishaini Mukhopadhyay, Adv.

For the Union of India/ Department: Mr. Anirban Mitra, Adv.

Heard on : 07.04.2026, 08.04.2026

Delivered on : 08.04.2026

Judgment (Oral)

Per, Sujoy Paul, C.J. : –

1. This judgment will dispose of the WPCT 224 of 2016, WPCT 78 of 2017, WPCT 80 of 2017 and the contempt petition filed in connection with WPCT 224 of 2016. These writ petitions are arising out of common impugned order dated 3.8.2016 passed by the Central Administrative Tribunal (Tribunal) in OA 350/707/2015.

Factual Matrix :

2. The facts are taken from WPCT 224 of 2016. The petitioners were appointed on contractual posts as Data Entry Operators against vacancies arising out of promotion under the Ministry of Statistics and Programme Implementation, Department of Statistics, Central Statistics Office (Industrial Statistics Wing) at Kolkata in regular 'non-plan' post through a process of selection. The petitioners upon their selection received the regular pay scale and annual attached to the increments post on which they were appointed.
3. The contention of the petitioners is that their selection was made by following the recruitment rules and, therefore, by no stretch of

imagination they can be said to be 'back door entrants'. Since the petitioners were not regularized despite their claims, they filed OA No.278 of 2012 before the Central Administrative Tribunal (Tribunal) **(Biswajit Das & Ors. vs. Union of India & Ors.)**. The Tribunal by order dated 18th February, 2013 decided the said OA and directed the department to regularize the services of the petitioners. The Tribunal placed reliance on the judgment of Karnataka High Court in **WP 17545 of 2011 (The Director General, National Sample Survey Organization & Ors. vs. Smt. B.V. Chandrika and others)**. The Tribunal came to hold that similarly situated persons (Smt. B.V. Chandrika and others) got the benefit of regularization and, accordingly, based on such binding decision of Karnataka High Court directed regularization of petitioners.

4. Aggrieved by the said judgment, the Department filed WPCT 488 of 2013 (Union of India & others vs. Biswajit Das & others). The said writ petition was finally decided by this Court by order dated 9.12.2013. This Court again considered the judgment of the Karnataka High Court in the case of **B.V. Chandrika (supra)** and affirmed the order of the Tribunal. The aforesaid order of the Tribunal and this Court was unsuccessfully challenged by the Department before the Apex Court by filing SLP(C) No.7686 of 2014, which was dismissed *in limine* on 4.4.2014. Thus, the order passed by the Tribunal directing regularization had attained finality. In obedience of the Court orders, the petitioners were regularized from different dates. For example, the

present petitioners were regularized by order dated 28/29th January, 2015 (Annexure P1 of WPCT 224 of 2016) with effect from 9.12.2014.

5. In the second round of litigation in the instant OA No.350/00707/2015, the petitioners claimed various reliefs including pay protection, seniority from the date of initial appointment as contractual employee, counting of the contractual employment period for the purpose of qualifying service for grant of pension etc. In addition, they prayed that services rendered by the contractual employee must also be treated for the purpose of counting the period under ACP/MACP schemes.

Contention of the Petitioners:

6. Mr. Mukherjee, learned senior advocate for the petitioners in WPCT 78 of 2017 and Mr. Majumder, learned senior advocate for the petitioners in WPCT 224 of 2016 submits that in the present petitions they are pressing the following reliefs.
 - i) Pay protection upon regularisation.
 - ii) Counting of contractual period from initial date of appointment as qualifying service for the purpose of grant of pension.
 - iii) Counting of the said period for the purpose of granting ACP/MACP benefits.

To elaborate, the learned Senior Advocates for the petitioners urged that when they were appointed on contractual posts, the said appointment was on a particular pay scale. Every year increments were granted to the petitioners. Thus, before their regularization, they

reached a particular stage in the said pay scale. They were regularized in the same pay scale but they had to start from minimum of scale meaning thereby the petitioners were given the pay scale from the date of regularization and on the first day of such regularization they were getting the initial of the pay scale. Thus, upon regularization their take home salary was reduced. In all fairness, the petitioners' pay which they were drawing in the same pay scale before regularization ought to have been protected upon regularization.

7. Secondly, it is submitted that the petitioners are entitled to get seniority from the date of their initial appointment as contractual employees. To support this, Mr. Mukherjee, learned senior counsel relied on Clause 6 of OM dated 03.12.2014 and urged that this clause in no uncertain terms makes it clear that seniority must be counted from the date of initial appointment as contractual employees and not from the date of regularization.
8. Thirdly, it is submitted that although in similar matter, the Karnataka High Court in WP 4712/2016 (S-CAT) (***Union of India and others vs. Shri S. D. Jayaprakash and others***), did not grant seniority and other consequential benefits from the date of initial appointment and granted it only from the date of regularization, fact remains that this judgment of Karnataka High Court dated 23.03.2021 in ***S. D. Jayaprakash*** (supra) was challenged before the Supreme Court in SLP (C) No.19539-19540 of 2021 (***S. D. Jayaprakash & Ors. Vs. Union of***

India & Ors.) (2025 INSC 594) and Karnataka High Court Judgement is not binding on this Court.

9. By placing reliance on the judgment of Supreme Court in the aforesaid matter, it is canvassed that the petitioners therein confined their relief only for the purpose of counting the entire services for treating it to be qualifying services for the purpose of pension. The Hon'ble Apex Court by conjointly reading Rule 2(g) and Rule 17 of **CCS (Pension) Rules, 1972** and in the light of the previous judgment of Supreme Court in **State of Himachal Pradesh & Anr. vs. Sheela Devi** reported in **2023 SCC OnLine (SC) 1272**, came to hold that the services so rendered on contractual basis needs to be counted for the purpose of qualifying service. If employees were governed under GPF Scheme, it was directed that department shall notify the amount to the appellants therein and in turn, they would remit in case they opt for grant of old pension under the Pension Rules. Based on this judgment, it is common ground that all the petitioners are entitled to count their services rendered on contractual basis from the date of initial appointment as qualifying service for Pension under the Pension Rules.
10. Lastly, it is common ground taken by Mr. Mukherjee and Mr. Majumdar, learned counsel that once services rendered on contractual basis are directed to be counted by Supreme Court for the purpose of qualifying service, there is no justification in not counting said service for the purpose of granting ACP/MACP benefits.

Contention of the department:

11. Mr. Mitra, learned counsel for the department submits that there is a principal difference between the case in hand and that of **V.V. Chandrika** (supra). The difference is that before the Bangalore Bench in **V. V. Chandrika** (supra), the applicants were appointed in “plan” posts whereas the present petitioners were admittedly appointed in “non-plan posts. Secondly, the contention of Mr. Mitra is that the petitioners were not covered under the GPF/CPF Scheme whereas the petitioners before Bangalore Bench in the case of **S. D. Jayaprakash** (supra) were covered by the GPF Scheme. In this background, Supreme Court directed that their services rendered on contractual basis be taken into account for the purpose of counting qualifying service under the Pension Rules. By projecting these two factual differences, Mr. Mitra submits that petitioners’ case is distinguishable and they are not entitled to get the fruits of the judgment of Supreme Court in the case of **S. D. Jayaprakash** (supra).
12. During the course of argument and upon receiving instruction, Mr. Mittra, learned Counsel for department apprised the court that the clients of Mr. Majumder have received the benefit of pay protection whereas clients of Mr. Mukherjee have not been given the benefit of pay protection upon their regularization.
13. So far benefit of ACP/MACP Scheme is concerned, Mr. Mitra submitted that most of the petitioners have already been promoted in different

years and therefore question of granting them ACP/MACP benefits does not arise.

14. Parties confined their arguments to the extent indicated above.

15. We have heard the parties at length and perused the record.

Findings:

Pay protection:

16. This is not in dispute that petitioners were appointed by following the regular selection method and they were not 'backdoor entrants'. It is also not in dispute that while working as contractual employees, they were getting the same pay scale which was granted to them upon regularization. During contractual service, in the said pay scale, they were given increments on regular basis. Resultantly, in that particular pay scale they achieved a particular pay position. Upon regularization, admittedly most of them were required to start from the initial/basic of the pay in the same pay scale. Resultantly, upon regularization, they start getting lesser pay than the pay which they were drawing before regularization. As noticed above, Mr. Mitra fairly apprised this court that regarding pay protection, there were different treatment given to similarly situated employees. Certain employees' pay was protected upon regularization whereas others were deprived from similar treatment.

17. In our opinion, the question of pay protection for similarly situated employees was considered by the Division Bench of Karnataka High

Court in the case of **S. D. Jayaprakash** (supra). The Karnataka High Court in para 9 opined as under:

*9. In the considered opinion of this court, once the initial appointment was on contractual basis, which was not done pursuant to the recommendation of the Staff Selection Commission, **the question of granting the benefit of seniority right from the inception in service and service benefits does not arise** and therefore, to that extent, the order passed by the Central Administrative Tribunal requires to be set aside. As the respondents have been regularized only in the year 2015, they shall be entitled for all consequential benefits and the regularisation of service w.e.f. 1.4.2015. So far as the **protection of pay** is concerned, it is a genuine prayer and therefore, their pay shall be protected while fixing it under the pay scale as provided in the order dated 01.04.2015.*

(Emphasis Supplied)

18. A plain reading of this para makes it clear that the court directed benefit of pay protection. This judgment of Karnataka High Court was not challenged by the department and therefore it attained finality. The present petitioners are similarly situated qua their counterparts in **S. D. Jayaprakash** (supra). Pausing here for a moment, we will be failing in our duty, if we would not consider alleged distinguishable fact projected by Mr. Mitra i.e. that the petitioners were appointed on 'non-plan' posts whereas their counterparts in **S. D. Jayaprakash** and **V.V. Chandrika** (supra) were appointed in 'plan' posts. In our view, once petitioners have been regularized, the said aspect became totally insignificant. Apart from this, it is an admitted position that petitioners were given contractual appointment against those posts from where their seniors were promoted on the next higher promotional posts. Thus, their initial appointments were also against clear and sanctioned posts. In other words, after regularizing the petitioners, the question

whether posts were 'plan' or 'non-plan' pales into insignificance. Resultantly, the petitioners cannot be given a different treatment. Otherwise it will violate equality clause flowing from Article 14 of the Constitution.

Pension:

19. The petitioners are claiming extension of benefit of judgment of Supreme Court in **S. D. Jayaprakash** (supra) decided on 29th April, 2025. To distinguish this judgment, the argument of Mr. Mitra is that petitioners in **S. D. Jayaprakash** (supra) were covered under the GPF Scheme whereas the present petitioners were not covered under any such scheme. In our opinion, this argument has no merit for the simple reason that for getting covered under the Pension Rules, the coverage under the GPF Scheme is not a condition precedent. Putting it differently, it is not necessary that only such employees who opted for GPF Scheme alone are entitled to get the benefit under Pension Rules of 1972.
20. For the purpose of deciding the starting point of qualifying service for the purpose of pension, the Supreme Court in the case of **S. D. Jayaprakash** (supra) considered Rule 2(g) and Rule 17 of Pension Rules and opined as under:

*8. This rule fell for consideration and interpretation in Sheela Devi (supra), where this Court held that although Rule 2(g) of the Pension Rules excludes contractual employees from their application, Rule 17 applies once such contractual employee is regularised on a later date. **The effect is that upon regularisation, the Pension Rules become applicable and Rule 17 requires that past service as a contractual***

employee is to be taken into account for calculating pension. In this light, and considering that Rule 17 requires the regularised employee to exercise an option to either retain the Government's contribution to Contributory Provident Fund, or to refund such amount or forgo the same if they have not been paid in lieu of counting the service period for which such benefits may have been payable, this Court in *Sheela Devi (supra)* issued the following directions:

"11. In view of the above reasoning, this court is of the opinion that there is no merit in the appeal however, the following directions are. issued:-

(i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged ie. prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.

(ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.

(iii) The options should be processed and completed within eight weeks from the last date of receiving options.

(iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued."

(Emphasis Supplied)

9. In light of the clear language of Rule 17 of the Pension Rules as well as its interpretation in *Sheela Devi (supra)*, the contractual service period rendered prior to the appellants' regularisation in 2015 must be counted towards the payment of their pensionary benefits in accordance with the mechanism set out in Rule 17. In line with the directions issued in *Sheela Devi (supra)* extracted hereinabove, we direct the respondent Union of India to take immediate steps and indicate the mode and manner for the appellants to exercise the option provided under Rule 17 of the Pension Rules as well as to notify the

amounts that the appellants would have to remit in case they opt for grant of pension under the Rules.

(Emphasis Supplied)

21. A bare perusal of this judgement makes it clear that the contractual service period rendered prior to regularization is directed to be counted towards payment of pensionary benefits in the light of the direction issued by Supreme Court in the case of **Sheela Devi** (supra).
22. Thus curtains are finally drawn by Supreme Court on the aspect of coverage under the Pension Rules. Considering the aforesaid, we are inclined to hold that services rendered by petitioners on contractual basis are liable to be counted for the purpose of qualifying service for their pensionary benefits. The department is accordingly directed to undertake the said exercise. The department may give option to the petitioner whether they intend to opt the pension under Pension Rules of 1972 and if they so opt, they may be required to deposit the requisite amount (if any) as notified by the department. Upon fulfilling the formalities, the department shall extend the benefit of counting the contractual period from initial appointment as qualifying service under the Pension Rules 1972.

Seniority:

23. Mr. Mukherjee, learned senior counsel by placing reliance on O.M. dated 3rd December, 2014 (Annexure A-7) in WPCT 78 of 2017, urged that as per Clause VI, seniority has to be counted from the date of initial appointment as contractual employee. The relevant portion of O.M. reads thus:

Office Memorandum

Sub: OA No.278/2012 – Shri Biswajit Das & Ors vs. UoI & Ors. –Reg.

In continuation to this Ministry's OM of even number dated 24.06.2014, the CSO(IS Wing) is directed to implement the orders of the Hon'ble CAT, Kolkata, subject to the following conditions:

- (i) *The regularization may be only and only in respect of the applicants (petitioners) of this case;*
- (ii) ***
- (iii) ***
- (iv) ***
- (v) ***
- (vi) *Inter-se senior may be based on continuous appointment.*
- (vii) ***

(Emphasis Supplied)

24. During the course of hearing, learned counsel for the petitioners fairly informed that after regularization of petitioners, no other set of employees have been appointed/promoted from any other stream/source.
25. A microscopic reading of Clause (vi) shows that it talks about *inter se seniority* and does not talk about the grant of seniority from the date of initial appointment. Since the petitioners/regularized employees are the only employees who entered the department during the relevant period between 1995 to 2000, the O.M. deals with *inter se seniority* of regularized employees and not *inter se seniority* with any other set of employees. Meaning thereby, the seniority of regularized employees has to be determined on the basis of their continuous appointment. It is noteworthy that the language employed in Clause VI is *inter se seniority* may be determined 'based on' continuous appointment. Thus, when

there exists a question as to which regularized employee is senior, the determination of seniority shall be based on the date of his initial appointment and this clause does not show that seniority is to be counted from the date of initial appointment.

26. Apart from this, Karnataka High Court in the case of **S. D. Jayaprakash** (supra) in para 9 opined that since the petitioners were regularized only in the year 2015, they shall be entitled for all consequential benefits from the date they were regularized. It was poignantly held that “*the question of granting the benefit of seniority right from the inception in service and service benefits does not arise*”. Since the petitioners are claiming benefit of parity with their counterparts in **S. D. Jayaprakash** (supra), we find no reason to give a different treatment to the petitioners for the purpose of seniority. Otherwise, the similarly situated employees will be governed by two different sets of principles. Apart from this, the Division Bench judgment of Karnataka High Court has a persuasive value on this court and we are persuaded to take the same view in order to maintain parity among the similarly situated employees.

ACP/MACP Benefits:

27. The claim of the petitioners to count the services from the date of initial appointment for ACP/MACP benefits deserves to be rejected for the same reason i.e. in **S. D. Jayaprakash** (supra) the Karnataka High Court opined that all consequential benefits shall be available only from the date of regularization of service. Thus, maintaining parity, we are

inclined to hold that for ACP/MACP benefits also, the services shall be counted from the date of regularization and not from the date of initial appointment as contractual employee.

28. In view of the foregoing discussion, following directions are issued:

- (i) Upon regularization, the petitioners shall be entitled to get the benefit of pay protection (if not already granted). In such cases, the respondent shall recalculate the pay by providing pay protection from the date of regularization and pay the arrears arising thereto to each one of them within 180 days from the date of communication of this judgement.
- (ii) Service rendered by petitioners from initial date of appointment as contractual employees shall be treated as qualifying service under the Pension Rules, 1972. The department shall give them option to switch over to the said Pension Rules and in case any formalities/deposit of amount etc. is required, the petitioners shall fulfil the said requirement. In that event, the petitioners shall be entitled to get the benefit of pension under the Pension Rules, 1972.
- (iii) The petitioners are not entitled to get seniority from the date of their initial appointment. Instead, they are entitled to get seniority from the date of their regularization.
- (iv) Similarly, the petitioners are not entitled to get the benefit of services rendered as contractual employee (before

regularization) for the purpose of counting services under the ACP/MACP benefits.

29. Petitions are **partly allowed** to the extent indicated above. The order of the Tribunal, if coming in the way in granting above relief stands quashed/modified.

(Sujoy Paul, C.J.)

I agree.

(Partha Sarathi Sen, J.)

In Re: CPAN 816 of 2017 & WPCRC 45 of 2017

1. Learned counsel for the petitioners and respondent jointly submitted that since this court has decided all the three writ petitions on merits, the contempt petitions and modification applications have lost significance and rendered infructuous.
2. Accordingly, the applications are dismissed having rendered infructuous.

(Partha Sarathi Sen, J.)

(Sujoy Paul, C.J.)