HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(DB : SHEEL NAGU & S.A. Dharmadhikari, JJ.)

R.P. No. 264/2017
State of M.P.
Vs.
Rajendra Kumar Jain
R.P. No. 320/2017
State of M.P.
Vs.
Amar Singh Kushwah
R.P. No. 321/2017
State of M.P.
Vs.
Netra Bahadur Thapa
R.P. No. 322/2017
State of M.P.
Vs.
Vijay Kumar Gupta
R.P. No. 323/2017
State of M.P.
Vs.
Chetram
R.P. No. 324/2017
State of M.P.
Vs.
Sameer Gupta
R.P. No. 325/2017
State of M.P.
Vs.
Gopal Singh
R.P. No. 326/2017
State of M.P.
Vs.
Harvilas Tyagi
R.P. No. 327/2017
State of M.P.
Vs.
Bhagwan Singh

R.P. No. 328/2017
State of M.P.
Vs.
Vijay Kumar Jain

R.P. No. 329/2017
State of M.P.
Vs.
Sanjay Birthare

R.P. No. 331/2017
State of M.P.
Vs.
Vijay Prakash Sharma
R.P. No. 332/2017
State of M.P.
Vs.
Darshan Singh
R.P. No. 333/2017
State of M.P.
Vs.
Virendra Kumar Shivhare
R.P. No. 334/2017
State of M.P.
Vs.
Suresh Singh Tomar
R.P. No. 335/2017
State of M.P.
Vs.
Baij Nath
R.P. No. 336/2017
State of M.P.
Vs.
Chandra Prakash Jain
R.P. No. 340/2017
State of M.P.
Vs.
Chandra Mohan Sharma
R.P. No. 341/2017
State of M.P.
Vs.
Bhuvneshwar Samadhiya

R.P. No. 342/2017
State of M.P.
Vs.
Braj Mohan Sen

R.P. No. 344/2017
State of M.P.
Vs.
Heeralal Ojha

R.P. No. 354/2017
State of M.P.
Vs.
Budhha Singh Jadon
R.P. No. 355/2017
State of M.P.
Vs.
Prema Tamang

R.P. No. 356/2017
State of M.P.
Vs.
Anil Kumar Tiwari
R.P. No. 358/2017
State of M.P.
Vs.
Dharmendra Kumar
R.P. No. 359/2017
State of M.P.
Vs.
Aman Sharma
R.P. No. 365/2017
State of M.P.
Vs.
Ramesh Chandra Sen
R.P. No. 366/2017
State of M.P.
Vs.
Prakash Kumar Raikwar
R.P. No. 367/2017
State of M.P.
Vs.
Suresh Singh Rajput
R.P. No. 369/2017
State of M.P.
Vs.
Keshav Prasad Sharma
R.P. No. 370/2017
State of M.P.
Vs.
Bhanu Prakash Sharma

R.P. No. 371/2017
State of M.P.
Vs.
Satya Dev Sharma

R.P. No. 372/2017
State of M.P.
Vs.
Sundar Giri Goswami

R.P. No. 373/2017
State of M.P.
Vs.
Puran
R.P. No. 374/2017
State of M.P.
Vs.
Than Singh

R.P. No. 375/2017
State of M.P.
Vs.
Navrangh Singh Rathor
R.P. No. 376/2017
State of M.P.
Vs.
Mahesh Pal
R.P. No. 377/2017
State of M.P.
Vs.
Smt. Saroj Sharma
R.P. No. 378/2017
State of M.P.
Vs.
Bhagwat Singh Karosiya
R.P. No. 379/2017
State of M.P.
Vs.
Shyam Kumar Prajapati

R.P. No. 472/2017
State of M.P.
Vs.
Ram Prakash Soni
R.P. No.473/2017
State of M.P.
Vs.
Brij Mohan Sharma
R.P. No. 522/2017
State of M.P.
Vs.
Mohan Singh
R.P. No. 523/2017
State of M.P.
Vs.
Gauri Shankar Pal
R.P. No. 524/2017
State of M.P.
Vs.
Harishchandran Sharma
R.P. No. 525/2017
State of M.P.
Vs.
Ram Prakash Upadhyay

R.P. No. 561/2017
State of M.P.
Vs.
Rajveer Singh Rajput

R.P. No.594/2017
State of M.P.
Vs.
Chandra Pal Singh Sengar
R.P. No. 609/2017
State of M.P.
Vs.
Sushil Pachouri
R.P. No. 611/2017
State of M.P.
Vs.
Prem Narayan Joshi

Shri Vishal Mishra, Additional Advocate General and Shri N.S. Kirar, Govt. Advocate for the petitioners/State.

Shri B.P. Singh, Shri Jitendra Sharma, NS Rana, Mahesh Goyal, Devesh Sharma, Anup Pratap Singh Chauhan, learned counsel for the respondents.

WHETHER REPORTABLE : Yes ☐ No ☐

Law Laid Down:

"Whether a daily-wager who is declared permanent by way of classification, by the employer, merely on completion of 240 days of service as daily-wager, without any judicial intervention is entitled to claim salary alongwith increments in the regular pay-scale admissible to a civil post or is merely entitled to salary equivalent to the minimum of the regular pay-scale without increments and in this backdrop whether the impugned orders granting benefit of regular pay-scale with increments are liable to be reviewed or not?."

Significant Paragraph Numbers: 12, 13, 14, 15, 16, 17 & 18

J U D G M E N T
(24.05.2018)

Per : Sheel Nagu, J.

Question Involved:

"The question which begs for an answer in these review petitions is whether a daily-wager who is declared permanent by way of classification, by the employer, merely on completion of 240 days of service as daily-wager, without any judicial intervention is entitled to claim salary alongwith increments in the regular pay-scale admissible to a civil post or is merely entitled to salary

equivalent to the minimum of the regular pay-scale without increments and in this backdrop whether the impugned orders granting benefit of regular pay-scale with increments are liable to be reviewed or not?."

CONTENT & CONTEXT

1. This bunch of review petitions can be classified into two categories:-

(i) The first category is of following review petitions arising from orders passed in writ petitions:-

R.P. Nos. 264/17, 320/17, 321/17, 322/17, 329/17, 340/17, 341/17, 342/17, 344/17, 365/17, 366/17, 367/17, 369/17, 370/17, 371/17, 372/17, 373/17, 374/17, 375/17, 376/17, 377/17, 378/17, 379/17, 472/17, 473/17, 522/17, 523/17, 524/17, 525/17, 561/17, 594/17, 609/17 and 611/17.

(ii) The second category is of following review petitions arising from orders passed in writ appeals:-

R.P. Nos. 323/17 , 324/17, 325/17, 326/17, 327/17, 328/17, 331/17, 332/17, 333/17, 334/17,335/17, 336/17 354/17, 355/17, 356/17, 358/17, 359/17.

2. However, since the question involved in all these cases is the same, this court thought it fit to analogously hear and decide both the above two categories of review petitions by this common order.

3. The respective I.As for condonation of delay in filing these bunch of review petitions are taken up, considered and allowed for the reasons mentioned therein and to rectify the aberration in judicial view occasioned by orders under review and for restoring judicial discipline.

4. For guidance the factual matrix involved in R.P. No. 356/2017 is considered.

4.1 R.P. No. 356/2017 seeks review of the final order dated 29/8/12 passed in W.A. No. 522/2012 which in turn approves the judgment dated 14/06/12 in W.P. No. 4836/2011(S) which was disposed of by following an earlier decision rendered by a single

bench of this court in W.P. No. 6515/2011 (S) passed on 14/12/11 (Suresh Sharma Vs. State of M.P.).

4.2 The skeletal facts in R.P. No. 356/17 are that the respondent/employee was initially engaged as daily-wager on 1/1/90. Respondent was classified without judicial intervention as permanent employee by order issued by Executive Engineer, P.H.E. Mechanical Section Gwalior as a Helper w.e.f. 27/8/90 (on mere completion of 240 days of service) but without any beneficial change in wages/salary. Aggrieved by non-regularisation and non-grant of pay scale admissible to regular employees working on commensurate post, the respondent preferred W.P. No. 4836/11(S). While allowing W.P. No. 4836/2011(S), the single bench of this Court squarely relied upon another single bench decision dated 14/12/11 in Suresh Sharma Vs. State of M.P. & Ors., which in turn drew inspiration from 2002 (1) MPLJ 385 (Engineer-in- Chief, P.H.E.D. Vs. Budha Rao Magarde) (Single Bench) and Division Bench decision dated 1/11/11 whereby a bunch of W.As. were decided including W.A. No. 1266/10 State of M.P. Vs. Rupram Yadav (wrongly captioned as State of M.P. Vs. Madan Singh Kushwaha). Pertinently the case of State of M.P. Vs. Madan Singh Kushwaha bore the registration number W.A. 228/2011 which incidentally was a part of the bunch of W.As decided by Division Bench on1/11/11 (supra).

4.3 All these review petitions arise out of the foundational factual matrix that respondents herein were engaged on daily wages without following any recruitment process recognised by law and in the absence of any sanctioned post, but for having worked since long, respondents were classified as permanent by the employer w.e.f. completion of 240 days of daily wage service, by issuing orders of classification in their favour but without any financial advantage since they continued to be paid daily wages at the rate

prescribed under the Minimum Wages Act, 1948 revised from time to time. Dispute herein was raised by these classified employees claiming regularisation and salary in pay scale admissible to employees borne on regular establishment. This grievance gave rise to a large number of petitions filed in all the three benches of this court. Initially, the view taken by the Division Bench at the Principal Seat especially in the case of **State of M.P. Vs. Madan Singh Kushwaha** in **W.A. No. 228/2011** dismissed on **1/11/11** was that on the pecuniary front there can be no disparity between an employee declared permanent by way of classification and an employee who is substantively appointed after undergoing the recruitment process prescribed by statutory rules. The State assailed this view taken in Madan Singh Kushwaha (supra) and several other similar cases before the Apex Court. In the first round of litigation before the Apex Court, the SLPs filed by the State suffered dismissal in limine. Thereafter the State persisted and initiated the second round of challenge before the Apex Court assailing the repeated orders being passed by this court in favour of workmen at all the three benches. The second round of litigation yet again suffered the same fate of dismissal of SLPs in limine and the Apex Court in the case of **State of M.P. & Ors. Vs. Sultan Singh Narwariya** in SLP (C) No. 20025/2011 and several others by order dated 21/1/15 directed the State and it's functionaries to implement the orders of this Court, failing which workmen were extended liberty to initiate contempt proceedings.

4.4 When the orders of this court were not complied with by the functionaries of the State, various contempt petitions were filed before the Apex Court which were clubbed along with certain other SLPs pending on the same issue and decided by a common order passed on 15/12/16 by the Division Bench of Apex Court in the case of **Ram Naresh Rawat Vs. Sri Ashwini Ray & Ors** reported

in **2017 (3) SCC 436.** The Apex Court in the case of Ram Naresh Rawat (Supra) dealt with the extent of pecuniary entitlement to a daily wager declared permanent by way of classification under the M.P. Industrial Employment (Standing Order) Rules, 1963 framed under the M.P. Industrial Employment (Standing Orders) Act, 1961 (for brevity 1961 Act and 1963 Rules).

4.5 It is pertinent to reproduce Para 3, 15, 23 and 24 of the judgment of Ram Naresh Rawat (supra) to highlight the questions involved therein and answers given as follows:-

> *"3. The precise submission is that once they are conferred the status of permanent employee by the court and it is also categorically held that they are entitled to regular pay attached to the said post, not only the pay should be fixed in the regular pay-scale, the petitioners would also be entitled to the increments and other emoluments attached to the said post.*
>
> *15. Insofar as petitioners before us are concerned they have been classified as 'permanent'. For this reason, we advert to the core issue, which would determine the fate of these cases, viz., whether these employees can be treated as 'regular' employees in view of the aforesaid classification? In other words, with their classification as 'permanent', do they stand regularized in service?"*
>
> *"23.From the aforesaid, it follows that though a 'permanent employee' has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.*
>
> *24. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.9).*
>
> *25. These contempt petitions are, accordingly, dismissed ."*

It is relevant to point out that the Apex Court in the case of Ram Naresh Rawat (supra) took note of various decisions on the

subject arising out of orders passed by the High Court of M.P..These decisions were **Mahendra Lal Jain & Ors. Vs. Indore Development Authroity & Ors. (2005) 1 SCC 639**, **State of M.P. & Ors. Vs. Lalit Kumar Verma (2007) 1 SCC 575**, **State of M.P. And another Vs. Dilip Singh Patel in S.L.P Nos.2057-2058/2014 decided on 27/8/14**.. Besides the aforesaid three cases arising from the State of M.P., Apex Court in Ram Naresh Rawat (supra) was also persuaded by the constitution bench decision in the case of **State of Karnataka Vs. Uma Devi (2006) 4 SCC 1** and **State of Punjab and others Vs. Jagjit Singh and others (2017) 1 SCC 148.**

4.6 On the strength of verdict in Ram Naresh Rawat (supra), the State and it's functionaries seek review/recall of the orders passed in favour of the respondents/workmen by this Court in various writ petitions and writ appeals herein (as detailed in Para 1 supra).

5. Pertinently the judgments under review passed either by Single Bench or Division Bench have primarily relied upon the following earlier decisions of this court:-

I. Brij Kishore Sharma Vs. State of M.P. and another reported in 1988 JLJ 137 (DB) order dated 16/12/87.
II. Surendra Kumar Saxena Vs. State of M.P. reported in 1988 MPLJ 519 order dated 18/2/88.
III. State of M.P. And another Vs. Ram Prakash Sharma reported in 1989 JLJ 36 (DB) order dated 7/10/88.
IV. MPSRTC Vs. Harish Jyanti Prasad reported in 1990 MPLJ 97 (DB) order dated 9/1/89.
V. Engineer-in-Chief, P.H.E.D. And Ors. Vs. Budha Rao Magarde and Ors. reported in 2002 (1) MPLJ 385 order dated 17/2/2001.
VI. State of M.P. Vs. Hariram reported in 2008 (3) MPHT 274 (SB) order dated 8/5/08..

VII. Judgment dated 1/11/11 passed inter alia in W.A. No. 1266/10 Sate of M.P. Vs. Rupram Yadav and W.A.No. 228/11 State of M.P. Vs. Madan lal Kushwaha (DB).

VIII. Judgment dated 14/12/11 passed in W.P. No. 6515/11 (S) Suresh Sharma Vs. State of M.P. (SB).

ANALYSIS

5.1 Each of the above said eight cases which form the backbone of the orders under review, need to be scrutinized to ascertain their precedential value in the context of issue raised herein.

(i). Taking up the case of Brij Kishore Sharma (supra) decided on 16/12/87 by division bench of this court, it is seen on the factual front that the termination dated 6/4/86 of four daily wagers working for different spells from 6-4 years, was put to challenge. The division bench held the termination to be in violation of executive instructions dated 15/5/87 of GAD which prohibited termination of daily wage employees appointed prior to 1/5/85. Consequential direction of reinstatement was made and while holding the said four petitioners to be entitled to wages/salary w.e.f. 15/5/85, this court declined grant of increments. The reason for denial of increments was not far to see. The said four petitioners were mere daily-wagers and therefore, were denied payment of salary in the regular pay-scale.

(ii) Thereafter is the division bench decision dated 18/2/88 of this court in Surendra Kumar Saxena (supra) wherein the petitioners approached this court against non payment of salary. The relief sought was granted on the principle of “Equal Pay for Equal Work” by directing payment of salary @ 515/- per month which was the minimum stage in the pay-scale of 515-800 admissible to the post of Filter Attender. However increments were denied.

(iii) Another division bench decision rendered in Ram Prakash

Sharma (supra) decided on 7/10/88 dealt with challenge to the appellate order of the industrial court upholding the order the labour court granting relief of classification as permanent employee and of salary equivalent to that admissible to regular employees. In this case, the division bench though followed the earlier verdicts in Brij Kishore Sharma (supra) and Surendra Kumar Saxena (supra) but went a step further granting increments in the regular pay-scale to the petitioners therein on the ground that the nature of appointment and the duties discharged by the petitioners therein were adjudicated upon by the Labour Court and found to be at par with that of regular employees.

(iv) Next is the case of Harish Jayanti (supra) dated 9/1/89 whereby the division bench of this court upheld the orders of the labour and industrial court declaring the workmen in question to be permanent employee by way of classification and granting salary of the post of LDC. In this case there is no reference as to whether the salary paid in the regular scale is with or without increments. Thereby rendering this decision irrelevant qua the controversy herein.

(v) The single bench decision dated 8/5/08 in Hariram (supra) upheld the decisions of labour and industrial court before which challenge was made to the revenue recovery certificate of Rs. 2,66,551/- arising out of order of labour and industrial court passed earlier by quashing the termination of the employee in question and directing for classification and payment of salary on the post of Chokidar. The issue involved in this single bench decision was merely the entitlement to consequential benefit of salary flowing from the order of classification and not to the validity of classification. Moreso in this case the order of classification was passed by judicial intervention of the labour and industrial court and not by the employer suo moto as is the case herein. Pertinently in

this case the decision of Apex Court in the case of **Mahendra Lal Jain & Ors. Vs. Indore Development Authroity & Ors. 2005 (1) SCC 639** cited by the employer was not considered due to dispute not pertaining to validity of classification order. Therefore this decision in Hariram (supra) is of no avail for deciding the issue involved herein.

(vi) Thereafter is the single bench decision dated 17/2/01 in Engineer-in-Chief, P.H.E.D. and Ors. Vs. Budha Rao Magarde and Ors. 2002 (1) MPLJ 385. In this case the employees approached labour court seeking classification on the post on which they were working as daily-wager. The prayer was allowed by the Labour and Industrial court by grant of benefit of classification with salary w.e.f. two years prior to the date of application. The single bench of this court in Budha Rao Magarde (supra) interfered only to the extent of grant of salary retrospectively. Remaining part of the order of the Labour and Industrial court was upheld. This decision though holds a classified employee to be entitled to salary alongwith increments admissible to the post against which classification took place but derives strength from Ram Prakash Sharma (supra) which as explained above turns of it's own facts where increments were directed to be granted based on adjudicated claim of pay parity.

(vii) Thereafter on 1/11/11, division bench of this court at Principal Seat in a bunch of WAs including W.A. No. 1266/10, W.A. No. 228/11 and several others preferred by State assailing the order of writ court granting benefit of salary in regular pay-scale to employee who had been classified as permanent, dismissed the State appeals by holding that an employee coming by way of normal recruitment and another through the process of classification cannot be discriminated on the pecuniary front when they discharge the same duties on the same post. It was further held that both such employees should be entitled to the same

benefits and not doing so amounts to violating the principle of "Equal Pay for Equal Work". While so holding the division bench though referred to but did not consider the decisions of Apex Court in the case of **M.P. State Agro Industries Development Corpn. Ltd and another Vs. S.C. Pandey 2006 (2) SCC 716** and **Gangadhar Pillai Vs. Siemens Limited 2007 (1) SCC 533**, but however relied upon the single bench decision in the case of Hariram (supra). Pertinently the division bench in said order dated 1/11/11 while holding that classified employee is entitled to same salary, did not specify as to whether the said entitlement would include payment of increment or not ? Thus this decision also does not specifically deal with the dispute herein. Pertinently the ratio laid down in the case of **M.P. State Agro Industries Development Corpn. Ltd and another Vs. S.C. Pandey 2006 (2) SCC 716** and **Gangadhar Pillai Vs. Siemens Limited 2007 (1) SCC 533** which was ignored by the division bench in it's order dated 1/11/11 shall be discussed in the latter part of this judgment.

(viii) Lastly is the judgment dated 14/12/11 rendered in the case of Suresh Sharma (supra) by single bench of this court directing grant of salary in the pay-scale of the post against which the employee concerned was classified as permanent employee. This decision is squarely based upon the earlier verdict in Budharao (supra), Ramprakash Sharma (supra), Surendra Kumar Saxena (supra), Brij Kishore Sharma (supra) and the decision of division bench in the bunch of WAs rendered on 1/11/11 which have already been explained above and thus the verdict in Suresh Sharma (supra) does not deserve separate analysis as regards it's irrelevance to the question involved herein.

5.2 At this juncture it is pertinent to mention that against all the orders under review, the SLPs preferred by the State suffered dismissal in limine without grant of leave to appeal and therefore, it

cannot be said that the said orders received stamp of approval of the Supreme Court for the reason that the doctrine of merger did not get attracted. A priori, the impugned orders under review are amenable to review jurisdiction of this court. This court is bolstered in it's view by the Apex Court decision **Kunhayammed Vs. State of Kerala** reported in **2000 (6) SCC 359**, para 38 of which is reproduced below for ready reference and convenience:-

> *"38. The Review can be filed even after SLP is dismissed is clear from the language of Order 47 Rule 1 (a). Thus the words no appeal has been preferred in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Courts order vests in the Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted."*

6. Pertinently during pendency of these review petitions the State has taken a policy decision to grant to the respondent employees and other similarly situated, the salary equal to the minimum stage of the pay scale admissible to a regular employee working against corresponding post with the benefit of dearness relief but without increments. The State while doing so has reserved liberty to verify the legality and validity of the subsisting orders of classifications. None of these recently passed orders are challenged herein and thus this court refrains from commenting about the same.

7. From the above discussion dealing with the eight cases of this court which are basis for passing of the orders under review, following revelations come to light:-

7.1 In the decision of Brij Kishore Sharma (supra) and Surendra Kumar Saxena (supra), this court had denied the grant of increments despite upholding the claim of pay parity to daily-wager with regular employees. Thus these two division bench decisions reveal that since very long this court was of the consistent view that

a classified permanent employee is not entitled to increments in the regular pay-scale.

7.2 The decision of Ram Prakash Sharma (supra) directs for grant of increments to a daily-wager in the regular pay-scale. This direction of grant of increment was based on the facts unique to that case where the claim for pay parity on the principle of "Equal Pay for Equal Work" was adjudicated upon by adducing of evidence in the Labour Court in favour of the workmen therein. In the case at hand, no such adjudication has taken place since the orders of classification herein were issued by the functionary of State without any judicial intervention, merely on the ground of the respondent employees having completed 240 days of daily wage service. Thus this verdict is unique to the factual scenario where direction of pay-parity was passed based on claim adjudicated by Labour Court.

7.3 Thereafter is the case of Budha Rao Magarde (supra) whereby following the verdict of division bench in Brij Kishore Sharma (supra), Surendra Kumar Saxena (supra), the single bench of this court directed for grant of increments in the regular pay-scale to classified employees. In this case also the single bench upheld the adjudication made in favour of workmen therein as regards claim of pay parity and thus this division bench decision is distinguishable on facts and is of no avail to resolve the controversy involved herein.

7.4 Thereafter is the case of Harish Jayanti (supra) of the division bench where the orders of classification and pay parity of the labour court were upheld by this court but there was no adjudication on the point as to whether the said benefit would also lead to release of increments to the employees therein declared permanent by classification. As such this division bench decision further does not assist this court in resolving the controversy

herein.

7.5 Thereafter is the decision of division bench dated 1/11/11, whereby the division bench ignoring the verdicts of the Apex Court in the case of **M.P. State Agro Industries Development Corpn. Ltd and Another v S.C. Pandey (2006) 2 SCC 716**, **Gangadhar Pillai Vs. Siemens Limited (2007) 1 SCC 533** upheld the order of the writ court and dismissed the W.As filed by the State holding that once a daily-wager is declared permanent by classification then he is entitled to all pecuniary benefits admissible to regular appointee who has been appointed after following constitutional/statutory provisions. By so holding the division bench dismissed a number of W.As. filed by the State without assigning any specific reason to ignore the verdict of the Apex Court in the case of **M.P. State Agro Industries Development Corpn. Ltd and Another v S.C. Pandey (2006) 2 SCC 716**, **Gangadhar Pillai Vs. Siemens Limited (2007) 1 SCC 533.** Moreso the ratio of the said decision dated 1/11/11 is at variance to the consistent view of the Apex Court that mere classification does not render a classified employee to stand at par with regular employee who occupies civil post after undergoing recruitment process prescribed by constitutional/statutory provisions. Thus this decision of the division bench dated 1/11/11 gets denuded of it's precendential value, for having been rendered ignoring the consistent contrary view of the Apex Court.

8. Threadbare analysis of the above said eight decisions relied upon for passing the orders under review, reveal that the said decisions treated to be precedents were infact cases which were decided either on their own peculiar facts or cases where the classification and pay parity was struck based on adjudication by the labour court or they were decided in ignorance of the consistent view of the Apex Court that an employee declared permanent by

classification merely on completion of 240 days is not entitled to acquire same status and pecuniary benefits as admissible to regular employee appointed after following due process of law recognized by the constitutional/statutory provision.

9. To emphasize the said consistent view of the Apex Court, the relevant extract of various decisions of the Apex Court rendered since last more than a decade is being reproduced below to highlight the vivid distinction between substantive appointment and permanency by way of classification recognized since time immemorial by Apex and all courts:-

(i) In the case of **State of M.P. And others Vs. Yogesh Chandra Dubey and others reported in (2006) 8 SCC 67**, it is observed:-

> *9. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularisation is not a mode of appointment. If any recruitment is made by way of regularisation, the same would mean a back-door appointment, which does not have any legal sanction.*
>
> *14. As the respondents did not hold any post, in our opinion, they are not entitled to any scale of pay."*

(ii) In the case of **Mahendra Lal Jain Vs. Indore Development Authority reported in (2005) 1 SCC 639**, it is observed:-

> "*27. No notification has been brought to our notice that the Standard Standing Orders had been made applicable to the Appellants. It is furthermore not in dispute that Adhiniyam came into force in 1973. The statute, rules and regulations framed by the State govern the terms and conditions of service of the employees of the Respondent. The terms of conditions of service contained in the 1973 Act and the 1987 Rules (statutory recruitment rules) are not in derogation of the provisions contained in schedule appended to the 1961 Act." (emphasis supplied)*
>
> *31.The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex, shall prevail over all other statutes. The only provision as regard recruitment of the employees is contained in Order 4 which merely provides that the Manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In absence of*

any specific directions contained in the schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the Respondent shall prevail.

35.....The nature of their employment continues save and except a case where a statute interdicts which in turn would be subject to the constitutional limitations. For the purpose of obtaining a permanent status, constitutional and statutory conditions precedent therefor must be fulfilled."

(iii) In the case of **M.P. State Agro Industries Development Corpn. Ltd and Another v S.C. Pandey** reported in **2006 (2) SCC 716**, it is observed:-

"17. The question raised in this appeal is now covered by a decision of this Court in M.P. Housing Board & Anr. v. Manoj Srivastava [Civil Appeal arising out of SLP (Civil) No. 27360/04 disposed of this date] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) A daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) Only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularized in service; (4) If an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

18. The said decision applies on all fours to the facts of this case. In Mahendra Lal Jain (supra) this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that before the respondent was appointed, the constitutional and statutory requirements were complied with.

22. *Such appointments, in our opinion, having regarding to the decisions in Mahendra Lal Jain (supra) and Manoj Srivastava (supra) must be made in accordance with extant rules and regulations. It is also a well settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v. Bhola Singh[(2005) 2 SCC 470] apart from Mahendra Lal Jain (supra).*

(iv) In the case of **M.P. Housing Board and Another Vs. Manoj Shrivastava** reported in **2006 (2) SCC 702**, it is observed:-

"8. A person with a view to obtain the status of a 'permanent employee' must be appointed in terms of the statutory rules. It is not the case of the Respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

17. It is now well-settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. [See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others, [(2005) 5 SCC 122], Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and others, [(2004) 8 SCC 262], Dhampur Sugar Mills Ltd. v. Bhola Singh, [(2005) 2 SCC 470], Manager, Reserve Bank of India, Bangalore v. S. Mani and Others, [(2005) 5 SCC 100] and Neeraj Awasthi (supra)].

21. In Onkar Prasad Patel (supra), whereupon Mr. Nair placed strong reliance, it was categorically held that an employee would not come within the purview of definition of 'permanent employee' only because he has completed six months' satisfactory service. The other requirement was that the service must be rendered in a clear vacancy in one or more posts which was established. The conditions were held to be cumulative and not independent of each other. The said decision, therefore, runs counter to the submission of the learned counsel."

(v) In the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** reported in **2006 (4) SCC 1**, it is observed:-

2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

16. In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized

and granting permanence of employment is a totally different concept and cannot be equated with regularization.

43.....Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment.....

44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment……

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons.....This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

(vi) In the case of **State of M.P. & Ors. Vs. Dilip Singh Patel & Ors.** reported in **2017 (3) SCC 455**, it is observed:-

"*5.From the aforesaid facts, it is clear that the respondents entitled for minimum wages and allowance as per the fixed Schedule of the pay scale but without any increment. In such case, if the pay scale is revised from time to time including the pay scale as revised pursuant to the Sixth Pay Commission the respondents will be entitled to minimum wages and allowances as per said revised scale without increment. Only after regularisation of their service, as per seniority and rules, they can claim the benefit of increment and other benefits."*

10. In the conspectus of above discussion, a substantive

appointment leads to enjoyment of status and privilege emanating from a statute and not by the fact of the employee merely having worked for a particular period of time or having been declared permanent by classification. The privilege of increment which is directly relateable to the concept of lien attached to a civil post is payable only to such employee who is inducted in service by following Statutory Recruitment Rules/ Constitutional Provisions. Increment is payable when the incumbent who holds lien on the post enjoys salary in the running pay-scale attached to the post. While on the other hand the employees declared permanent by classification under the industrial laws can not claim increment in the regular pay-scale. Such classified employees however become eligible to all the pecuniary and service benefits which flow from different industrial statutes.

11. **DISTINCTION BETWEEN PERMANENCY BY CLASSIFICATION AND SUBSTANTIVE APPOINTMENT:-** Permanency arising out of classification under the Standing Orders on one hand and the regular appointment after following due process of law envisaged in statutory recruitment rules or by following the procedure recognized by the equality clause under Article 16 on the other hand are two distinct concepts which have often misunderstood due to their ostensible overlapping contours.

(i) The induction of a person in the regular cadre of any service under the State or the Union is invariably governed by recruitment rules framed under proviso to Article 309 of Constitution of India. These recruitment rules framed for all the departments of the State, are statutory in nature. The common feature in all these recruitment rules is laying down of a detailed procedure for recruitment and appointment to a civil post. All these rules prescribe in mandatory terms that whenever any vacancy occurs on a civil post, in a cadre or service, then an advertisement is

required to be published laying down minimum basic educational and other related requirement for filling up the vacancy fixing a particular date as the last date for receipt of applications from eligible candidates. On receipt of applications, the candidature of the candidates is scrutinized on the anvil of eligibility criteria prescribed in the recruitment rules and a list of eligible candidates is prepared who are invited to participate in the selection process which may consist of a written examination with or without an interview or with an interview alone as the case may be depending upon the requirement and nature of post to be filled up. All the eligible candidates participating in this selection process are tested on the same yardstick. Thereafter the select list is prepared of candidates who secure the minimum marks in the selection process if prescribed. The number of these selected candidates which are equivalent to the zone of consideration either prescribed by the recruitment rules or executive instructions. Ordinarily the select list has more number of candidates than the vacancies advertised to be filled up. This is to cater to the eventuality of some selected candidates not joining due to unforeseen circumstances or some being declared disqualified owing to certain deficiencies in the candidature discovered later. Placement of selectees in the select list in cases of direct recruitment is based on merit ranking obtained in the selection process. Meaning thereby that a candidate who is more meritorious is placed higher than a less meritorious candidate. Thereafter appointment orders are issued inviting the selectees to fill up the vacancies advertised strictly in the order of merit and no candidate lower in merit ranking can be appointed ignoring the available candidates with higher merit ranking unless the latter does not come forward to join within time prescribed.

(ii) The aforesaid lengthy procedure starting from advertisement

to the issuance of appointment letter is invariably prescribed in all the statutory recruitment rules. The reason is not far to see. The said procedure is in line with the concept of equality under Article 16 which provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and no such citizen shall be ineligible or discriminated against in respect of any employment or office under the State on the ground only of religion, caste, sex, descent, place of birth, residence or any other. To ensure that this fundamental right is preserved and enforced every citizen who is eligible as per law to be appointed to a civil post, ought to be informed about the intention of the State to fill up the vacancies. This information and intimation is given by way of an advertisement which is ordinarily published in newspapers of wide circulation, so that every eligible citizen can avail the opportunity to compete alongwith all other eligible persons for public employment. This elaborate recruitment process further ensures appointment of the most suitable and meritorious to a civil post.

(iii) On the other hand, permanency arising out of an order of classification under the industrial laws is a misnomer since it gives an impression that a person who is declared permanent by way of classification becomes a member of regular establishment of a particular civil service under the State entitling him to all those benefits, pecuniary or otherwise to which a person is entitled who is appointed through procedure prescribed by the statutory recruitment rules as explained supra. The concept of “classification” is unique to the industrial/labour laws. The Industrial Dispute Act, 1947 (ID Act for brevity) does not define classification. The term “classification by grades” is found at item No. 7 of the IVth schedule appended to the ID Act which may not be of much assistance as it relates to grade/pay scale only. The expression

'classification' of employees is further found in part 2 of the Annexure appended to the M.P. Industrial Employment (Standing Orders) Rules, 1963 framed u/S. 21 of M.P. Industrial Employment (Standing Orders) Act, 1961. The said Act of 1961 was framed to provide rules defining with sufficient precision, in certain matter the condition of employment of employees in undertakings in the State of M.P.. Section 2 of the 1961 Act excludes application of 1961 Act to employees of an undertaking who are governed by Fundamental and Supplementary rules, The Central Civil Services (Classification, Control & Appeal) Rules, 1965 , Central Civil Services (Temporary Service) Rules,1965, revised leaves rules, Civil Services Regulation or any other rules or regulations that may be notified by the State Government in the official gazette.

(iv) Coming to the 1963 Rules framed under the 1961 Act, it is seen that the annexure appended to the said rules prescribe, the standard standing orders providing for classification of employees under various categories i.e. permanent, temporary, apprentice, probationers, badlis (seasonal or otherwise). Every industrial establishment/undertaking is mandatorily required to frame rules governing service conditions of it's workmen on subjects which are enumerated in the schedule to the 1961 Act.

(v) The sole object behind framing of such rules is to prevent the employer who is always in a dominant position, to indulge in unfair labour practices as defined in Section 2 (r) (a) of I.D. Act and as enumerated in the fifth Schedule to the I.D. Act. Thus the object behind classification of a particular employee as permanent is to bestow upon him certain security of employment to insulate him from the onslaught of unfair labour practices exercised by the dominant employer and to ultimately ensure industrial harmony.

(vi) The standard standing orders further do not vest the employee classified as permanent with any right to receive salary

and service benefits equivalent to an employee appointed to a civil post after being subjected to the statutory recruitment process. As regards the pecuniary entitlement of any employee under any industrial establishment, the provisions of Minimum Wages Act, 1948 govern the field, where appropriate government prescribes the minimum wages which the employer is obliged to pay to different categories of employees alongwith admissible allowances revised from time to time to keep pace with the rising price index. Thus the pecuniary benefits admissible to an employee classified as permanent flow out of the Minimum Wages Act, 1948 and therefore cannot be governed by the statutory recruitment rules and pay revision rules which are applicable to a civil post holder.

(vii) The cardinal differences between an employee declared permanent by classification and an employee appointed substantively under the statutory recruitment rules is that the latter occupies a civil post but the former does not. The reference of post/vacancy in Clause 2(i) in the Annexure appended to Rules 1963 does not relate to civil post.

12. Reverting to the facts of the present review petitions, it is seen that all the respondents/employees who were working as daily-wagers in the department of Public Health and Engineering under the State of M.P., were declared permanent by classification by the employer merely because of completion of 240 days of daily wage service. It is undisputed that all substantive appointments on any civil post in class IV and III category in the department of Public Health and Engineering are governed by the Statutory Recruitment Rules namely Madhya Pradesh Public Health Engineering Department (Non-Gazetted) Service (Conditions of Service and Recruitment) Rules, 1976 and Madhya Pradesh Class IV Services on the Establishment of Public Health Engineering Department Recruitment Rules, 1980 which are framed under

proviso to Article 309 of Constitution of India. These rules are statutory in nature and bestow lien, status and privilege upon incumbents who are appointed on a post after being subjected to the procedure laid down therein. Once the incumbent acquires lien and status on the civil post, privileges and benefits of the said civil post automatically start flowing to the incumbent which include privilege of annual increments. At this juncture, it will be pertinent to explain the concept of status and privilege by reproducing Paragraph 19 of the decision of Apex Court in the case of **Municipal Council, Sujanpur Vs. Surinder Kumar** reported in **(2006) 5 SCC 173.**

> *"19. Yet again, in Haryana State Agricultural Marketing Board v. Subhash Chand & Anr. [(2006) 2 SCC 794], this Court held:- "In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., Vol. 4 at p. 4470, the expression "status" has been defined as under:*
>
> *"Status" is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253, 257), or, to be verbally accurate, of his capacity for rights and duties. (Holland, Jurisprudence 88) The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned.Duggamma v. Ganeshayya, AIR at p.101 [Evidence Act (1 of 1872), Section 41] In the language of jurisprudence `status' is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. (Roshan Lal Tandon v. Union of India).*
>
> *The word "privilege" has been defined, at p. 3733, as under:*
>
> *`Privilege is an exemption from some duty, burden, or attendance to which certain persons are entitled; from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their care; that therefore, without this indulgence, it would be impracticable to execute such offices, to that advantage which the public good requires.*
>
> *A right or immunity granted as a peculiar benefit; advantage or favour; a peculiar or personal advantage or right, especially when enjoyed in derogation of a common right.*
>
> ** * * Immunity from civil action may be described also as a privilege, because the word `privilege' is sufficiently wide to include an immunity.*
>
> ** * * The word `privilege' has been defined as a particular and peculiar benefit or advantage enjoyed by a person.. `Privileges' are liberties and franchises granted to an offence, place, town or manor, by the King's great charter, letters patent, or Act of Parliament.*

> *In view of the aforementioned definitions of the expressions "status" and "privilege" it must be held that such "status" and "privilege" must emanate from a statute. If legal right has been derived by the respondent herein to continue in service in terms of the provisions of the Act under which he is governed, then only, would the question of depriving him of any status or privilege arise. Furthermore, it is not a case where the respondent had worked for years. He has only worked, on his own showing, for 356 days whereas according to the appellant he has worked only for 208 days. Therefore, the Fifth Schedule of the Industrial Disputes Act, 1947 has no application in the instant case. In view of the above, the dispensing with of the engagement of the respondent cannot be said to be unwarranted in law."*
>
> *[See also BHEL v. B.K. Vijay & Ors., (2006) 2 SCC 654]."*

13. The aforesaid reveals that the element of status is acquired by a person who is substantively appointed to a post after following due process of law prescribed either by statutory rules or procedure which passes the test of equality clause of Constitution. This status is also known in service jurisprudence as lien. The expression "Lien" derives from the latin word *legare* meaning knot or bind. The concept of lien has been well recognized in the fundamental rules which defines lien as follows:-

> *"Lien" means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively. (emphasis supplied)*

14. The importance and relevance of lien is further emphasized by FR (12)(A), FR (13), FR (14)(A) and 14 (B). A conjoint reading of all these provisions as aforesaid reflect that concept of "lien" can be equated with that of "title" which a substantive appointee holds on a civil post and this title is conferred and bestowed upon such employees who are subjected to the rigors of the due process of law prescribed in statutory recruitment rules/constitutional provisions before being appointed. The concept of lien is directly relateable to the substantive mode of recruitment preceding every appointment on a civil post.

15. Per contra to the above a workman/employee who has

worked for 240 days or six months is categorized as permanent employee by way of classification under the Industrial Law. This permanency by way of classification does not adorn the incumbent with lien/title/status. Such a classified permanent employee merely starts enjoying certain security of service such as protection under section 25-F of I.D. Act.

16. Thus it is evident from the above discussion that there is a palpable difference between an employee declared permanent by classification under the Industrial Laws and an employee appointed substantively by following statutory/constitutional provisions. This difference between the two categories of employees though working in the same service under the State or Union is required to be preserved or else the sanctity, gravity and relevance of substantive appointment would be lost, thereby negating the equality clause under Article 14 & 16 of Constitution of India.

17. Due to marked difference between the said two categories of employees a piquant situation arose where the said difference was though required to be maintained but the adverse effect of the said difference qua pecuniary entitlement was required to be dealt with. As such the principle of “Equal Pay for Equal Work” enshrined in Article 39 (d) of the Constitution has been invoked in favour of such classified permanent employees by granting them the minimum of the regular pay scale admissible to a substantively appointed employee, thereby ameliorating the heart burning to a considerable extent. The Apex Court has categorized the concept of “Equal Pay for Equal Work” by elevating it to be concept of equality under Article 14 of the Constitution in various of its decision. The most recent decision in this respect where the right of “Equal Pay for Equal Work” was recognized by interfering with the full bench decision of Punjab and Haryana High Court is the decision of Apex Court in the case of **State of Punjab and Others Vs. Jagjit Singh**

and others reported in **(2017) 1 SCC 148**.

18. Conspectus of above discussion compels this court to hold that the employee declared permanent by way of classification under the Industrial Law cannot be equated at least on the pecuniary front with the employee who has been appointed substantively after following due process of law prescribed under the statutory rules/constitutional provisions. This marked difference of non-entitlement to increment to classified employees has been recognized by the Apex Court since long as explained above and therefore, the contention of the respondent employees herein that the Apex Court took this view for the first time in Ram Naresh Rawat (supra) is liable to be and is rejected.

19. Once it is held that the Supreme Court has been consistently treating these two class of employees to be distinct at least on the pecuniary front, we are of the considered view that the orders under review having been passed in variance to the said consistent view held by the Apex Court since long, suffer from palpable error and thus deserve to be reviewed for the sake of maintaining judicial discipline.

20. Consequently, all the review petitions mentioned in Para 1 supra are allowed and the orders under review are set aside.

Copy of this order be retained in the docket of all the aforesaid connected review petitions.

(Sheel Nagu)
Judge
24/05/2018

(S.A. Dharmadhikari)
Judge
24/05/2018

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