IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 13th OF MAY, 2025

WRIT PETITION No. 15173 of 2025

RAMESH CHANDRA JHA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.D. Jain - Advocate for petitioner.

Shri S.S. Kushwaha – Government Advocate for respondent/State.

WRIT PETITION No. 15174 of 2025

ASHVANI TRIPATHI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.D. Jain - Advocate for petitioner.

Shri S.S. Kushwaha – Government Advocate for respondent/State.

WRIT PETITION No. 15591 of 2025

RAJENDRA SHARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.D. Jain - Advocate for petitioner.

Shri S.S. Kushwaha – Government Advocate for respondent/State.

ORDER

By this common order, WP No. 15173 of 2025 filed by Ramesh Chandra Jha, WP No. 15174 of 2025 filed by Ashvani Tripathi, and WP No. 15591 of 2025 filed by Rajendra Sharma shall be decided.

2. For the sake of convenience, facts of WP No. 15173 of 2025 shall be taken into consideration.

3. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> अतएवं माननीय न्यायालय से निवेदन है कि याचिकाकर्ता की याचिका स्वीकार की जाकर प्रतियाचिकाकर्तागण में से प्रतियाचिकाकर्ता कमांक–2 व 3 द्वारा जारी किया गया आदेश दिनांक 21.11.2023 जिसके द्वारा याचिकाकर्ता को उसका लाभ दिये जाने से वंचित किया गया है को निरस्त करते हुये प्रतियाचिकाकर्तागण को निर्देशित किया जावे कि वह याचिकाकर्ता की नियमितीकरण से पूर्व की गई सेवा की गणना पेंशन व अन्य सेवा लाभों के लिये किये जाने का आदेश प्रदान करने की कृपा करें। अन्य आदेश अथवा परमादेश जो माननीय न्यायालय याचिकाकर्ता के पक्ष में जारी किया जाना उचित समझें जारी करने की कृपा करें इस याचिका का व्यय भी याचिकाकर्ता को दिलाया जावे।

4. Facts necessary for disposal of the present petitions, in short, are that petitioners have claimed that for calculating their pensionery services, the period during which they had worked as daily wager, should also be counted.

5. Now the only question for consideration is as to whether the services rendered by an employee as a daily wager can be counted for pensionary services or not?

6. The question is no more *res integra*.

7. This Court in the case of **Ashok Kumar Sharma Vs. The State of M.P. & Others** in **W.P. No.29982/2023**, while relying upon the judgment passed in the case of **Malook Singh and others Vs. State of Punjab**, **decided on 28.9.2021 passed in Civil Appeal No.6026- 2028/2021**, has held as under:

> "1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-
>
> i) Issue a writ of Mandamus commanding the respondents to produce entire service records of the petitioner for ready perusal of the Hon'ble High Court.
>
> ii) Issue a writ of Mandamus commanding the respondents to count the service period from 12.10.1984 to 07.02.1990 total 5 years 4 months for the purpose of pension of the petitioner and revised the pension of the petitioner accordingly and also pay the arrears, in the interest of justice.
>
> iii) Issue a writ of mandamus commanding the respondents to consider and decide the representation, annexure P/7 of the petitioner in accordance with law in the interest of justice.
>
> iv) Any other relief/order or directions as this Hon'ble Court deems fit and proper looking to the facts and circumstances of the case deemed fit and proper in the interest of justice may please be awarded along with the cost of proceedings.
>
> 2. It is the case of the petitioner that earlier by order dated 12.10.1984 he was appointed as daily wager and subsequently he was regularized in service by order dated 5.2.1990 but the service rendered by him from 12.10.1984 to 5.2.1990 has not been counted for pensionary purposes.
>
> 3. It is submitted by counsel for the petitioner that noncounting of service rendered by him as a daily wager is in violation of judgment passed by the Supreme court in the case of **Ram Kumar Agarwal Vs. State of M.P., reported in (1995) Suppl. 3 SCC 67**.
>
> 4. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that the petitioner was appointed as a daily wager which is evident from the order dated 5.2.1990, annexure P/2. As per rule 12, 13, 14, 15, 16 of the M.P. Civil Services (Pension) Rules, 1976, the services rendered by the petitioner as a daily wager are not to be counted for the pensionary

purpose.

5. Heard the learned counsel for the parties.

6. Rule 12 to 16 of the Pension Rules reads as under :-

"12. **Commencement of qualifying service.** - (1) Except for compensation gratuity, a Government servant's service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.

(2) 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.

13. **Conditions subject to which service qualifies.** -

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service against a post under the Government and paid by the Government from the Consolidated Fund of the State which has not been declared as non-pensionable.

14. **Counting of service on probation** . - Service on probation against a post shall qualify.

15. **Counting of service as apprentice.** - Service as an apprentice shall not qualify, except in cases where it qualifies under the pension rules applicable at the time when the service was rendered.

16. **Counting of service on contract**. - (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in regular capacity in a pensionable establishment without interruption of duty, may opt either :

(a) to retain the Government contribution in the contributory provident fund with interest including any other compensation for that service; or

(b) to agree to refund to the Government the monetary benefits referred to in clause (a) or to forego the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the

Head of Office under intimation to the Audit Officer within a period of three months from the date of issue of the order of transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2) the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of Service rendered on contract.

7. It is not the case of the petitioner that as a daily wager they were appointed substantially or in officiating or temporary capacity. The Supreme Court in the case of **Malook Singh and others Vs. State of Punjab**, **decided on 28.9.2021 passed in Civil Appeal No.6026- 2028/2021** has held as under:-

"20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In **Direct Recruits (supra)**, a Constitution Bench of this Court has observed:

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stopgap arrangement, without considering the claims of all the eligible available persons and without following the rules of

> appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary… .....
>
> 47. To sum up, we hold that
>
> **(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account considering the seniority"**
>
> **(emphasis supplied)**

The decision in **Direct Recruits (supra)** stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on **Direct Recruits (supra)** to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in **Direct Recruits (supra)** was subsequently followed by this Court in **Keshav Chandra Joshi v. Union of India**. Recently a two judge Bench of this Court in **Rashi Mani Mishra v. State of Uttar Pradesh** , of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable

Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would not include ad hoc service. This Court also clarified that the judgement in **Direct Recruits (supra)** cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

> "36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent redetermination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.
>
> 37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for

considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules. The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case may be, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority."

8. As a daily wager the petitioner was not having any

> service conditions. A Full Bench in the case of **Ashok Tiwari Vs. M.P.Text Book Corporations and Another** , reported in **2010 (2) MPLJ 662** has held that a daily rated employee is not appointed to any post and before he is appointed, the pre-conditions contemplated for appointment to the post are not followed. His appointment is on a day - to - day basis as per need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such an employee.
>
> 9. Since the petitioner was not appointed against any substantive post and the counsel for the petitioner has also failed to prima facie establish that under which provision of M.P. Civil Services (Pension) Rules, 1976, the case of the petitioner is covered, this Court is of the considered opinion that the services rendered by the petitioner as a daily wager cannot be counted for pensionary purposes.
>
> 10. Accordingly, the petition fails and is hereby **dismissed**."
>
> 10. Thus, it is clear that a daily rated employee is not appointed to any post and before his appointment preconditions contemplated for appointment to the post were not followed. The appointment of daily rated employee is on day-to-day basis as per need of work and normally the conditions of service regarding transfer, suspension, disciplinary action cannot be applied to such daily rated employee. Since the petitioner was not appointed against any substantive post, accordingly, it is held that the respondents did not commit any mistake by rejecting the claim of petitioner to count the services rendered by him as a daily wager for the purposes of pension.
>
> Accordingly, this petition fails and is, hereby, **dismissed**."

8. Since the daily wagers have no service conditions and their services start from the morning and come to an end in the evening, therefore, the services rendered by the petitioners as daily wagers cannot be taken into consideration for the purposes of counting their pensionary services.

9. Accordingly, petitions fail and are hereby ***dismissed***.

(G.S. Ahluwalia)
Judge

(and)