

HIGH COURT OF MADHYA PRADESH : JABALPUR

BEFORE HON. SHRI JUSTICE SANJAY YADAV

Writ Petition No.13302/2013

Baldeo Prasad Ubnare and others

versus

State of Madhya Pradesh and another

Shri Aakash Choudhary, learned counsel for petitioners.

Shri A.P. Singh, Govt. Advocate for respondent-State.

Reserved on : **08.09.2016**

Date of decision : **19.09.2016**

ORDER

Whether a Senior Auditor (Apprentice) appointed by virtue of direct recruitment under Madhya Pradesh State Local Fund Audit Subordinate Accounts Service Recruitment Rules, 1969 (for brevity 'Recruitment Rules, 1969') can be said to be an appointment to Madhya Pradesh State Local Fund Audit Subordinate Accounts Service from the initial date of recruitment and joining as apprentice or from the date when he is absorbed after completion of successful apprenticeship and probation, is the issue which crops up for consideration.

2. The said issue crops up in the backdrop of the insertion of sub-clause (g) under clause (ii) of Rule 2 of Madhya Pradesh

Civil Services (Pension) Rules, 1976 (hereinafter referred to as 'Pension Rules, 1976').

3. Clause (ii) of Rule 2 of the Pension Rules, 1976 is an exclusion clause excluding the class of persons/government servants from the applicability of Pension Rules, 1976. Sub-clause (g) whereof mandates that the provisions of Pension Rules, 1976 shall not apply to :

“Government servants appointment on or after 1st January 2005 to the services and posts in connection with the affairs of the State, either temporarily or permanently”

4. Indisputably, in pursuance to the advertisement issued in early 2003, applications were invited under the Special Recruitment Drive to fill in the post of Senior Auditors (Apprentice), Assistant Auditor and Assistant Grade III from backlog of the post earmarked for direct recruit, the petitioners were selected as Senior Auditors (Apprentice) and were appointed by order-dated 25.8.2003. One such specimen order is brought on record as Annexure P/2. The appointment as evident from the order was on the following terms and conditions :-

“(1) शिशुक्षु अवधि दो वर्ष की होगी एवं इस अवधि में उन्हें ज्येष्ठ संपरीक्षक के पद को लागू वेतनमान रुपये 5000-150-8000 में प्रारम्भिक वेतन रुपए 5000/- एवं शासन द्वारा स्वीकृत अन्य भत्ते देय होंगे। इस अवधि में कर्मचारी को सैद्धांतिक एवं व्यवहारिक प्रशिक्षण दिया जावेगा तथा विभागीय अधीनस्थ लेखा सेवा (एस.ए.एस.) परीक्षा

भाग—एक एवं भाग—दो उत्तीर्ण करनी होगी। शिशुक्षु अवधि पूर्ण करने पर कर्मचारी को एक वर्ष के परीवीक्षा अवधि में रखा जाएगा।

(2) शिशुक्षु एवं परीवीक्षा अवधि में आपका कार्य एवं आचरण संतोषजनक न पाए जाने या विहित विभागीय परीक्षा भाग एक एवं दो अपेक्षित स्तर से उत्तीर्ण न करने पर या अन्य पर्याप्त कारणों से आपकी सेवाएं समाप्त कर दी जायेगी। तथापि विशेष प्रकरण में संतोषजनक कार्य एवं आचरण को देखते हुए आपकी सेवाएं शासन अनुमति से सहायक संपरीक्षक के निम्न संवर्ग में नियुक्ति दी जा सकती है।

(3) ज्येष्ठ संपरीक्षक के संवर्ग में नियमित नियुक्ति 2 वर्ष की शिशुक्षु अवधि या एस.ए.एस. परीक्षा उत्तीर्ण करने की तिथि जो भी बाद में हो, से की जावेगी। तथा पारस्परिक वरिष्ठता एस.ए.एस. परीक्षा उत्तीर्ण होने की तिथि एवं चयन सूची के आधार पर तय होगी। आपके परीवीक्षाधीन कालावधि एक वर्ष की रहेगी जिसे पूरा करने के पश्चात् यदि स्थायीकरण के लिए पद उपलब्ध न हो तो ज्येष्ठ संपरीक्षक के संवर्ग में उन्हें अर्द्ध स्थायी घोषित किया जाएगा एवं पद उपलब्ध होने पर स्थायीकरण होगा।

(4) कर्मचारी की पदस्थापना म.प्र. में किसी भी स्थान पर वित्त—विभाग के अन्तर्गत किसी भी कार्यालय में की जा सकेगी। सेवा के दौरान कार्य निरन्तर शासकीय यात्रा पर संपरीक्षाधीन निकायों की संपरीक्षा करना है एवं बीमा योजना के लेखा योजना के लेखा संधारण से संबंधित कार्य अनिवार्य हैं।

(5) 2 वर्ष की शिशुक्षु एवं एक वर्ष का परीवीक्षा अवधि में नियुक्ति पूर्णतः अस्थायी होगी तथा किसी भी समय बिना कोई कारण बताए एक माह की पूर्व सूचना पर सेवामुक्त किया जा सकेगा। कर्मचारी द्वारा शासकीय सेवा छोड़ने पर एक माह की पूर्व सूचना न देने की स्थिति में एक माह के वेतन एवं भत्ते की राशि शासन को देय होगी तथा नोटिस कम अवधि का होने की दशा में उक्त धनराशि भू—राजस्व की बकाया की तरह वसूली की जावेगी।

(6) कर्मचारी को स्वयं की स्वस्थता की जांच सिविल सर्जन से कराने हेतु स्थल से ज्ञापन प्राप्त कर मेडीकल जांच सिविल सर्जन से कराकर सिविल सर्जन का प्रमाण-पत्र उपस्थिति प्रतिवेदन प्रस्तुत करते समय प्रस्तुत करना होगा। कार्य पर उपस्थित होने के पूर्व उन्हें किसी केन्द्रीय अथवा राजकीय राजपत्रित अधिकारी अथवा वैतनिक मजिस्ट्रेट द्वारा दिया गया चरित्र संबंधी प्रमाण-पत्र जिसमें कम से कम तीन वर्षों का उल्लेख किया गया हो प्रस्तुत करना होगा। साथ ही सक्षम अधिकारी का मूल निवासी प्रमाण-पत्र, रोजगार कार्यालय का जीवित पंजीयन, जाति प्रमाण-पत्र की सत्यापित प्रति एवं शैक्षणिक योग्यता संबंधी प्रमाण-पत्रों की सत्यापित प्रति मूल प्रमाण-पत्र के सहित प्रस्तुत करना होगी। मूल प्रमाण-पत्र सत्यापन के पश्चात वापस किये जावेंगे।

(7) यह नियुक्ति आदेश चरित्र सत्यापन एवं जाति प्रमाण-पत्र के सत्यापन की प्रत्याशा में जारी किए जा रहे हैं। पुलिस द्वारा चरित्र सत्यापन हेतु अनुप्रमाणन फार्म भरकर प्रस्तुत करना होगा। पुलिस विभाग द्वारा आपके चरित्र सत्यापन में प्रतिकूल टिप्पणी अंकित की जाने पर तत्काल प्रभाव से सेवा से प्रथक किया जावेगा।

(8) अभ्यर्थी को अपने पद पर उपस्थित होने हेतु नियुक्ति स्थल पर दिनांक 30.8.03 तक अनिवार्य रूप से उपस्थित होना होगा। अन्यथा उन्हें प्रसारित उक्त नियुक्ति आदेश निरस्त माना जावेगा। नियुक्ति स्थल पर उपस्थित होने हेतु उन्हें कोई यात्रा भत्ता नहीं दिया जावेगा।

(9) अति महत्वपूर्ण :-

उपरोक्तानुसार नियुक्ति माननीय उच्च न्यायालय खण्डपीठ ग्वालियर द्वारा याचिका क्रमांक डब्ल्यू.पी. 1730/2003 में दिनांक 27.6.03 को पारित अंतरिम आदेश के संदर्भ में माननीय न्यायालय के अंतिम निर्णय के अधीन है।”

5. Thus, as per condition No.1 the incumbents were appointed as Apprentice for a period of two years on a pay of Rs.5000/- per month, being the minimum of scale Rs.5000-

150-8000. During which period they will undergo theoretical and practical training whereafter they will have to pass Subordinate Accounts Service Part I and Part II Examination. After successful completion of apprenticeship, the incumbent will be on probation for one year. Condition No.2 stipulated that in case of unsatisfactory performance during the period of apprenticeship and probation, the services would be dispensed with. Condition No.3 mandates that the regular appointment in the cadre would after successful completion of apprenticeship and probation and in case the permanent post are not available, they will be declared quasi-permanent till the regular post is available. Condition No.5 provides for that the period of apprenticeship and the probationer shall be treated as temporary service.

6. The petitioners on completion of two years' apprenticeship were appointed in the cadre in grade Rs.5000-150-8000 on probation for a period of one year vide order-dated 22.10.2005. The appointment were temporary. The order states :

“संचालनालय बीमा तथा स्थानीय निधि संपरीक्षा विभाग में सीधी भरती के माध्यम से नियुक्त निम्न ज्येष्ठ संपरीक्षाकों को जिनके द्वारा 2 वर्षों की शिशुक्षु अवधि पूर्ण करने एवं विभागीय अधीनस्थ लेखा सेवा परीक्षा (भाग—एक एवं दो) उत्तीर्ण किये जाने पर उनको कार्यभार ग्रहण करने के दिनांक से पूर्णतः अस्थायी रूप से एक वर्ष की परिवीक्षा पर वेतनमान रु0

5000-150-8000 में नियुक्त करते हुए उनके नाम के सम्मुख दर्शित क्षेत्रीय कार्यालय के अन्तर्गत पदस्थ किया जाता है।”

7. The petitioners thereafter were appointed on regular basis by order-dated 20.3.2008. The order states :-

“संचालनालय बीमा तथा स्थानीय निधि संपरीक्षा विभाग में सीधी भरती के माध्यम से नियुक्त निम्न ज्येष्ठ संपरीक्षकों जिनकों 2 वर्ष की शिशिक्षु अवधि तथा एक वर्ष की परिवीक्षा अवधि पर वर्ष 2003 में नियुक्त किया गया था। इनके द्वारा 2 वर्ष की शिशिक्षु अवधि पूर्ण करने तथा विभागीय अधीनस्थ लेखा सेवा परीक्षा (भाग एक एवं दो) उत्तीर्ण करने पर इनको संचालनालयीन आदेश क्रमांक 173/05 ग्वालियर दिनांक 22 अक्टूबर 2005 एवं 83/06 ग्वालियर दिनांक 14.07.06 द्वारा एक वर्ष की परिवीक्षावधि पर वेतनमान (5000-150-8000) में नियुक्त किया गया था।

इन नवनियुक्त ज्येष्ठ संपरीक्षकों द्वारा एक वर्ष की परिवीक्षावधि पूर्ण की जा चुकी है। तथा इनके विरुद्ध कोई विभागीय जांच/आरोप पत्र/निलम्बन इत्यादि की कार्यवाही प्रक्रियाधीन नहीं है तथा इनके वर्ष 2004 से 07 तक के गोपनीय चरित्रावलियों में किसी को भी “घ” श्रेणी प्राप्त नहीं हुई है।

अतः नवनियुक्त ज्येष्ठ संपरीक्षकों द्वारा एक वर्ष की परिवीक्षावधि संतोषप्रद पूर्ण कर लेने पर इनकी परिवीक्षावधि समाप्त कर परिवीक्षा पर नियुक्ति दिनांक से एक वर्ष बाद नियमित वार्षिक वेतन वृद्धि प्रदान करने की स्वीकृति दी जाती है।”

8. That, the State Government vide notification no.F-9/3/2005/नियम/चार dated 2.4.2005 issued by the Department of Finance, Government of Madhya Pradesh while excluding the Government Servant from the applicability of Madhya Pradesh Civil Services (Pension) Rules, 1976 and Madhya Pradesh

General Provident Fund Rules, introduced a contributory pension scheme to the Government Servant appointed after 1.1.2005. A circular to that effect was issued vide No. 9/3/2003/नियम/चार, भोपाल dated 13.4.2005.

9. That, a clarification in the following terms were issued vide Government of Madhya Pradesh, Department of Finance Circular No.F-9/3/2005/नियम/चार dated 17.10.2006 in the following terms :

विषय:— राज्य शासन के अधीन दिनांक 1-1-2005 अथवा इसके बाद नियुक्त होने वाले कर्मचारियों को परिभाषित अंशदान योजना लागू की जाना ।

संदर्भ:— विभाग का ज्ञाप. क्र. एफ-9/3/2003/नियम/चार, दिनांक 13-4-2005

मध्यप्रदेश शासन के अधीन सिविल सेवा व सिविल पदों पर दिनांक 1-1-2005 के पश्चात् नियुक्त कर्मचारियों के लिए संदर्भित ज्ञाप दिनांक 13-4-2005 द्वारा परिभाषित अंशदान पेंशन योजना लागू की गई है। उक्त अंशदान योजना के संदर्भ में कतिपय विभागों ने यह जानना चाहा है कि जो अधिकारी/कर्मचारी पूर्व से सेवा में है तथा जिनकी नवीन नियुक्ति पी.एस.सी./निर्धारित चयन प्रक्रिया द्वारा दिनांक 1-1-2005 के पश्चात् की गई है, उन्हें मध्यप्रदेश सिविल सेवा (पेंशन) नियम, 1976 लागू होंगे अथवा अंशदायी पेंशन योजना लागू होगी ।

2. इस संबंध में स्पष्ट किया जाता है कि ऐसे अधिकारी/कर्मचारी जो दिनांक 1-1-2005 के पूर्व से राज्य शासन की नियमित सेवा में है तथा जिनकी नियुक्ति निर्धारित चयन प्रक्रिया द्वारा दिनांक 1-1-2005 के पश्चात् की गई है, ऐसे मामलों में मध्यप्रदेश सिविल सेवा (पेंशन) नियम, 1976 लागू होंगे। ऐसे कर्मचारियों के मामलों में वित्त विभाग के ज्ञाप दिनांक 13-4-2005 द्वारा जारी अंशदान पेंशन योजना लागू नहीं होगी।

10. Further clarification in respect of Madhya Pradesh State Local Fund Audit Subordinate Accounts Service, was issued on 30.12.2006 in the following terms :

“क्रमांक एफ-10/11/2005/ई/चार :-मध्यप्रदेश अधीनस्थ लेखा सेवा (भरती तथा सेवा की शर्त) नियम-1965 के नियम-22 अनुसार प्रावधान है कि सेवा में प्रत्यक्ष रूप से भरती किया गया प्रत्येक व्यक्ति 02 वर्ष की कालावधि के लिए शिशिक्षु के रूप में भरती किया जायेगा, उस कालावधि के दौरान में उसे ऐसा प्रशिक्षण पाठ्यक्रम ग्रहण करना होगा तथा ऐसी विभागीय परीक्षा उत्तीर्ण करनी होगी जिसे शासन विनिश्चित करें। विभागीय परीक्षा उत्तीर्ण कर लेने पर शिशिक्षु परिवीक्षा पर सेवा में नियुक्ति का पात्र होगा। परिवीक्षा की कालावधि एक वर्ष की होगी।

2. मूलभूत नियम-9/ (5) 7 (ए) 1 के अनुसार परिवीक्षाधीन अवधि या शिशिक्षु के रूप में की गयी सेवा जो आगे चलकर स्थायी हो गयी हो, को कर्तव्य माना जाता है। इस प्रकार मध्यप्रदेश अधीनस्थ लेखा सेवा (भरती तथा सेवा की शर्त) नियम-1965 के प्रावधान मूलभूत नियमों के विपरीत थे। उपरोक्त विसंगतियों को दिनांक 25.09.89 के संशोधन द्वारा दूर किया जा चुका है। लेकिन संशोधन दिनांक 25.09.89 से पूर्व के नियुक्त अधिकारियों की शिशिक्षुता अवधि का निराकरण इससे नहीं हो सकेगा।

3. प्रकरण में विधि विभाग का अभिमत प्राप्त किया गया, जिसके अनुसार सेवा भरती नियमों को म.प्र. सिविल सेवा/शर्त नियम-1961 के प्रावधानों के अनुरूप होना चाहिए। अतः वर्ष 1987 में मध्यप्रदेश अधीनस्थ लेखा सेवा में नियुक्त ऐसे शिशिक्षुओं को शिशिक्षुता अवधि को कर्तव्य अवधि मान्य किया जाता है, जिन्हें आगे स्थायी कर दिया गया है।”

11. With the issuance of aforesaid clarification, demand was raised by the members of State Local Fund Audit Subordinate Accounts Service like the petitioners for extending them the

benefit under the Pension Rules, 1976; rather, treating them as a member of contributory pension scheme introduced from 1.1.2005. The claim was turned down on the ground that the petitioners since were appointed to service after cut-off date i.e. 1.1.2015, they are not entitled to be treated as member of pensionary establishment under Pension Rules, 1976.

12. It is in this context the issue referred to above arises for consideration.

13. However, before dwelling on the issue which crops for consideration, relevant rules of Recruitment Rules, 1969 i.e. Rule 2(h), 5 & Schedule I, Rules 6 and 7 are taken note of. These Rules are in the following terms :

"2. Definitions :-

...

(h) 'Service' means the Madhya Pradesh State Local Fund Audit Subordinate Accounts Service;

...

5. Classification, Scale of pay, etc.- The classification of the Service, the scale of pay attached thereto and the number of posts included in the Service shall be in accordance with the provisions contained in the Schedule I hereto annexed:

Provided that the Government may, from time to time add to reduce the number of posts included in the service, either in a permanent or temporary basis.

SCHEDULE I

(*Vide* Rule 5)

MADHYA PRADESH STATE LOCAL FUND AUDIT SUBORDINATE
ACCOUNTS SERVICE

Name of posts included in the service	Number of posts	Classification	Scale of pay
(1)	(2)	(3)	(4)
DUTY POSTS-			
Senior Auditors	50	Class III Ministerial	190-10-250 -EB-12½-300

6. Method of recruitment.- (1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, viz. -

- (a) by direct recruitment by Selection;
- (b) by promotion of members of the Madhya Pradesh State Local Fund Audit Ministerial Service who have passed the Examination;
- (c) by transfer of persons from other services as and when necessary under special circumstances.

(2) The number of persons recruited under clause (a) of sub-rule (1) shall not at any time exceed the percentage shown in Schedule II of the number of duty posts (as specified in Schedule I).

(3) Subject to the provisions of these rules, the method of methods or recruitment to be adopted for the purpose of filling any particular vacancy of vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Examiner.

(4) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Examiner the exigencies of the Service so require, the Examiner may, after consulting the Government, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as he may, by order issued in this behalf, prescribe.

7. Appointment to the Service.- All appointments to the Service after the commencement of these Rules shall be made by

the Examiner and no such appointment shall be made except after selection by one of the methods of recruitment specified, in rule 6.

...

13. Probation.- Every person directly recruited to the Service shall be appointed on probation for a period of THREE years as apprentice and will be required to pass the Examination during this period."

14. Evident it is from the combined reading of aforesaid Rules that Senior Auditor is a cadre post under the Recruitment Rules, 1969.

15. Madhya Pradesh Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or a part of a service sanctioned as a separate unit. Apparent it is from Rule 5 and Schedule I appended thereto that the post which exists in a cadre is that of Senior Auditors and there is no post like Senior Auditors (Apprentice). True it is that it is within the competence of the State to create as much as cadre post as the administrative exigency warrants in service but, that is not the case presently. In **Dr. Charkardhar Paswan vs State of Bihar AIR 1988 SC 959**, their Lordships while dwelling on the distinction between cadre and service, were pleased to observe :

7-A. ... In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service

sanctioned as a separate unit. The post of the Director which is the highest post in the directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service. It is manifest that the post of the Director of Indigenous Medicine, which is the highest post in the Directorate carried on a higher grade or scale, could not possibly be equated with those of the Deputy Directors on a lower grade or scale."

16. Applying the said principle in the case at hand, in absence of a cadre of Senior Auditor (Apprentice), it can safely be said that the appointment through direct recruitment as Senior Auditor (Apprentice) is, under rule, an appointment as Senior Auditor, which is a part of service. In this context, reference can be had of a decision in **G.R. Luthra vs Lt. Governor AIR 1974 SC 1908**, wherein it is observed :

27. In Fundamental Rule 9(22) "permanent post" means a post carrying a definite rate of pay sanctioned without limit of time. Fundamental Rule

9(30) defines "temporary post" as a post carrying a definite rate of pay sanctioned for a limited time. Temporary posts may be posts created to perform the ordinary work for which permanent posts already exist. Temporary posts may also be temporary addition to the cadre of a service. "Cadre" in Fundamental Rule 9(4) means the strength of a service or part of a service sanctioned as a separate unit. In the case of a temporary addition to the cadre of a service the power of the authorities to create such a post will depend on the provisions of the Rules. Isolated posts may be created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. Such temporary posts are treated as unclassified and isolated ex-cadre posts. Here again the power to create the post depends on the provisions contained in the Rules. Where however temporary posts are considered as temporary additions to the cadre of a service the incumbents of those posts will draw their time scale pay."

17. Thus, when a post is a cadre post that is part of service an appointment to such post is an appointment to service.

18. Furthermore, the scheme of Recruitment Rules, 1969 is that, with selection through direct recruitment, the incumbent is appointed on probation, which is in two parts. First two years, the selectee has to undergo an apprenticeship and after passing the examination, he has to undergo probation for one year before being confirmed in service. These three years are the part of duty he has to undergo on his appointment in service. Thus, even these three years are the services rendered

by an incumbent appointed as Senior Auditor. It cannot, therefore, be said that an incumbent appointed as Senior Auditor by direct recruitment by selection is not appointed to the State Local Fund Audit Subordinate Accounts Service and that the appointment to service is deferred till he has successfully completed his probation period which includes apprenticeship. There is no such provision in the Recruitment Rules, 1969. Rather, it is an appointment to a post in connection with service of the State and the confirmation of appointment to the post is subject to successful completion of the probation period of three years including two years' apprenticeship.

19. In view whereof, the appointment of petitioners by direct recruitment to the State Local Fund Audit Subordinate Accounts Service is with effect from 25.8.2003 i.e. the initial date of appointment and not from 22.10.2006, when they successfully completed the probation period, as construed by the respondents. Rule 15 of Pension Rules, 1976 is, therefore, to be understood in the light of above analysis. It (i.e. Rule 15) envisages :

“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”.

20. In the case at hand, the petitioners being appointed as Senior Auditors which is a cadre post in service and not as apprentice, an apprenticeship during probation cannot, in the considered opinion of this Court, be construed as service rendered as apprentice as would deprive them from counting the period as service period. In this context, reference can be had of a decision in **M.P. Pradhan vs Union of India AIR 1990 SC 891**, wherein it has been held :

“5. We have examined the admitted entries in the service book of the appellant which are on the record. These entries show that the appellant joined service as paid apprentice on substantive permanent basis on 1st of July, 1937. It is correct that from 1st of July, 1937 upto 1st of August, 1941 he has been shown in the service book to be appointed in officiating capacity to various posts but the fact remains that his basic appointment as paid apprentice was permanent. The finding of the Tribunal that the appellant was made permanent for the first time as Copyist on 1st August, 1941 cannot be accepted in the face of clear entries in the service book showing that he joined as paid apprentice on permanent basis on 1st of July, 1937. **Joining as paid apprentice on permanent basis cannot be anything else but entering Government service on permanent basis** and since the entry was before 31st March, 1938 Fundamental Rule 56(c)(i) is attracted and the appellant is entitled to remain in Government service till the age of 60 years.”

21. Thus understood, decision taken by the department in not treating the petitioners as not borne on pensionable

establishment cannot be countenanced. The petitioners being appointed to service prior to 1.1.2005, are amenable to the provisions of Pension Rules, 1976. The issue is, accordingly, answered in favour of the petitioners and similarly situated other Senior Auditors appointed prior to 1.1.2005 to Madhya Pradesh State Local Fund Audit Subordinate Accounts Service.

22. In the result, petition is **allowed** to the extent above. No costs.

(SANJAY YADAV)
JUDGE

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