IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 751 of 2020

RAM VISHAL PATERIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 14044 of 2010

RAMESHWAR PRASAD GAUTAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15957 of 2010

LALMANI SEN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17463 of 2010

CHANDRA MOHAN AGARWAL

Versus

PRINCIPAL SECRETARY THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1356 of 2011

KASHI PRASAD MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1357 of 2011

MOLE RAM MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13083 of 2011

SHIV SHARAN SINGH

Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7393 of 2013
SONELAL CHADHAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7412 of 2013
MOHAN SINGH
Versus
M.P. POWER GENERATING COMPANY LTD. MPPGCL AND OTHERS

WRIT PETITION No. 7506 of 2013
RAVISHANKAR MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16075 of 2013
BIHARI LAL PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2486 of 2015
DHANIRAM SONWANE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3646 of 2016
SMT. PRABHA DEVI PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13790 of 2016
ENDRABHAN PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13791 of 2016
R.K. DALAKSHUDU AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13798 of 2016

RAJENDRA PRASAD ARAKKA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 18458 of 2016
SAIYAD WAJAHAT ALI JAFRI AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5676 of 2017
RAMAN KUMAR GOUR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7711 of 2017
HARISH CHANDRA THAKUR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7712 of 2017
HARI NARAYAN SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9418 of 2017
MANMOHAN GOYAL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9722 of 2017
TULSIRAM RAI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12695 of 2017
RAMGOPAL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12931 of 2017
SMT. KAMLA DEVI JANGHELA
Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14089 of 2017
MADHAV SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 18415 of 2017
KALICHARAN KUSHWAHA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 19378 of 2017
BHIM SINGH CHANDEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20186 of 2017
RAMESHWAR MALWI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20322 of 2017
HARISHANKAR MANDHRE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20550 of 2017
MUNSHI LAL PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20552 of 2017
BANSHI LAL BARMAN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15 of 2018
KANKAMMA PILLAI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 775 of 2018

RAVI SHANKAR SHRIVASTAVA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1725 of 2018
MAHESH KUMAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2485 of 2018
MAGAN LAL YADAV
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3388 of 2018
SARMAN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7264 of 2018
JAGAT PRASAD TRIPATHI AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8470 of 2018
BIJENDRA KUMAR SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 11700 of 2018
ASHOK KUMAR SAXENA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14470 of 2018
UDHAM SINGH KUMRE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14749 of 2018
BAHADUR SINGH AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 23935 of 2018
RAMESH LUDHEKAR
Versus
PRINCIPAL SECRETARY STATE OF M.P. AND OTHERS

WRIT PETITION No. 25839 of 2018
GANPATLAL MEHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 383 of 2019
MOTILAL MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3423 of 2019
TEKRAM YADAV
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4201 of 2019
RAMDAYAL RATHOR AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12437 of 2019
RAJENDRA SINGH TOMAR AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17857 of 2019
KAILASH PRASAD MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 26213 of 2019
RAJENDRA PRASAD SHRIVASTAVA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27956 of 2019
RAJENDRA SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 28667 of 2019
BIHARILLA TIWARI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1232 of 2020
LAKHAN LAL BISEN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3144 of 2020
BABULAL SHUKLA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15969 of 2020
ANAND PARASAD MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3669 of 2021
PARASRAM PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3674 of 2021
IMRATLAL LODHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3677 of 2021
SURAJ PRASAD JHARIYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10614 of 2021
RAM NARAYAN SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12477 of 2021
SUBODDH CHANDRA SHARMA
Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14313 of 2021
MOHD. FAREED KHAN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 21366 of 2021
NARAYAN RAO SONWANE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 22397 of 2021
GAIBIDEEN VISHWAKARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2872 of 2022
ROSHAN LAL PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2876 of 2022
OM PRAKASH SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3237 of 2022
RAMAVATAR TELI (SAHU)
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4152 of 2022
PRAKASH SHRIVASTAVA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4345 of 2022
RAM LAKHAN KEWAT
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4716 of 2022
RANJEET SINGH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8259 of 2022

SATISH SAKERGAYE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8596 of 2022

PARASNATH TIWARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16792 of 2022

RAJA RAM KHAMPARIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17185 of 2022

NAND KUMAR PANDY

Versus

STATE OF M.P. AND OTHERS

WRIT PETITION No. 19918 of 2022

PRADEEP KUMAR PATEL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20934 of 2022

UMESH KUMAR MISHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 24423 of 2022

AMBIKESHWAR PRASAD TIWARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25316 of 2022

LAXMAN SINGH RANA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 26686 of 2022

PAVAN HARINKHEDE (RETIRED)
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27044 of 2022
SHRI MUNEENDRA PRASAD PANDEY AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1209 of 2023
JITENDRA SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7885 of 2023
RAMAYAN SHARAN DWIVEDI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10628 of 2023
SHIVKUMAR VISHKARMA AND OTHERS
Versus
THE STATE OF M.P. AND OTHERS

WRIT PETITION No. 13242 of 2023
RAM KISHOREDUBEY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13810 of 2023
GYAN PRAKASH MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 18586 of 2023
PRADEEP KUMAR NAMDEO
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20774 of 2023
MAHESH KUMAR BORKAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 23611 of 2023
RAMADHAR VERMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 24359 of 2023
JHANAKLAL JHARIYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 29163 of 2023
BALMIK KACHHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 31859 of 2023
SATISH KUMAR SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3544 of 2024
SMT. RAJAN MAURYA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5820 of 2024
TULSIRAM PATEL
Versus
MUNICIPAL CORPORATION JABALPUR AND OTHERS

WRIT PETITION No. 7531 of 2024
GADADHAR PRASAD CHARAMKAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8905 of 2024
GOPIKA PRASAD MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10389 of 2024
RAJA BHAIYA GAUTAM
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10452 of 2024
SUSHIL YADAV
Versus
MUNICIPAL CORPORATION JABALPUR AND OTHERS

WRIT PETITION No. 11061 of 2024
SANTOSH KUMAR PANDEY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14497 of 2024
ROSHAN LAL RAO AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 21460 of 2024
BHAGWAT PRASAD KEWAT AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 29321 of 2024
GAJRAJ PRASAD TIWARI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 32434 of 2024
PRADEEP KUMAR MALVIYA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 40244 of 2024
RAJENDRA MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5472 of 2025
BHANU SINGH JANGHELA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6858 of 2025
GOVIND SINGH
Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 13228 of 2025
SIYARAM SHARAN PANDEY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 14122 of 2025
HANSH KUMAR PANDEY AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15877 of 2025
HIMMATLAL PICHHODE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 15878 of 2025
DUKHLAL NAGPURE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17460 of 2025
KHUMANLAL BISEN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17476 of 2025
BHAGCHAND THAKREY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17484 of 2025
MAHESH KUMAR PACHORI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17767 of 2025
KHUBCHAND RAGHUVANSHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17769 of 2025
SMT. LEELABAI KATRE

Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17798 of 2025
SMAIL AHMAD QURESHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17811 of 2025
HEERAMAN LILHARE (RETIRED)
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17817 of 2025
SURESH CHAND CHANDRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17820 of 2025
KUNWARLAL CHOUDHARY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 18988 of 2025
SAUKHILAL NAPIT
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 19459 of 2025
LAXMI NARAYAN SAINI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 19738 of 2025
UMASHANKAR MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 23437 of 2025
GANGA PRASAD CHAKPAK
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30064 of 2025

RAJENDRA PRASAD SONI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri M.P.S. Raghuvanshi Sr. Advocate with Shri Bramhanand Pandey, Shri Brindavan Tiwari, Shri Choudhary Mayank Singh, Ms. Sanjana Yadav, Shri Gopal Singh, Shri O.P. Dwivedi, Ku. Kanchan Tiwari, Ku. Saloni Kasliwal, Shri Sachin Pandey, Shri Praveen Kumar Verma, Shri Narendra Kumar Sharma, Shri Harish Chand Kohli, Shri Gajendra S. Thakur, Ms. Ankita Khare, Shri Rakesh Singh, Shri Rajesh Kumar Soni, Shri Rahul Mishra, Ms. Ashi Soni, Shri Sanjeev Kumar Singh, Shri Aditya Ahiwasi, Shri Suresh Prasad Khare, Shri Jai Shukla, Shri Gaurav Singh Kaurav and Ms. Malti Dadariya – Advocates for the petitioners in their respective cases.

Shri Shri V.P. Tiwari – Govt. Advocate for the respondents / State.

ORDER

(Reserved on 21/08/2025)
(Pronounced on 27/09/2025)

All these petitions have been filed by employees who were initially appointed as Daily wager employees and subsequently regularized upon finding their initial appointment to be irregular, and not illegal. They in these petitions are seeking same relief of reckoning of services spent by the petitioners as Daily Rated Employees prior to they being regularized in regular establishment or in regular work charged establishment as per policy of the State Government dated 09.1.1990 or 16.05.2007, which was framed by the State Government for regularization of daily rated employees who had completed a requisite years of service as Daily Rated Employees

and who had requisite qualification for the post and their appointments were not illegal and were only irregular.

2. Some of these petitioners have been regularized as per policy dated 09.1.1990, which was a more lenient policy having more lenient terms and conditions for regularization, because it was framed before the judgment of the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka vs. Umadevi (2006) 4 SCC 1.*** However, after judgment of the case of ***Umadevi (supra)***, in pursuance to directions of the Hon'ble Constitution Bench as contained in paragraph 53 thereof, the State Government came out with a stricter policy dated 16.05.2007, which has been modified and amended from time to time. This policy contains more strict parameters for assessing whether the employee has requisite qualification for the post and whether his appointment is illegal or mere irregular. The petitioners in these set of petitions have either been regularized in terms of policy dated 09.1.1990 or have been regularized in terms of subsequent policy dated 16.05.2007.

3. Counsel for the petitioners have vehemently argued that the Daily Wage Services of the petitioners have to be reckoned as Contingency Paid Services, because the Daily Rated Employees are paid from contingencies and when they are named as Daily Rated Employees but get paid monthly, then they are Temporary Contingency Paid Employees, who acquire deemed status of permanency as per Clause 2(c) readwith 6(3) of M.P. Work Charged and Contingency Paid Employees Pension Rules, 1979 (herein after for short referred to as "Pension Rules, 1979"). It is argued that the petitioners upon being engaged as Daily Rated Employees are in fact, holders of status of temporary contingency paid employees, because there is no other mode for payment of Daily Rated Employees as per M.P. Works Department Manual, M.P. Treasury Code and M.P. Finance Code

under which payments are made in the Works Departments of the State Government. It is argued that as per Clause 2 (c) of Pension Rules 1979, permanent employee means a Contingency Paid Employee or Work Charged Employee, who completes 15 or more years of service on or after 01.01.1974 and in case of those employees who had attained the age of superannuation on or after 01.04.1981, permanent employee would mean an employee who completes 10 years of service on or after 01.01.1974.

4. It is vehemently argued that a special provision has been carved out for the purpose of pension whereby upon completion of 6 years service against any regular pensionable post from 01.01.1974, the services shall be counted towards pension, if they are in excess of 6 years and rendered as Temporary Worked Charged Employee.

5. Therefore, learned counsel for the petitioners have vehemently argued that the Division Bench of this Court in ***Rahisha Begum v. State of M.P., (2010) 4 MP LJ 332 (MP),*** has interpreted the amended Clause 6(3) of the Pension Rules 1979 as inserted w.e.f. 30.01.1996 and therefore, in terms of the said provision of the Pension Rules, the petitioners are entitled to count their services for the purpose of pension upon they being regularized either in work charged or regular establishment and undisputedly, now their services are otherwise pensionable if they stand regularized prior to 01.1.2005, or their length of service for purpose of pension is counted from a date prior to 01.1.2005. It is argued that if Daily Rated Services are counted, then the initial date of appointment of some petitioners would be advanced to a date prior to 01.01.2005 which is the cut-off date of old pension scheme and even those petitioners who on getting regularization before 01.1.2005 are still entitled to pension, but they also will stand to gain because their pensionable service would increase

and therefore, they would get more pension upon getting benefit of qualifying service for the period they had spent as Daily Rated Employees.

6. The counsel for the petitioners have argued by placing reliance on judgment of the Division Bench in case of ***Pannalal vs. Public Works Department (W.A. No.827 of 2019)*** decided at Indore Bench. So also the judgments of various co-ordinates benches whereby identical reliefs have been granted some of which been confirmed up to the Hon'ble Apex Court. As an example, the judgment in case of ***Netram Sharma (WP No. 6135 of 2016, as affirmed in WA No. 101 of 2017***, Gwalior) has been relied by learned counsel for the petitioners, so also in case of ***Laxmikant Mishra Vs. State of M.P., W.P. No. 5133 of 2016*** (Gwalior), that has been affirmed upto Hon'ble Supreme Court by order Annexure P-13. It is argued that judgment in case of ***Rahisha Begum (supra)*** has been followed and the aforesaid order has been confirmed by the Hon'ble Apex Court vide Annexure P-13.

7. The counsel for the petitioners have also vehemently argued that the petitioners were paid on monthly basis and since they were monthly paid employees, they would be treated to be Contingency Paid Employees. It is argued that a mere Daily Rated Employee would be one who is getting paid on muster roll on daily basis, i.e. for the actual number of days he works. He works as per minimum daily wages notified by the Labour Commissioner or Competent Authority of the State Government from time to time. Once he gets paid as per minimum monthly wages declared by Collector/Labour Commissioner, he gets the status of temporary Contingency paid employee.

8. Further, it is argued that the petitioners were not being paid on daily basis but were being paid on monthly basis and therefore, upon they started

to get paid on monthly basis, then as per Clause 2(a) of Pension Rules 1979 that defines a Contingency Paid Employee, he gets the status of Contingency Paid Employee. It is argued that the said definition defines a Contingency Paid Employee as one who is employed for full time in office or establishment and who is paid on monthly basis and is being charged to office contingencies and who is not employed only for certain period in a year, i.e. he is not a seasonal employee. Learned counsel for the petitioners have vehemently argued that since the petitioners had ceased to be paid on a daily basis and therefore, they had earned the entitlement to be declared as Contingency Paid Employees and they have to be treated as Contingency Paid Employees. It is also argued that from the date after entering service, they earned the status of Temporary Contingency Paid Employee from the date they were started to be paid on monthly basis. It is argued that the petitioners would therefore be entitled to count their pre-regularization services in terms of Rule 6(3) if they are in excess of 6 years or otherwise in terms of Rule 2(c) if they are in excess of 15 years, from very first year.

9. Learned counsel for the petitioners further argued that the Hon'ble Supreme Court recently in the case of ***Madan Lal Sharma vs. State of M.P. [SLP (Civil) No.18981 of 2021] decided on 19.12.2024*** has even held that those employees, who are declared classified as permanent employees by the Labour/Industrial Tribunals, they are also entitled to be covered for pension and their services are also pensionable. It is further argued that recently, the Hon'ble Apex Court in the case of ***Dharam Singh vs State of UP and others (Civil Appeal No.8558 of 2018) decided on 19.08.2025*** has held that the State Government cannot weaponise the judgment of ***Umadevi (supra)*** against Daily Related Employees and directed in that particular case that all those employees, who have been retired shall be granted regularization w.e.f. 24.04.2002 until the date of the superannuation, for

pay fixation arrears and recalculation of pension, gratuity and other terminal benefits. Therefore, it is argued that the petitioners cannot be short-changed by the State Government, more so when they have given their entire life to the State Government by firstly being engaged as Daily Rated Employee, then being paid on monthly basis and then later on, upon being regularized.

10. It is argued that the petitioners are not rank Daily Rated Employees, who were illegally appointed, but they are those persons whose appointment was legal and their appointment was only irregular in nature on account of which the concerned authority of the State has subsequently regularized their appointments, which is not in dispute and presently all these petitioners are enjoying regular status in the State Government on one or the other post in Class-III & Class-IV cadres.

11. It is further argued that though the Full Bench of this Court in the case of ***Mamta Shukla v. State of M.P., (2011) 3 MP LJ 210 (FB)*** has held that the work charged and contingency paid employees are not entitled to count their pre-regularization services for the purpose of pension unless their appointment is in consonance with the recruitment rules for work charged and contingency paid employees. However, it is argued that even in the said judgment, the Full Bench has not set aside the case of ***Rahisha Begum (supra)*** and by protecting the dictum of ***Rahisha Begum (supra)***, the Full Bench has only held that the dictum in the case of ***Rahisha Begum (supra)*** is not *per incuriam*. Therefore, the judgment of ***Mamta Shukla (supra)*** may seem to be against the petitioners, but it is actually not against the petitioners. It is argued that even if to any extent the judgment of ***Mamta Shukla (supra)***is deemed to be adverse to the case of the petitioners, then, in that situation, the said part has to be treated to be *per*

incuriam, because the earlier Full Bench judgment of this Court in ***Vishnu Mutiya v. State of M.P., (2006) 1 MP LJ 23 (FB)*** has skipped the attention of the subsequent Full Bench and the subsequent Full Bench having failed to notice the earlier Full Bench, therefore, the subsequent Full Bench to the extent it is contrary to judgment in the case of ***Vishnu Mutiya (supra)*** has to be treated as *per incuriam*. It is argued that the subsequent Full Bench could not have passed any order contrary to dictum of the earlier Full Bench, which had considered the same two sets of Rules and after considering both, had held that in case two different rules contained different provisions, then the one which is more beneficial to the employees has to be accepted in the welfare state, but in ***Mamta Shukla (supra)*** a contrary view has been taken that even though the pension rules are more beneficial in defining the Contingency Paid Employee, but since the less beneficial definition as contained in the substantive recruitment rules is there, the said definition which is less beneficial to the petitioners has been given priority over the more beneficial definition given in the pension rules.

12. On these grounds, it is prayed to follow the judgment of the case of ***Vishnu Mutiya (supra)***. It is argued that some of these cases are such where the employees did not complete six years in Daily Rated or Contingency Paid Establishment and they are seeking reckoning of their services rendered as Daily Rated or Temporary Contingency Paid Employees, which is of less than six years duration.

13. Therefore, in all these cases it is prayed that the services rendered by the petitioners as alleged Daily Rated Employee be treated to be Temporary Contingency Paid Employee as they were paid on monthly basis, and upon regularization, their entire length of service in excess of six years, or

even if it is less than six years, be calculated for the purpose of pension from the date of initial engagement as Daily Rated Employee at least for the purpose of pension; and if the pension rules give a more lenient interpretation, then though the benefits for seniority, promotion etc. may not enure good under the substantive recruitment rules, but for the purpose of pension once a more lenient definition is there it will enure good only for the purpose of pension if not for anything else. On these grounds it is prayed to allow the petition.

14. *Per contra*, learned counsel for the State has vehemently opposed the petitions. It is argued that the contention of the petitioners is utterly misconceived in view of judgment of the Full Bench of this court in ***Ashok Tiwari vs. M.P. Textbook Corporation*** reported in ***2010 (2) MP LJ 662***, wherein the Full Bench has held that a Daily Rated Employee is not governed by any service rules and his service conditions are not defined. He does not hold any post. It is argued that though it was so held in relation to the question whether Daily Rated Employee can be transferred, but still it has been held by the Full Bench that Daily Rated Employee does not hold any post, he does not work against any post and he is not subjected to any defined service conditions and no service rules are applicable to the Daily Rated Employee. Therefore, now the petitioners cannot claim that their Daily Rated Services be held to be covered under the Pension Rules of 1979 and they be given the status of Temporary Contingency Paid Employees for the period they were working as Daily Rated Employees. The petitioners cannot claim that their daily rated services be covered under the pension rules of 1979 and they be given the status of temporarily contingency paid employees for the period they were working as daily rated employees.

15. It was argued that the petitioners cannot claim that their daily rated services be covered under the pension rules of 1979 and they be given the status of temporarily contingency paid employees for the period they were working as daily rated employees. The petitioners cannot claim that their daily rated services be covered under the Pension Rules of 1979 and they be given the status of temporary contingency paid employees for the period they were working as Daily Rated Employees.

16. Learned counsel for the State further argued that the judgment of the Hon'ble Apex Court in the case of ***Dharam Singh (supra)*** and in the case of ***Madanlal Sharma (supra)*** would not apply to these cases, because the petitioners are neither classified as permanent employees as was the case of ***Madanlal Sharma (supra)*** nor it is a case whereby they were illegally left out for being considered for regularization as was the case in ***Dharam Singh (supra)***. Therefore, it is argued that the petitioners are not entitled to be given the benefits that they are seeking in these petitions.

17. It is further argued that subsequently there has been further amendment in Pension Rules, 1979 on 27.02.2023 as corrected on 28.12.2023 and now as per the amended provisions of Rule 6(3) of Pension Rules, 1979, there has been a drastic amendment in Rule 6 (3) and therefore, in view of subsequent amendment in Pension Rules, 1979 which has been made with retrospective effect from 30.01.1996, the judgment of the Division Bench in W.A. No.827 of 2019 rendered on 10.03.2025 as well as the judgment in the case of ***Rahisha Begum (supra)*** are now distinguishable and *per incuriam* as these judgments do not take into account the amended Rule 6(3), which was not in existence at the time of rendering of the judgment in the case of ***Rahisha Begum (supra)*** and the amendment escaped the consideration of the Division Bench in the case of

Panna Lal (supra) in W.A. No.827 of 2019. Therefore, the petitioners cannot seek benefit of both these judgments, that no longer remain relevant after the amendment of 2023.

18. It is further argued that the petitioners have already been given some benefits by regularizing them either in regular establishment or work charged establishment and giving them regular salary with increment, though they were irregularly appointed by back door and now they cannot seek reckoning of pre-regularization services, which was nothing, but back door appointment as Daily Rated Employee, and cannot be reckoned for the purpose of pension. On these grounds, it is prayed to dismiss the petitions.

19. Heard.

20. Learned counsel for the petitioners initially further argued that in view of the judgment of the Hon'ble Apex Court in the case of ***Dharam Singh (supra)*** and in the case of ***Madanlal Sharma (supra)***, now all the issues stand closed, because now pension has been recognized a right, and the dispute whether the petitioners are contingency paid employees or not, no longer remains germane and relevant.

21. However, upon considering the issue, it is observed that the petitioners are not classified as permanent employees as was the case of ***Madanlal Sharma (supra)***, nor it is a case whereby they were illegally left out for being considered for regularization as was the case in ***Dharam Singh (supra)***, wherein the Hon'ble Supreme Court held them entitled to be regularized from 2002. Therefore, simply on basis of these judgments, the petitioners cannot be held entitled to calculate daily rated services for pension.

22. Then, counsel for the petitioners had argued that even if the benefit of Pension Rules, 1979 would not enure to the petitioners, then their services have to be deemed to be pensionable because a daily rated employee is deemed to be a temporary employee and as per the provisions of M.P. Civil Services Pension Rules 1976, the services rendered as temporary employees have to be counted.

23. The aforesaid assertion is found to be utterly misplaced because the concept of temporary services flows from the M.P. Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 (for short 'Rules of 1960') which defines a temporary Government Servant in its own manner as per Rule 2(d) as under:

> *"2(d). "Temporary service" means officiating or substantive service in a temporary post, and officiating service in a permanent post, under State Government and also includes the period of leave with allowance taken while on temporary service and complete years of approved war-service, which have been counted for fixation of pay and seniority."*

24. The petitioners being daily rated employees do not fall within the definition of temporary employee as per the aforesaid Rules of 1960 and hence this ground holds no foundation. Therefore, this Court proceeds to examine the case of petitioners on the anvil of law relating to Contingency paid employees.

25. The issue that arises for determination in these matters is whether all these petitioners who have now undisputedly been regularized in services of the State Government but whether their pre-regularization services should be counted for the purpose of pension only. It is undisputed that if the pre-regularization services are counted for the purpose of pension then the services of most of the petitioners would convert into pensionable

services and in some other cases, the number of years of pensionable services would increase which would increase the quantum of pension.

26. To appreciate the contention of the petitioners, the law relating to work-charged and contingency paid employee is required to be seen first. The State Government has framed the Pension Rules of 1979 for the work-charged and contingency paid employees which contains definition of contingency paid employee in Rule 2(a) and permanent employee in Rule 2(c) as under:-

> *"2(a) "Contingency paid employee" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies excluding the employees who are employed for certain period only in a year.*
>
> *2(c) "Permanent employee" means a contingency paid employee or a work-charged employee who has completed fifteen years or service or more on or after the 1st January, 1974:*
>
> *[Provided that in respect of a contingency paid employee who has attained the age of superannuation on or after 1-4-1981, permanent employee means an employee who has completed ten years of service on or after the January 1, 1974.]"*

27. The said rules also had an amendment on 01.01.1996 inserting a special provision that on absorption of temporary employee without interruption against any regular pensionable post, the service rendered from 01.01.1974 onwards if it is more than six years, shall be counted for pension as if it was rendered in regular post. The relevant Rule 6(3) as was originally inserted on 01.01.1996 initially was as under:-

> *"(3) On absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from Ist January, 1974 onwards,*

if such service is of less than six years shall be counted for pension as if such service was rendered in a regular post."

28. The substantive rules governing the services of work-charged and contingency paid employee in the three engineering departments of the State Government are identical. This Court shall consider the **M.P. Irrigation Department (Work-charged and Contingency Paid Employees) Recruitment and Conditions of Service Rules, 1977**, (for short, referred as "Recruitment Rules"). All the three engineering Departments are stated to be having identical rules governing the substantive service conditions of contingency and work-charged employees as per which contingency paid employee is defined as under:-

2. Definitions.-

(b) Contingency paid employee means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies. Excluding the employees who are employed for certain periods only in the year.

29. The aforesaid definition of contingency paid employee means a person employed for full-time in office or establishment and who is paid on monthly basis and whose pay is debitable to office contingency and is not a seasonal employee. The Full Bench in the case of **Mamta Shukla (supra)** had relied on Rule 7 of the substantive Recruitment Rules of 1977 which lay down in Rule 7 (2-A), that there shall be a selection committee in every District and as per Rule 7 (2-B) the appointment shall be made as per the recommendations of the said Selection Committee.

30. The aforesaid provisions are as under:-

*"7. **Recruitment and promotion.-**(1) The establishment under the appointing authority specified in the Schedule shall*

constitute a unit for all purposes including recruitment, seniority and promotion.
(2) Appointment of the Contingency-paid employees shall be made by one or more of the following methods as may be prescribed, namely:-

(i) Direct recruitment;

(ii) Promotion;

(iii) Transfer.

2-A) There shall be constituted in every district a committee consisting of-

(a) a Class-I Gazetted Officers nominated the concerning Chief Engineer-Chairman.

(b) District Tribal Welfare Officer or District Organiser Tribal Welfare as the case may be Member.

(c) Employment Officer of the district concerned-Member,

(2-B) Appointment to any post under the Service shall be made in accordance with the recommendations of the committee constituted under subrule (2-A).

(2-C) Nothing in these rules shall effect reservations and other concessions required to be provided for the members of Scheduled Castes and members of Scheduled Tribes and other special categories of persons in accordance with the orders issued by the State Government from time to time in this regard.

(2-D) Direct recruitment to the posts under the service shall be made out of the list of candidates furnished by the Employment Exchange on being asked for by the establishment concerned for the purpose and where no suitable candidates are available at the Employment Exchange, the recruitment shall be made after inviting applications through advertisement.

(2-E) Education at qualifications for filling up the posts shall be such as are prescribed for regular employees under the State Government on corresponding posts Where there are no corresponding posts, the qualifications shall be prescribed by the appointing authority.

> *(2-F) Where candidates possessing requisite qualifications in respect of training are not available untrained candidate may be recruited subject to the condition that they qualify themselves within a specified period after availing of the opportunity for training to be provided by the establishment concerned in this respect.*

It is not in dispute that this procedure has not been followed in most of the cases, and the employees were simply engaged as Daily rated employees, and were lateron regularized.

31. The Full Bench in the case of **Mamta Shukla (supra)** has held in para-24 as under:-

> ***"24.*** *On the basis of above discussion, we hold in regard to the substantial questions of law Nos. 2 and 3 that an employee is eligible to count his past service, as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules framed by the concerned department, i.e., the Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly."*

32. Though in the subsequent para-25 the Full Bench did not touch the ratio laid down by the earlier Division Bench in the case of ***Rahisha Begum (supra)*** that for coverage under the Pension Rules, 1979 there has to be an appointment in terms of the Recruitment Rules of 1977 by following the procedure contained therein. The case of ***Rahisha Begum (supra)*** has been confirmed by the Hon'ble Supreme Court in ***SLP (Civil) CC No. 4671/2012 on 23.03.2012***.

33. An earlier Full Bench of this Court in ***Vishnu Mutiya (supra)*** has held in relation to fixation of superannuation age that since a Gangman is a contingency paid employee therefore, he is entitled to benefit of Rule-2(c)

of the Pension Rules, 1979 which declares that a contingency paid employee or work-charged employee becomes permanent employee when he completes 15 years of service. The Full Bench had said that once there are two sets of rules then those set of rules which benefits the employee has to be accepted in a welfare state. The Full Bench held as under:-

> ***"13.*** *While deciding the Gulabsingh's case (supra) the 1977 Rules and Pension Rules of 1979 were not brought to the notice of the Court. Under Rule 6 of 1976 Rules the employees who were in service for at least fifteen years on 1-1-1974 were eligible for the status of permanent work charged or contingency paid employees. This has been made more liberal by the 1979 Rules.* ***Rule 2(c) of the 1979 Rules lays down that a contingency paid employee or a work-charged employee becomes permanent employee whenever he completes fifteen years of his service though it may be after 1-1-1974****.*
>
> ***14. It is well known principle of law that when two different Rules contain different provisions the one which is more beneficial to the employees has to be accepted in the welfare State****. Considering this fact we find that the law laid down by this Court in the case of Bharosi (supra) and Bhajanlal (supra) lay down the correct law while the law laid down by the Gulabsingh case (supra) is not correct as the view taken in the said case was taken without considering the 1977 Rules and 1979 Rules. In such circumstances we hold that the services of gangmen are governed by the Rules applicable to work charged and contingency paid employees even though the gangman is not included in the schedule of 1976 Rules and the age of superannuation is 62 years as other Class IV employees of the State Government because they are in comparable category."*
>
> (Emphasis supplied)

34. To appreciate the contention of the petitioners that they have been appointed as contingency paid employees and they are to be reckoned as temporary contingency paid employees because they are paid from office contingencies and are paid on monthly basis, the relevant provisions are required to be seen in MP Works Department Manual, MP Treasury Code and MP Financial Code.

35. As per MP Works Department Manual, Clause 1.133 there are three sets of rules to govern the work-charged and contingency paid employees in M.P. Public Works Department, Irrigation Department and Public Health Engineering Department.

36. As per clause 286 and 287 of MP Treasury Code, the following has been provided:-

> ***"286.*** *(1) Save as hereinafter provided in this rule, on pay of any kind and no additions to pay may be drawn on bills for contingent expenditure.*
>
> *(2) Subject to any general or special orders issued by Government, the pa of class IV servants by whatever designation they may be called who have been or may be, declared by competent authority to be ineligible for pensions and who discharge the duties of the classes mentioned below, may be treated a contingent expenditure:-*
>
> *(a) Hot weather establishment.*
>
> *(b) Mazdoors engaged on manual labour and paid daily or monthly wages.*
>
> *(c) Temporary field establishments on surveys and settlements.*
>
> *(d) Sweepers (whether whole-time servants or nor).*
>
> *(e) Other classes of class IV servants, e.g., dhobies tailors, syces, grass-cutters, cooks, malis. watermen, cartmen, dairymen, mochis, barbers, ploughmen, carpenters, etc.*
>
> ***287.*** *Contingent charges incurred on account of the wages of mazdoors engaged on manual labour and paid at daily or monthly rates shall be supported by a certificate signed by the disbursing officer of the effect that mazdoors were actually entertained and paid."*

37. As per the aforesaid provisions provided by clause 286(1) (b) that Mazdoors engaged on manual labour and paid daily or monthly wages are paid from "contingent expenditure" of the office. Rule 287 further clarifies

that "contingent" charges incurred on accounts of wages of Mazdoor shall be supported by certificate signed by the officer concerned.

38. The aforesaid provisions as contained in clause 286 and 287 of MP Treasury Code, duly establish that the payment to daily rated employees or any labourer engaged has to be made from contingent funds of the Department.

39. As per clause-43 of Appendix-6 of MP Financial Code, the Collector is required to fix the wages of Class-IV Government servants paid from contingency funds. Clause 43 is as under:-

> *"**43. Class IV Government servants paid from contingencies**- Fixation of the pay of:- The Collectors are authorized to fix annually according to the market rate the pay of the class IV Government servants paid from contin-gencies such as watermen, chowkidars, sweepers and others. The Heads of Departments should send to the Collector of their district a list showing the nomenclature of servants paid from contingencies working in their offices whose pay is required to be fixed according to market rates. The Collector will at the commencement of each year ascertain the current market rates for the services in each class or class IV Government servants prevailing at the more important centres in the district and announce such rates annually in January. The Heads of Departments and Deputy Inspector-General of Police may, at their discretion, introduce the rates from the beginning of the next financial year. These rates should be regarded as maxima and should not be exceeded without the previous sanction of the State Government.*
>
> *Exception 1. This Rule does not apply to the mazdoors of Government farm and gardens, ploughmen cattlemen, dairymen, milkers, mechanics, tractor dri vers, carpenters and black-smiths, who are paid according to the rates fixed by the Director of Agriculture. The Director of Agriculture is empowered to fix the wages of the Bee-Keeper employed in the Entomological Section of the Agri-culture Department at a rate not exceeding eight annas per diem.*

> *Exception 2. This rule does not also apply to ploughmen, cattlemen, dairymen, milkers, carpenters, blacksmiths and, all other class IV Government servants, if any, of Cattle-breeding and Dairy-Farms, excepting mechanics and tractor drivers who are paid according to the rates fixed by the Director of Veterinary Services."*

40. From the aforesaid clause 43 it is crystal clear that the Collector fixes wages which are popularly known as "Collector rates" for the employees who are paid from contingency fund. Therefore, the Daily rated employees, are only paid from contingent funds, and upon being paid on monthly rates, they would acquire the status of "contingency paid employees", under pension Rules of 1979. Though the definition in Recruitment Rules of 1977 is also same, but in absence of selection being made as per Rule-7 thereof, the said status shall not enure good for the Rules of 1977.

41. The Full Bench of this Court in the case ***Mamta Shukla (supra)*** did not touch the ratio in the case of ***Rahisha Begum (supra)*** inasmuch as in ***Rahisha Begum*** it has been held by the Division Bench that an employee who completes 6 years as temporary contingency paid employee he would be entitled to reckon the period for the purpose of pension as per Rule 6(3) of Pension Rules, 1979. Though in **Mamta Shukla (supra)** it has been held that the appointment has to be in accordance with the provisions mentioned in the recruitment rules for the work-charged and contingency paid employees, however despite that in **Mamta Shukla (supra)** the ratio of **Rahisha Begum (supra)** has not been touched. It is important to note here that the judgment in the case of **Rahisha Begum (Supra)** has been confirmed by the Hon'ble Apex court by dismissing the SLP of the State.

42. Furthermore, the case of **Mamta Shukla (supra)** does not take note of the earlier Full Bench judgment in the case of **Vishnu Mutiya (supra)** whereby the Full Bench held that despite there being variance in the

recruitment rules and in the pension rules governing contingency paid employees of the State Government but where two sets of rules are there then the one which favours the employee has to be followed in the welfare State and this judgment was not put for consideration before the subsequent Full Bench whereby, the Full Bench held that the recruitment rules will take priority over the pension rules.

43. It is in view of this position that various subsequent Benches of this Court have taken the view that the ratio of ***Rahisha Begum (supra)*** should be followed despite the Full Bench judgment in the case of ***Mamta Shukla* (supra)**. It was also on account of the fact that ***Rahisha Begum (supra)*** has been confirmed by the Hon'ble Apex Court. Therefore, to the extent of holding that unless an employee is appointed as per the provisions of the Recruitment Rules of 1977, he would not count his services for the purpose of Pension Rules of 1979, the judgment in case of ***Mamta Shukla (supra)*** is *per incuriam*, as it does not take into account the earlier contrary view in ***Vishnu Mutiya (supra)***, that was also by a Full Bench and earlier in time.

44. In ***Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC* 623,** it was held as under :-

> ***"19.*** *It cannot be over emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench****; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to*

> *the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam".*
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> **(Emphasis supplied)**

45. In ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680***, the Constitutional Bench considered and affirmed the judgement of ***Sundeep Kumar Bafna (supra)***, and while recognizing that the general principle is to follow the ratio of co-equal bench, held as under :-

> ***"28.*** *In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty.* ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167]. We have no hesitation that it is not a binding precedent on the co-equal Bench***."
>
> (Emphasis supplied)

46. In **Shah Faesal v. Union of India, (2020) 4 SCC 1**, another Constitution Bench held as under :-

> ***"29.*** *In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)*
>
> *"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)*
>
> *'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'"*
>
> ***31.*** *Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)*
>
> *"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. **A***

> ***decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court****. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."*
>
> (Emphasis supplied)

47. The counsel for the State has tried to distinguish the judgment of the Division Bench passed recently at Indore in ***Pannalal (supra) in W.A. 827/2009*** on the ground that there has been an amendment in the Pension Rules, 1979 later to the judgment in the case of ***Rahisha Begum (supra)*** which has not been noted by the subsequent Benches. The Division Bench in ***Pannalal (supra)*** has held as under :-

> *"08. Rule 2(b) of the Rules of 1976 defines the 'contingency paid employee' which simply says that a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies. Like definition 2(H) defines 'work-charged employee' means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery etc. In this rule, mode of appointment has not been provided.*
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> *09. In the case of Vishnu Mutiya (supra), the Full Bench held that these Gangmen are the employee under the Madhya Pradesh Work Charged & Contingency Paid Employees (Recruitment and Conditions of Service) Rules, 1976. Before the judgment passed in the case of Vishnu Mutiya (supra), even much before this issue came up for consideration before this Court in the case of Rahisha Begum W/o Late Ashraf Khan v/s The State of Madhya Pradesh & Others reported in 2010 (4) M.P.L.J. 332 and the Division Bench held that the contingency paid employee means a person employed for full time in an office or establishment and who is paid on monthly basis is entitled for pension under the Pension Rules, 1979. In the said case, the husband of Rahisha Begum was working as Driver. The validity of the said judgment was examined in the case of Mamta Shukla (supra). Even in the case of Mamta Shukla (supra), the Full Bench held that if an employee comes within the definition of Work Charged & Contingency Paid employee as defined in the Pension Rules, 1979,*

then he is eligible to count past services for the purpose of qualifying service in accordance with the Pension Rules, 1979 and the judgment passed in the case of Rahisha Begum (supra) is not per inquriam. Even the case of Mamta Shukla (supra) also is in favour of these writ petitioners which has wrongly been applied by the Writ Court to dismiss their claim of pension. In the case of Vishnu Mutiya (supra) which has not been overruled till date, the Full Bench had already held that the Gangman comes within the definition of Work Charges & Contingency Paid employees under the Madhya Pradesh Work Charged & Contingency Employees (Recruitment and Conditions of Service) Rules, 1976. Hence, in view of the verdict given in the case of Mamta Shukla (supra), the Gangmen are also entitled for pension under the Pension Rules, 1979. If both the judgments of Mamta Shukla & Vishnu Mutiya (supra) are read jointly, the writ petitioners are liable to be pensioned under the Pension Rules, 1979.

10. Apart from above, the Single Bench in W.P. No.8950 of 2012 held that the petitioner being a Mason is entitled for pension in view of the judgment passed in the case of Ramchandra Singh (supra). The State of M.P. & Ramchandra is another decision of the Division Bench of this Court in W.A. No.179 of 2010, in which Ramchandra being Gangman appointed on Muster Roll in the year 1957, regularized w.e.f. 01.01.1996 and retired in the year 2000 has been held entitled for pension under the Pension Rules, 1979.

11. The judgment passed by the Single Bench in the case of Madanlal Sharma (supra) was challenged by the State by way of W.A. No.1444 of 2018. Although the writ appeal was allowed in favour of the State Government vide order dated 20.09.2019, but Madanlal challenged the same before the Apex Court by way of SLP (C) No.18981 of 2021. The Apex Court granted the leave and registered the same as Civil Appeal No.14753 of 2024. Recently, the Apex Court vide order dated 19.10.2024 has set aside the order passed by the Division Bench and upheld the order of Writ Court. The legal heir of Madanlal has been directed to be given the pensionary benefits along with interest @ 6%. Paragraphs - 14, 15, 16 & 17 of the same are reproduced below:-

> *"14. Be that as it may, we have noticed that once the Labour Court directed that Madanlal should be classified as a permanent employee, the respondents in their appeal petition before the Industrial Court at Indore had taken a point that Madanlal cannot be regularized in the absence of a sanctioned post. It is, therefore, clear that the respondents were well and truly aware of the implications of the order of the Labour Court which required them to regularize his service on a post. If no post was available then, Madanlal was required to be placed on a supernumerary post till such time a sanctioned post became available where he could be accommodated. The neglect/failure/omission of the respondents in not conferring permanent status to Madanlal cannot afford any justification or*

good reason for them to take advantage of their own wrong in depriving Madanlal of his pensionary benefits.

15. It is in these circumstances that we feel constrained to hold that the learned Single Judge was perfectly right in allowing the writ petition and holding that Madanlal was entitled to pensionary benefits from 31st January (sic, March), 2012.

16. We, therefore, set aside the impugned judgment and order of the Hon'ble Division Bench of the High Court and restore the judgment and order of the learned Single Judge.

17. Now that Madanlal has passed away, the retiral benefits to which he was entitled, treating him to be a permanent employee, as well as benefit on account of family pension shall be released in favour of his heirs/legal representatives together with 6% interest from the date of his retirement within three months from date, upon compliance with all formalities and proper identification of his heirs/legal representatives."

12. Definitions 2(a) & (b) defines the 'contingency paid employee and work-charged employee' and as per Definition 2(c), permanent employee means a contingency paid employee or a work-charged employee who has completed 15 years of service or more is entitled for pension under the Pension Rules, 1979. Now the period of said 10 years is reduced to 06 years by way of state amendment in the said Rules. Rule 6 defines commencement of qualifying service, according to which for calculating qualifying service of a permanent employee who retires, the service rendered w.e.f. 01.01.1959 onwards shall be counted. As per sub-rule (2) of Rule 6, on absorption of a permanent employee without interruption against any regular pensionable post, the service rendered w.e.f. 01.01.1959 onwards shall be counted for pension as if such service was render in a regular post. Therefore, these writ petitioners having rendered more than 30 years of service in Work Charges & Contingency Paid Establishment are entitled for the pensionary benefits. In these Bunch of writ appeals, one of the appellants / writ petitioners in W.A. No.1591 of 2018 had been declared as permanent employee by the Labour Court.

13. In view of the foregoing discussion, the common order dated 06.08.2018 passed by the Writ Court is hereby set aside. The appellants / writ petitioners are entitled for the benefit of pension and same be extended to them from the date of retirement within three months from today with all consequential benefits."

48. So far as the 2023 amendment is concerned, it was not placed for consideration before the Division Bench in the above case. The amendment has been made vide notification dated 27.02.2023 published in M.P.

Gazette extraordinary dated 27.02.2023 amending the questioned Rule 6(3) of Pension Rules, 1979 and there has been a correction in the said amendment on 28.12.2023. After correction, the amended provision reads as under:-

> *"(3) A service made after 1 January, 1974 on the provisions of any regular pensionable post for any temporary employee, without any interference, provided that such service is not less than six years shall be counted for pension suppose that such a service has been done on a regular basis.".*

49. The said amendment has been made effective from 30.01.1996 which is the date when the earlier provision of Rule 6(3) on which the judgment of the case of ***Rahisha Begum (supra)*** was based had been inserted. Therefore, the provision inserted on 30.1.1996 which was the basis for judgment in the case of ***Rahisha Begum (supra)*** has now been changed with retrospective effect from 30.01.1996 and undisputedly the *vires* of the said amendment have not been put to challenge by any of the petitioners.

50. After the said amendment, the services rendered after 01.01.1974 shall count towards pension only if the services have been rendered on the provision of any regular pensionable post. Earlier, the provision was "absorption" on any regular pensionable post but now the provision is that the temporary "service" should also be on a regular pensionable post.

51. The aforesaid amendment was argued to be self-contradictory because if there would be temporary service it would not be against a regular pensionable post and if there would be service against a regular pensionable post then it would not be a temporary service. However, the position remains that this kind of amendment that was argued to be cryptic, has not been challenged before this Court till date, nor in these petitions the

said amendment has been put to challenge. Till the amendment is put to challenge, the ratio of the judgment of ***Rahisha Begum (supra)*** stands diluted because this amendment has been made effective from 1-1-1996 and the amendment which was the basis of ***Rahisha Begum (supra)*** has now gone away from the very first initial date on which it was incorporated in the Pension Rules 1979.

52. Despite amendment in Rule 6(3) of Pension Rules, 1979 it is seen that there has been no change or amendment in Rule 2(c) of the Pension Rules, 1979 which defines a Permanent Employee as a contingency paid employee or work-charged employee who has completed 15 years of service or more after 1.1.1974, and in case of pensioner, who completes 10 years of service.

53. Therefore, on account of amendment dated 27.02.2023, though the special relaxation given to temporary contingency paid employees completing at least 6 years of service and to reckon the said service for pension if they are appointed or absorbed against any regular post has been diluted, but the provision of Rule 2(c) has still not been diluted.

54. As per Rule 2(c) an employee completing 15 years of service or more after 1.1.1974 would acquire the status of permanent employee.

55. As per Rule 6 of the Recruitment Rules, 1977, the contingency paid employees are categorized in permanent and temporary categories.

56. The counsel for the State has also relied on the judgments of Coordinate Benches of this Court and WP. 15726 of 2025 and WP No.11024 of 2016 and WP No.1268/2021 that identical petitions have been dismissed. On the other hand, learned counsel for the petitioner has relied on judgment of Coordinate Bench in WP 23297 /2022 and WP No.

13107/2015 so also of the Division Bench in WA. 827/2019 to contend that the identical petitions have been allowed.

57. However, in the opinion of this Court, unless the subsequent amendment dated 27.02.2023 is set aside by any court, the petitioners cannot seek that parity with the case of ***Rahisha Begum (supra)***.

58. In none of these cases, the 2023 amendment of Rule 6(3) has been challenged and now after considering the amendment made in Rule 6(3), this Court has reached to the conclusion that the ratio of ***Rahisha Begum (supra)*** has been diluted. However, the force of Rule 2 (a) and 2 (c) has still not been diluted so far and that if read with Rule 6 (2) of the Pension Rules 1979 and the earlier Full Bench in ***Vishnu Mutiya***, it would give rise to conclusion that services have to be reckoned for pension if rendered as temporary contingency paid employee for more than 15 years. Rule 6 (2) of Pension Rules is as under:-

> ***6. Commencement of qualifying service.***
>
> *(1) xx xx xx*
>
> *(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onwards shall be counted for pension as if such service was rendered in a regular post.*

59. Upon considering the relevant provisions of MP Financial Code and MP Treasury Code, this Court has already reached to conclusion that Class-IV and Daily Rated employees in the Engineering Departments are only paid under contingent expenditure and the contingency paid employees have been paid on a monthly basis, they then acquire the status of temporary contingency paid employees. Such employees would not acquire the status of temporary contingency paid employees only till the date he continues to paid on muster roll as daily basis. But as soon as he is started

to be paid at monthly rates, then as per the definition as contained in Pension Rules 1979, he would acquire the status of contingency paid employee.

60. Therefore, in view of Paragraph-13 of the judgment in case of ***Vishnu Mutiya (supra)***, and looking to the position that the petitioners are temporary contingency paid employees as they are were being paid on a monthly basis prior to regularization, therefore, the services, if rendered as monthly paid Daily rated employee, have to be treated as permanent contingency paid employee, if at least 15 years of service had been completed prior to regularization. Therefore, the petitions are **partly allowed** in the following terms:-

> (i) The services rendered by the petitioners in excess of 15 years as monthly paid employees though declared as daily rated employees by the State shall be reckoned as services for the purpose of calculation of length of service for pension. In other words, the services from date next immediately after completion of 15 years as monthly paid daily rated employee shall be counted towards pensionable service after regularization.
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> (ii) It is held that the services rendered as monthly paid employee, though named or described as daily rated employee by the State, shall be reckoned to be services rendered as temporary contingency paid employees that would convert into "permanent contingency paid employee" in terms of proviso to Rule 2 (c) immediately upon completion of 15 years of monthly paid service, only for purpose of pensionable service.

(iii) This period in excess of 15 years shall enure good only for purpose of calculation of length of service for pension under Pension Rules of 1979. In those cases where there was no compliance of Rule 7 of the Recruitment Rules, the services shall not be reckoned to be permanent contingency paid services for other purposes like salary, etc.

(iv) The petitioners are set at liberty to challenge the vires of the amendment dated 27.02.2023 and in the case that the amendment is declared *ultra-vires* by this Court in any subsequent petition, then the petitioners would be at liberty to seek calculation of services rendered as temporary contingency paid employees in excess of 6 years for the purpose of pension.

(v) The order be complied within 60 days.

(VIVEK JAIN)
JUDGE

rj/nks