

# State Of U.P. And 4 Others vs Sinchai Mazdoor Sangh Uttar Pradesh And ... on 17 January, 2025

**Bench: Anjani Kumar Mishra, Jayant Banerji**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:7569-DB

RESERVED

Court No. - 3

Case :- SPECIAL APPEAL No. - 232 of 2021

Appellant :- State Of U.P. And 4 Others

Respondent :- Sinchai Mazdoor Sangh Uttar Pradesh And 16 Others

Counsel for Appellant :- Pranab Kumar Ganguli

Counsel for Respondent :- Sanjay Kumar Mishra

ALONGWITH

1. Case :- SPECIAL APPEAL No. - 371 of 2021

Appellant :- State Of U.P. And 5 Others

Respondent :- Sinchai Workshop Mazdoor Union And 99 Others

Counsel for Appellant :- Pranab Kumar Ganguli

Counsel for Respondent :- Sanjay Kumar Mishra

2. Case :- SPECIAL APPEAL DEFECTIVE No. - 144 of 2022

Appellant :- State Of U.P. And 5 Others

Respondent :- Bhairo Prasad Rathor And 4 Others

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Syed Mushfiq Ali

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Jayant Banerji,J.

(Per : Hon'ble Jayant Banerji, J.) Special Appeal No. 232 of 2021

1. Against the judgment dated 14.1.2020 passed by a learned Judge in Writ-A No.12780 of 2018, the State authorities have filed this special appeal.

2. By means of the judgment under appeal, after considering the facts of the case and various judgments, the learned Judge observed that the case of petitioners-respondents is on a much better footing than those petitioners who had approached the Supreme Court in Prem Singh vs. State of U.P. & Ors.<sup>1</sup>, and that their service is required to be considered for computation of length of services for extending pensionary benefits to them from the State Government as the petitioners were appointed on substantive posts in regular capacity and had rendered continuous service and the State Government also accorded regular pay scale and other allowances admissible to similarly situated other government employees. It was held that in such a situation, after their retirement, it could not be accepted that the services of petitioners would be governed under the Labour Laws disentitling them for pensionary benefits at par with State Government employees. Accordingly, the order impugned dated 7.3.2018 passed by the Principal Secretary, State of U.P., Lucknow, was set aside as being unsustainable and the writ petition was allowed. It was held that the petitioners are entitled for pension and other benefits as admissible to similarly situated employees of the State Government from the date of their superannuation.

3. The contention of the learned Additional Advocate General appearing for the appellants is that the petitioner-respondents had throughout submitted to the certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946<sup>2</sup>, which applies to private bodies and Government. It is contended that their conditions of service were governed by the Standing Orders

Act and they would be entitled to pension only in accordance with the Employees Pension Scheme, 1995 which employees other than the petitioners, who are similarly situated, are getting. Learned counsel has referred to the Uttar Pradesh Irrigation Department (Irrigation Workshop Circle Kanpur) Semi Technical Service Rules, 1984. It is stated that the petitioners were working since prior to 1984 when the Rules, 1984 came into force; that the conditions of service of the petitioners were governed in terms of the Certified Standing Orders and they cannot be stated to be appointed to a civil post or a civil service under the State Government so as to entitle them for pension which is earned by service in the Civil Department as required under the Civil Service Regulations; that retirement benefits including pension are covered under the U.P. Retirement Benefits Rules, 1961 including consistent provisions of the Civil Service Regulations, which are applicable only to officials under the rules making power of the Governor or those appointed to civil service or holding a civil post under the State Government. The petitioners being workmen appointed under the Certified Standing Orders would not be entitled for pension benefits under the Rules, 1961. It is stated that the Certified Standing Orders have been framed under the aforesaid Act, 1946, which is a special law governing the class of workmen to which the petitioners belong; that to avail the benefit of pension under the provisions of Employees Pension Scheme, 1995, prescribed documents with signatures were required to be submitted by the petitioners after retirement but majority of them have not done so and are claiming pension as admissible to regular employees which is not admissible in law; that during service the petitioners were contributing to the provident fund under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; that the petitioners being workmen in the Workshop Division of the Irrigation Department were covered under the EPF Act and as per the Pension Scheme, their contribution in this regard was specified and being paid; the petitioners being workmen have to avail their remedy before the Industrial Forum created under the U.P. Industrial Disputes Act, 1947 and not in writ jurisdiction before this Court. In support of his contentions, learned counsel has referred to various judgments of this Court as well as of the Supreme Court as under:-

- (i) A judgment of a single Judge in Moti Lal Kushwaha vs. State of U.P. & Ors.<sup>6</sup>
- (ii) A judgment of a division bench in an intra-court appeal in Moti Lal Kushwaha vs. State of U.P. & Ors.<sup>7</sup>
- (iii) Bramhadeen & Ors. vs. State of U.P. & Ors.<sup>8</sup>
- (iv) Ved Prakash Saxena vs. State of U.P. & 4 Ors.<sup>9</sup>
- (v) A.B. Krishna vs. State of Karnataka<sup>10</sup>
- (vi) D.R. Yadav vs. R.K. Singh<sup>11</sup>

4. Learned counsel for the petitioner-respondents has submitted that the terms and conditions of the petitioner-respondent nos.2 to 17 are governed by the Rules, 1984, which have been made for regulating the recruitment and service conditions of the petitioner-respondent nos.2 to 17 and are applicable to them in view of the fact that they have been appointed prior to coming into force of the

Rules, 1984. It is stated that the posts specified in Appendix-A of the Rules, 1984 contains all the posts sanctioned under the Irrigation Workshop Circle Kanpur and the same is applicable to the petitioner-respondent nos.2 to 17. It is stated that in view of these special rules enacted, the Certified Standing Orders framed under the Standing Orders Act would not apply. It is stated that in view of the provision of Rule 25 of the Rules, 1984, which has been interpreted by a coordinate Bench of this Court in the case of State of U.P. & Ors. vs. Om Prakash<sup>12</sup>, the petitioner-respondent nos.2 to 17 continue to be governed by Rules, 1984; that the Certified Standing Orders cannot govern the conditions of service of the petitioner-respondent nos.2 to 17 in view of the special provisions in the Rules, 1984.

5. It is stated that the judgment of Moti Lal Kushwaha (supra), which has been relied upon by the appellants would have no bearing on the present case inasmuch as the Rules, 1984 were not considered therein; that in the Government Orders of 13.11.2007 and 27.2.2009, the State Government had admitted that the petitioner-respondent nos.2 to 17 were government servants and entitled to dearness allowance and time scale as applicable to regular government servants. Learned counsel has referred to various letters issued by the Senior Officers of the Irrigation Department to the State Government for payment of pension and other benefits admissible to regular government servants working in the Department to the petitioner-respondent nos.2 to 17. It is stated that the Standing Orders Act acknowledges in the definition of an 'employer' in any industrial establishment, as the head of the Department appointed by the Government. In such a situation, the petitioner-respondent nos.2 to 17 would come under the purview of Regulation 361 of the Civil Service Regulation entitling them for pension. It is stated that classifying the petitioner-respondent nos.2 to 17 as workmen of Industrial Establishment is an artificial classification as they have been working against substantive posts since the beginning and their appointments were duly made. It is stated that the Pension Scheme was brought into force in the year 1995, whereas the petitioner-respondent nos.2 to 17 were working since a very long time. They have retired after completing nearly 35 years of service and have been denied pensionary benefit from the State Government.

It is stated that earlier, the Roorkee Workshop, which is now in Uttarakhand State, employed similarly circumstanced employees as the petitioner-respondent nos.2 to 17 and they are being paid regular pension by the State Government of Uttarakhand which followed the judgment of the Supreme Court in the case of Prem Singh (supra) and issued a Government Order in this regard on 1.8.2020. In support of his contentions, learned counsel has relied upon a judgment of a coordinate Bench of this Court in the case of Om Prakash (supra), State of U.P. & Ors. vs. Gorakh Nath Pandey & Ors.<sup>13</sup>, as well as the judgments of the Supreme Court in the cases of Prem Singh (supra), and Indian Oil Corporation Ltd. vs. Chief Inspector of Factories & Ors.<sup>14</sup>.

6. A series of supplementary affidavits and affidavits have been filed on behalf of the appellants. In the supplementary affidavit dated 22.7.2021, enclosed therewith, in response to a letter submitted by Works Manager of the Irrigation Workshop Division, Meerut dated 22.2.2021, is a letter dated 23.2.2021 in which it is reflected that each of the petitioner-respondent nos.2 to 17 had withdrawn their provident fund dues from the Employees Provident Fund Organisation. It further appears that by a letter dated 1.3.2021 from the Employees Provident Fund Organisation, two of the aforesaid

petitioner-respondents, namely Gordhan Singh and Laxmi Chand, had opted for pension under the provisions of the Pension Scheme after submitting Form 10-D. It is stated that the remaining petitioner-respondents are also equally placed alongwith the above two workmen, namely Gordhan Singh and Laxmi Chand, and they are also entitled to withdrawn their pension as per the Pension Scheme after submitting Form 10-D.

7. A supplementary affidavit dated 22.9.2021 was then filed enclosing therewith a certificate of Standing Orders in Form-B dated 28.9.1970 issued under the Standing Orders Act bearing No.678(1) of 1970. The name of the Industrial Establishment specified therein is M/s. Irrigation Workshop Division, Mawana Road, Meerut. The aforesaid certificate appears to be granted pursuant to the approval of proposed modifications (with some alteration) in the existing Certified Standing Orders of that Industrial Establishment.

Also brought on record is an office order dated 17.11.1972 issued by the Executive Engineer, Irrigation Meerut appointing one of the petitioner-respondents, i.e., Sarjeet Singh as a daily wager for a period of three months on a temporary post.

8. It is stated in this supplementary affidavit that the service of the employees of the Industrial Workshop is different than the service conditions of regular workmen of the Department of Irrigation. The former set of employees' service condition is covered by the Standing Orders Act. It is further stated that under the EPF Act, the scheme framed thereunder is made applicable to all the factories and establishment to which the EPF Act applies. The Pension Scheme was made by the Central Government which provided the applicability of the Pension Scheme to all the employees of factories and other establishments to which the EPF Act applies. It is stated that the Pension Scheme is applicable to the petitioner-respondents and contribution thereof was regularly being made by the petitioner-respondents, as follows:-

"a. Employees Contribution - 12% (Basic) Pay + DA) b. Employer Contribution - 12% (Basic) Pay + DA) c. Total Contribution - 24% d. Payment on Retirement - 15.67% (along with accumulated interest) e. Rest as pension - 8.33%"

9. It has been stated that the aforesaid payment has also been made to the petitioner-respondents and they are also being paid pension as per the Pension Scheme (sic-two petitioners). It is, therefore, stated that the petitioner-respondents cannot claim benefit of dual pension.

A copy of the license in Form-3 under Section 6 of the Factories Act granted to the Superintending Engineer, Irrigation Workshop of Kanpur Circle by the Labour Department, Uttar Pradesh on 5.11.2019 has been enclosed. In the description of the licensed premises, it is mentioned that the licensed premises are situated at Irrigation Workshop Division, Mawana Road, District Meerut and consists of the building shown on the approved site plan.

10. An affidavit dated 18.10.2021 was filed in compliance of the order dated 6.10.2021 passed by this Court, which order reads as follows:-

"During the course of arguments, one of the submissions that has come from the learned counsel for the appellants is that the U.P. Irrigation Department (Irrigation Workshop Circle, Kanpur) Semi Technical Service Rules, 1984 ipso facto will not be applicable to the writ petitioners as from the description of the Department, in which they were employed, it appears that they were either located in Irrigation Workshop at Meerut or Okhla Irrigation Workshop.

The learned counsel for the writ petitioners, in his compilation of papers, has brought on record an office memorandum dated 01.01.1990 issued from the office of Pramukh Abhiyanta, Sajja Evam Samagri Prabandh, Sinchai Vibhag, Uttar Pradesh which discloses that Irrigation Workshop Circle Kanpur includes the Irrigation Workshops of Roorki, Bareilly, Meerut, Jhansi and Kanpur.

Further, from the averment made in paragraph 21 of the writ petition, it appears that the writ-petitioners had set up a claim that the terms and conditions of the services of the petitioners are governed by Sinchai Karyashala Circle Service Rules, 1984 of which the reply in the counter affidavit is provided in paragraph 16 wherein, though, the appellants have claimed that the service conditions of the petitioners are governed under the provisions of Employees' Pension Scheme, 1995 but there is no specific statement that the 1984 Rules would not be applicable because they were employed either at Mawana in Meerut or at Okhla. However, in addition to above, in paragraph 16, it is also stated that the provisions of Sinchai Karyashala Circle Service Rules, 1984 have been implemented upon the regular technical employees in regular Establishment.

Under the circumstances, as there is no specific stand coming from the appellants with regard to the area of operation of the 1984 Rules, we deem it appropriate to require the appellants to file an affidavit stating specifically whether the area of operation of Sinchai Karyashala Circle Service Rules 1984 is limited to Kanpur Circle. If it is limited to Kanpur Circle, then they shall also specifically disclose as to what is the area of operation of Kanpur Circle and, in all, how many Circles are there in the State of U.P. and what is the area of each Circle and whether the Irrigation Workshops at Roorki, Bareilly, Meerut, Jhansi and Kanpur fall in the same Circle or different Circles, and the name of those Circles shall also be disclosed.

Affidavit, as above, be filed within two weeks.

Put up for further hearing on 25.10.2021 at 2:00 pm."

11. It has been stated in this affidavit that after the completion of Workshops in Okhla Barrage in the year 1983-84, some of the surplus workmen from Erection Division, Okhla were adjusted in industrial establishment of Irrigation Workshop Division, Mawana Road, Meerut. One of the petitioner-respondents, namely Satveer Singh, was so adjusted; that prior to 1974, the workmen of industrial establishment were paid daily wages and from 01.01.1974 they were provided post

and 'pay-scale'.

12. It is further stated in the affidavit that the aforesaid Rules, 1984 are not applicable to the petitioner-respondent nos. 2 to 17. The Rules, 1984 are applicable to 97 regular posts whereas in the year 1976 there were 927 sanctioned posts of industrial workmen in the Workshop Divisions. A true copy of office order dated 21.1.1976 issued by the Chief Engineer has been enclosed which reads as follows:-

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13. It has been stated that due to technical advances and to facilitate the works in the irrigation workshops, it was decided to recruit regular employees with technical education and to regulate their service conditions, the Rules, 1984 were framed. Those employees, who were covered under the Rules, 1984, were extended the benefit of Fundamental Rules, Ancillary Rules and Civil Services Regulation Rules. It has further been stated that the petitioner-respondents, who were industrial workmen working in the Irrigation Workshop, Meerut under the provisions of the Standing Orders Act were not covered by the provisions of the Rules, 1984. It has been stated that petitioner-respondents were all appointed prior to 1984 and it has been indicated with reference to a proceeding under Section 33-C(2) of the Industrial Disputes Act, 1947 that the petitioner-respondents were resorting to the provisions of the Industrial Disputes Act, 1947 for redressal of their grievance.

14. It is stated that prior to 1994, the Irrigation Workshop Circle, Kanpur had the administrative control of workshops at Roorkee, Bareilly, Meerut, Jhansi and Kanpur and thus the petitioner-respondents were industrial workmen in the industrial workshop of the Irrigation Department in Workshop Division, Meerut which was registered under the Factories Act. It is further stated that this administrative mechanism continued till 1994 whereafter the Irrigation Workshop Circle-2 Bahraich was created which was later converted to Irrigation Workshop Circle, Lucknow in 1996. Thereafter, the Roorkee Workshop was shifted to Uttaranchal. It is further stated that as on date, there are two circles:- one is the Irrigation Workshop-Kanpur which has under its administrative control, the workshops at Jhansi and Bareilly, and, the second is the Irrigation Workshop Lucknow, which has under its administrative control Workshops at Kanpur, Meerut, Allahabad and Gorakhpur.

15. In paragraph 13 of the affidavit, it is stated that the Irrigation Workshop Circle, Kanpur has under its administrative control workshops at Bareilly, which has 361 sanctioned posts and Irrigation Workshop Jhansi, which has 171 posts. Similarly, the Irrigation Workshop Circle-Lucknow has under its administrative control, Irrigation Workshop, Meerut (Sanctioned post-258), Irrigation Workshop Kanpur (Sanctioned posts- 100), Irrigation Workshop Allahabad-(Sanctioned posts-62) and Irrigation Workshop Gorakhpur-(Sanctioned Posts-126). The combined sanctioned posts of both the Circles consist of 1078 workmen in the Industrial Establishment, whereas the Rules of 1984 were applicable to 97 regular post only.

16. Thereafter, a supplementary affidavit was filed on 11.1.2022 on behalf of the appellant-State. As it appears from paragraph no.4 of this supplementary affidavit, the affidavit was filed to submit that the petitioner-respondents were not covered by the Rules, 1984, and, further, to submit that for what purpose and for whom the Rules, 1984 were made.

17. It has been stated that the Rules, 1984 have been framed for the employees of the regular establishment working in the workshops of Kanpur Circle (primarily at the workshops of Jhansi and Bareilly where a few permanent employees were working whose services were governed by the Fundamental Rules). These permanent workers were distinct and constituted a separate cadre from the industrial workmen working in the Workshops of Kanpur Circle as their services were not governed by the certified Standing Orders framed under the Standing Orders Act and the Rules, 1946. As such, for purposes of regulating the service of such permanent workmen, the Rules, 1984 have been framed and were specifically applicable only for such existing posts (97 posts available/sanctioned at Jhansi and Bareilly Workshops only). Paragraph nos.7 to 10 of the aforesaid supplementary affidavit reads as follows:-

"7. That further in pursuance of the order dated 06.10.2021 to the query of the Hon'ble Court regarding of area of operation of Kanpur Circle and other related query as stated above in para 3 of the affidavit, it is submitted that initially all the workshops i.e. Roorki, Meerut, Bareilly, Jhansi, Kanpur, Allahabad and Gorakhpur were under the Kanpur Circle which was the only circle for whole State of U.P.. At later stage by the office memorandum dated 26.04.1994 the bifurcation/work allocation between the different workshops as stated above was done. By the aforesaid office memorandum dated 26.04.1994 the Kanpur Circle was bifurcated in two circles i.e. Sinchai Karyashal Mandal-I, Kanpur and Sinchal Karyashala Mandal-II Bahraich.

No. Old Kanpur Circle Sinchal Karyashala Mandal-I, Kanpur Sinchal Karyashala Mandal-II Bahraich 26 April, 1994

1. A. Roorki, B. Meerut, C. Bareilly, D. Jhansi, E. Kanpur, F. Allahabad G.Gorakhpur (Including Few Division such as Erection Okhla Barrage Erection Division) A. Roorki, B. Bareilly, C. Jhansi.

A. Meerut, B. Kanpur, C. Allahabad, D. Gorakhpur 02 August, 1996

2. Sinchai Karyashal Mandal-I, Kanpur Sinchai Karyashala Mandal-II Lucknow A. Roorki, \* B. Bareilly, C. Jhansi.

\*(After creation of Uttarakhand Roorki Workshop and Erection Unit were transferred to State of Uttarakhand) \*\*Kanpur Workshop has also been brought under Lucknow Circle.

Sinchal Karyashala Mandal-II Bahraich was closed and the workshops/Erection Units in the aforesaid Circle were transferred to newly created Circle of Lucknow consisting of following workshops:-

A. Meerut, B. Kanpur, C. Allahabad, D. Gorakhpur The true copy of office memorandum dated 26.04.1994 and the Government Order dated 02.08.1996 are

being filed herewith and marked as Annexure No.SA-1 and SA-2 to this affidavit.

8. That it is relevant to mention here that so far as the applicability of the Rules, 1984 is concerned, it is relevant to mention here that as stated above the Rules, 1984 were specifically created for the permanent workmen working in the workshops of Jhansi and Bareilly, Kanpur Circle, Kanpur upon whom the certified Standing Orders were not applicable as per Section 13B of the Industrial Employment (Standing Order) Act, 1946. The reason for employment of such workmen only in the aforesaid two workshops was that Hydro Mechanical Works (Work of Precision which required technical qualifications) were being done only in the workshops of Jhansi and Bareilly as such to regulate the service conditions of aforesaid such workmen the Rules, 1984 have been promulgated. True copy of the Certified Standing Order of Irrigation Workshop, Jhansi and Irrigation Workshop, Meerut are being annexed herewith and marked as Annexure No.SA-3 and SA-4 to this affidavit.

9. That as such in view of the facts and circumstances stated as above, it becomes quite clear that the purpose of promulgation of Rules, 1984 was only to regulate the service conditions of those employees specifically working in the Jhansi and Bareilly workshops of Kanpur Circle whose service conditions were not governed by the certified standing orders issued by the State of U.P. i.e. employees whose service conditions were governed as per Section 13B of the Industrial Employment (Standing Orders) Act, 1946.

10. That the Respondent-Petitioner who were employed in Irrigation Workshop Division, Meerut are specifically governed by the Certified Standing Order issued for Irrigation Workshop, Meerut (Annexure No.SA-4). It is relevant to mention here that the service conditions of the respondents were at no point of time either before or after the promulgation of Rules, 1984 were governed by the aforesaid Rules. It is further submitted that the respondents who have retired from the Irrigation Workshop Division, Meerut are such workmen who do not belong to the category of the employee as mentioned in Section 13B of the Industrial Employment (Standing Orders) Act, 1946 as such at no point of time it can be said that the workmen belonging to the category of the employees of regular establishment and can be said to be equivalent to the employees of the Department of Irrigation, State of U.P."

18. Thus the affidavit of 18.10.2021 and the supplementary affidavit of 11.01.2022 filed by the appellants seek to demonstrate that the concerned workshops were initially under administrative control of the Kanpur Circle. After 1994, two Circles were created having administrative control over various workshops. The stand is that the Rules, 1984 have been framed for the employees of the regular establishment working in the workshops of Kanpur Circle (primarily at workshop of Jhansi and Bareilly where few permanent employees were working whose services were governed by the Fundamental Rules of the Government); that these permanent workers are distinct and constituted a separate cadre from the industrial workmen working in the Workshops of Kanpur Circle as their services were not governed by the certified Standing Orders framed under the Standing Orders Act

and the Rules, 1946; that, as such, for purposes of regulating the service of such permanent workmen, the Rules, 1984 have been framed and were specifically applicable only for such existing 97 posts available/sanctioned at Jhansi and Bareilly Workshops only.

It needs mention that the Rules, 1984 in its long title as well as in its preamble refer to the Irrigation Workshop Circle Kanpur.

19. It is pertinent to mention that no response/reply has been filed by the petitioner-respondents to any of the aforesaid four supplementary affidavits/affidavits filed on behalf of the appellants.

20. There is yet another un-rebutted supplementary affidavit dated 22.11.2022 filed on behalf of the appellant-State in which it is stated as follows:-

"3. That the petitioners were industrial workmen and performed their duties in the Irrigation Workshop Division, Meerut and deduction and other benefits and Scheme as admissible to the workers of the industrial establishment of the Irrigation Workshop were also provided to the petitioners from time to time.

4. That the establishment of the Irrigation Workshops has been done under the Factories Act, 1948 (hereinafter referred as "Act, 1948"). It is relevant to mention here that the Irrigation Workshop has been established under the provisions of the Act, 1948 at present having two circles (1) Lucknow Circle & (2) Kanpur Circle. Lucknow Circle consists of the irrigation workshops established at (1) Kanpur (2) Allahabad (Prayagraj) (3) Meerut (4) Gorakhpur and the Kanpur Circle consists of two workshops at (1) Jhansi (2) Bareilly.

5. That the Irrigation workshop Division, Meerut was established, which is an Industrial Establishment working under the Department of Irrigation functioning under the supervision of the Works Manager of Irrigation Workshop Division, Meerut and covered by the Industrial Disputes Act, 1947. It is relevant to mention here that prior to 1974 the engagement of the industrial labour in the different established workshops was done on daily wage basis in different trades thereafter from 01.01.1974 the workmen employed on daily wage basis against different trade were sanctioned different scales of pay. It is further submitted that their services conditions were governed by the Standing Orders made in pursuance of the Industrial Employment (Standing Orders) Act, 1946 which is different from the employees engaged on work charge basis working in the regular establishment of the Department of Irrigation.

6. That the services of the employees of the Industrial Workshop is different from the service conditions of the employee working in regular establishment of the Department of Irrigation. It is relevant to mention here that the services of the employees in the Industrial Workshop being an industrial unit is covered by the Industrial Employment (Standing Orders) Act 1946 issued under the Industrial

Disputes Act and thereafter U.P. Industrial Employment Model Standing Orders, 1991, framed in exercise of the authority vested under the Industrial Employment (Standing Orders) Act, 1946 published on 24.07.1992. The aforesaid standing order lays down statutory imposed condition of service, binding on both the employer and the employees.

7. That the petitioner was initially engaged in the industrial unit of Irrigation Workshop Division, Meerut according to the nature of work. It is relevant to mention here that the services of the petitioner are governed by the Industrial Employment (Standing Orders) Act, 1946, Certified Industrial Employment (Standing Order) No. 678 (1) of 1970 (Meerut Workshop) and further by Uttar Pradesh Industrial Employment Model Standing Orders, 1991 notified on 24.07.1992 (hereinafter referred as "Standing Orders, 1991").

8. That to understand the provisions governing the services of the workmen employed in different workshops of the Irrigation Department established in the State of Uttar Pradesh it would be important to understand the past and present structure of the workshop created under various, Circles in the State of Uttar Pradesh which is as follows:-

21. Thereafter, various provisions of the Factories Act, Industrial Disputes Act, 1947, Standing Orders Act and the EPF Act have been quoted. Subsequently, in paragraphs 9 to 16, it is stated as follows:-

"9. That Industrial Labour under the different categories of trade are covered by the provisions of the Standing Order, 1991 and is workmen as defined under the Industrial Disputes Act working under the industrial establishment (established under Factories Act, 1948) of the Department of Irrigation and as such the schemes of Employees Provident Fund Scheme, 1952 and Employees Pension Scheme, 1995 are applicable over the services of the petitioner. Therefore, the petitioner claiming parity of salary and other benefits equivalent to the regular employees of the State Government being illegal cannot be granted as the petitioner is already working as a regular Industrial Workman/Labour under the Industrial Establishment of the Irrigation Workshop and is getting all the benefits as admissible to the industrial employees of the Irrigation Workshops.

10. That it is further submitted that in pursuance of the aforesaid benefits the deductions are also being made from the salary of the petitioner and other benefits such as increments, incentive and benefits of overtime is also being made to the petitioner and the petitioner after his retirement will also be paid pension as per Employees Pension Scheme, 1995.

11. That as such under such circumstances when the service conditions are governed by different service rules and specifically in case of pension different provisions

including different pension scheme has been made applicable to the workmen of the Industrial Establishment the parity with the employees of regular establishment cannot be claimed by the petitioner which is perse illegal.

12. That one Rama Kant Yadav was engaged as Chaukidar on the basis of daily wages on 01.08.1992 (sic) and continue to work as daily wagers till 06.11.1984 at Irrigation Workshop Division, Gorakhpur which is an industrial establishment.

13. That Rama Kant Yadav filed writ petition seeking regularization and getting the benefits as admissible to the regular government employees. The learned Single Judge vide judgment and order dated 01.10.2021 allowed the writ petition. A true photostat copy of judgment and order dated 01.10.2021 is being annexed herewith and marked as Annexure No. SA-1 to this affidavit.

14. That the State of U.P. has preferred Special Appeal No. 66 of 2022 challenging the judgment and order dated 01.10.2021. The Division Bench of this Court vide a judgment and order dated 09.02.2022 has allowed the appeal and set aside the direction of the learned Single Judge for regularization of the petitioner. A true photostat copy of judgment and order dated 09.02.2022 passed in Special Appeal No. 66 of 2022 is being annexed herewith and marked as Annexure No. SA-2 to this affidavit.

15. That the petitioner Rama Kant Yadav preferred SLP No. 6550 of 2022 challenging the judgment and order dated 09.02.2022 passed in the above noted special appeal. The Hon'ble Supreme Court vide judgment and order dated 22.07.2022 has allowed the special leave petition No. 6550 of 2022 and directed that the appellant (Rama Kant Yadav) be treated as a permanent employees in industrial establishment at Gorakhpur and necessary consequence shall follow. A true photostat copy of judgment and order dated 22.07.2022 passed in special leave petition is being annexed herewith and marked as Annexure No. SA-3 to this affidavit.

16. That the petitioners are similarly situated workmen in the industrial establishment at Industrial Workshop Division, Meerut and cannot held to be Government servant."

22. It is pertinent to mention here that the judgment dated 1.10.2021 passed by a learned Single Judge in the case of Ramakant Yadav<sup>15</sup>, which has been referred to in the aforesaid supplementary affidavit dated 22.11.2022 in paragraphs 12 to 15 thereof, reads as follows:-

"Leaned counsel for the petitioner states that the relief is not very happily worded and as such he may be permitted to amend the relief, during the course of the day.

Heard learned counsel for the petitioner and Shri Rajendra Prasad Dubey, learned Additional Chief Standing Counsel for the State-respondents.

The present petition has been filed alleging that the petitioner was engaged at the Irrigation Department as a labour and received salary from 7.11.1982 up to 30th November, 1984, however the petitioner was stopped from performing his services. As the petitioner was not permitted to continue, the petitioner approached the Labour Court by filing Case No. 298 of 1985, which was decided vide order dated 9.1.1989 (Annexure-2 to the writ petition), whereby the Labour Court held that the removal of the petitioner on 7.11.1984 was not a valid removal and directions were passed for reinstatement of the petitioner with back wages.

In terms of the said order, the petitioner was re-engaged in service and he continued to work on the post in terms of the said order. It is argued that from 1989, the petitioner was asked to provide to work as a helper in place of Chowkidar, which the petitioner did and continue to do so till 1.1.1996.

The petitioner alleges that all the persons similarly situated as the petitioner were regularized in the department in December, 1996 (Annexure-3 to the petition), however, the case of the petitioner was not considered. The petitioner was not being paid salary of helper, as such, the petitioner again approached the Labour Court. The claim of the petitioner before the Labour Court was that he was being asked to work as a helper, whereas he was being paid as Chowkidar. Thus, the claim was that difference of the salary should be paid to the petitioner.

In the said proceedings, a reply was filed by the respondents accepting that the petitioner continue to work as a helper, however, on 29.12.2014, an order has been passed, which is also reflected in the service book of the petitioner to show that the petitioner shall now work on the post as he was working prior to 1.1.1996 on the post of Chowkidar.

The claim of the petitioner is that the petitioner should be paid the difference of salary for the period, on which the work of helper was taken from the petitioner and he is entitled to regularization in view of the fact that all persons similarly placed were regularized way back in 1996. The fact is that the petitioner still continues to work as Chowkidar and regularization benefits has not been accorded to the petitioner.

The first relief of the petitioner for payment of difference of wages on account of the fact that petitioner had worked as a helper is liable to be rejected on the ground that the petitioner had agitated the same before the Industrial Court in Case No. 10 of 2015. As such, the same cannot be re-agitated in the present proceedings.

The second claim of the petitioner for regularization merits acceptance, as admitted, the petitioner has worked since 1982 and all the persons similar to the petitioner have been regularized, thus the writ petition is allowed insofar as the relief of the regularization is claimed. The respondents are directed to regularize the services of

the petitioner within a period of three months from today and pass necessary orders in respect whereof as has been done in the case of similarly placed employees.

The said relief to the petitioner is also liable to be allowed in view of the judgment of the Supreme Court in the case Secretary, State of Karnataka Vs. Umadevi (3), (2006) 4 SCC 1.

The writ petition stands allowed in terms of the said order.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order."

23. The aforesaid judgment of the learned Single Judge was challenged by the State in Special Appeal No.66 of 2022 before this Court, which was allowed by means of the following judgment dated 9.2.2022 :-

" Heard Sri P.K. Ganguli, learned Standing Counsel for the appellant/State-respondents and Sri Sunil Kumar Singh, learned counsel for the petitioner-respondent.

This Special Appeal has been filed by the State-appellants praying to set aside the impugned judgement dated 1.10.2021, passed by learned Single Judge in Writ-A No. 19152 of 2019 (Ramakant Yadav Vs. State of U.P. and 3 others).

Perusal of the writ petition shows that there is no whisper in the pleadings which may indicate either claim of the petitioner-respondent for regularization or any rules or scheme providing for regularization.

It is well settled that services of a daily wager, adhoc or temporary can be regularized only as per the rules or scheme for regularization. Neither there is whisper in the entire writ petition nor in the impugned judgement about any rules or scheme for regularization, under which the petitioner-respondent could be regularized.

Under the circumstances, the impugned judgement of learned Single Judge cannot be sustained and is hereby set aside.

The Special Appeal is allowed."

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24. Thereafter, in the SLP (C) No.6550 of 2022, the Supreme Court, while granting leave to the petitioner therein, Ramakant Yadav, allowed the civil appeal by the following judgment dated 22.7.2022 :-

"Leave granted.

Feeling aggrieved and dissatisfied with the impugned Judgment and order dated 09.02.2022 passed by the High Court of Judicature at Allahabad in Special Appeal No. 66 of 2022, by which the Division Bench of the High Court has allowed the said Special Appeal preferred by the State of U.P. and set aside the judgment and order passed by learned Single Judge directing the State to regularise the services of the appellant, the original writ petitioner has preferred the present appeal.

In response to the notice issued by this Court, Shri Ravindra Raizada, AAG/learned Senior Advocate has appeared on behalf of the State of U.P. He has stated at the Bar and even so stated in the counter affidavit that in fact the appellant has been treated as a permanent employee in the industrial establishment after completion of requisite period and even thereafter he has been even granted three ACPs. In that view of the matter, we set aside the impugned judgment and order passed by the Division Bench of the High Court. The appellant be treated as a permanent employee in Industrial Establishment at Gorakhpur and necessary consequences shall follow.

The present Appeal is allowed to the aforesaid extent. No costs.

25. It is pertinent to look into certain provisions of law that are stated to be applicable in the present case. Much emphasis has been laid on behalf of the appellants that the petitioner-respondent nos.2 to 17 worked in the Industrial Establishment of the Workshop of the Irrigation Department, which is owned and controlled by the Government of U.P.. The terms 'employer' and 'industrial establishment' have been defined in Section 2 of the Standing Orders Act as under:-

"(d) "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes-

(i) in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as the manager of the factory;

(ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

(iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

(e) "industrial establishment" means -

(i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or

(ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or

(iii) .....

(iv) ....."

26. In the Factories Act, 1948<sup>16</sup>, the words 'factory' and 'occupier' have been defined thus:-

"(m) "factory" means any premises including the precincts thereof--

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,--

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Explanation I--For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Explanation II.--For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory-

Provided that--

(i) .....

(ii) .....

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier: ....."

27. Therefore, the word 'occupier' of a factory in the facts of the present case would mean the person or persons appointed to manage the affairs of the factory (industrial establishment) by the State

Government which owns and controls the factory. Such factories are the aforesaid workshops of the Irrigation Department.

28. Similarly, the term 'employer' in the Standing Orders Act means the owner of the industrial establishment, which is the State Government, the industrial establishment being the aforesaid Workshop of the Irrigation Department, to which the Standing Orders Act for the time being applies. The term includes, (i) in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as the manager of the factory; (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; and, (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment.

29. The Factories Act was enacted to regulate factories and to address important basic provisions relating to health, working hours, holidays, lighting and ventilation, minimum age of employment and other conditions of working in the factory coupled with the general welfare of the workers. The Standing Orders Act gives recognition to rights of workman employed in an industrial establishment which expressly and exclusively deals with the Schedule-enumerated conditions of service of workmen in industrial establishment.

30. Therefore, the Standing Orders Act and the Factories Act are special enactments that are applicable to the industrial establishments which may be owned by the State Government. These enactments seek to specify the conditions of employment of workmen engaged by such factories/industrial establishments. The Standing Orders Act would apply to every industrial establishment defined therein subject to the exception sought to be carved out by Section 13-B of the Standing Orders Act.

31. Section 13-B of the Standing Orders Act, which was inserted by Act No. 36 of 1956 with effect from 10.3.1957, reads as follows:-

"13B. Act not to apply to certain industrial establishments.--Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

The exception carved out by Section 13-B is in respect of such workmen to whom the following rules or regulations apply:-

(i) Fundamental and Supplementary Rules,

- (ii) Civil Services (Classification, Control and Appeal) Rules,
- (iii) Civil Services (Temporary Services) Rules,
- (iv) Revised Leave Rules,
- (v) Civil Service Regulations,
- (vi) Civilians in Defence Service (Classification, Control and Appeal) Rules, or
- (vii) Indian Railway Establishment Code, or
- (viii) any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette.

In the aforesaid section, the phrase 'any other rules or regulations' can only mean such rules or regulations that are notified by the appropriate Government in the Official Gazette under Section 13-B of the Standing Orders Act and to none other. To substantiate exclusion of the application of the Standing Orders Act in respect of workmen or a set of workmen, the workmen have not only to show and demonstrate that 'any other rules or regulations' have been framed, but, also that such rules or regulations have been notified in this behalf, that is to say, under Section 13-B by the appropriate Government in the Official Gazette.

It is important to note that if any question arises to the application or interpretation of a Standing Order certified under the Standing Orders Act, then under the provisions of Section 13-A of the Standing Orders Act, any employer or workman or a Trade Union or other representative body of the workmen may refer the question to the labour court constituted under the Industrial Disputes Act and specified for the disposal of such proceedings by the appropriate Government by notification in the official gazette and the labour court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

32. The scope of Section 13-B of the Standing Orders Act were considered by a three Judge Bench of the Supreme Court in the case of U.P. State Electricity Board & Ors. vs. Hari Shankar Jain & Ors.<sup>17</sup>. The Governor had notified, under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946, a regulation made by the U.P. State Electricity Board under Section 79(c) of the Electricity (Supply) Act, 1948, which prescribed the age of superannuation of employees of the Board. Acting in pursuance of this regulation as notified by the Governor, the Board sought to retire two employees on their attaining the age of 58 years. It was observed by the Supreme Court as follows:-

"14. .... It is true that in S. 13-B the species specifically mentioned happens to be Government servants. But they also possess this common characteristic that they are all public servants enjoying a statutory status, and governed by statutory rules and regulations. If the legislature intended to confine the applicability of S. 13-B to

industrial undertakings employing Govt. servants only nothing was easier than to say so instead of referring to various rules specifically and following it up with a general expression like the one before us. The words 'rules and regulations' have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by authorities to whom the statute delegates that function. The words can have no other meaning in Sec. 13-B. Therefore, the expression "workmen ..... to whom ..... any other rules or regulations that may be notified in this behalf" means, in the context of S. 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations. The expression cannot be construed so narrowly as to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Govt. under S. 13-B.

15. .... In Raman Nambissan's case<sup>18</sup> it was held that the mere fact that the Electricity Board had adopted the rules and regulations of the Government of Madras as its transitory rules and regulations did not bring the workman employed in industrial establishments under the Board within the mischief of S. 13-B of the Industrial Employment (Standing Orders) Act. In Thiruvengataswami's case<sup>19</sup> it was held that rules made by the Government under the District Municipalities Act could not be considered to be rules notified under S. 13-B of the Standing Orders Act merely because the rules were made by the Government and published in Government Gazette. We agree with the conclusions in both cases. In Thiruvengataswami's case Kailasam, J. also observed that the Industrial Employment (Standing Orders) Act was a special act relating exclusively to the service conditions of persons employed in industrial establishments, and, therefore, its provisions prevailed over the provisions of the District Municipalities Act. We entirely agree. But, the learned Judge went on to say 'S. 13-B cannot be availed of for purposes of framing rules to govern the relationships in an industrial establishment under private management or in a Statutory Corporation. This rule can apply only to industrial establishments in respect of which the Government is authorised to frame rules and regulations relating to the conditions of employment in industrial establishments.' There we disagree. Our disagreement however is only in regard to industrial establishments under Statutory Corporations which are authorised by statute to make rules and regulations and not in regard to those under Statutory Corporations not so authorised, nor in regard to those under private management. Our reasons are mentioned in the previous paragraph.

16. .... The words 'nothing in this Act shall apply' are not to be interpreted too literally as to lead to absurd results and to what the Legislature never intended. In our view the only reasonable construction that we can put upon the language of S. 13-B is that a rule or regulation, if notified by the Government, will exclude the applicability of the Act to the extent that the rule or regulation covers the field. To that extent and to that extent only 'nothing in the Act shall apply'. To understand S.

13-B in any other manner will lead to unjust and un contemplated results. For instance, most of the Service Rules and Regulations expressly mentioned in Sec. 13-B do not deal with a large number of the matters enumerated in the schedule such as 'Manner of intimating to workmen periods and hour of work, holidays, pay-days and wage rates', 'shift working', 'Attendance and late coming', 'conditions of, procedure in applying for, and the authority which may grant leave and holidays', 'Closing and reopening of Sections of the industrial establishments and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom' etc. To exclude the applicability of Standing Orders relating to all these matters because the Fundamental Rules, the Civil Service Rules or the Civil Services (Classification, Control and Appeal) Rules provide for a few matters like 'Classification of workmen' or 'suspension or dismissal for misconduct' would be to reverse the processes of history, apart from leading to unjust and untoward results. It will place workmen once again at the mercy of the employer be he ever so benign and it will certainly promote industrial strife. We have indicated what according to us is the proper construction of S. 13-B. That is the only construction which gives meaning and sense to Section 13-B and that is a construction which can legitimately be said to conform to the Directive Principles of State Policy proclaimed in Articles 42 and 43 of the Constitution.

17. We, therefore, hold that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under S. 13-B or certified by the Certifying Officer under S. 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply. In the present case the regulation made by the Board with regard to age of superannuation having been duly notified by the Government, the regulation shall have effect notwithstanding the fact that it is a matter which could be the subject-matter of Standing Orders under the Industrial Employment (Standing Orders) Act. The respondents were therefore, properly retired when they attained the age of 58 years. The appeal is, therefore, allowed. The Writ Petition filed in the High Court is dismissed. The appellants will pay the costs of the respondents as directed by this Court on 28-9-77. The costs are quantified at Rs.3500/-."

33. In the case of Rajasthan State Road Transport Corporation vs. Krishna Kant<sup>20</sup>, while dealing with the issue relating to the nature and character of the Certified Standing Orders, the Supreme Court observed that they are not in the nature of delegated/ subordinate legislation. It was observed that the Standing Orders do not say that on such certification of the Standing Orders, they acquire statutory effect or become part of the statute, though they are undoubtedly binding upon both the employer and the employees and constitute the conditions of service of the employees. The Supreme Court held that it appears difficult to say, on principle, that they have statutory force. The Supreme

Court, after referring to various decisions, observed as follows:-

"18. .... The consensus of these decisions is: the certified Standing Orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as pointed out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitute "statutory provisions" within the meaning of the dicta in Sukhdev Singh [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] where it was held: (SCC p. 447, para 67) "The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions."

Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves."

34. The aforesaid judgment in Krishna Kant has been relied upon in the judgment of Rajasthan State Road Transport Corporation vs. Deen Dayal Sharma<sup>21</sup>. The judgment in Deen Dayal Sharma has been adverted to by the learned Additional Advocate General appearing for the appellants to contend that the remedy of the petitioner-respondent nos. 2 to 17 for enforcement of their rights under the Certified Standing Orders made under the Standing Orders Act would be to seek a reference of the dispute before the appropriate forum constituted under the U.P. Industrial Dispute Act, 1947.

35. Admittedly, the conditions of service of the petitioner nos. 2 to 17 were governed by the Standing Orders Act. They were availing of the benefits and were being governed by the procedural and other terms of the certified Standing Orders that were applicable to them in the industrial establishments/Workshops of the Irrigation Department of the State Government they were working in. They were seeking enforcement of the provisions of the Standing Orders Act by resorting to legal remedies under the provisions of the U.P. Industrial Disputes Act. However, their claim to pension is solely on the basis of their stand that the Rules, 1984 is applicable to them. In the aforesaid background, we may proceed to consider the Rules, 1984 and their applicability to the petitioner nos. 2 to 17.

36. With regard to the applicability of the Rules, 1984, which has been held by the learned Judge to be applicable to the petitioner-respondent nos. 2 to 17 and which has been disputed by the appellants, the observations by the Supreme Court in Hari Shankar Jain (supra) with regard to "rules" referred to in Section 13B of the Standing Orders Act would have to be seen. While addressing the arguments of the learned counsel before the Supreme Court that the rules and regulations which have been specifically mentioned in Section 13B were all comprehensive sets of rules and, therefore, the phrase "any other rules or regulations" that might be notified by the

Government should also satisfy the test of comprehensiveness, and that it could not be said that notifying of a single rule or regulation would exclude the applicability of all provisions of the Standing Orders Act, the Supreme Court in Hari Shankar Jain observed that the only reasonable construction that can be put upon the language of Section 13B is that a rule or regulation, if notified by the Government, will exclude the applicability of the Standing Orders Act to the extent that the rule or regulation covers the field. For instance, most of the service rules and regulations expressly mentioned in Section 13B do not deal with the large number of matters enumerated in the Schedule to the Standing Orders Act.

37. The Supreme Court went on to further observe in Hari Shankar Jain (supra) that in regard to matters in respect of which the regulations made by the Board (under the Electricity Supply Act) had not been notified by the Governor or in respect of which no regulations had been made by the Board, the Standing Orders Act would continue to apply.

38. Therefore, keeping in mind the ratio decidendi of the judgment in Hari Shankar Jain, coupled with the fact that it has been stated in the affidavit of 18.10.2021 filed on behalf of the appellant-State that the Irrigation Workshop Circle, Kanpur had administrative control over the workshops in Roorkee, Bareilly, Meerut, Jhansi and Kanpur in the State of Uttar Pradesh prior to 1994, the Rules, 1984 may be considered.

39. A coordinate Bench of this Court in Om Prakash was considering the aspect regarding the age of retirement of the employees working at Kanpur Workshop observed as follows-

"10. The controversy, therefore, in the present case is as to whether the Certified Standing Orders would be applicable in the case in hand in spite of the fact that the appellants themselves have framed the Rules of 1984. The appellants in their own wisdom has taken a decision to make the service Rules in 1984 and those Rules have been prevailing since then. Rule-8 specifies the category of posts and also specifies the post in Appendix-A. The posts, therefore, which are included within the ambit of the Rules, will fall exclusively within the domain of the Rules and the Certified Standing Orders cannot be said to be applicable in respect of these posts.

11. Learned Additional Advocate General has drawn the attention of the Court towards Rule-25 of the Rules and on that basis, it has been submitted that since no age of retirement has been prescribed under the Rules, therefore, the Certified Standing Orders would be applicable wherein the date of retirement is mentioned as 58 years.

12. The aforesaid argument has to be tested in the light of the language used in Rule-25 of the Rules, which says that in respect of the matters, which have not been provided in these Rules or special orders, the provisions related to State Government employees will apply. The applicability of the Rules has to be tested in the light of the fact that the Certified Standing Orders came into existence after promulgation of the Rules and the appellants consciously framed the Rules so as to place the category of

persons indicated in the Rules outside the ambit of the Certified Standing Orders. The Certified Standing Orders, therefore, in the wake of the Rules framed by the appellants would not apply in respect of the category of employees, who are falling under Rule-8 and Appendix-A of the Rules.

13. The Division Bench of this Court while considering the issue at Allahabad<sup>22</sup> was seized with the matter, in respect of which, no Rules were existing and neither framed in respect of Allahabad Workshop. In those very circumstances, the Division Bench came to the conclusion that until and unless there is declaration as contemplated under Section 13-B, the Government Servant Rules will not be applicable, but in the case in hand, the appellants themselves have framed the Rules and the employees have been subjected to the aforesaid Rules, and whatever has not been provided in these Rules, the same will be adopted from the Rules applicable in respect of U.P. State Government employees, so in these circumstances, if the age of retirement has not been provided in these Rules, then the age of retirement, which is applicable in respect of U.P. State Government employees would be applicable.

14. The argument of learned Additional Advocate General that the Certified Standing Orders would be applicable, relying upon the judgment of the apex court in the case of *The U.P. State Electricity Board and another vs. Hari Shankar Jain and others* (1978) 4 SCC 16, does not come to the rescue of the appellants on account of the fact that in the said case, in Para-10 of the judgment, it has been held as under:

"10. We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely the conditions of service, enumerated in the schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard-won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."

15. In the aforesaid case, the situation was otherwise, wherein the Electricity Supply Act was framed prior to promulgation of the Standing Orders and therein, the Supreme Court came to the conclusion that special rule excludes the general will not apply in that case because the special provision was in existence prior to promulgation of the Act of 1946.

16. Here, in the case in hand, the Industrial Employment Standing Orders Act, 1946 was framed and thereafter the Certified Standing Orders were framed and the Rules have been framed in 1984 and the said Rules are applicable in respect of the employees of Kanpur Workshop. The State Government was conscious of the fact and, therefore, took a conscious decision and framed the Rules so as to keep the employees of the Kanpur Workshop outside the purview of the Certified Standing Orders, otherwise there would have been no necessity of providing under Rule-25 of the Rules that whatever has not been provided in these Rules, the same shall be adopted from the State Government employees Rules and shall be applicable in respect of present employees."

40. With all due respect to the judgment of the Bench in Om Prakash, the ratio in the matter of Hari Shakar Jain is not only that the special rule excludes the general, but that the only reasonable construction that could be put upon the language of Section 13B of the Standing Orders Act, is that a rule or regulation, if notified by the Government, will exclude the applicability of the Standing Orders Act to the extent that the rule or regulation covers the field. Further, such a rule or regulation has to be notified under Section 13-B of the Standing Orders Act, which aspect was specifically indicated in Hari Shankar Jain and reiterated by a Division Bench of this Court in the aforesaid case of Motilal Kushwaha. Though the judgment of Motilal Kushwaha was considered in Om Prakash but was sought to be distinguished.

41. Now, to consider the Rules, 1984, Rule 2 of the Rules, 1984 deals with the service comprising Group C and Group D posts. Rule 3 contains definitions. Clauses (i), (j) and (k) of which read as follows:

"(i) 'Service' means the Utter Pradesh Irrigation Department (Irrigation Workshop Circle, Kanpur) Semi Technical Service;

(j) 'Substantive appointment' means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the rules and, if there were no rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government;

(k) 'Year of recruitment' means a period of twelve months commencing on the first day of July of a calendar year."

Part-II of the Rules, 1984 deals with the cadre of service. Rule 4 reads as follows:

"4. (1) The strength of the service and each category of posts therein shall be such as may be determined by the Government from time to time.

(2) The strength of the service and each category of posts therein shall, until orders varying the same are passed under sub-rule(1), be as has been given in the Columns No.3 to 5 of Appendix 'A', provided that;

(One) The appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensating;

(Two) The Governor may create such additional permanent or temporary posts as he may consider proper."

Part-III of the Rules, 1984 deals with recruitment and the source of recruitment. Rule 5 specifies that the recruitment to the various categories of posts in the service shall be made from the sources mentioned opposite to each post in Column No. 9 of Appendix 'A'. Part-IV of the Rules deals with the qualifications which specifies nationality, academic qualification, preferential qualification, age and character. Further, marital status and physical fitness are also specified therein. Part-V deals with the procedure for recruitment which consists of Rules 14, 15 and 16. Rule 14 deals with determination of vacancies and it reads as follows:

"14. The Appointing Authority shall also determine number of vacancies to be filled during the course of the year through direct recruitment and also the number of vacancies reserved for under rule 6 and he shall intimate this information to the Employment Exchange according to rules and orders prevailing."

Rule 15 provides for procedure for direct recruitment and Rule 16 provides for procedure recruitment through promotion. Part-VI pertains to appointment, probation, confirmation and seniority. Part-VII of the Rules deals with pay etc.. Scales of pay are specified in Rule 21. Pay during probation falls under Rule 22. Rule 23 deals with the criteria for crossing the efficiency bar. Part-VIII deals with other provisions regarding canvassing which is prohibited under Rule 24. Rules 25 and 26 read as follows:

"25. In regard to the matters not specifically covered by these rules or special orders persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government servants serving in connection with the affairs of the State.

26. When the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, he may, notwithstanding anything contained in these rules applicable to the case, by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as may consider necessary for dealing with the case in a just and equitable manner."

Appendix 'A' to the Rules specifics the various posts and the number of posts which includes permanent and temporary workmen, the scales of pay, the appointing authority, and the source of recruitment.

42. The Rules, 1984 were framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India but have not been notified under Section 13-B of the Standing Orders Act. In

this regard, in the case of Raman Nambissan (supra) relied upon before the Supreme Court in Hari Shankar Jain and the judgment of Thiruvengataswami (supra) to the extent it was affirmed by the Supreme Court are illustrative.

It is pertinent to mention here that even in the case of Hari Shankar Jain, the Supreme Court had held that the regulations made by the Electricity Board with respect to any of those matters enumerated in the Schedule of the Standing Orders Act are of no effect unless such regulations are either notified by the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Standing Orders Act. Therefore, the judgment in Om Prakash cannot be considered as a binding precedent.

43. Moreover, in Section 13-B of the Standing Orders Act, the usage of the phrase 'in so far as the workmen employed therein are persons to whom ..... apply', indicates that in an industrial establishment there may be a separate class of workmen of the regular or permanent establishment to whom the rules named in Section 13-B or 'any other rules or regulations that may be notified in this behalf', applies. It also indicates that in the same industrial establishment there may be another class of workmen to whom the rules referred to in Section 13-B do not apply. The words "in so far as" mean 'to the extent'. So on a plain reading of Section 13-B, it reflects that it recognises the existence of the aforesaid two classes of workmen existing in one industrial establishment. Having such separate classes of workmen by the State Government in the same industrial establishment with each class being subject to separate enactments cannot be said to be discriminatory or arbitrary in view of the provisions of the Factories Act and the Standing Orders Act in general, and, in view of Section 13-B of the Standing Orders Act aforesaid in particular.

44. It has not been stated in writ petition that the petitioner-respondent nos. 2 to 17 were regularized in service after coming into force of the Rules, 1984 and against existing vacant posts as provided in the Rules, 1984. They were working since prior to 1984 and were initially working on daily wage basis. Though it has been stated that the petitioner-respondent nos. 2 to 17 were regularized, and this has not been denied by the appellant, no order or letter of regularization of service has been produced by the petitioner-respondent nos. 2 to 17 to demonstrate that their regularization was against particular vacant posts specified in the Rules, 1984.

45. With regard to the payment of pensions, the Civil Services Regulations, as adopted in its application in Uttar Pradesh are required to be seen.

46. Regulation 350 of the Civil Service Regulations, as adopted in its application in Uttar Pradesh is as under:-

"350. All establishments whether temporary or permanent, shall be deemed to be pensionable establishments;

Provided that it is open to the State Government to rule that the service in any establishment does not qualify for pension.

1. Service in Dak Bungalow and District Garden Establishments does not qualify.
2. The service of a Patwari, whether appointed before or after the abolition of the Patwari or Village Officers' Cases and Funds, does not qualify in any case in which it did not qualify prior to that abolition.
3. Service in non-gazetted posts in Government Technical and Industrial institutions in the Uttar Pradesh does not qualify in the case of persons appointed to such posts on or after November 15, 1938.

Exceptions--This rule does not apply to the posts declared pensionable in Shram (Kha) Vibhag G.O. No. 810 (E) XXXVI-B- -106/56, dated May 29, 1963 and Udyog (Gha) Vibhag G.O. No. 375-ED/XVII-D-AQ-19-ED, 60, dated June 5, 1963."

47. As stated in the affidavits filed by the appellants, the Rules, 1984 provide for 97 regular posts whereas in the year 1976 there were 927 sanctioned posts of industrial workmen in the various Workshop Divisions. The contention is that the petitioner-respondent Nos. 2 to 17 were engaged in the industrial establishment and covered under the Standing Orders Act and were not permanent workmen covered under the Rules, 1984.

48. In the aforesaid conspectus, it cannot be stated that the petitioner-respondent nos. 2 to 17 were 'appointed to the service' as per the usage of the phrase in Rule 25 of the Rules, 1984 or 'member of the service' as defined in clause (h) of Rule 2 of the Rules, 1984. It is the categorical stand of the appellants that the Rules, 1984 are inapplicable to the petitioners-respondent nos. 2 to 17. The employees, who are in receipt of pension from the State Government are those who were technical employees in the regular establishment. The proviso to Regulation 350 of the Civil Service Regulations as adopted in its application in Uttar Pradesh also leaves it open to the State Government to rule that the service in any establishment does not qualify for pension.

49. In the case of State of U.P. and Others Vs. Gorakh Nath Pandey and Others<sup>23</sup>, a Division Bench of this Court, while considering an intra-Court Appeal against the order of a learned Single Judge directing payment of pension and other retiral dues to the petitioners who answered the description of the industrial employees/workmen within the meaning to be assigned for the parties under the Standing Orders Act and the conditions of their employment governed by the Standing Orders applicable to the U.P. Government Cement Factory Churk, Mirzapur, considered the provisions of Regulation 361 of the Civil Service Regulations and observed that the provisions therein are a beneficial piece of legislation and there was no reason found to exclude persons covered by certified Standing Orders from the benefits of Regulation 361 of the Civil Service Regulations, if they satisfy the other requirements of Regulation 361. It was held that even a workmen/industrial employee of Government Industrial Undertaking has to be held to be a civil servant/holder of a civil post under the Government. Accordingly, the appeal was dismissed.

As would be evident hereinafter, this judgment in Gorakh Nath Pandey would not operate as a precedent, nor are the facts therein similar to that of the petitioner-respondent nos. 2 to 17 in the

present case.

50. Another coordinate Bench of this Court in an intra-Court Appeal in the case of State of U.P. and Others Vs. Shiv Jag Sharma and Others<sup>24</sup> considered a matter that was identical to the matter adjudicated in Gorakh Nath Pandey. It noted the order dated 1.5.2018 passed by the Supreme Court in the Special Leave Petition filed against the judgment in Gorakh Nath Pandey, which is as follows:-

"Delay condoned.

Application for exemption from filing official translation is allowed.

In the peculiar facts of this case, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution of India. Hence, this special leave petition is dismissed, leaving the question of law open.

Needless to say that the impugned judgment may not be treated as precedent."

51. The Bench in Shiv Jag Sharma explained the judgment of the Division Bench in Gorakh Nath Pandey and went on to observe as follows-

"20. While the Supreme Court may not have fully approved and thus affirmed the order of the co-ordinate Bench, it did not reverse the same and in any case, it did not lay down any contrary law. The later observation made in that order leaving the question of law open and not for that reason allowing that decision of the co-ordinate bench to be made precedent, only indicates that the same is not to be applied by way of reasoning if facts are different.

21. Insofar as the same facts are shown to exist in the present case as existed in Gorakh Nath Pandey (supra), peculiarity of facts noted by the Supreme Court in the third paragraph of its order dated 1.5.2018 obtains in the present case, as well. It is not the case of the State-respondents that the present set of respondents stand on a different footing than the petitioners in Gorak Nath Pandey (supra). Therefore, while no law may have arisen as may bind the Court in future decisions, at the same time, the rule of consistency and principles of equity would dictate, the Court may not draw any distinction as may itself lead to equals being treated unequally. Relying on a decision of the Supreme Court in Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association Vs. National Textile Corporation Limited and others; [2021 (4) ESC 880 (SC), it has been strenuously urged that the Court itself may not pass any order as may result in equals being treated unequally. As to delay, it has been submitted, neither such ground was raised before the learned single judge nor there is any inordinate delay on the part of the petitioner in the present case. These petitions were filed immediately after pronouncement by the learned single judge in Gorakh Nath Pandey (supra).

22. Having heard learned counsel for the parties and having perused the record, we find the coordinate Bench in Gorakh Nath Pandey (supra) had the occasion to deal with the exact same submissions being advanced in the present appeal. There also, an issue had been raised that exactly similarly situated workmen of a cement factory established by the State Government may not have been equated to civil servants and, therefore, they may not be found entitled to pensionary benefits under Regulation 361 of the Civil Service Regulations. Pertinent to the dispute before us, the co-ordinate bench had observed as under:

"Crux of the submission of the learned Advocate General therefore, is what once the petitioners are found to answer the description of workmen/industrial employees within the meaning of to be assigned under the Standing Orders Act, they stand excluded from the definition of a person appointed to a civil post or in civil service within the meaning of U.P. Fundamental Rules/Civil Service Regulations and therefore they are not entitled to pension.

We specifically inquired from the learned Advocate General as to under which provision of the U.P. Fundamental Rules/Civil Service Regulations/Standing Orders Act, any such exclusion in respect of the persons who are workmen are not being a person appointed to a civil post. No response could be given. It is more or less an admitted position that there is no specific provision for excluding the workmen/industrial employees in the matter of payment of pension/retiral dues, who otherwise satisfy all the conditions as contemplates by Regulation 361 of the Civil Service Regulations.

The Standing Orders Act has been enforced with an object to law down the condition of service like disciplinary action, leave, allowances etc. so as to minimize the fraction between the workmen and employer in Industrial Undertaking. Such Industrial Undertaking can be private undertaking or Government Undertaking or Public Private Undertaking. It is useful to refer to the definition of employer contained in Section 2 (d) (ii) of the Act, 1946, which reads as follows:

"2. Interpretation.

(d) "employer" .....

(ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;"

Thus, it will be seen that a Government may own industrial undertaking and in that circumstance, a employee working in such an industrial undertaking has to be held to be in service of Government and if the appointment is substantive and his service is to be paid by the Government, he stands covered by the provisions of Regulation 361 of the Civil Service Regulations, which entitles him to

pension.

For ready reference, Regulation 361 of the Civil Service Regulations reads as under:

"361. The service of an officer does not qualify for pension unless it conforms to the following three conditions:---

First-The service must be under Government.

Second-The employment must be substantive and permanent.

Third-The service must be paid by Government."

We may explain that use of the word "civil service" under Civil Service Regulations has to be read to include all nature of employment in the Government, except those which are in relation to defence service or service connected with defence.

Civil Service as defined in The New Dictionary of Cultural Literacy, Third Edition by Houghton Mifflin Company reads as under:

"The nonmilitary personnel who work for a government, applying its laws and regulations."

In our opinion the service conditions laid down as per the Certified Standing Orders, the Act, 1946 do not in any way impinge upon the right of a employee working in a Government Industrial Undertaking to be entitled to pension and other retiral dues under Regulation 361 of Civil Service Regulations. Provisions of Regulation 361 of the Civil Service Regulations are a beneficial piece of legislation and we do not find any reason for the persons who are covered by the Certified Standing Orders to be excluded from the benefits of Regulation 361 of the Civil Service Regulations, if they satisfy the other requirements of Regulation 361 of the Civil Service Regulations.

In our opinion even a workman/industrial employee of Government Industrial Undertaking has to be held to be a civil servant/holder of a civil post under the Government so as to be covered within the meaning of Regulation 361 of the Civil Service Regulations.

There is no issue with regard to other employees appointed in Factory at Churk and subsequently absorbed in the Corporation being paid pension in terms of the Government Order dated 2nd August, 2005.

We for the reasons recorded above see no reason as to why the workmen/industrial employees similarly appointed and absorbed be denied the same benefit. It is held that petitioners who answer the description of industrial employees/workmen shall also be covered by the Government Order dated 2nd August, 2005 and would be entitled to all benefits following therefrom.

In the totality of the circumstances on record we do not find any substance in the contentions raised by the learned Advocate General for the State to interfere with the judgment and order of the learned Single Judge dated 12th April, 2016.

All these appeals lack merit and are accordingly dismissed."

23. Thus, we find, exact same submission had been raised before the coordinate Bench. It had been dealt with and repelled on the reasoning that the petitioners (in that case), were specifically included for the purpose of grant of pensionary benefit upon the decision made by the State Government dated 02.08.2005. Even today, it is no one's case that the above Office Order issued by the Commissioner and Director, Industries, Government of U.P., was later withdrawn or amended, at any subsequent date. That decision of the State Government has not only remained in existence, but it was also enforced against the State Government in Gorakh Nath Pandey (supra).

24. Therefore, the mere reference to the Standing Order containing the terms and conditions of engagement of the petitioners-respondents as workmen establishes that technically it is true that the workmen of the industrial establishment may stand on a different footing than an employee of the State Government enjoying status of an employee engaged under separate Rules. That technical deficiency of status though may always be recognized by the Courts, yet, it is always open to the State-government/employer to still treat its workmen equal to its other employees, for grant of pensionary benefit. ....

.....

.....

39. Having failed to establish any distinction before the co-ordinate bench, in Gorakh Nath Pandey (supra), and that decision having not been upturned by the Supreme Court, we do not find this a fit case to interfere on the submission advanced by the learned Additional Advocate General that the basic difference in status between a civil servant and an industrial workman, must always maintain. The respondent-appellant/State may not be permitted to re-agitate that issue, in these proceedings. That exercise, if permitted, may only lead to absolute equals being treated unequally by the writ Court. Thus, we do not find the equities being pitted against the law; rather, we find, in the present facts, the equities are running parallel to the result that arose in law i.e., upon dismissal of the Special Leave Petition in Gorakh Nath Pandey (supra).

40. Since the equality claimed was to a final order of a coordinate bench that has attained finality, it is that 'law' that the present set of petitioners-appellants sought benefit of, on an equitable principle. It has been granted by the learned single judge in exercise of the extraordinary discretionary jurisdiction of the Court under Article 226 of the Constitution of India.

41. In the context of service jurisprudence, the normal rule remains i.e. when a particular set of employees is given relief by the Court, all other identically situated persons are to be treated alike by extending that benefit. Not extending that benefit would itself amount to discrimination in violation

of Article 14 of the Constitution of India..... "

52. After considering a gamut of case laws, the writ petition of Shiv Jag Sharma was allowed.

53. It is pertinent to mention here that the judgment in Shiv Jag Sharma followed Gorakh Nath Pandey only because of equitable considerations given the fact that the petitioners in Shiv Jag Sharma were identically placed as the petitioners in Gorakh Nath Pandey.

54. It is important to note here that the question in this appeal is not whether the petitioner-respondent Nos. 2 to 17 are entitled to pension, but, whether pension is payable to them either by the State Government or under the Pension Scheme. Pertinently and admittedly, the petitioner-respondent nos. 2 to 17 had voluntarily subscribed to the Pension Scheme and their contributions as well as the contribution of the employer were deposited. Admittedly, two of the petitioner-respondents submitted Form 10-D and are availing of pension under the Pension Scheme.

55. In the case of Prabhu Narain v. State of U.P.<sup>25</sup>, the Supreme Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme.

56. A coordinate bench of this Court in the matter of C/M U.P. Rajkiya Roadways Parivahan Nigam Sewa Nivrat and another v. State of U.P. and another<sup>26</sup> observed as follows:-

"38. To sum up, we state that the concept of pension has been considered by Apex Court time and again and in catena of cases noted above, it has been observed that the Pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for past services. It is a social security plan consistent with the socioeconomic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied i.e. the payment of it does not depend upon the discretion of the Employee but is governed by the Rules/Policy and incumbent falling within the purview of those Rules/Policy is entitled to claim pension. Right to receive pension flows by virtue of Rules/Policy holding the field."

57. The judgment in the aforesaid case of C/M U.P. Rajkiya Roadways Parivahan Nigam Sewa Nivrat has been affirmed by the Supreme Court in the recent case of U.P. Roadways Retired Officials & Officers Assn. v. State of U.P. and another<sup>27</sup>, in which case the Supreme Court observed as follows:-

"46. The common thread in the abovereferred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules."

58. It is the specific case of the appellant that the petitioner-respondent nos. 2 to 17 are covered by the Pension Scheme, that they have withdrawn their provident fund dues that had accumulated under the Provident Fund Scheme framed under the EPF Act. It is pertinent to mention here that in paragraph no. 22 of the counter affidavit filed on behalf of the appellants in the writ petition, it has been stated that the petitioner-respondent nos. 2 to 17 were each asked to submit "Pension Prapatra-10-D" by means of separate letters, but that Prapatra were not filled up by the petitioners. This averment has not been denied in the rejoinder affidavit filed by the petitioner-respondents in the writ petition.

59. The aspect of payment of pension under the Pensions Scheme is not dislodged by the Rules, 1984 as far as pension payable to the petitioner-respondent nos. 2 to 17 is concerned. As far as the conditions of service of the petitioner-respondent nos. 2 to 17 were concerned, the same were admittedly governed by the Certified Standing orders. The said petitioners opted for the benefits of provident fund and pension under the Provident Fund Scheme and the Pension Scheme respectively framed under the provisions of the EPF Act. Therefore, now these petitioners cannot turn around and stake any valid claim to pension from the State Government for want of any specific rule or government order in this regard. Moreover, they cannot lay any claim to pension from the State Government on equitable considerations. The fact that they were initially appointed on daily wages is not disputed. They claim that their services were regularized. Therefore, the Government Orders of 13.11.2007 and 27.2.2009 provided that they were government servants and entitled to D.A. and time scale as applicable to regular government servants. But that would not confer any entitlement on the petitioners to stake claim to pension from the State Government in view of the fact that these petitioners were not regularized in the regular establishment.

60. As far as allegation of discrimination is concerned, in paragraph no. 26 of the writ petition filed by the petitioners, it is alleged that five employees were similarly situated as the petitioners and they have received retiral benefits and are getting pension at par with Government Employees; (1) Ram Dev Singh, (2) Islamuddin, (3) Suresh Chand Sharma, (4) Ram Asrey Lal and (5) Chhote Lal.

In reply thereof, in paragraph no. 20 of the counter affidavit filed on behalf of the appellants, the allegation has been denied and in reply it has been submitted that referenced employee no. 1 and 2 retired from Irrigation Workshop Division, Meerut, the employee nos. 3, 4 and 5 retired from the Irrigation Workshop Division, Izzatnagar, Bareilly according to the service condition of regular employees not from the Industrial Establishment, while the petitioner nos. 2 to 17 have been retired from the Industrial Establishment. In the rejoinder affidavit, however, the contents of paragraph no. 20 of the counter affidavit have not been denied.

As already held herein above, the petitioner-respondent nos. 2 to 17 have not been able to demonstrate that they were regularised in the regular or permanent establishment. Under the circumstances, the petitioners have not been able to demonstrate any discrimination qua the aforementioned five persons.

61. In the judgment of Prem Singh, the Supreme Court dealt with the question whether the period of work charged services could be excluded from qualifying service for pension, and, in our humble opinion, the same would not apply in the facts and circumstances of the present case. Moreover, the appellant before the Supreme Court in Prem Singh had been regularized in service in the regular establishment. Therefore, the period of work charged services of such employees was the relevant consideration for purpose of qualifying service for payment of pension.

62. In view of the facts and circumstances of the case, the present Special Appeal is allowed. The impugned judgment of the learned Judge is set aside.

63. Learned counsel for the appellants have stated that this special appeal is directed against an order passed by this Court following the judgment dated 14.1.2020 passed by learned Judge in Writ-A No. 12780 of 2018, the special appeal filed against which was the aforesaid Special Appeal No. 232 of 2020 which has been allowed.

64. Though, on perusal of the memo of appeal, it appears that immediately after array of parties, a statement has been made that the special appeal is preferred against the impugned judgment and order dated 11.11.2020, passed in Civil Misc. Writ Petition No. 18517 of 2018 (Ram Chandra Vs. State of U.P. and others), however, on perusal of the relief clause, it appears that it is directed against the judgment and order dated 31.8.2021, passed in Civil Misc. Writ Petition No. 222 of 2021 (Sinchai Workshop Mazdoor Union an others Vs. State of U.P. and others.). The grounds raised in the memo of appeal are also directed in respect of judgment and order dated 31.8.2021 in Writ-A No. 222 of 2021. On perusal of the judgment and order dated 31.8.2021 enclosed with the Special Appeal, it reflects that the writ petition was allowed in terms of the judgment dated 14.1.2020 passed in Writ-A No. 12780 of 2018.

65. Since we have allowed the Special Appeal No. 232 of 2021 which was filed impugning the judgment dated 14.1.2020, passed in Writ-A No. 12780 of 2018, the instant Special Appeal is also allowed accordingly. The impugned judgment is set aside.

Special Appeal Defective No. 144 of 2022

66. Cause shown for the delay in filing the instant special appeal is found to be sufficient and it has not been opposed by the learned counsel for the petitioner-respondents.

67. The delay condonation application is, accordingly, allowed.

68. Learned Advocate General states that in the aforesaid appeal, judgment and order dated 23.11.2021 passed by the learned Judge in Writ-A No. 15556 of 2018 (Bhairo Prasad Rathore and

others Vs. State of U.P. and others) is under challenge. He has further stated that this appeal would be covered by the judgment rendered in Special Appeal No. 232 of 2021.

69. We have perused the judgment and order dated 23.11.2021 passed in Writ-A No. 15556 of 2018 and find that in the aforesaid judgment, the judgment and order dated 14.1.2020 has been relied upon to allow the writ petition in terms of the judgment rendered in that case. The instant Special Appeal is, therefore, allowed in terms of the judgment passed today in Special Appeal No.232 of 2021. The impugned judgment is set aside.

Order Date :- 17.1.2025 SK/A.V. Singh/sfa