



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No. 3241 of 2016
Reserved on : 05.08.2025
Pronounced on: 21.11.2025

Soma Devi and others

...Petitioners

Versus

Union of India and others

...Respondents

Coram:

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?. Yes.*

For the petitioners: Mr. Pawan Gautam, Advocate.

For the respondents: Mr. Balram Sharma, Deputy
Solicitor General of India
[Senior Advocate] with
Mr. Rajeev Sharma, Advocate.

Ranjan Sharma, Judge

Petitioners, namely, Soma Devi being the widow and Raju Verma and Sunil Kumar being sons of deceased employee, namely, Mehar Chand, have come up before this Court, assailing the order dated 28.10.2015 [Annexure P-5] **[referred to as the Impugned Order]** passed by the Learned Central Administrative Tribunal, Chandigarh Bench **[referred to as Tribunal]**, rejecting the claim of the deceased employee, namely Mehar Chand for regularization

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

and in not adjudicating the claim of deceased employee for retiral benefits, including pension for the continuous and uninterrupted temporary service rendered {w.e.f. 29.11.1989 till superannuation on 08.06.2012}, as admissible to the regular Group "D" Employees ; **and** when, based on temporary service rendered, the retiral benefits including pension were granted to another similarly placed superannuated employee, namely Shri Shyam Lal Shukla; **and** denial of legal entitlements of retiral benefits to deceased employee Mehar Chand w.e.f. 08.06.2012 and resultant denial of family pension to the substituted petitioner no 1, Soma Devi, being the widow w.e.f 28.01.2015 till day has led to the filing of third round of litigation, by means of OA No 063/00161/2014, assailing rejection orders and in asserting claim for pension / family pension.

FACTUAL MATRIX IN EARLIER ROUND OF LITIGATIONS BEFORE LEARNED TRIBUNAL:

2. In First Round of Litigation, O.A. No. 618 / HP/2009, the deceased employee, Mehar Chand, had filed an Original Application, before Learned Tribunal by setting up a case that he was engaged as

Part-Time Water Carrier in Post Office Bhambla, District Mandi, Himachal Pradesh, on 03.03.1983, but instead of working as a Part-Time Worker, the Respondents have made him to work for the duration stretching from 8 hours to 16 hours continuously and un-interruptedly; and prayed for grant of *Temporary Status* on completion of one year's service in terms of the Policy dated 12.04.1991 **and** had prayed for regularization as granted to other similarly placed incumbents, including one Rattan Chand, who had filed Original Application No.822/HP/1998, decided on 15.05.2000 and other Original Applications filed by Puran Chand, Lekh Chand Sharma and Narain Singh, respectively. The Original Application filed by the deceased employee, Mehar Chand, was disposed of by the Learned Tribunal on 19.07.2010 [*at pages 38 to 46 paper book*] by directing the Respondents to consider the case of the deceased employee, Mehar Chand, for grant of *Temporary Status* in terms of the Scheme of 1991 in the same manner in which the benefits have been extended to others *and* with further

direction(s) to *consider the claim* for regularization as per Rules and Law and the Scheme at the appropriate time. Pursuant to the *orders passed by Learned Tribunal on 19.07.2010*, the Respondents issued an order dated 11.08.2011 [at page 47 of *paper book*], whereby, deceased employee, Mehar Chand, was granted *Temporary Status* as Casual Labourer w.e.f. 29.11.1989 and after completing three years of continuous service, he was treated at par with Temporary Grade 'D' Employees of Department of Posts w.e.f. 29.11.1992 and was held entitled for benefits as were admissible to Temporary Grade 'D' Employees on regular basis in terms of the Communications-Instructions dated 12.04.1991 and 30.11.1992. Resultantly, the deceased employee, Mehar Chand, was granted Temporary Status as Casual Labourer w.e.f. 29.11.1989 and was treated at par with the Temporary Grade 'D' Employees w.e.f. 29.11.1992 and was also granted financial benefits flowing from orders passed by Tribunal dated 19.07.2010 by issuing implementation order dated 11.08.2011 but by restricting such

benefits for 18 months prior to filing of Original Application. However, the deceased employee, Mehar Chand, superannuated from service on 08.06.2012, without being granted the pensionary benefits. Against this, a legal notice dated 15.08.2013 was served requesting for grant of pension and other retiral benefits but the claim was rejected by Respondent-Senior Superintendent of Post Offices, Mandi, on 17.09.2013 [at page 54 of paper book] on the ground, that since the deceased employee had retired from service on 08.06.2012 without being regularized, therefore, he was not entitled for retiral benefits as were admissible to regular Grade 'D' Employees by the respondents.

2(i). In Second round of litigation, i.e. OA No. 1593-HP/2013, the deceased employee, Mehar Chand, assailed the rejection order dated 17.09.2013 and prayed for granting pensionary-retiral benefits for temporary service rendered by treating the said service at par with regular service as per the judgment of the Hon'ble Supreme Court in the case of **Jagrit Mazdoor Union (Regd.) & Ors.**

etc. versus Mahanagar Telephone Nigam Ltd. & Anr. etc. reported in **1990 SCC Suppl. 1113** and the *Instructions dated 30.11.1992* and other judgment(s), including the judgments passed in the case of **Shyam Lal Shukla** [OA No.1626/2005, decided on 28.07.2019, which was upheld by the Allahabad High Court, in **Civil Misc. Writ Petition No. 60272 of 2009**, decided on 23.12.2011, against which **SLP(C) No.12664 of 2012**, titled as **Union of India versus Shyam Lal Shukla** stood dismissed on 06.08.2012 *[at pages 67 to 81 of paper book]*. Original Application filed by Mehar Chand, came up for hearing before Learned Tribunal on 04.07.2014 and the same was disposed of with directions to respondents to re-examine the case for regularization and if any junior was regularized prior to the date of his superannuation on 08.06.2012 and to accord benefit of regularization, including pensionary benefits from the date of retirement. In compliance to the orders *passed by the Learned Tribunal on 04.07.2014 [at pages 56 to 60 of paper book]*, Respondents rejected the case on 21.10.2014 *[at*

page 36 of paper book], on the ground, that once the deceased employee, Mehar Chand, retired from service without being regularized, therefore, the retiral benefits including pension cannot be granted to him.

**CASE SET UP BY DECEASED MEHAR CHAND
IN THIRD ROUND OF LITIGATION LEADING
TO PASSING OF IMPUGNED ORDER DATED
28.10.2015 [ANNEXURE A-5]:**

3. In third round of litigation, i.e. O.A. No. 063 /00161/2014, the deceased employee, Mehar Chand, assailed the rejection orders dated 17.09.2013 and dated 21.10.2014 *with the twin prayers, i.e. firstly,* to grant regularization to him from the date junior Moti Ram was regularized and *secondly,* to grant retiral benefits [including pensionary benefits] by taking into account temporary service {rendered after grant of *Temporary Status* and continuous service} by treating such temporary service at par with service *rendered by Grade 'D' Employees on regular basis* **and** *based on such temporary service the pensionary* benefits, were granted to **Shyam Lal Shukla**, who was made to superannuate from service in temporary capacity, without granting regularization despite having rendered two decades of service as temporary employee

under the Respondents. In this backdrop, the deceased employee, namely Mehar Chand had filed OA No 063 /00161/2014, seeking following reliefs:-

- “(i) That the impugned orders dated 21.10.2014 (A-1, 17.09.2013 (A-6/A) be quashed and set aside being wholly illegal and arbitrary.
- (ii) That it be declared that the applicant is entitled to pensionary benefits w.e.f. 8.5.2012 with all the consequential benefits along with 18% interest per annum.
- (iii) That the applicant be extended the benefit of the judgment in the case of Shyam Lal Shukla (Supra).”

STAND OF RESPONDENTS BEFORE LEARNED TRIBUNAL:

4. In Reply to OA No. 063/00161/2014, i.e. *third round of litigation [which is subject matter of instant petition]*, the Respondents filed a *Written Statement-Reply* on Affidavit of Senior Superintendent of Post Offices, Mandi. Stand of Respondents in *Reply-Affidavit* was that deceased employee, Mehar Chand, retired on attaining the age of superannuation on 08.06.2012 and the alleged junior, Moti Ram was not regularized on the date of superannuation of the deceased employee, namely Mehar Chand on 08.06.2012 whereas, the aforesaid Moti Ram, was regularized subsequently in the month of November

2012 and therefore, the claim for regularization was stated to be not tenable. So far as the claim for pensionary benefits is concerned, it was stated that once deceased employee, Mehar Chand was not a regular employee of the Department and therefore, the pension was not admissible. In this backdrop the Respondents prayed for dismissal of the Original Application.

**REJOINDER BY ORIGINAL APPLICANT BEFORE
LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL:**

5. Deceased Employee, Mehar Chand, filed a rejoinder, stating that the issue as to whether a *Temporary Employee* was entitled for pensionary benefits has already been put at rest by Learned Allahabad Bench of the Tribunal, in the case of **Shyam Lal Shukla**, mandating that a *Temporary Employee* who was conferred the *Temporary Status* and thereafter rendered temporary service till superannuation was to be granted the service benefits, including pensionary benefits as were admissible to Grade 'D' Employees on regular employees. Meaning thereby, that in case a temporary employee superannuated from government service without being regularized (due to inaction of

government inaction) therefore, the Original Applicant, namely, Mehar Chand was entitled to the pensionary benefits as granted to **Shyam Lal Shukla (supra)**. It was averred in Para 4(iv) that Respondents did not consider the case of deceased Original Applicant-petitioner, Mehar Chand for regularization against post of MTS Grade 'D' and had the case been considered in true perspective then, he would have been regularized. In Para 4 (xiv), the entitlement of the deceased Original Applicant-Petitioner for retiral benefits was asserted to be squarely covered by the judgment of the Hon'ble Supreme Court in the case of **Jagrit Mazdoor Union (Regd.) & Ors. etc. versus Mahanagar Telephone Nigam Ltd. & Anr, 1990 Suppl. SCC 1113**. In above backdrop, deceased employee Mehar Chand had claimed the retiral benefits, including pension, on the basis of temporary service rendered w.e.f. 23.11.1989 till his superannuation on 08.06.2012 with the prayer to release all consequential benefits.

ORIGINAL APPLICANT MEHAR CHAND DIED DURING PENDENCY OF PROCEEDINGS BEFORE TRIBUNAL:

6. During the pendency of OA-063/00161/2014 before Learned Central Administrative Tribunal, the Original Applicant, namely, Mehar Chand, died on 28.01.2015 [as per death certificate enclosed with Miscellaneous Application as MA-1] and thereafter his Legal Heirs, including the petitioner No.1 being the widow and the petitioners No.2 and 3 being the sons were substituted as Original Applicants before Learned Central Administrative Tribunal.

IMPUGNED ORDER DATED 28.10.2015 VIDE ANNEXURE P-5 PASSED BY LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL:

7. Though in OA No 063/00161/2014, the Deceased Original Applicant-Petitioner, namely, Mehar Chand, {which is subject matter of controversy in instant writ proceedings} had primarily sought two reliefs i.e. *firstly*, seeking quashing of the rejection orders dated 21.10.2014 and 17.09.2013 *and claiming* regularization for the prolonged temporary service rendered from 29.11.1989 for more than two decades and *secondly*, for retiral benefits, including pension even if aforesaid employee superannuated on 08.06.2012 without having been regularized, in

the light of the mandate of the Honble Supreme Court in the case of *Jagrit Mazdoor Union (infra)* and *Establishment Rule 154-A of the Posts and Telegraph Ministerial Manual* {at Page 79 of paper book} by mandating that contingent paid/part time Chowkidars shall be brought on regular establishment and such employees shall be treated as a regular employee *and* in terms of the order passed by the Allahabad Bench of Tribunal in case of *Shyam Lal Shukla*, which has attained finality also entitles a temporary Government Servant who superannuates from service, without having been regularized is also entitled for pensionary benefits.

To the dismay of the Original Applicant, the Learned Central Administrative Tribunal dismissed the Original Application by passing Impugned Order on 28.10.2015 [**Annexure P-5**], disallowing the claim for regularization on the ground that once no junior was regularized and the named junior, Moti Ram was regularized in month of November 2012, after superannuation of the Original Applicant, namely Mehar Chand. The operative part of the *Impugned Order*

dated 28.10.2015 [**Annexure P-5**], reads as under:-

“6. Learned counsel for the respondents stated that as per the counter reply filed on behalf of the respondents, **Sh. Moti Ram was appointed as regular MTS Group 'D' in November, 2012 whereas the services of the applicant were dispensed on 08.06.2012 on attaining the age of 60 years.** Learned counsel further stated that memo dated 10.11.2010 (Annexure A-8) was not an order regarding regularization of the services of Sh. Moti Ram and hence the **applicant could not rely on the same to claim regularization from the same date as Sh. Moti Ram and pensionary benefits** on account of his service.

7. We have given our careful consideration to the matter. In the earlier round of litigation in OA No. 1593/HP/2013 decided on 04.07.2014, it has been directed as follows:-

"Hence, the respondents are directed to re-examine the case of the applicant for regularization and if any junior of the applicant has been regularized prior to his date of superannuation on 08.06.2012 the applicant's claim for regularization may also be considered. It is to state the obvious that if the applicant is regularized, he would be entitled to pension from the date he retired from service. Such consideration may be effected within

three months of a date of receipt of a certified copy of this order being served upon the respondents and the applicant may be apprised about the decision in the matter.”

It is in response to this order that the impugned order dated 21 10 2014 has been passed. The respondents have categorically stated that **Moti Ram whose case has been referred to by the applicant was appointed as regular MTS Grove in November, 2012. Perusal of the memo no. B-2/Moti Ram/2010, dated 10.11.2010 (Annexure A-8)** shows that this was an order regarding posting of Sh. Moti Ram Temporary status Casual Labourer treated at par with Temporary Group 'D' employees, as Group 'D' against vacant post at Sub Post Office, Manali. In the endorsement it is seen that copy no.1 is endorsed to Moti Ram Temporary Group 'D'. Mandi HO. **This order dated 10.11.2010 cannot be treated as an order regularizing the services of Sh. Moti Ram.** It is merely a posting/deployment order. Hence, **since the applicant has not been able to establish that any person junior to him was regularized prior to the date when he superannuated on 08.06.2012, his claim for regularization prior to his date of superannuation cannot succeed.** The judgments regarding **Shyam Lal Shukla (supra)**, UOI & Ors. Vs. Shyam Lal Shukla (supra) etc. **are distinguishable** on

facts.

8. Hence, **this OA is rejected**. No costs.”

8. Heard, Mr. Pawan Gautam, Learned Counsel for the petitioners and Mr. Balram Sharma, Learned Deputy Solicitor General of India [Senior Advocate] assisted by Mr. Rajeev Sharma, Learned Counsel, for the Respondents.

ANALYSIS:

9. Taking into account the entirety of the facts and circumstances and the material on record this Court is of the considered view, that the Impugned Order dated 28.10.2015 **[Annexure P-5]** passed by Learned Tribunal (Chandigarh Bench) in not adjudicating the claim of the deceased petitioner -Mehtar Chand and resultant claim of his widow-Soma Devi for family pension from due date, as in Para 8(ii) of Original Application No. 063/00161/2014 for failure to exercise the jurisdiction vested in it, for reasons recorded in succeeding paras of this judgement is deprecated ; **and** the Impugned Order dated 28.10.2015 **[Annexure P-5]** rejected the claim for regularization as in Para 8(i) of OA, by ignoring the rights and entitlement for regularization, despite

having rendered 23 years of temporary service was contrary to settled position of law, and on the same analogy it was granted to others and the Impugned Order denying regularization/deemed regularization, for reasons recorded hereinafter cannot sustain and the Impugned Order deserves to be set aside and deceased Original Applicant-Employee, *Mehar Chand*, is held entitled for regularization/deemed regularization and also for pensionary benefits w.e.f. 08.06.2012/ 01.07.2012 till his death on 28.01.2015 and the present petitioner No.1 Soma Devi, being the widow, is held entitled for family pension from 28.01.2015 onwards, [besides directions to examine the claim of other substituted petitioners No. 2 and 3, being sons, subject to eligibility, as per norms].

IMPUGNED ORDER PASSED BY LEARNED TRIBUNAL IGNORING AND NOT ADJUDICATING CLAIM FOR RETIRAL-PENSIONARY BENEFITS IS ERRONEOUS:

10. *Perusal of the O.A. No. 00163/00161/2014 [Annexure P-1] reveals that the Deceased Original Applicant-Petitioner, Mehar Chand, had sought two reliefs i.e. firstly, seeking quashing of the rejection orders dated 21.10.2014 and 17.09.2013 and claiming*

regularization for the prolonged temporary service rendered from 29.11.1989 for more than two decades and secondly, for retiral benefits, including pensionary benefits even if the aforesaid deceased employee had superannuated in the capacity of a temporary employee on 08.06.2012 [*sic written as 08.05.2012 in Para 8 (ii) of Original Application*], but without having been regularized, in the light of the mandate of the Honble Supreme Court in the case of *Jagrit Mazdoor Union [infra]* and *Establishment Rule 154-A of the Posts and Telegraph Ministerial Manual* {at Page 79 of paper book} mandating that the contingent paid/part time Chowkidars shall be brought on regular establishment and treated as regular employee *and* the order passed by the Allahabad Bench of Tribunal in the case of *Shyam Lal Shukla*, conferring pensionary benefits, even if the petitioner therein, stood retired as a temporary employee, without being regularized, was upheld by the Allahabad High Court (*at page 78 to 80 of the paper book*), and even the SLP No 12664 of 2012 also stood dismissed on 06.08.2012 (*at page 81*

of paper book] and the deceased Original Applicant, Mehar Chand deserves similar treatment.

Scanning of the Impugned Order dated 28.10.2015 [Annexure P-5], indicates that the Learned Tribunal rejected the claim for regularization with the finding that no junior was regularized prior to superannuation of the deceased Original Applicant, Mehar Chand on 08.06.2012. Even, a perusal of the Impugned Order dated 28.10.2015 [Annexure P-5] indicates that the Learned Tribunal has neither considered nor addressed the claim of the petitioner, Mehar Chand for pensionary benefits despite having rendered more than 20 years of continuous and uninterrupted temporary service rendered {after grant of temporary status on 29.11.1989 till superannuation on 08.06.2012, by ignoring the entitlement of the temporary employees, including Chowkidars for service benefits and pensionary benefits as were admissible to regular Grade 'D' Employees in the Department of Posts, in terms of the mandate of the Hon'ble Supreme Court in case of **Jagrit Mazdoor Union [infra]**, and **Establishment Rule 154-A** of Posts

and Telegraph Ministerial Manual {at Page 79 of paper book} [infra] entitling the contingent paid/part time Chowkidars for being granted temporary status and upon grant of temporary status, these temporary employees were to be brought on regular establishment and were to be treated as regular employees and this entitlement was affirmed by Allahabad Bench of Tribunal and by the Allahabad High Court in the case of **Shyam Lal Shukla** [infra], which had attained finality after dismissal of SLP, entitling the temporary employees {who superannuated from service in temporary capacity, without granting regularization} for pensionary benefits.

NON-ADJUDICATION OF CLAIM IN PARA 8 (ii) REGARDING PENSIONARY BENEFITS VITIATES-IMPUGNED ORDER PASSED BY TRIBUNAL:

11. Impugned Order dated 28.10.2015 [Annexure P-5] passed by Learned Tribunal, in not adjudicating the claim of deceased employee namely, Mehar Chand, for all pensionary benefits, based on the temporary service rendered from 29.11.1989 till superannuation on 08.06.2012 cannot sustain. Learned Tribunal erred in not exercising jurisdiction vested in it. Once a

matter claiming one or more relief(s) had come up for adjudication, then, a Court or Tribunal is bound to adjudicate all the claims prayed for in a said matter-lis. A Court or Tribunal cannot, at its own, proceed to adjudicate one out of more claims-relief(s) and proceed to not adjudicate other claims-relief(s). A Court or a Tribunal has no discretion in the matter. Non adjudication of one or more claims-relief(s) has to be exercised judiciously and not in a whimsical manner, unknown in law. A claim-relief(s) can be abandoned or relinquished by an act of parties to a lis, either on an application by a party to lis or a statement made by a party to lis himself or through counsel. Nothing of this sort, is borne out from the records that petitioner-Original Applicant, Mehar Chand (now deceased) had either abandoned or relinquished or foregone the claim regarding relief in Para 8 (ii) in OA No 063 /00161/2014, for pension on the basis of the continuous and uninterrupted service rendered by him. Non-adjudication of claim as in Para 8(ii) of OA, has resulted in miscarriage to justice to the petitioner-Original Applicant, Mehar

Chand by depriving/denying pensionary benefits due to him w.e.f. 08.06.2012/01.07.2012 and then after his death to present petitioner-Soma Devi for family pension w.e.f. 28.01.2015. Non-adjudication of the claim-relief in Para 8(i) of OA, by Learned Tribunal despite the fact that the entitlement for pensionary benefits is established in view of the settled law i.e. judgment of the Hon'ble Supreme Court in the cases of **Jagrit Mazdoor Union** and **Establishment Rule 154-A** of the Posts and Telegraph Ministerial Manual {at Page 79 of paper book} *{infra}* and the order /judgment passed by Allahabad Bench of Tribunal, which was upheld by the High Court and by the Honble Supreme Court in the case of **Shyam Lal Shukla** *[infra]*. Once the entitlement of the petitioner for pensionary benefits is apparently established in light of settled position but non-adjudication and failure on the part of Learned Tribunal to exercise jurisdiction has resulted in miscarriage of justice and denying of pensionary benefits cannot sustain, and is liable to be interdicted by this Court, in the light of the principles outlined by the Honble

Supreme Court in **Central Council for Research in Ayurvedic Sciences and Another vs Bikartan Dass and Others, (2023) 16 SCC 462 {Paras 50-76}**.

However, in order to render substantial justice and in the light of above settled position of law, deceased petitioner-Mehar Chand is held entitled for pension w.e.f. 08.06.2012 and upon his death on 28.01.2015, the present petitioner No.1 [*Soma Devi*] *being the widow, is held entitled for "family pension" w.e.f. 28.01.2015* coupled with the additional fact that Respondents have made the deceased employee and now his widow {taken together} to face more than three rounds of litigation since 2009 till 2025 and therefore, in peculiar fact-situation of instant case, the *Impugned Order*, passed by Learned Tribunal on 28.10.2015 is quashed and set-aside.

**ENTITLEMENT FOR ALL PENSIONARY BENEFITS
IN TERMS OF JUDGMENT OF HON'BLE SUPREME
COURT IN CASE OF JAGRIT MAZDOOR UNION:**

12. Respondent Department formulated a scheme known as *Casual Labourers [Grant for Temporary Status in Regularization] Scheme*, which was put into operation from 01.10.1989. Based on the aforesaid

claim for absorption/regularization of Casual Labourers, the issue for grant of *Temporary Status* to Casual Labourers in Postal Department on completion of one (1) year of continuous service with atleast 240 days of work and on conferment of *Temporary Status* and after rendering three (3) years of continuous service with *Temporary Status*, such casual labourers were to be treated at par with *Grade 'D' Employees of the Department of Posts* and were entitled to such service benefits and including pensionary benefits as were admissible to Grade 'D' Employees on regular basis. Even, the Hon'ble Supreme Court in the case of ***Jagrit Mazdoor Union (Regd.) & Ors. etc. versus Mahanagar Telephone Nigam Ltd. & Anr. etc. 1990 SCC Suppl 113***, has approved the entitlement of Casual Labourers for *Temporary Status and thereafter benefit of temporary service rendered after grant of Temporary Status, for service benefits, including all pensionary benefits, as were admissible to Grade 'D' Employees on regular basis, in following terms:-*

*“.....It has been stated that in compliance with that direction the **Department has already formulated a scheme for***

absorption of casual labourers and about a thousand justified posts are being created with concurrence of the nodal Ministry. As per existing recruitment rules, extra-departmental agents are given preference in the matter of absorption as Group 'D' postmen. Directions have already been issued for their absorption against the vacancies. It has been pointed out again that casual labourers are being paid bonus while substitutes are not entitled under the existing scheme. The other note placed before us at the bearing indicates :

1. Justified (by necessity) posts in Groups 'C' and 'D' will be created in the administrative and operative establishments as per the existing norms for creation of posts in consultation with the Finance Ministry.
2. On creation of the posts, recruitment will be done following the existing recruitment rules giving preference to extra-departmental agents over casual labourers;
3. If on the basis of established norms, casual labourers are in excess, their services shall be dispensed with in accordance with law; and
4. If any casual labourers cannot be retrenched straightaway, they shall be paid wages for three months at the existing rates. This tentative scheme does not take into account the several

specific claims advanced by the petitioners in the two writ petitions. These are House Rent Allowance, City Compensatory Allowance, Bonus and Earned Leave. There are also demands for weekly off day, postal holiday and maternity leave. Weekly off has now been given to RTPs, casual labourers and substitutes under order of this Court and the claim does not survive for adjudication. All these three categories in these two writ petitions are also being given three national Holidays. For the remaining postal holidays, the claim has been pressed but we are of the view that until absorption, they may not be granted. It has been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council. **As regards** House Rent Allowances, City Compensatory Allowance and maternity Leave, **we see no justification for treating the employees of the Postal Department differently from those covered under the Regularisation Rules in the Telecommunications Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in**

the case of officers observing five days' week) and on conferment of temporary status, House Rent Allowance and City Compensatory Allowance shall be admissible.

There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in Part-IV of the Constitution should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be **treated at par with temporary Grade 'D' employees** of the Department of Posts and **would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.** So far as the substitutes are concerned, it has been stated to us that orders have been issued for considering their claims against Group 'D' vacancies and a copy of the Department's letter has been produced. We hope and trust that the direction shall be implemented in its true spirit. The claim on behalf of substitutes ordinarily is not entertainable but we have been told that there are substitutes who work for long periods continuously. We are inclined to **agree with counsel for**

the petitioners that in such cases their claims should have been appropriately considered by the Department.

The writ petitions are disposed of with the aforesaid directions without any order as to costs."

RIGHT FOR PENSIONARY BENEFITS RULE 154-A OF POSTS AND TELEGRAPH MANUAL:

13. In order to appreciate the claim and the legal entitlement of the deceased Original Applicant-Petitioner, namely, Mehar Chand for pension, it is necessary to have a recap of Establishment Rule 154-A of Posts and Telegraph Manual, reads as under:

"Selected categories of **whole time** contingency paid **staff** such as Sweepers, Bhisties, **Chowkidars**, Chobdars, Malis or Gardeners, Khalasis and such other categories as are expected to work side by side with regular employees or with employees in work charged establishments, *should for the present be brought on to regular establishments of which they form adjuncts and should be treated as "regular" employees.* The other contingency staff who do not fulfill these conditions e.g. Dhobis, Tailors, Syces, Grass Cutters, etc., should continue on the existing basis and should be treated to be "Casual employees". Part time employees of 'regular' categories, as also employees of 'Casual' categories who are not brought on to the regular establishment, will continue, as at present, to be paid from contingencies."

In above backdrop, the deceased Original Applicant-Petitioner, Mehar Chand was appointed as

contingent paid Chowkidar (part time) on 03.03.1983 in Post Office Bhambla and while working as such, he was granted temporary status of casual labourer on 11.08.2011 [at page 47 of paper book] w.e.f. 29.11.1989 and after grant of temporary status, the aforesaid employee performed work, job and functions as that of regular or work charged employees till superannuation on 08.06.2012. In above backdrop, once Establishment Rule 154-A provides that whole-time staff, who performs work and functions as that of regular or work charged employees are to be brought on regular establishment and treated as “regular employee” entitling him for pension. Further, the claim set up in Para 4 (xii) of the OA that the deceased employee, Mehar Chand had rendered temporary service as was performed by regular service w.e.f. 29.11.1989 and completion of 3 years as such w.e.f. 29.11.1992 till superannuation on 08.06.2012 stands uncontroverted in the Reply filed before the Tribunal. Right acquired by deceased employee, Mehar Chand for being brought on regular establishment and for treating him as “regular employee” and in

treating the service rendered after grant of temporary status from 29.11.1989 and after completion of three years' service as such w.e.f. 29.11.1992 till superannuation on 08.06.2012, was a whole-time service, as was performed by the regular employees. Continuous and uninterrupted temporary service rendered as whole time for more than 20-23 years, as was performable by the regular employees could neither be wiped out nor obliterated for pensionary purposes. Inaction of the respondents in not passing the necessary orders *firstly*, for bringing petitioner on regular establishment and *secondly*, for treating him as regular employee since 23.11.1989/23.11.1992 till his retirement defeats the object and intent of Rule 154-A. Inaction of the Respondents in not passing orders for treating Shri Mehar Chand, as 'regular employee' in terms of Rule 154-A has certainly deprived the deceased original applicant-petitioner Mehar Chand, of his right for pension, during his lifetime, despite that the petitioner had rendered more than 20-23 years qualifying service vis-à-vis requirement of 10 years of qualifying service

under the CCS (Pension) Rules, which were in vogue on the date of superannuation on 08.06.2012. The right and legal entitlement of the deceased petitioner for pension under Establishment Rule 154-A and the CCS (Pension) Rules 1972 could not have been negated or denied by acting contrary to the Rules. Inaction of Respondents in “neither bring him on regular establishment nor treating him as regular employee” but in exploiting the petitioner by treating him as “temporary employee” despite having rendered whole time/regular service for more than 20-23 years continuously, is calculated design and an exploitative methodology to deny the petitioner of the accrued right for pensionary benefits under the Rules. In these circumstances, Impugned Order passed by Learned Tribunal on 28.10.2015 {Annexure P-5}, ignoring the claim and entitlement of petitioner for pensionary benefits is interdicted. Ordered accordingly.

RIGHT FOR PENSIONARY BENEFITS IN TERMS OF JUDGMENT IN CASE OF SHYAM LAL SHUKLA:

14. While adjudicating the claims and rights of an employee for pension, who was made to retire as a temporary employee, without being regularized

{despite having rendered temporary service as was performable by the regular/work charged employees}, was held to be contrary to Establishment Rule 154-A and CCS (Pension), by Learned Central Administrative Tribunal Allahabad in case of **Shyam Lal Shukla [supra]**, by granting pensionary benefits for temporary service by conferring benefit of deemed regularization, for having rendered more than 17 years of qualifying service {by reckoned the same after expiry of three years w.e.f. 29.11.1992 from date of grant of temporary status on 29.11.1989 till retirement on 30.06.2003 to Shyam Lal Shukla, supra) reads as under:-

“7.

The main defence of the respondents, in their counter affidavit, is that the applicant was not regularized in absence of a vacancy. Privileges and benefits (including post retrial benefits) have been conferred upon a casual labour who has been granted Temporary status treating of per with regular appointee A photocopy of Pension Rules has also been filed with Rejoinder Affidavit as Annexure RA-11; relevant extract of the same reads

- (2) Grant of pensionary benefits to temporary Government servants retiring superannuation/invalidation

on completion of twenty years temporary service. In terms of Rule 2 of the C.C.S. (Pension) Rules 1972 a Government servant including civilian Government servant in the Defence Services appointed substantively to a civil service of post in a pensionable establishment is eligible for the grant of pension and death cum-retirement gratuity. A Government servant who at the time of retirement from service does not hold a then on a permanent pensionable post is not eligible for pension and death-cum-retirement gratuity but is eligible for terminal gratuity under sub-rule (1) of Rule 10 or sub-rule (1) of Rule 11 of the C.C.S. (T.S.) Rules, 1965. **The question of grant of pension to Government servants who retire after long years of service without being confirmed in any post has been under the consideration of the State Government.** The position has been reviewed and the President is pleased to that a Government servant who in his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority after he has rendered

temporary service of not less than twenty years shall be brought dispensed with in his case.

Consequently, such a Government servant will be eligible for the grant of superannuation or invalid pension, death- cum- retirement gratuity and family pension in accordance with the provisions of the aforesaid rules.

8. Respondents have filed 'supplementary counter reply' sworn by one Shri R.S. Mishra, the then Senior Superintendent of Post Offices (in reply to Rejoinder Affidavit(s). In the said supplementary counter affidavit respondents have again reiterated their defence of non-availability of 'Vacancy' and that the applicant is not entitled to the benefits/privileges claimed in the OA. For convenience para 5, 6 and 7 of the same are reproduced:-

5. That the contents of paragraph No. 5 of the rejoinder affidavit are not correct as such are denied. The averments made in paragraph No. 3 (A) of the counter affidavit are reaffirmed as correct. However, it is further submitted that the applicant was engaged as contingency paid Chowkidar in Shason Post Office on daily wages on 10-04-1982. **Temporary status of Group 'D' was given to him w.e.f. 29.11.1989** as per Director General Post Letter

dated 12-04-1991 (Annexure-CA-1 to the counter affidavit). **He was not regularized as Group 'D' in the absence of vacancy for casual employees.** He was **retired on attaining the age of 60 years on 30-06-2003.** Rule 154-A of Postal Manual appointment and allowances as referred hereby, the applicant does not allow, the automatic regularization of casual employee in Group 'D' It is added that the post of Contingent Paid Chaukidar comes under the purview of Director General Post letter No. 45-95/87-SPB dated 12-04-1991: The averments made by the applicant are misconceived and not correct. **Since the applicant was not regularized as regular Group 'D'** as per Para-6, of Director General Post letter dated 12-04-1991 (Annexure-CA-1 to the counter affidavit) and para 3(3) of Director General Post letter No. 66-9/81-SPB-1 dated 30-11-1992 (Annexure-A-13 to the original application), hence the applicant is not entitled for pension and pensionary benefits.

6. That the contents of paragraph No 6 of the rejoinder affidavit are not correct as such are denied. The averments made in paragraph No. 3 (B) of the counter affidavit are reaffirmed as correct. However, it

is further submitted that the Government of India DOP and AR OM No. 38 (16)/Pension Unit/80 dated 30-12-1980 referred hereby, the same is not applicable in the case of applicant, as his services have not been regularized as regular Group 'D' in the absence of vacancy. The applicant has tried to mislead this Hon'ble Tribunal by twisting the facts.

7. That the contents of paragraph No. 7 of the rejoinder affidavit are not correct as such are denied. The averments made in paragraph No. 3 (C) of the counter affidavit are reaffirmed as correct. However, it is further submitted that the applicant was engaged as Contingent paid Chaukidar on 10-04-1982 on daily wages. He was given temporary status of Group "D" w.e.f. 29-11-1989 as per Director General Post letter dated 12-04-1991. Monthly wages calculated on the basis of daily wages after taking into account the annual increments accrued to the applicant averments made by the applicant in paragraph under reply are not covered by the rules in force.

9. The Essential facts to decide the controversy in the OA are not being denied by the respondents in the counter reply/

supplementary counter reply as noted above. respondents have taken work from the applicant throughout without objection and/or finding deficiency in the performance of duties by the Applicant for about two decades. ***The respondents granted temporary status and extended all benefits including contribution to G.P.F. at par with other regular employees (as contemplated under relevant Rules) except for issuing formal order of regularization.*** On the admitted facts of the instant case, respondents themselves engaged and continued appointment of the applicant, allowed him to work for long time till he attained superannuation, treating him at par with regular employees and he continued in service with all incidences of regular employee (except formal order).

Non Consideration or failure to regularize under rules is a lapse' on the part of the respondents and they cannot take advantage of their own fault.

Admittedly work was there- the Applicant was paid salary with increments and even contributed to GPF (a privilege of permanent employee). ***Apex Court held that if a Daily Rated Worker/ Casual Labour /or Temporary employee, is working since long period without objection on any score; the said employee may acquire all antecedents and essential by virtue of a regular employee and he should be treated as such.***

14. In view of admitted facts (noted above), ***the applicant is deemed to be regularized, treated as 'regular employee' of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force.*** It is further provided that post retiral benefits shall be paid along with 9% per annum annual interest from the date it become due from the date of its actual payment. Learned counsel for the applicant has submitted that he does not press for costs. It is made clear that applicant shall not be entitled to arrears of salary (if any) prior to his date of superannuation.

15. Accordingly, ***OA stands allowed*** subject to above directions/observations. ***Respondents are directed to ensure payment of 'pension' and all other post retiral benefits as expeditiously*** as possible but not beyond the period of three months in accordance with law.”

14(i). The Orders passed by Learned Central Tribunal, was assailed by Respondents before the Division Bench of Allahabad High Court in Civil Misc. Writ Petition No. 60272 of 2009, titled as **Union of India vs Shyam Lal Shukla**, and same was dismissed on 23.12.2011, upholding right for pensionary benefits, as per Rule 154-A, in the following terms:

“.....From the perusal of Rule 154 A of Manual it is manifestly clear that the Chowkidar, Sweeper, Malis, Khalasis who worked side by side with regular or with employees in Work Charge Establishment should be brought on regular Establishment and should be treated regular employees. The Rule itself has used the word 'regular employee' without any reference to formal order of regularization. The Tribunal has relied on Rule 154 A of the Manual of appointment and allowances of the Officers of the Indian Post & Telegraphs Department. It is, undisputed fact that the respondent no.1 has worked and has received the payment from contingent fund w.e.f. 10.4.1982 to 26.11.1989 i.e. **Seven Years Six Months and Nineteen days**, thereafter from the consolidated fund of Central Government from 26.11.1989 to 29.11.1992 three years and then from 30.11.1992 till the date of retirement i.e. 30.6.2003 as temporary Government Employee of Group D, for ten years Seven months and One day. The **total qualifying service for pension comes to 17 years, four months and 10 days.**

It is admitted case that the respondent no. 1 from his Initial engagement i.e. 10.4.1982 till his date of superannuation i.e. 30.6.2003 has worked uninterruptedly and to the entire satisfaction of the Department as has been stated in the Counter Affidavit, Supplementary Counter Affidavit before the Tribunal and in the Writ Petition before this Court and

there is **no mention that the work of the respondent no.1 was unsatisfactory.**

The Tribunal has also relied on the order of the **Supreme Court in Special Leave to Appeal dated 13.1.1997** arising out of the Original Application No. 159/93 of Tribunal, in the case of (Ram Lakhani v. Union of India and others) as well as order dated 2nd September, 2005 in Original Application No. 917 of 2004, (Chandi Lal versus Union of India and others). The aforesaid orders were on the record of the Tribunal as Annexure-AR-2 and AR-3 with affidavit filed on 26.8.2008 in similar facts.

In our view the said Rule clearly spells out its essential purpose, to give pensionary benefit to certain class of employees as 'regular employee', notwithstanding the fact that no formal order of regularization was passed. Sri Singhal has relied on the judgment of Central Administrative Tribunal, Lucknow Bench, Lucknow passed in Original Application No. 509 of 2004. We have perused the said judgment. In the said case, the learned Tribunal has not taken note of the Scheme framed by the Department dated 12.4.2001 and paragraph 17 of the Scheme where it is clearly provided that no recruitment will be made from open market for Group D posts (except on compassionate appointment) till casual labours with requisite qualifications are available to fill up the posts in question. Moreover, the Tribunal has also mis-construed

Rule 154 (a) as it has not appreciated the said Rule in correct prospective. It appears, the relevant part of the said Rule wherein it is provided that the **Chowkidars etc. should be treated as "regular employee"** subject to completion of conditions mentioned therein, has escaped the notice of the learned Tribunal. Sri Singhal has also relied on the judgment of the Supreme Court passed in the case of Secretary, State of Karnataka v. Umadevi reported in 2006 (2) UPLBEC 1880. The said judgement has no application in the present case as in the present matter the Scheme has been framed by the Postal Department in compliance of the order of the Supreme Court and the said Scheme has been approved by the Supreme Court. Thus the Postal Department /Petitioner herein cannot resile from its obligation to implement the said Scheme in letter and spirit. In the background of the aforesaid facts **we are satisfied that there is no error in the impugned judgment of the Tribunal** and it does not call for interference under Article 226 of the Constitution. Hence, the **writ petition is dismissed...**"

14(ii). Still aggrieved against the upholding of order of Learned Central Administrative Tribunal by the Allahabad High Court, the Respondent-Union of India filed **SLP (C) No.12664 of 2012** before the Hon'ble Supreme Court in Re; **Union of India &**

Ors. versus Shyam Lal Shukla and the same was dismissed on 06.08.2012, *in the following terms:-*

“Delay condoned.

We find no merit in this petition for special leave. It is dismissed.”

**ENTITLEMENT FOR BENEFITS IN TERMS OF
DIVISION BENCH JUDGMENT IN THE CASE
OF PAINU RAM:**

15. While dealing with the case of **Painu Ram**, who was appointed as Part-Time Chowkidar at Post Office, Talai on 02.02.1982 and was denied *Temporary Status* and the benefit of the *Temporary Service* for regularization and other consequential benefits, including retiral benefits filed OA No 426 /HP /2013, titled as *Painu Ram versus Union of India and others* and the same was decided on 31.01.2014, entitling the aforesaid *Painu Ram* for pensionary benefits as are admissible to regular Grade ‘D’ Employees of the Department. Respondent -Senior Superintendent of Post Offices assailed orders dated 31.01.2014 before this Court in **CWP No.2299 of 2014, in Re; The Sr. Supdt. of Post Offices versus Shri Painu Ram** and the same was decided on 23.07.2018, dismissing the

writ petition and in upholding the orders passed by Learned Tribunal, entitling the aforesaid **Painu Ram (supra)** for benefit of temporary service for all pensionary benefits, in the following terms:-

“3. The original applicant was initially appointed as a part time Chowkidar in Post Office at Talai on 02.02.1982.

Though, his appointment was as a part timer, however, he worked with the respondent-Department from 5:00 p.m. to 9:00 p.m., which were the same duty hours as that of a regular appointee on the post concerned. It is not in dispute that feeling aggrieved by non-conferment of temporary status upon him, present respondent earlier filed OA No. 405-HP 2010 before learned Central Administrative Tribunal praying that a direction be issued to the respondent to grant him temporary status and subsequently regularize his services against the post of Chowkidar with all consequential benefits in terms of the Scheme of the Department dated 12.04.1991.

6. Learned Tribunal after relying upon the relevant portion of letter dated 30.11.1992 so issued by the respondent-Department, as also directions issued by Hon'ble Supreme Court in **Jagriti Mazdoor Union (supra)** and the order passed by learned Central Administrative Tribunal, Allahabad Bench, in OA No. 1626 of 2005, titled

as **Shyam Lal Shukla** vs. Union of India & Ors. dated 28.07.2009, which stood confirmed by Allahabad High Court,

9. During the course of arguments, **learned Assistant Solicitor General of India** could not dispute that the persons, similarly situated as the present respondent, have already been held to be entitled for benefits which were accruable to regular Group 'D' employees, by various Benches of the learned Central Administrative Tribunal and **one such Order passed by the Allahabad bench of the learned Tribunal has been upheld by the Allahabad High Court.** We have also been informed at the bar that the judgment passed by the **Hon'ble High Court of Allahabad has attained finality.**

10. The factum of the respondent having been conferred temporary status w.e.f. 29.11.1989 in group 'D' is not in dispute. The relevant portion of the letter dated 30.11.1992, which stands relied upon by the learned Tribunal while granting the relief to the present respondent is quoted herein-below....

12. In view of the contents of communication dated 30.11.1992 as also the directions passed by the Hon'ble Supreme Court of India in Jagriti Mazdoor Union' case (supra), we do not find any infirmity with the directions issued by the learned Tribunal

in favour of the present respondent. Said directions are strictly in consonance with the judgment passed by Hon'ble Supreme Court in Jagriti Mazdoor Union's case (supra), as also the contents of communication dated 30.11.1992. **In our considered view, after the conferment of the temporary status upon the present respondent, he was entitled for benefits which are accruable to a regular Group 'D' employee after completion of three years of service on temporary basis.** In view of the judgment of Hon'ble Supreme Court as also the orders passed by various Benches of learned Central Administrative Tribunal, **it cannot be said that the relief granted by learned Central Administrative Tribunal in favour of the present respondent is not sustainable in law, especially in view of contents of letter dated 30.11.1992.**

13. Accordingly, we do not find any infirmity with the order passed by the learned Central Administrative Tribunal. The same is upheld and this writ petition being devoid of merits is dismissed."

CLAIM FOR PENSIONARY BENEFITS EVEN IF REGULARIZATION DENIED ILLEGALLY ON ANALOGY OF SUNIL SONI:

15. While dealing with a claim of one **Shri Sunil Soni**, who had served from 21.09.1989 in temporary capacity and was made to superannuate

but without retiral benefits, was held entitled for retiral benefits, on analogy on which benefits were granted by Learned Tribunal to **Shyam Lal Shukla [supra]**, which were upheld by Allahabad High Court. Even the Orders passed by Learned Tribunal, entitling **Sunil Soni [supra]** for pensionary benefits was upheld by *Punjab and Haryana High Court*, in **Writ Petition No.15138 of 2022 in Re; Union of India and others versus Sunil Kumar and another**, on 18.07.2022, in the following terms:-

“Challenge in the writ petition is to the order of **Central Administrative Tribunal, Chandigarh dated 08.02.2019 (Annexure P-3)** at this belated point of time after a period of more than three years. The model employer, the Union of India is **aggrieved against the directions of regularization and for the grant of retiral dues to a class-IV employee who served them from 21.09.1989 as a Waterman-cum-Angithi Burner and who superannuated on 31.01.2018.**

The Tribunal has found the employee had completed 240 days as on 01.09.1993 and was entitled to the benefit of temporary status and which had been granted w.e.f. 01.09.1993, which would clear from the order dated 07.08.1998 (Annexure A-

5). **Apparently his case was also forwarded to the concerned quarter for regularization thereafter on account of the regularization policy issued by the petitioner-Union of India itself dated 11.12.2006 (Annexure A-9) as he had completed 10 years' service on 10.04.2006. Names of juniors were considered and order dated 02.07.2008 (Annexure A-10) was also passed granting them the benefits on the basis of which respondent No.1 had claimed the same before the Tribunal. The objection taken was that he was overage at the time of initial entry into service and illiterate and therefore not entitled for regularization nor for retiral dues.**

Keeping in view the fact that there was earlier decision on the same issue in original application No.1626 of 2005 titled as **Shyam Lal Shukla Vs. Union of India and others** decided on 28.07.2009 by the Central Administrative Tribunal Allahabad Bench which has been upheld by the jurisdictional High Court, the benefit was granted by the Tribunal.

We have perused the paper book and are of the considered opinion that the Tribunal has not erred in any manner. Specific averments were made in the original application that juniors have been granted the said benefit in paragraph 4(viii) and **that he had been made to retire on**

temporary status without any retiral benefits released to him. The response as such was only a bald averment that he was overage being 30 years and was not qualified and was illiterate and is not eligible for appointment.

The counsel for the Union of India could not point out from the policy in question that there was any bar at such under the policy that such persons were not to be granted the benefits of regularization. We have also gone through the list which has been appended who have been given the said benefit and at certain places there are other persons whose qualifications have not been mentioned. The same would be clear from Sr. No.91 Darshan Kumar, Mali, Sr. No.95 Sanjay Kumar, Sweeper, Sr.No.125 Ram Charan, Waterman and Sr.No.142 Pala Ram, Frash where there educational qualifications were shown as nil. It is thus apparent that **Union of India is fighting its battle unfairly and not wanting to grant the benefit of its own instructions to a person who served them water diligently from 1989.**

In such circumstances, we are constrained to **dismiss the present writ petition in limine** while imposing cost of Rs.25,000/ on the concerned person who authorized the filing of the writ petition at this belated stage, after 3 years. The effect of the Tribunal's order and the costs aspect be

complied with within a period of two months from today. The higher officials shall also fix the responsibility, who authorized the filing of such petition challenging the benefits to be given to a lowly placed employee.

Let a report be submitted to the Registrar General of this Court regarding the action taken within a period of three months.”

TEMPORARY SERVICE COUNTS FOR PENSION UNDER CCS (TEMPORARY SERVICE) RULES:

16. Undisputedly, petitioner, namely, Mehar Chand, was granted the Temporary Status w.e.f. 29.11.1989 and had rendered continuous service as Temporary Government Servant till superannuation on 08.06.2012. This temporary service entitles the petitioner, Mehar Chand, for pension under Rule 10 of CCS [Temporary Service] Rules, 1965, in accordance with the CCS [Pension] Rules, 1972. The relevant part of Rule 10 of CCS [Temporary Service] Rules, 1965, reads as under:-

“10. Terminal gratuity payable to temporary Government servants:

10 (1) no relevant.

10 (1-A) no relevant.

10 (1-B) “In the case of a temporary Government servant who retires from service on attaining the age of

superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority, **after he has rendered temporary service of not less than 10 years** or who has sought voluntary retirement by giving three months' notice in writing on completion of 20 years' service, provisions of sub-rule (1) shall not apply **and in accordance with the provisions of the Central Civil Services (Pension) Rules, 1972-**

(i). Such a Government servant shall be **eligible for the grant of superannuation**, invalid or retiring pension, as the case may be, **and retirement gratuity**; and

(ii). In the event of his death after retirement, the **members of his family shall be eligible for the grant of family pension.**

Death Gratuity

10 (2)

In the event of death of a temporary Govt. servant while in service his family shall be eligible for family pension and death gratuity at the same scale and under the same provisions as are applicable to permanent Central Civilian Government servants under the Central Civil Services (Pension) Rules, 1972;

10(3) no relevant.”

Rule 10 [1-B] and 10(2) of CCS [Temporary Service] Rules, entitles a Temporary Government Servant for pension and gratuity on superannuation, after rendering more than 10 years of service as temporary government servant. In the instant case, once the petitioner has rendered temporary government service from 29.11.1989 till his superannuation from service on 08.06.2012 then, the action of the Respondents in denying the benefit of pension and gratuity, upon superannuation, under Rule 10 (1-B) and 10 (2) of CCS (Temporary Service) Rules in accordance with CCS (Pension) Rules, 1972 is illegal.

UNFAIR TO TREAT EMPLOYEE AS TEMPORARY FOR DECADES ONLY TO DENY PENSIONARY BENEFITS IS TRAVESTY OF SERVICE:

17. Even the Hon'ble Supreme Court in the case of **Yashwant Hari Katakhar versus Union of India and others, (1996) 7 SCC 113**, has mandated that it would be travesty of justice if an employee is denied pensionary benefits simply on the ground that he was not a permanent employee, *in following terms:-*

“2. **The appellant sought premature retirement from government service** after he had put in 18½ years of service in two different departments under the Central Government. Although a request for premature retirement could be made only after 20 years of government service but the Union of India granted premature retirement to the appellant at a stage when he had served the Government for 18 1/2 years. **The question for determination is whether the appellant is entitled to any pensionary benefits.** The Central Administrative Tribunal rejected the claim of the appellant.

3. Dr Anand Prakash, learned Senior Advocate appearing for the Union of India, has contended that on 7-3-1980 when **the appellant was prematurely retired he had put in 18½ years of quasi-permanent service.** According to him, to earn pension it was **necessary to have a minimum of 10 years of permanent service.** It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 ½ years. **It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that**

he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/ quasi-permanent. Keeping in view the facts and circumstances of this case **we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits.** We allow the appeal, set aside the judgment of the Tribunal and **direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18½ years (more than 10 years of permanent service) and as such his case for grant of pension be finalised** within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement.”

MERE NOMENCLATURE BEING TEMPORARY NO GROUND TO DENY PENSIONARY BENEFITS

18. Deprecating the stand of the Respondents- Union of India that temporary Government Servants appointed on various posts under the Compulsory Savings Scheme Deposits Fund were not entitled

for service and pensionary benefits under the CCS Rules, despite having rendered temporary service for decades and when, the service performed had the hallmark of regular service in terms of work, job, duties and functions performed then, mere status or nomenclature being temporary status” is oversimplification of their employment relationship with the government by creating a class just to deprive temporary government servants of benefits and protections, including pensionary benefits, was held arbitrary and violating fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India by the Hon’ble Supreme Court in ***Rajkaran and Others versus Union of India and Others, 2024 SCC OnLine SC 2138***, in following terms:-

“29. Indisputably, the appellants have served SFF HQ Estt. No.22 for over *three* decades. While the duration of service alone may not be determinative, it is a significant factor when considered in conjunction with the other aspects of their employment. Such long-term service suggests a level of permanence and integration into the governmental structure that belies their classification as temporary employees. The appellants

performed duties similar to those of regular employees in the Accounts Section of SFF HQ Estt. No.22. This **similarity in job functions further blurs the line between the appellants' status and that of regular government employees,** suggesting that the distinction may be more formal than substantive. The extension of significant elements from the 4th and 5th CPC to the appellants further cements their plea of being employed in governmental functions.

31. As held in **Vinod Kumar (supra), "the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time."**

32. This Court fully associates with this principle and finds it wholly applicable in the present case, especially in light of the administrative orders and Board proceedings referred to supra that have consistently treated the appellants as equivalent to regular government employees. The mere classification of employees as 'temporary' or 'permanent' is not merely a matter of nomenclature but carries significant legal implications, particularly in terms of service benefits and protections.

33. In the present case, the totality of

circumstances indicates that despite their formal classification as temporary employees, **the appellants' employment bears substantial hallmarks of regular government service.** The **denial of pensionary benefits solely on the basis of their temporary status, without due consideration of these factors, appears to be an oversimplification of their employment relationship with the government.** This approach runs the risk of creating a class of employees who, despite serving the government for decades in a manner indistinguishable from regular employees, are deprived of the benefits and protections typically accorded to government servants.

34. Thus, *we are of the opinion that the **denial of pensionary benefits to the appellants is not tenable or justifiable in the eyes of law** as the same is arbitrary and violates the fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India.* It is indeed relevant to note that the appellants' batch seems to be the last in their genre of SSD Fund temporary employees and thus, manifestly, the direction to extend the benefits of the 6th CPC and the RP Rules to the appellants shall not form a precedent so as to have a detrimental effect on the financial health of the SSD Fund."

19. While dealing with denial of claim for regularization for want of vacancies, the Hon'ble Supreme Court in *Civil Appeal No(s).8558 of 2018, in Re; Dharam Singh & Ors versus State of U.P. & Anr.*, decided on 19.08.2025 has outlined that long-term extraction of work under temporary labels corrodes confidence in public administration and offends the promise of equal protection and such *adhocism* erodes not only the dignity of workers and their livelihood but such exploitation practice offend Articles 14, 16 and 21 of the Constitution of India. After deprecating such practice, directions were issued to accord the benefit of regularization to Casual Incumbents, *in the following terms:-*

“19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material indicating vacancies and comparator regularizations we issue the following directions:

- i. **Regularization and creation of Supernumerary posts:** All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh

recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.

ii. **Financial consequences and arrears:**

Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization/retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months

and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. **Retired appellants:** Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and **recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues** shall be paid within three months of this Judgement.

iv. **Deceased appellants:** In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) upto the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgement.

v. **Compliance affidavit:** The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgement.

20. We have framed these directions comprehensively because, case after case,

orders of this Court in such matters have been met with fresh technicalities, rolling “reconsiderations,” and **administrative drift which further prolongs the insecurity for those who have already labored for years on daily wages.**

Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. **As a constitutional employer, the State is held to a higher standard and therefore it must organize its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit.** Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that **fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India.”**

CONCLUSION:

20. Based on the discussion made hereinabove, this Court deprecates the Learned Tribunal in not adjudicating the claim of the deceased petitioner- namely, Mehar Chand for pension for continuous and uninterrupted temporary service rendered after grant of temporary status from 29.11.1989 till superannuation on 08.06.2012 and the resultant claim of present petitioner no 1-widow Soma Devi for family pension from 28.01.2015 till day, despite the entitlement for pensionary benefits in view of the settled law i.e. judgment of the Hon'ble Supreme Court in **Jagrit Mazdoor Union** and the provision of **Establishment Rule 154-A** of the Posts and Telegraph Ministerial Manual {at Page 79 of paper book} (**supra**) and the order/judgment passed by Allahabad Bench of Tribunal, which was upheld by the High Court and by the Honble Supreme Court in case of **Shyam Lal Shukla (supra)**, which stands implemented and based on the judgement in the case of Shyam Lal Shukla, the entitlement for pensionary benefits as granted by the Learned

Tribunal was upheld by a Coordinate Division Bench of this Court in the case of **Pianu Ram (supra)** and by the Punjab and Haryana High Court in the case of **Sunil Soni (supra)**. Even, the right and entitlement for pensionary benefits to deceased petitioner and his widow is borne out from the CCS (TS) Rules, as referred to above. Once the entitlement of petitioner for pensionary benefits is apparently established in the light of the settled position of law and the Rules coupled with the fact that the pensionary benefits have been granted to other similarly placed temporary employees, who had rendered temporary service for continuous service, on whole time by performing same work, job, duties and functions as was performed by regular employees but were retired without being regularized, and the Courts have affirmed the right of such temporary employees in respondent department for pensionary benefits, by granting “deemed regularization” therefore, the petitioner being similarly placed, deserves similar treatment as granted to others so as to ensure

parity and to obviate the charge of discrimination. Treating petitioner differently, shall lead to “treating equals as unequal”, which cannot be permitted to sustain. Failure on the part of Learned Tribunal to exercise its jurisdiction by not adjudicating the claim has resulted in miscarriage of justice and denying of pensionary benefits to the deceased Original Applicant Mehar Chand and the resultant denial of family pension to the present petitioner no 1 has violated the social security, by way of pensionary benefits, and the inaction is interdicted.

Now, coming to Impugned Order dated 28.10.2015, (Annexure P-5) dismissing the claim of deceased Original Applicant-petitioner, Mehar Chand for regularization, this Court is of the considered view, that the view taken by the Learned Tribunal is untenable, for the reason, that *firstly*, non-regularization amounts to exploitative practice by making the deceased employee, Mehar Chand w.e.f. 29.11.1989 till superannuation on 08.06.2012; *and secondly*, the non-availability of vacancy for regularization cannot be ground to deny benefit

of regularization, when as per Establishment Rule 154-A, the Respondents were bound to bring the employee-Mehar Chand on regular establishment and to treat him as deemed regular employee which was not done; and *thirdly*, once the right of temporary employees, who were granted temporary status for being brought on regular establishment and were mandatorily to be treated as “regular employees” by virtue of Rule 154-A, then, the rights acquired under Rule 154-A could not be permitted to be negated by Respondents due to the inaction or lethargy of respondents in not taking timely action for giving effect to right of consideration and upon consideration for actual regularization under aforesaid Rule; and *fourthly*, the rights acquired in terms of the judgements in the cases of **Jagrit Mazdoor Union (supra)** and **Shyam Lal Shukla**, (supra) cannot be negated when, the latter judgement has attained finality and stands implemented also; and *fifthly*, even deceased employee-Mehar Chand is similarly placed with Shyam Lal Shukla (supra) as both incumbents

were granted the temporary status in 1989 and after grant of temporary status both stood retired from service after rendering decades of temporary service (ranging between more than 17 years in case of Shyam Lal Shukla and more than 20 years in case of Mehar Chand) and both stood retired from service without being regularized and by virtue of judicial intervention, Shyam Lal Shukla was granted pensionary benefits by treating and conferring benefit of “deemed regularization” then, the petitioner deserves similar treatment so as to ensure similar treatment in terms of the mandate of the Honble Supreme Court in the case of **State of Uttar Pradesh versus Arvind Kumar & Ors (2015) 1 SCC 347** and **Siraj Ahmad versus State of Uttar Pradesh (2019) 17 SCC 626** and in **Lt Col. Suprita Chandel versus Union of India, Civil Appeal 1943 of 2022**, that the benefit of a judgement has to be granted to all similarly placed incumbents without forcing them to come to the Courts; and *sixthly*, after following the judgement in case of Shyam Lal Shukla, another

Coordinate Bench of this Court in case of **Pianu Ram (supra)** and by the Punjab and Haryana High Court in case of **Sunil Soni (supra)**, granted regularization or deemed regularization so as to enable retiree for pensionary benefits for having rendered decades of temporary service after being granted temporary status then, deceased employee -Mehtar Chand was entitled for the same treatment, which has been overlooked by the Learned Tribunal; and *seventhly*, the rights acquired and the effect and applicability of the settled law cannot in any manner be curtailed or restricted or negated by the Respondents; and *eighthly*, the denial of regularization for want of vacancy speaks volumes of inaction of respondents, when, the creation of a post was an act to be performed by the respondents over which the employee had no say; and *ninthly*, creation of posts for regularization in normal parlance, may be an administrative act, but in fact-situation of the instant case, once *Rule 154-A* and judgments of the Honble Supreme Court in the case of *Jagrit Mazdoor Union* and similar

directions in case of *Shyam Lal Shukla* mandates to confer “temporary status” after completion of one year of continuous service as casual labourer with 240 days (which was 206 days in offices with five days week) and then to bring “temporary employees on regular establishment” and in treating temporary employees as “regular employees”. The conferment of temporary status was ignored and it was after judicial intervention that Respondents issued an order on 11.08.2011 (at page 47 of paper book) granting temporary status to deceased employee-Mehar Chand w.e.f. 29.11.1989 (at page 47 of paper book). After issuance of the orders dated 11.08.2011, the Respondents were under an obligation to create the posts (if not available) so as to bring such “temporary employees on regular establishment” and in treating temporary employees as “regular employees.” Such an accrued right to be considered for regularization cannot be frustrated or defeated due to the inaction and lethargy of in respondents, in “not creating posts” for giving effect to regularization of the deceased

employee, Mehar Chand and all others, after grant of temporary status on 11.08.2011 retrospectively despite having rendered more than two decades {23 years' service}; and *tenthly*, the Respondents have not placed on record any cogent and convincing as to what prevented the authorities from creating the post (if not available) for regularizing deceased petitioner-Mehar Chand and others after issuance of orders on 11.08.2011 till his superannuation on 08.06.2012; and *lastly*, even the plea of the Respondents that Moti Ram-junior was regularized in November 2012 after the retirement of Mehar Chand on 08.06.2012, goes on to establish that Respondents have slept over the matter, remained negligent, failed to take effective and timely action for creating the posts for regularization, with the intent to defeat the de-facto and de-jure right of consideration and resultant regularization, which had accrued under the Rules and settled law, as discussed hereinabove. It is not the case of the Respondents-Authorities that the petitioner had not rendered more than 23 years of temporary service.

It is not the case of Respondents that service record was not upto the mark. It is not the case of the Respondents that aforesaid employee-Mehar Chand was not entitled for "being brought on regular establishment and to be treated as regular employee in terms of the Rules and settled law and it is not disputed that in similar fact-situation, the benefits of regularization/deemed regularization has been granted extended to **Shyam Lal Shukla** and to **Pianu Ram and Sunil Soni (supra)** by Respondents. The fundamental right of consideration and resultant regularization which had accrued on the basis of Rule 154-A and settled law could neither not be defeated, restricted or negated due to inaction and omission of Respondents in not taking effective and timely steps for creating posts, so as to make the accrued right meaningful and practicable. Inaction of not creating the posts for regularization reveals exploitative practice, which smacks of unreasonableness and arbitrariness in action, only to deprive the deceased employee-Mehar Chand of regularization prior to retirement on

08.08.2012. Ignoring these material aspects, the Impugned Order dated 28.10.2015, {Annexure P-5}, passed by disallowing the claim of Mehar Chand for regularization is interdicted by this Court.

21. Resultantly, the deceased employee-Mehar Chand is held entitled for regularization/deemed regularization prior to his retirement on 08.06.2012 in view of having rendered more than two decades of service rendered after grant of temporary status on 23.11.1989 till his retirement on 08.06.2012. Treating an employee on temporary service amounts to *creating a class on basis of mere nomenclature or designation*, ignoring the fact that the *service performed by employee had the hallmark of regular service* in terms of work, job, duties and functions. *Mere status or nomenclature cannot be made the basis for denying benefits and protections, including pensionary benefits.* Such deprivation is arbitrary and violates fundamental rights as guaranteed by Articles 14 and 16 and reiterating of such right by the Honble Supreme Court in the cases of **Yashwant Hari Katakhar, Rajkaran and Dharam**

Singh (supra).

22. Accordingly, the Impugned Order dated 28.10.2015 (Annexure P-5) disallowing the claim of deceased petitioner-Mehar Chand for regularization is set-aside; and non-adjudication of the claim of the deceased employee, Mehar Chand for pensionary benefits w.e.f. 08.06.2012/01.07.2012 and the right and claim of the present petitioner no 1, Soma Devi for family pension w.e.f. 28.01.2015 in applicable pay scale-pay band and in revised pay scale w.e.f. 01.01.2016 with pension fixation benefits from due date, with all consequential benefits.

23. Besides the above, it is clarified that the case of the petitioners 2 and 3, namely, Raju Verma and Sunil Kumar, being sons of deceased Original Applicant, for family pension, may be examined in the light of applicable rules and subject to eligibility, admissible share of family pension, be released, if any, in accordance with law.

24. No other point was argued/pressed.

DIRECTIONS:

25. In view of the above discussion and for

the reasons recorded hereinabove, instant *petition*
is allowed, in following terms:-

- (i) The Impugned Order dated 28.10.2015 [Annexure P-5] passed by Learned Central Administrative Tribunal, Chandigarh Bench in Original Application No .063/00161/2014, in Re; Soma Devi and others versus Union of India and others, is quashed and set aside;
- (ii) Respondents are directed to consider and grant regularization or deemed regularization to the deceased Original Applicant, Mehar Chand, either by creating post or against available posts prior to superannuation ;
- (iii). Respondents are directed to grant all the pensionary benefits to the deceased Original Applicant-Mehar Chand upon superannuation w.e.f. 08.06.2012/01.07.2012 till his death on 28.01.2015 *and* to grant resultant Family Pension to present petitioner No. 1 [Soma Devi], being widow, w.e.f. 28.01.2015 and pay fixation benefits in the applicable pay scale and the revised scales with all consequential benefits;
- (iv) Respondents shall examine the claim of petitioners No.2 and 3, namely, Raju Verma and Sunil Kumar, being sons of Deceased Petitioner-Original Applicant, Mehar Chand, for family pension and to release admissible share of family pension, if found eligible and entitled for same, in accordance with law ;

- (v) Respondents Authorities are directed to ensure compliance of this order within six weeks from today;
- (vi) Failure to release benefits shall entitle the petitioners for interest @ 6% per annum thereafter till realization; and
- (vi) Parties to bear their respective costs.

In aforesaid terms, the present petition along with all pending miscellaneous application(s), if any, shall stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

November 21, 2025
[Bhardwaj]