sitting in appeal without returning a finding that the disciplinary enquiry stood vitiated for breach of statutory provisions of the Rules, 1991, or that the punishment was not commensurate to the guilt, or perverse.

35. In ***P. Gunasekaran*** (supra), Supreme Court reiterated and cautioned the Court / Tribunals not to act as an appellate authority in disciplinary proceedings.

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer....."

[Refer: B.C. Chaturvedi versus Union of India and others9 and S. Sreesanth versus The Board of Control for Cricket in India10]

36. In any case, in our opinion, the punishment imposed upon the respondent is of much lesser rigour and not commensurate to the guilt having regard to the fact that respondent was member of a disciplined Force, a more severe punishment was warranted in the given facts. The Disciplinary Authority took a liberal view while imposing punishment having regard to the fact that the respondent was absent from almost seven years and of having indulged in criminal activity.

37. For the reasons recorded herein above, impugned judgement and order dated 23 March, 2021, passed by the Tribunal is set aside and quashed.

38. Accordingly, the writ petition is allowed.

39. No cost.

(2023) 5 ILRA 1555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2023

BEFORE

THE HON'BLE VIVEK CHAUDHARY, J.

Writ-A No. 13327 of 2020

Ranveer Singh & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Sri Akhilesh Mishra, Sri Rahul Mishra, Sri Utsav

Counsel for the Respondents:
C.S.C., Sri Shri Ram Pandey

Civil Law - Jal Sansthan (Rural) U.P. Nagarpalika Non-Centralized Services Retirement Benefits Regulation, 1984 (Rules of 1984) - Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021 - *Issue:* Whether services rendered before regularization by daily wage employees who worked on Class III posts in the Jal Sansthan and were later regularized in continuation of their services is to be counted for the purpose of pension and other retiral benefits ? *Held:* Daily rated employees perform the same duties as regular employees and are throughout treated as regular employees. They were also regularized in continuation of their work charge services. So far as the Act of 2021 is concerned, the same is applicable only to employees of the State Government. Even otherwise, the Act of 2021 has already been read down by this Court in its judgment dated 17.02.2023 passed in Writ-A No.8968 of 2022 (*Dr. Shyam Kumar Vs. State of U.P. and others*). Respondents were directed to ensure regular payment of pensionary and other retirement benefits to the petitioners, who have already retired,

under the Pension Rules, treating their entire service, including services rendered by them as daily rated employees prior to their regularization, as qualifying services for pensionary benefits, within a period of three months.

Allowed. (E-5)

List of Cases cited:

1. Jai Prakash Vs St. of U.P. & ors., WRIT - A No. - 10405 of 2022 dated 17.03.2023

2. Prem Singh Vs St. of U.P. & ors., (2019) 10 SCC 516

3. Dr. Shyam Kumar Vs St. of U.P. & ors., Writ-A No.8968 of 2022 dated 17.02.2023

(Delivered by Hon'ble Vivek Chaudhary, J.)

1. Heard Shri Rahul Mishra, learned counsel for petitioner, Shri Ram Pandey, Advocate appearing for respondent Jal Sansthan and learned Standing Counsel for the State.

2. Petitioners have approached this Court challenging the Order dated 20.02.2020 whereby the respondent authority has refused to enroll employees of the Jal-Sansthan under the old pension scheme on the ground that they were regularized after the old pension scheme was abolished and for a prayer commanding the respondents to pay regular pension to the petitioners by counting their past services rendered on daily wage posts in the respondent-Sansthan.

3. The facts of the case are that the petitioners were appointed as daily wage employees on class III posts in the Jal Sansthan between the years 1989-1991. They were throughout treated as regular employees and later regularized in the Jal Sansthan between 2005-2011. Counsel for the petitioners informs that some of the petitioners are already retired.

4. Learned counsel for petitioners submits that by letter dated 30.08.2018, respondent-Jal Sansthan (Rural) has adopted U.P. Nagarpalika Non-Centralized Services Retirement Benefits Regulation, 1984 (Rules of 1984) for regulating pension of its employees. Under the same rules, petitioners are entitled to pensionary and other retirement benefits. Further submission is that same rules with regard to employees of the Nagar Palika was interpreted by this Court by its judgment dated 17.03.2023 in **WRIT - A No. - 10405 of 2022 (Jai Prakash vs State of U.P. and 4 others)** wherein daily wager employees who were later regularised in continuation of their services were held entitled for benefits of the Old Pension Scheme. He has further relied on a judgment by a three Judge Bench of Supreme Court in case of **Prem Singh vs. State of U.P. and others, (2019) 10 SCC 516** where it was held that services rendered before regularization must be counted for the purpose of pension and other retiral benefits. The relevant paragraphs of the judgment in the case of Prem Singh (supra) reads:

"8. We first consider the provisions contained in the Uttar Pradesh Retirement Benefits Rules, 1961 (for short 'the 1961 Rules'). Rule 3(8) of the 1961 Rules which contains the provisions in respect of qualifying service is extracted hereunder: "3. In these rules, unless is anything repugnant in the subject or context-

(1)-(7) * * *

(8) 'Qualifying service' means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations:

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

(i) periods of temporary or officiating service in a non-pensionable establishment;

(ii) periods of service in a work-charged establishment; and

(iii) periods of service in a post paid from contingencies shall also count as qualifying service.

Note. If service rendered in a non-pensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will

not constitute an interruption of service.

9. Regulations 361, 368 and 370 of the Uttar Pradesh Civil Services Regulations are also relevant. They are extracted hereunder:

"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."

These three conditions are fully explained in the following Regulations.

"368. Service does not qualify unless the officer holds a substantive office on a permanent establishment.

370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify, except-

(i) periods of temporary or officiating service in non-pensionable establishment;

(ii) periods of service in work-charged establishment; and

(iii) periods of service in a post paid from contingencies."

10. The qualifying service is the one which is in accordance with the provisions of Regulation 368 i.e. holding a substantive post on a permanent establishment. The proviso to Rule 3(8) clarify that continuous, temporary or officiating service followed without interruption by confirmation in the same or any other post is also included in the qualifying service except in the case of periods of temporary and officiating service in a non-pensionable establishment. The service in workcharged establishment and period of service in a post paid from contingencies shall also not count as qualifying service.

11. The Note appended to Rule 3(8) contains a provision that if the service is rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies, falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service. Thus, the Note contains a clear provision to count the qualifying service rendered in work-charged, contingency paid and nonpensionable establishment to be counted towards pensionable service, in the exigencies provided therein.

12. The provisions contained in Regulation 370 of the Civil Services Regulations excludes service in a non-pensionable establishment, work-charged establishment and in a post paid from contingencies from the purview of qualifying service. Under Regulation 361 of the Civil Services Regulations, the services must be under the Government and the employment must be substantive and permanent basis.

.....

30. We are not impressed by the aforesaid submissions. The appointment of the work-charged employee in question had been made on monthly salary and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees? No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work-charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to another like regular employees as apparent from documents placed on record. In Narain Dutt Sharma v. State of U.P. [CA No. _____2019 arising out of SLP (C) No. 5775 of 2018] the appellants were allowed to cross efficiency bar, after "8' years of continuous service, even during the period of work-charged services. Narain Dutt Sharma, the appellant, was appointed as a work-charged employee as Gej Mapak with effect from 15-9-1978. Payment used to be made monthly but the appointment was made in the pay scale of Rs 200-320. Initially, he was appointed in the year 1978 on a fixed monthly salary of Rs 205 per month. They were allowed to cross efficiency bar also as the benefit of pay scale was granted to them during the period they served as work-charged employees they served for three to four decades and later on services have been regularised time to time by different orders. However, the services of some of the appellants in few petitions/appeals have not been regularised even though they had served for several decades and ultimately reached the age of superannuation.

31. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularised. However, the period spent by them in the work-charged establishment has not been

counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.

32. In view of the Note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work-charged, contingencies or nonpensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or

has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.

33. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or inbetween temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund

employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

35. In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of

the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the workcharged establishment shall be counted as qualifying service for purpose of pension.

37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

5. He further submits that since the same rules for pensionary benefits exist in the respondent authority, therefore, the matter is squarely covered by the said judgment and petitioners herein should also be extended the benefit of the law settled in the case of Prem Singh (Supra).

6. Learned counsel for the Jal Sansthan opposes the applicability of the judgment in the case of Prem Singh (Supra) on the ground that the effect of the aforesaid judgment stands nullified because of the enactment of the Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021.

7. So far as Act of 2021 is concerned, the same is applicable only upon the employees of State Government. Even otherwise Act of 2021 is already read down by this Court by judgment dated 17.02.2023 passed in **Writ-A No.8968 of 2022 (Dr. Shyam Kumar Vs. State of U.P. and others).** Relevant paragraphs of the same reads as:

"9. Therefore, the question now before this Court is whether by bringing Act of 2021, the State Government has done away with the vice pointed out by the Supreme Court in case of Prem Singh (supra). In the said judgment, the Supreme Court found that the State Government has

adopted exploitative labour practice by taking work of regular employees from work charge employees on long term basis without any rationale classification while refusing them benefits available to regular employees. Supreme Court specifically held that the State Government can not get involved in corrupt labour practices. On the aforesaid grounds, the Supreme Court read down the provisions of Rule 3(8) of the Rules of 1961 and struck down Regulation 370 of Civil Services Regulations and Para 669 of the Financial Handbook.

10. It is the duty of State to create new temporary or permanent posts as per its needs and make appointments on the same. Law also permits State to appoint daily wagers or work charge employees, but only when the work is for short period or is in a work charge establishment for fixed duration. Law does not permit the State to take work for long period, extending even for the entire working life of a person, on temporary or work charge basis. In such cases, it is the duty of State to create new posts and make appointments, giving all benefits of regular employees. Otherwise, State would be found to be adopting exploitative labour practice. This is the vice pointed out by the Supreme Court in Prem Singh's case (supra), and instead of removing the same, the State by Section 2 of the Act of 2021 has extended the sphere of its illegality. By Section 2 of the Act of 2021, it desires to take benefit of its own failure of creating posts in time and making appointments on the same, by not counting the said period of such service for pensionary benefits. State still fails to explain the rationale on the basis of which it has created this new classification and the manner in which, by the amended provision, it has removed the irrationality.

In case Section 2 of the Act of 2021 is given a literal meaning it would mean that services rendered by a person on a temporary or permanent post alone can be counted for pension. The same would again be an exploitative device and labour malpractice, as by this, the State Government is again attempting to use persons to work for it on long term basis, just like regular employees, without giving them benefits they are entitled to as regular employees. The very vice pointed by the Supreme Court in the judgment of Prem Singh (supra) with regard to work charge employees is, in fact, now made applicable to even larger number of employees and extended to daily wagers and other persons not working on a temporary or a permanent post including, work charge employees.

In case of V. Sukumaran vs. State of Kerala (2020) 8 SCC 106, the Supreme Court held:

"22. We begin by, once again, emphasising that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind i.e. to facilitate a retired government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities."

Thus, again to save Section 2 of the Act of 2021 from the vice/arbitrariness, in the spirit of the judgment of Prem Singh (supra), the word 'post' is required to be diluted to save it from arbitrariness and hence, the word 'post' used in Section 2 of the Act of 2021, be it temporary or

permanent, has to be read down as 'services rendered by a government employee, be it of temporary or permanent nature'."

8. The pension rules adopted by the respondent Jal Sansthan (Rural) have already been read down by this Court in the case of Jai Prakash (Supra), being held in violation of Article 14 of the Constitution of India, as they create an artificial categorization of similarly situated employees. Relevant portion the said judgment reads:

"The present Rules of 1984 are parallel to the Rules of State Government which have been read down by the Supreme Court, being held in violation of Article 14 of the Constitution of India, as they create an artificial categorization of similarly situated employees. In the present case also an artificial classification is created as admittedly, as the daily wage employees perform the same duties as the regular employees and are throughout treated as the regular employee. They were also regularized in continuation of their services. Thus, the matter is squarely covered by the law settled in case of Prem Singh (Supra)."

9. In the present case also an artificial classification is created as admittedly, as the daily rated employees perform the same duties as the regular employees and are throughout treated as the regular employee. They were also regularized in continuation of their work charge services. Thus, the matter is squarely covered by the law settled in case of Prem Singh (Supra) and Dr. Shyam Kumar (supra) and Jai Praksh (supra).

10. Thus, the writ petition is ***allowed*** and impugned order dated 20.02.2020 is set aside.

11. Respondents are directed to ensure regular payment of pensionary and other retirement benefits to the petitioners who have already retired, under the Pension Rules, treating their entire service, including services rendered by them as daily rated employees prior to their regularization as qualifying services for pensionary benefits within a period of three months.

12. Respondents are further directed to enroll petitioners who have not yet retired under the Old Pension Scheme by adding the services of petitioners rendered by them as daily rated employees.

(2023) 5 ILRA 1562
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.03.2023

BEFORE

THE HON'BLE DEVENDRA KUMAR UPADHYAYA, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Special Appeal No. 139 of 2022

Smt. Suman Singh ...Appellant
Versus
Chairman, Ram Manohar Lohia Inst. Of Medical Sciences, Lko & Ors. ...Respondents

Counsel for the Appellant:
Sri Rani Singh, Sri Abhineet Jaiswal, Sri Chinmay Mishra, Sri Gaurav Mehrotra

Counsel for the Respondents:
Sri Anupras Singh, C.S.C., Sri Vinayak Saxena