BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
------ Chairman

Hon'ble Mr. V.K.Maheshwari
-------Vice Chairman (J)

Hon'ble Mr. D.K.Kotia
-------Vice Chairman (A)

Claim Petition No. 98/2010

Baldev Singh Jagdev, aged about 65 years, S/o S. Fateh Singh R/o Ram Das Colony, Near Chadha Glass Factory behind Police Station, G.T. Road, Sirhind, Shri Fatehgarh Saheb, Punjab.

……Petitioner

Versus.

1. Uttarakhand Jal Vidyut Nigam Ltd., through its Managing Director, Ujjaval Bhavan, G.M.S. Road, Dehradun.
2. Dy. Chief Accounts Offaicer, Offaice of Central Salary & Pension Payment, Uttarakhand Jal Vidyut Nigam Ltd., G.M.S. Road, Dehradun.
3. Executive Engineer, Uttarakhand Jal vidyut Nigam Ltd., Testing and Technical Division, Yamuna Valley, Dakpathar, Distt. Dehradun.
4. State of Uttarakhand through its Secretary, Department of Power & Energy, Subhash Road, Dehradun.

…….Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld.A. P.O.
for the State.
Sri S.C., Virmani,
Sri V.D.Joshi &
Sri V.K.Sharma, Counsel
for the respondents.

JUDGMENT

DATED: SEPTEMBER 20, 2013.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. On reference made by the Division Bench of this Court comprising of Hon'ble V.K.Maheshwari, Vice Chairman (J) and Hon'ble Sri

U.D.Chaube, Member (A), the Full Bench was constituted to answer the following,

"*Whether the period of service rendered in work charge establishment can be counted for the purpose of pensionary benefits*."

2. Before answering the reference, it would be appropriate to consider the facts which have resulted in making present reference. The petitioner filed a claim petition before the Division Bench claiming a direction to the respondents to take into account the period of service rendered by him in work charged establishment for fixation of pension and to make the payment of arrears of pension and cost of Rs.10,000/-. There is no dispute that the petitioner was appointed by the Executive Engineer Hydel Power Corporation, Construction Division, Dakpatthar, Dehradun on 3.9.1970 in the work charged establishment. Later on his services were regularized on 4.9.1973. Thereafter the petitioner was regularly working as a Trainee Supervisor in the regular establishment and thereafter he was appointed Junior Engineer on 28.5.1975. After creation of State of Uttarakhand, the petitioner was posted in Uttarakhand Jal Vidyut Nigam Ltd and after attaining the age of superannuation he retired on 31.8.2003. Thus, the petitioner rendered 29 years, 10 months and 27 days services as regular employee of the respondents. The respondents while calculating the pension, did not calculate the period of service rendered by him in the work charge establishment and he alleged that the said act of the respondents was arbitrary and illegal and it caused the monetary loss to the petitioner. Inspite of the several representations, no heed was paid to his request to count his services rendered by him as a work charged employee during his service tenure. The services of the petitioner are governed by the U.P. Retirement Benefits Rules 1961 (hereinafter referred to as Retirement Rules 1961) for the purposes of pension and C.S.R..

3. The respondents have only challenged that the period of service in the work charged establishment would not be counted for the purpose of pensionary benefits. The petitioner had only rendered the services in the department from 4.9.1973 to 31.8.2003. The petitioner is not entitled to get the benefit of the services in the said work charged

establishment period under Retirement Rules 1961 and requested that his petition be dismissed.

4. Ld. counsel for the petitioner contended that the petitioner completed three years continuous satisfactory service on work charge establishment. Thereafter his services were regularized and he worked as Junior Engineer till his date of retirement without any interruption, so his services should be added for calculating the pensionary benefits of the petitioner. Ld. counsel for the petitioner further contended that the government order issued by the composite State of U.P. No.सा0–3–1152/दस–915–89,लखनऊ : दिनांक 1.7.1989 is also applicable in the case of the petitioner and he contended that the said Government order of the year 1989 states, even if the petitioner had not rendered 10 years' service on the regular establishment, even then as a work charged employee he being a temporary government servant is entitled to get the benefits of the pension by adding said services rendered in the work charged establishment and as such the period from 3.9.1970 to 4.9.1973 is to be counted towards the petitioner's services for calculation of the pension.

5. Ld. counsel for the petitioner contended that after completion of three years continuous satisfactory service in the work charged establishment of Hydro Power Construction Division, Dakpatthar, Dehradun, he was appointed as S.S.A. in the pay scale of Rs. 130-240/- w.e.f. 4.9.1973 on the regular basis. It was further contended that the petitioner requested to the respondents to grant him pension based on his continuous service from 4.9.1970 to the date of his retirement i.e. 30.8.2003. The respondents had not counted the period of service of the petitioner in the work charge establishment for pension and as such the act is arbitrary, illegal and wrong. Ld. counsel for the petitioner also contended that the Government Order dated 1.7.1989 clearly provides that the temporary government employees are also entitled to get the benefits of the pension and as such he is entitled to get the pensionary benefits.

6. Ld. counsel appearing on behalf of the respondents contended that the petitioner was a work charged employee in the establishment and he was not a temporary Government employee and he has not been

working against any substantive post, so he is not entitled to get pensionary benefits for the period when he was work charged employee. He further pointed out that Article 368 of CSR (Civil Service Regulation) clearly provides that service does not qualify unless the officer/ official holds a substantive post of a permanent establishment. He further relied upon the provisions of Article 361 of CSR which also provides that the services of official/ officer do not qualify for pension unless he conforms to the following three conditions :- (i) The services must be under the Government (ii) The employment must be substantive and permanent and (iii) The services must be paid by government.

7. He further contended that the petitioner did not conforms to the above conditions of the C.S.R.. He further contended that Rule 8 of the Uttar Pradesh Retirement Benefits Rules, 1961 (hereinafter referred to as 1961 Rules) defines qualifying services which is as under:-

"(8) 'Qualifying Service' means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Service 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 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, it will not constitute an interruption of service.

8. By virtue of the above 1961 Rule the CSR Rules have been made applicable in the case of the petitioner. At last Ld. counsel for the respondents contended that the petition is liable to be dismissed.

9. The work charged employee can claim protection under the Industrial Dispute Acts or right flowing from the particular statute but they cannot be treated at par with the employee of the regular establishment. They can neither claim regularization of services as of right nor can claim pay scales and other financial benefits at par with regular employees. If the services of a work charged employee are regularized under any statute or scheme framed by the employer, then he becomes a member of regular establishment from the date of the regularization. His services in the work charged establishment cannot be clubbed with the services in a regular establishment unless a specific provision to that effect is made either in the relevant statute or scheme of the regularization. If the statute or scheme under which the services of the work charged employee are regularized, does not provide for the counting of the past services, the work charged employee cannot claim benefit of such services for the purpose of fixation of seniority in the regular cadre, promotion to the higher post, fixation of pay in the higher scales, grant of increment etc. In the instant case it is admitted that there is no such rule or statute by which services of the petitioner can be clubbed with the regular services. In the case in hand Rule 8 of the 1961 Rules specifically prohibits to count the services of work charged employees towards the pension. Before entering into further discussion, it would be appropriate to understand the term of the work charged establishment:-

A work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and

their duties and responsibilities are also substantially different than those of regular employees.

10. In the case of **Jaswant Singh Vs. Union of India 1979 (4) SCC 440**, the Hon'ble Apex Court considered the issue relating to the nature of the work charged establishment, status of the work charged employee and held that the employees appointed in work charged establishment are not entitled to the services benefits available to the regular employees. Hon'ble Apex Court in Paragraphs 8, 9 & 10 of the judgment of **Kunji Raman Vs. State of Rajasthan and another 1997(1)SCC (L&S) 559** held as under:-

"A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a 'work' and availability of funds for executing it. So far as employees engaged on work-charged establishments are concerned, not only that their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons on the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well-settled that the Government has the power to frame different rules for different classes of employees, we, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Curt.

The Project Rules have been framed by the Government in exercise of the power available to it under Rule 42 of the RSR. They are subsidiary Rules made for the purpose of granting special concessions and allowances to Government servants working on projects. When non-application of the main Rules, namely, RSR to work-charged employees is not found to be violative of Articles 14 and 16 by. The High Court it is difficult to appreciate how the subsidiary Rules for that reason only can be held to be violative of those Articles. The High Court failed to consider this aspect and in our opinion, erroneously struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules.

It was also contended on behalf of the State that the High Court having held that the workmen working on the regular establishment and the employees working on a work- charged establishment belong to two separate categories and, therefore, separate classification made by the Government in that behalf is reasonable, committed a grave error in striking down Rules 2(b) and (d) of

the 1962 Project equal pay for equal work. The reason given by the High Court for taking that view is that the project allowance is compensatory in nature and, therefore, the classification made between the work--charged employees and the employees of the regular establishment has no rational nexus with the object sought to be achieved by those Rules. What the High Court failed to appreciate is that when an employee working in the regular establishment is transferred to a project he has to leave his ordinary place of residence and service and go and reside within the project area. That is not the position in the case of an employee who is engaged on the work-charged establishment of executing that work.

Respondent Kunji Raman and other employees on whose behalf he had filed the petition were all engaged for execution of the Mahi Project and thus they became a part of the work- charged establishment of Mahi Project. They were not required to from their regular place of service. The High Court also failed to consider that for such employees the pay scales under the Pay Scale Rules are also different. The material produced by the State goes to show that while fixing the pay scales of employees of the work-charged establishment of mahi Project the element of project allowance was also included therein and for that reason their pay scales were higher than the pay scales of general category work-charged employees, some of whom were transferred and posted on the Mahi Project. Except a general denial in the rejoinder affidavit by Kunji Raman no other material has been produce to point out that the said claim of the Government is not correct. The order dated 30.4.81 annexed with the rejoinder affidavit of Kunji Raman is with respect of those work-charged employees who were absorbed on 43 regular posts which were newly created. They thus cased to be work-charged employees employed on a project and become general category work-charged employees whose pay scales were different and were, therefore, paid the project allowance. Thus the claim made by Respondent Kunji Raman and other similarly situated employees for granting them project allowance was really misconceived. From what is now stated by them in the counter affidavit, it appears that what they really want is parity in all respects with the employees of the regular establishment. In other words, what they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan Government and should be given all benefits which are made available under the RSR and the Project Rules. Such a claim is not justified and, therefore, the contention raised in that behalf cannot be accepted. We hold that the High Court committed an error in declaring Rules 2(b) and (d) of the Project Rules 1962 and Rules 4(2) and (4) of the Project Rules, 1975 as Ultra vires Articles 14 and 16 of the Constitution."

The aforesaid pronouncement of the Hon'ble Apex Court clearly lays down that the work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees, much less regular employees and further that the work charged employees are not entitled to the service benefits which are admissible to the regular employees under the relevant rules or policies framed by the employer. The work charged employees cannot claim parity with the regular employees in the matter of pay fixation

and other financial benefits etc. Thus, there is a difference between a regular employee working in an establishment and an employee working as work charged employee.

11. Now we will analyze the relevant provisions of the relevant rules. As we have quoted earlier Rule 8 of the 1961 Rules, which clearly provides that the employees are entitled to get the pension on the said premises provided in the said rules.

12. Article 361, 368 and 370, 465, and 468 and of the CSR read as under respectively:-

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

First- The service must be under Government.

Second- The employment must be substantive and permanent.

Third- The service must be paid by Government".

"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 a non-pensionable establishment.

(ii) Periods of service in work charged establishment, and

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

As such, Clause (ii) of Article 370 of CSR clearly provides that no period of service rendered in work-charge establishment is to be counted towards service to qualify the period of service for the purpose of pensionary benefits.

A perusal of Article 361 read with Article 368 and 370 of the CSR clearly indicates that the service does not qualify unless the officer holds a substantive office on a permanent establishment and that the period of service in a work-charged establishment will not qualify service for the purpose of pension. The underlying reason is that a work charged employee is not holding a substantive post on a permanent establishment.

"465 (1) A retiring pension is granted to a Government servant who is permitted to retire after completing qualifying service for twenty five year or on attaining the age of fifty years.

(2) A retiring pension is also granted to a Government servant who is required by Government to retire after completing twenty-five years or more of qualifying service".

"468. The amount of pension that may be g ranted is determined by length of service. In calculating the length of qualifying service, fractions of a half year-equal to three months and above shall be treated as a completed one-half year and reckoned as qualifying service".

13. Now the short question which arises for determination before us is whether the services rendered by the work charged employees under the Government of U.P./ U.K. prior to securing the employment with the respondents would qualify for grant of pension under 1961 Rules. This dispute deserves to be determined in the light of the rules quoted above and the Government Order dated 1.7.1989 which is quoted below:-

"उत्तर प्रदेश सरकार

वित्त (सामान्य) अनुभाग–3

सं0: सा0 –3– 1152/दस–915–89,लखनऊ : दिनांक 1.7.1989

कार्यालय ज्ञाप

विषय– अस्थायी सरकारी सेवकों की सेवानिवृत्ति/मृत्यु पर पेन्शनरी लाभों की अनुमन्यता।

महोदय,

उपयुक्त विषय पर अद्योहस्ताक्षरी को यह कहने का निदेश हुआ है कि सिविल सर्विस रेगुलेशन के अनुच्छेद 368 की व्यवस्था के अनुसार राज्य सरकार के अन्तर्गत की गई सेवा पेंशन हेतु तब तक अर्ह नहीं मानी जाती है जब तक कि सरकारी सेवक किसी पद पर स्थायी न हो गया हो। सरकारी सेवकों के यथा समय स्थायीकरण किये जाने हेतु शासन के विद्यमान आदेशों के बावजूद कुछ मामलों में प्रक्रिया सम्बन्धी अपेक्षायें पूरी न हो जाने के कारण सम्बन्धित कर्मचारी हए बिना ही अधिवर्षिता पर सेवानिवृत्त हो जाते है जिससे उन्हें पेंशनीय लाभ, अनुमन्य नहीं हो पाते हैं।

2 उपरोक्तानुसार अस्थायी रहते हुए सेवा निवृत हो जाने के कारण सेवकों को होने वाली कठिनाइयों को दूर किये जाने का प्रश्न काफी समय से शासन के विचाराधीन रहा है और सम्यक विचारोपरान्त को दूर किये जाने का प्रश्न काफी समय से शासन के विचाराधीन रहा है और सम्यक विचारोपरान्त राज्यपाल महोदय ने सहर्ष यह आदेश प्रदान किये हैं कि ऐसे सरकारी सेवकों को जिन्होंने कम से

कम 10 वर्ष की नियमित सेवा पूर्ण कर ली हो, अधिवर्षिता पर सेवानिवृत्त होने अथवा सक्षम चिकित्सा प्राधिकारी द्वारा आगे सेवा करने हेतु पूर्णतया अक्षम घोषित कर दिये जाने का अधिवर्षता / आशक्तता पेंशन सेवानिवृत्ति ग्रेच्युटी तथा पारिवारिक पेंशन उसी प्रकार स्वंय उन्हीं दरों पर देय होगी जैसा कि स्थायी कर्मचारियों को उन्हीं परिस्थतियों में संगत नियमों के अन्तर्गत अनुमय होती है।

3 यह व्यवस्था उन मामलों में भी लागू होगी जहां अस्थायी रहते हुए 20 वर्ष की सेवा पूर्ण करने अथवा 45 वर्ष की आयु पूर्ण करने, जो भी पहले हो के उपरान्त मूल नियम 56 के अन्तर्गत स्वेच्छया सेवानिवृत्त होने की अनुमति प्रदान की गयी हो।

4 यह आदेश 1.6.1989 से लागू माने जायेंगे। उक्त दिनांक से पूर्व अस्थायी रहते हुए अधिवर्षता/ अशक्तता पर अथवा स्वेच्छया सेवानिवृत्त हो चुके ऐसे कर्मचारियों के मामले में जो उक्त पुनरीक्षण नही किया जायेगा। जिन मामलों में संयत नियमों के अन्तर्गत , कोई ग्रेच्युटी अनुमन्य नहीं थी उनमें इस कार्यालय ज्ञाप के अन्तर्गत कोई ग्रेच्युटी अनुमन्य नहीं होगी। ऐसी सरकारी सेवकों को जो अस्थायी रहते हुए दिनांक 1.6.1989 से सेवानिवृत्ति हो चुके थे और जिन्हें उसके कारण कोई पेंशन अनुमन्य नहीं हुई थी, दिनांक 1.6.1986 से सेवानिवृत के पूर्व सेवा की अन्तिम दस मास की औसत परिलब्धियों (दिनांक 1.1.1986 के पूर्व सेवानिवृत्त कर्मचारियों के मामले में औसत परिलब्धियों का आशय ,उस वेतन से है जो उन्हें मूल वेतन 9 (21) के अन्तर्गत मिल रहा था तथा 1.1.1986 अथवा उसके उपरान्त मामलों में परिलब्धियों का आशय उस वेतन से है जो मूल नियम 9(21)(1) में परिभाषित है) के 50% की दर से उस दशा में पेंशन अनुमनय होगी जब सेवानिवृत्ति के पूर्व उन्होंने 33 वर्ष की अर्हकारी सेवा पूर्ण कर ली हो। यदि अर्हकारी सेवा 33 वर्ष से कम रही हो तो पेंशन उसी अनुपात में कम हो जायेगी । इस प्रकार आगणित ऐसे कर्मचारियों की पेंशनों को जो दिनांक 1.1.1986 के पूर्व सेवानिवृत्त हो चुके थे वित्त विभाग द्वारा निर्गत शासनादेश सं0 सा–4 – 1120/दस–87–301 1987 दिनांक 28.7.1987 के रेडिरिकनरी भाग–1 एवं भाग–2 जैसी स्थिति हो, के अनुसार 608 मूल्य सूचनांक के बराबर मंहगाई राहत का लाभ देते हुए पुनरीक्षित कर दिया जायेगा। और दिनांक 1.6.1989 से पुनरीक्षित धनराशि का लाभ दिया जायेगा।

5 इस कार्यालय ज्ञाप के अन्तर्गत पेंशन का किसी ऐसे कर्मचारी को राशिकारण अनुमन्य नहीं होगा जो 31.5.1974 अथवा उसके पूर्व सेवानिवृत्त हुआ हो। यदि इस कार्यालय ज्ञाप के अन्तर्गत किसी ऐसे कर्मचारी को पेंशन दी जाये तो 31.5. 1974 के उपरान्त सेवानिवृत्त हुआ हो तो उसे 1.6.1989 के उपरान्त अगली जन्मतिथि के समय उसकी पेंशन स कम की गयी धनराशि उसकी वास्तविक सेवानिवृत्त के दिनांक 15 वर्ष के बाद रेस्टोर कर दी जायेगी।

6 दिनांक 1.6.1989 अथवा उसके बाद सेवानिवृत्ति / मृत्यु के जिन मामलों में उपर्युक्त व्यवस्था का लाभ दिया जायेगा , उनमें कार्मिक अनुभाग –1 के शासनादेश सं0 19.8.1980 कार्मिक–1 दिनांक 29.4.1980 के अन्तर्गत आनुतोषिक लाभ नहीं होगा।

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विजय कृष्ण सक्सेना
प्रमुख सचिव।

14. This controversy squarely came before the Hon'ble High Court of Uttarakhand before the Division Bench in the case of State of U.P. and another Vs. Pitamber Dutt Sanwal 2011 (2) UC 1101 in which the Division Bench of the Hon'ble Uttarakhand High Court held that the services of the work charged employees rendered, would be counted towards the pensionary benefits of the employees. The correctness of the ratio laid down by the Division Bench in the aforesaid case was doubted by another Division Bench of the Court and referred the matter to the larger bench. The following question was referred to the larger bench by the division bench, " Whether the period of service rendered in the work charged establishment can be counted for the purpose of pensionary benefits". The controversy was settled down by the Full Bench in Madan Mohan Chaudhary Vs. State of Uttaranchal 2011(87) ALR 645 holding that the said service would not be counted to a regular service and as such he would not be entitled to get pension for the period he worked as a work charged employee. The Hon'ble Court held as under in Para 9, 10, 12 & 13:

"(9). The Government order dated 1.7.1989 talks about temporary employees in a Government service retiring without being made permanent, and are therefore not getting pensionary benefits in view of Article 368 of the CSR, which requires an employee to hold a permanent post. Para 2 of the aforesaid G.O. indicates that such Government employee, namely, temporary employees, who have worked for a minimum period of 10 years in a regular service, would be given pensionary benefits in the same manner as given to a permanent employee. A temporary employee, even though temporary is working on a substantive post, though not permanent. In this light, the Government thought ift to include temporary employees for the purpose of receiving pensionary benefits. A work charged employee is not working on a substantive post and is specifically excluded under clause (ii) of Article e 370 of the CSK . Consequently, the period rendered in a work charged establishment cannot be included for claiming pension. Sub-rule (8) of Rule 3 of the U.P. Retirement Benefit Rules, 1961 supports this view. Said sub-rule

defines qualifying service with the note that if a person serves in a pensionable job, then in work charged establishment, and again thereafter in regular service, such interruption would not be disqualification. Similar provision is contained in Article 422 of the CSR.

(10.) On behalf of the writ petitioner/ respondent reference is made to Rule 2 of Temporary Government Servant (Termination of Service)Rules, 1975, which defines 'temporary service', According to said Rule 2, 'temporary service' means officiating or substantive service on a temporary post or officiating service on a permanent post under the Uttar Pradesh Government. These Rules of 1975, are not applicable to the work charged employees. Clause (d) of Rule 4 of Temporary Government Servant (Termination of Service_ Rules 1975, provides that these rules are not applicable to the employees serving in a work charged establishment. In our opinion, service rendered in work charged establishment, before regularization is not a temporary service for the purpose of regular ser vice. It is relevant to mention here that without there being a post, a person cannot hold it either as a temporary employee or permanent employee. In Para 4 of State of Himanchal Pradesh Vs. Suresh Kumar, it is observed by the Apex Court that work charged employees perform the duties of transitory and urgent nature so long as the work exists (in a particular project). In our opinion, only because a work charged employee was engaged in one after another projects does not make his services regular without there being a permanent post.

(12.) Para 669 of Financial Hand Book, Volume VI, provides that member of work charged establishment are not entitled to pension except the conditions mentioned therein like in the case of getting injured in the accidents etc.

(13.) In our considered opinion, the Government order dated 1.7.1989 recognizes only status of a temporary employee on regular post as that of a confirmed employee, for the purposes of pensionary benefits, as is apparent from Para 1 of the G.O. quoted above, in which it is mentioned that many temporary Government employees get retired without their services getting confirmed, and they get deprived of pension due to non confirmation on account of condition mentioned in Article 368 of CSR. To remove the difficulty of such temporary employees they are treated as a confirmed employees by the Government for the purposes of pension. The G.O. nowhere says that it is applicable to work charged employees who are neither temporary

Government servants, nor permanent employees. The G.O. dated 1.7.1989, no where interferes with Clause (ii) of Article 370 of CSR, quoted above.

Thus, present controversy in the case in hand is squarely covered by the judgment of the full bench of Hon'ble High Court.

15. Ld. counsel for the petitioner relied upon a judgment of Hon'ble Apex Court **Punjab State Electricity Board Vs. another Vs. Natara Singh and another 2010 SCLJ, SC 505.** Ld. counsel for the petitioner pointed out that his case is squarely covered by the said judgment. In this case Natara Singh was employed on work charge basis as a special Foreman by the Board. He worked in the same capacity from 6.8.1982 to 5.1.1984. W.e.f. 6.1.1984 he was appointed on a regular basis and thereafter he retired from the service of the Board on 31.7.1990 on attaining the age of superannuation. Natara Singh after his retirement moved a representation to grant him pension and other retrial benefits after taking into consideration the entire services rendered by him on the work charged basis under the State Government. When the department did not pay any heed to the request of the petitioner, thereafter a litigation started between Natara Singh and the Punjab State Electricity Board. The Punjab State Electricity Board was also governed by the Punjab Civil Services Rules for the purposes of the pension of the employees. In the said rules, there was a provision that the period of service in the work charged establishment shall not be counted as qualifying service. The said rule was challenged before the Punjab & Haryana High Court and the Division Bench in the case of **Kesar Chand Vs. State of Punjab and others 1988 (5) SLR 27**(Punjab & Haryana) struck down the said Rule 3.7(II) of the Punjab Civil Services Rules. The said rule was similar to the rule which is in the State of Uttarakhand. The Division Bench of the Punjab & Haryana High Court concluded that the rule which excluded to count the work charged services of employees, whose services were regularized subsequently, was bad in law and it was struck down. Keeping in view the above facts, the Hon'ble Punjab & Haryana High Court allowed the claim petition of Natara Singh and directed to include the work charged services rendered by him to the State of Punjab for grant of pension and directed the Board to count the said period for

determining the qualifying services for the purpose of grant of pension. The matter came up before the Hon'ble Apex Court by way of appeal filed by the State Government and the Hon'ble Apex court has held that in order to determine whether work charged services rendered by Natara Singh under the State Government could have been taken into consideration for the purpose of calculating the qualifying services, one has to refer to a definition of a temporary post as defined in the Punjab Civil Service Rules and not to the rules referred by the Board. Rule 3.17 (II) which reads as under:-

"If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in Full as qualifying service except in respect of:-

(i) …. …. …. …. ….

(ii) Periods of service in work charged establishment; and"

16. The Hon'ble Court while disposing of this petition held as under:

"The short question which arises for determination of this Court is whether the work charged services rendered by the respondent No.1 under the Government of Punjab prior to securing employment with the Board would qualify for grant of pension under the Punjab Civil Services Rules. This dispute deserves to be determined because the contention of the appellant is that the High Court was neither justified in referring to the definition of "temporary post" as given in Regulation 3.17(ii) of Punjab Civil Services Rules nor the Full Bench decision in Kesar Chand (supra) but the High Court should have taken into consideration the definition of "temporary post" as per Regulation 2.58 of PSEB MSR Vol. 1 Part-I, 1972. As noticed earlier, by memo dat ed 25.11.1985, the Board adopted letter dated 20.5.1982 of the Department of Finance, Government of Punjab in order to allocate liability of pension in respect of temporary service rendered under the State Government. A bare glance at letter dated 20.5.1982 makes it very clear that allocation of pensionary liability in respect of temporary service rendered under the Government of India and the State Government was agreed upon on certain conditions being fulfilled, one of which was that the period of temporary service rendered under the Central/ State Government should be such which could be taken into consideration for determining qualifying

service for g rant of pension under the Rules of respective Government. In order to determine whether work charged service rendered by the Respondent No.1 under the State Government could have been taken into consideration for the purpose of calculating qualifying service, one has to refer to definition of "temporary post" as defined in Punjab Civil Services Rules and not to the Rule referred to by the Board."

17. Thus, the ratio decided by the Hon'ble Apex Court is also based on a judgment of Punjab & Haryana High Court delivered in Kesar Chand (supra) which had attained finality and the rule excluding the service of work charged employee after being held to be unconstitutional, was out of the rules in the text books. This ruling is also based on the rule as quoted above. The temporary service as defined in the rules applicable in Uttarakhand, is different and the rules have been interpreted by the full bench of Hon'ble High Court in Madan Mohan Chaudhary Vs. State of Uttaranchal 2011(87) ALR 645. So in these circumstances the Court calculated the above period of Natara Singh including the work charged period dismissing the appeal of the State. But in our State the provision of CSR Rules are applicable; work charged employee has been included in the said rule and that has not been struck down by any Court. So this judgment is not applicable in the present scenario.

18. Ld. counsel also relied upon a judgment of the Single Judge of Punjab & Haryana High court reported in **Gejo Vs. State Bank of Patiyala and others 2011(3) SLR 69,** this judgment is also based on the Division Bench of the Punjab & Haryana delivered in Kesar Chand (supra) and the analogy which has been given by the Hon'ble Apex Court has been followed in this judgment also. Ld. counsel for the respondents also referred the judgment of Hon'ble Apex Court delivered in **Punjab State Electricity Board and others Vs. Jagjivan Ram 2009(1) SCC (L&S) 769**, the respondents were engaged as work charged employees in the services of the Board and they were appointed on regular basis on different dates later on. The Punjab State Electricity Board (hereinafter referred to as Board) introduced a scheme for giving time bound promotional scales increment on completion of 9/16/23 years' of regular service but it stagnated the employees who

were working in a particular pay scale for a long period of time. The respondents filed petitions before the Hon'ble High Court for issue of a direction to count their work charged services for the purpose of grant of time bound promotional scales and promotional increment from the date of completion of 9/16/23 years' of their services. The Division Bench of Hon'ble Punjab & Haryana High Court granted the relief to the writ petitioners. The Hon'ble Apex Court in appeal held that the work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees, much less regular employees and further that the work charged employees are not entitled to service benefits which were admissible to regular employees under the relevant rules or policies framed by the employer. What to say of work charged employees even though appointed on ad-hoc basis, same cannot claim parity with the regular employees in the matter of pay fixation, grant of higher pay scales, promotion etc. The Hon'ble Apex Court further declined the prayer of the respondents and held that they are not entitled of time bound promotional scales on a date prior to completion of the regular service and the High Court has committed an error by directing the Board to give them benefit of the scheme by counting their work charged service.

19. Ld. counsel for the respondents also referred a judgment of Hon'ble Allahabad High Court delivered in **Nand Kishore Sinch Vs. State of U.P. and others 2011(2) 236 LBESR ALL** in which the Hon'ble High Court held that,

    "It is no doubt true that the denial of pension appears to be harsh in view of the fact that the petitioner has served for more than 34 years, yet in view of the ratio of the decision in the case of General Manager Uttaranchal Jal Sansthan 2009(2)SCC(L&S) 304, the status of a work charge employee does not entitle him to any service benefits for the purpose of award of pension. No other provision either statutory or in the shape of executive instructions has been successfully demonstrated before the Court so as to extend the said benefit."

20. The Ld. counsel for the respondents also referred a Full Bench decision of the Hon'ble Allahabad High Court delivered in **Pawan**

Kumar Yadav Vs. State of U.P. reported in 2011 (3) SLR 595 though there was a controversy as to whether a daily wager or a work charged employee employed in connection with the affairs of the State, who is not holding any post whether substantive or temporary, is a regular servant within the meaning of 2 (a) of the U.P. Recruitment of Dependants Government Servants (Dying in Harness) Rules 1947. The Hon'ble Allahabad High Court while relying upon the judgment of the Hon'ble Apex Court delivered in **General Manager Uttaranchal Jal Sansthan Vs. Luxmi Devi 2009(2) SCC(L&S) 304** held that a daily wager and the work charged employee employed in connection with the affairs of the State and who had not been appointed against any substantive or temporary vacancy, is not appointed in the regular establishment even if he is working for a long period, he is not a government servant and he cannot claim the benefits of Dying in Harness Rules. Thus, it is apparent from the above ratio decided by the Full Bench of the Hon'ble Allahabad High Court based on the judgment of the Hon'ble Apex Court that work charged employee has no substantive or temporary status in the cadre and he is not a permanent employee. Ld. counsel for the petitioner also referred a Full Bench decision of Hon'ble Madhya Pradesh High Court delivered in **Mamta Shukla Vs. State of M.P. and others reported in 2012 (1) SLR 381,** the main controversy before the Full Bench was that whether for counting the services of an employee for the purpose of granting benefit of pension, it is necessary that the employee has to be appointed in accordance with the provisions of the Contingency Paid Employee Recruitment Rules framed by the concerned department in regard to the work charged and contingency paid employees. At the outset we would like to mention that this judgment is based on the rules applicable in Madhya Pradesh. It was not pointed out that the Rules of Uttarakhand are paramateria to the State of Madhya Pradesh. It is also well settled principle of law that the ratio of each pronouncement or judgment must be read as applicable to the facts proved or assumed to be proved and the application of particular rule or law to the said facts, since the generality of expressions which may be found these are not intended

to be expositions of whole law, but are governed and qualified by a set of particular fact and law of the case in which such expressions are to be found. Though the Hon'ble High Court has come to the conclusion that an employee, who was not appointed in accordance with the provisions of the Recruitment Rules framed by the concerned department, would not be eligible to count his past services as qualifying services for the purpose of grant of pension in accordance with the Pension Rules 1979. Thus, the conclusion has come in favour of the petitioner.

21. In the case of the Full Bench decision in Madan Mohan Chaudhary Vs. State of Uttaranchal 2011(87) ALR 645 (supra), the the Hon'ble High Court has considered an interpretation of the relevant Articles of CSR Rules and provisions of the 1961 Rules and also interpreted the temporary vacancies as defined in 1989 Government Order and settled the controversy about the work charged employee. The judgment of the Full Bench (supra) squarely covers the controversy in favour of the State/ Respondents and is binding on the Tribunal.
22. In view of the aforesaid discussion and in view of the law laid down in Full Bench judgment, we answer the question posed that a work charged employee in connection with the affairs of the State of Uttarakhand, who is not holding any post whether substantive or temporary and is not appointed in any regular vacancy even if he had worked in the work charged capacity for a long, cannot be counted towards is pensionary benefits.
23. The reference is ordered accordingly.
24. Now this matter may be listed before the Division Bench to enable them to be decided based on the facts of the case in the light of the observations contained in the judgment.

Sd/-	Sd/-	Sd/-
D.K.KOTIA	**V.K.MAHESHWARI**	**JUSTICE J.C.S.RAWAT**
VICE CHAIRMAN(A)	VICE CHAIRMAN (J)	CHAIRMAN

Date: 20 SEPTEMBER, 2013
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