CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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ORIGINAL APPLICATION N0.060/00105/2018
Chandigarh, this the 13th day of March, 2018

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CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

1. Dr. Neelam Aggarwal W/o Dr. Ajay Aggarwal, Aged 58 years, working as Additional Professor, Department of Obs & Gyane, PGIMER, Sector-12, Chandigarh.
2. Dr. Sadhna Lal [w/o] Dr.Vivek Lal, Aged 54 years, Working as Professor, Department of Gastroenterology, PGIMER, Sector-12, Chandigarh.
3. Dr. Rajesh Chhabra S/o Sh. Harbhajan Singh Chhabra, Aged 49 years, Working as Professor, Department of Neurosurgery, PGIMER, Sector-12, Chandigarh.
4. Dr. Jasmina Ahluwalia w/o Dr. Surjit Singh, Aged 53 years, working as Professor, Department of Haematology, PGIMER, Sector-12, Chandigarh.
5. Dr. Ajay Duseja S/o Late Sh.Verinder K Duseja, Aged 51 years, working as Professor, Department of Hepatology, PGIMER, Sector-12, Chandigarh.
6. Dr. Parampreet Singh Kharbanda S/o Sh. Jasbir Singh Aged 51 years, Working as Professor, Department of Neurology, PGIMER, Sector-12, Chandigarh.
7. Dr. Jaimanti Bakshi W/o Sh Navdeep Bakshi, Aged 47 years, Working as Professor, Department of Otolaryngology, PGIMER, Sector-12, Chandigarh.
8. Dr. Rajesh Vijayvergiya S/o Sh K. N. Vijayvergia, Aged 48 years, Working as Professor, Department of Cardiology, PGIMER, Sector-12, Chandigarh.
9. Dr. Bhavneet Bharti w/o Sahul Bharti, Aged 49 years, Working as Professor, Department of Pediatrics, O/o PGIMER, Sector-12, Chandigarh.
10. Dr.Sumita Khurana w/o Sh.Varunjit Khurana, Aged 48 years, Working as Professor, Department of Parasitology, PGIMER, Sector-12, Chandigarh.
11. Dr. Prema Menon D/o K.P.B. MENON, Aged 56 years, Working as Additional Professor, Department of Pediatric Surgery, PGIMER, Sector-12, Chandigarh.
12. Dr. Rijuneeta, W/o Sh. Dr.Suresh Kumar, Aged 46 years, Working as Professor, Department of Otolaryngology, PGIMER, Sector-12, Chandigarh.
13. Dr.Sanjay Bhadada S/o Sh. M.L Bhadada, Aged 49 years, Working as Professor, Department of Endocrinology, PGIMER, Sector-12, Chandigarh.
14. Dr. Devi Dayal S/o Sh. Tej Ram, Aged 54 years, working as Professor, Department of Pediatrics, PGIMER, Sector-12, Chandigarh.
15. Dr. Joseph Mathew S/o Dr. Lazar Mathew, aged 46 years, Working as Professor, Department of Pediatrics, PGIMER, Sector-12, Chandigarh.

16. Dr. Ajay Behl S/o Late Sh.Harish Bahl, Aged 51 years, Working as Professor, Department of Cardiology, PGIMER, Sector-12, Chandigarh.
17. Dr.Sandeep Mohindra S/o Jagdish Kumar Mohindra, Aged 44 years, working as Additional Professor, Department of Neurosurgery, PGIMER, Sector-12, Chandigarh.
18. Dr.Kushaljit Singh Sodhi S/o Late Sh.G. S. Sodhi, Aged 44 years, Working as Professor, Department of Radio Diagnosis, PGIMER, Sector-12, Chandigarh.
19. Dr. Akshay Anand S/o Sh. RC Anand, aged 45 years, Working as Professor, Department of Neurology, PGIMER, Sector-12, Chandigarh.
20. Dr. Manish Modi S/o Vinod Kumar Modi, Aged 45 years, Working as Professor, Department of Neurology, PGIMER, Sector-12, Chandigarh.
21. Dr. Ashish Sharma S/o Narottam Sharma, Aged 44 years,Working as Professor & Head, Department of Renal Transplant Surgery PGIMER, Sector-12, Chandigarh. All applicants are Group 'A'.

....Applicants

(**Present**: Mr. R.K. Sharma, Advocate)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Post Graduate Institute of Medical Education and Research(PGIMER), Sector-12, Chandigarh, through Director.
3. President, Post Graduate Institute of Medical Education and Research(PGIMER), Sector-12, Chandigarh.
4. Secretary to the Government of India, Ministry of Finance, Department of Expenditure, New Delhi.

....Respondents

Present: Mr. Ram Lal Gupta, Advocate for Resp. No. 1&4.
Mr. Amit Jhanji, Advocate for Resp. No.2&3.

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

Exhibiting their deep concern and assailing the action of the respondents, applicants Dr. Neelam Aggarwal and 20 other eminent Doctors, having specialization in their respective disciplines, have instituted the instant Original Application (O.A.), challenging the validity of the impugned orders dated 12.10.2017 (Annexure A-1), dated 15.11.2013 (Annexure A-2), and dated 12.8.2014 (Annexure A-3), whereby their claim for grant of General

Provident Fund (GPF)-cum–Old Pension Scheme, existing prior to 1.1.2004, was rejected by the competent authority.

2. The matrix of the facts and the material, culminating into the commencement, relevant for disposal of the present O.A and exposited from the record is that the Post Graduate Institute of Medical Education and Research (for brevity "PGIMER"), is an Institute of National importance and established under the "Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966" (hereinafter to be referred to as the "Act"). The PGIMER has also promulgated PGIMER Rules & Regulations, 1967, governing the procedure of recruitments and conditions of service of its employees. It is catering to the needs of very serious patients of States of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir and many other States. There is great shortage of Doctors in every sphere in it. When recruitment of doctors, on regular basis, was delayed, for variety of reasons, and keeping in view the exigency of service, public interest and welfare of the patients, the PGIMER used to make appointments of faculty in various departments against regular sanctioned posts, by way of open advertisement, and in accordance with the eligibility criteria prescribed under the relevant Rules and Regulations, identical to the eligibility criteria for regular recruitment. Since the regular appointments take a long time, so the adhoc appointees continue to work for years together, in their respective fields, before their regularization and, as such, their appointments cannot be termed as stop-gap arrangement but only as regular appointments, due to delay in regular process. It was alleged that infact this practice of recruitments continue uninterruptedly and in most of the cases the

faculty members, who are appointed on adhoc basis, through transparent manner, are also appointed on regular basis, keeping in view their eligibility and experience of working in the PGIMER.

3. Sequelly, the case set up by the applicants, in brief, in so far as relevant, is that keeping in view the urgency of the matter, welfare of the patient and public interest, the applicants, who were eligible for appointments to the posts of Lecturers, re-designated as Assistant Professors, and were appointed in their respective departments, by way of open advertisement, by wrongly using the nomenclature of adhoc. The applicants were duly selected and appointed as Lecturers in their respective fields, after advertisement of the posts and on successfully clearing the recruitment process, as per the rules and regulations of the PGIMER. The applicants were duly selected as Assistant Professors between 1996 to 2003, as mentioned therein in the petition (not denied by the respondents). Their appointments were in accordance with the eligibility criteria, prescribed under the statutory rules and regulations and most of them were appointed against the regular sanctioned posts. In pursuance of selection, all the applicants joined their respective posts during the period 1996 to 2003, as Assistant Professors and continued uninterruptedly earning increments and other service benefits. Thus, their appointments were stated to be, as good as permanent, for all intents and purposes.

4. Likewise, the case of the applicants further proceeds, that subsequently PGIMER advertised to fill up the posts manned by them, on regular basis. The applicants, who were already eligible for regular appointments against the said posts, applied. Having

successfully completing the recruitment process, they were duly selected and appointed on regular basis, without any break or interruption, w.e.f. various dates, maintaining and protecting their continuity in service, pay scale and other service benefits including increments, which they were drawing as adhoc appointees. They continued working, as such, uninterruptedly without any break and have been getting promotions as Associate Professors, Additional Professors, and even reached the status of Professors under APS Scheme.

5. According to the applicants, their regular appointments were in continuation of the initial ad-hoc appointments, which were neither stop gap nor short term and ranged from number of years. Their clinical duties were exactly the same as regular faculty. In this manner, they were fully covered under the GPF-cum-Old Pension Scheme, but the competent authority has wrongly treated them as freshly appointed Doctors, after their regular appointments. They approached the respondent authorities for redressal of their grievance and case was favourably recommended by the Director to be put up before the Governing Body, vide letter dated 21.01.2010. Subsequently, a Sub Committee was constituted by the Ministry of Health, vide letter dated 3rd April, 2011 (Annexure A-13). It was claimed that six members of the Committee recommended the case of the applicants for GPF-cum-old Pension Scheme vide letter dated 14.9.2011/05.10.2011 (Annexure A-14). The Governing Body approved the recommendations, vide proceedings dated 28.04.2012 (Annexure A-15). However, subsequently, the matter, which had already been approved by the Governing Body on 28.4.2012, was again taken up

by it and the Ministry, by ignoring its earlier positive recommendations, declined the claims of the applicants vide letter dated 14.12.2013 (Annexure A-16). Again, they made representations on 9.1.2014 (Annexure A-17) and 14.6.2014 (Annexure A-18) but in vain. Their claim was, however, declined vide impugned orders dated 12.10.2017 (Annexure A-1), 15.11.2013 (Annexure A-2) and 12.8.2014 (Annexure A-3), by the competent authority.

6. Aggrieved thereby the applicants have preferred the instant OA challenging the legality of impugned orders and actions of the respondents, inter-alia, on the following grounds:-

(a) That the respondents failed to examine the claim of the applicants keeping in view the latest law and the similar benefits extended to other PGI employees who are similarly situated and has been rejected on non-existing grounds in as much as applicants were appointed/adjusted against the duly sanctioned posts, whereas it has been stated that many of them were against leave vacancy or deputation vacancies. The point of applicability of the rules on the date of vacancies has not been dealt with including judgment relied upon by the applicants in their earlier O.A. and also factum that their pay has been protected which they were drawing as adhoc employees before regularization and regularization is in continuation of adhoc appointment, which was against the same vacancies and cannot be ignored for the purpose of GPF-cum-pension Scheme particularly when even the daily wages and the employees paid out of contingencies are given the benefit of old pension scheme, even if regularization is after 01.01.2004. The plea of DOPT circular dated 03.04.2013 (Annexure A-38) cannot be used to the disadvantage of the applicants in as much as their continuation was keeping in view the public interest and the interest of the patients and the applicants never applied for continuation of their service, rather the PGI authorities themselves considered them. The circular relied upon by the respondents cannot be applied in the present case. The status of the PGI remains autonomous qua those employees, who have been granted benefit of GPF-cum-old pension scheme though regularization of their services was after 01.01.2004. Applicants have been appointed against the advertisement issued prior to 2004. However, the words that have been mentioned in the appointment letter that they are governed by the New Pension Scheme, is inconsequential as such condition can be applied only qua those who are fresh appointees having no nexus with the earlier service qua employees who are working on adhoc basis. In earlier representations it was duly pointed out and it was thereafter that judgments rendered subsequently were also brought to the notice of the authorities but they have ignored the same. Keeping in view the intervening circumstances and the subsequent developments, Hon'ble Tribunal was pleased to direct them to decide the representation on merit but instead of going into the merit, respondents are sticking to the same view which had already been taken by them and as such, the order dated 12.10.2017 cannot be said to be speaking one and in terms of the

law and the rules on the subject and as such, same is liable to be quashed.

(b) That it is on the record of the respondents that the applicants were appointed on adhoc basis in the year 1996 to 2003 by open advertisement against regularly sanctioned posts and were allowed to continue without any interruption. Therefore, their entire service is countable towards qualifying service towards old Pension Scheme Benefits.

(c) That respondents have delayed the case of applicants for regular appointment and as such regular appointment of the applicants is to relate back to the date of initial appointment in view of judgment of the |Hon'ble Supreme Court referred as 1990(2) JT 236.

(d) That on appointment of applicants on regular basis, great prejudice has been caused to them as their entire service of more than 13-14 years is sought to be ignored and on the other hand the persons who also have rendered even 12-13 years of adhoc service similar like applicants, they have been granted the benefit of old pension Scheme benefits. Thus action of the respondents is arbitrary, discriminatory and not sustainable in the eyes of law.

(e) That not only adhoc service, even work charge and casual service and contractual service followed by regularization is countable for GPF-cum-Pension Scheme and the case of the applicants is on better footings as they were appointed/adjusted against a regular posts prior to 01.01.2004. Hence, their entire service deserves to be counted for pension etc.

(f) That case of the applicants is covered by the judicial pronouncements including Full Bench judgment passed by the Hon'ble Punjab and Haryana High Court in the case of Kesar Chand's case and judgments passed in the case of Rai Singh and another Versus Kurukshetra University and others as well as in the case of Harbans Lal, as detailed in the body of the O.A.

(g) That in case of similarly situated employees, who were appointed on adhoc basis as detailed in the body of the O.A. and were regularized subsequently after 01.01.2004, as is evident from Annexure A-19, they had been given benefit of G.P. fund-cum-old Pension Scheme. However, the applicants are not being extended the benefit of G.P.Fund-cum-old Pension scheme. Thus action of the respondents is discriminatory.

(h) That action of the respondents in not treating the applicants as regular with effect from the date of their initial appointment is harsh, arbitrary, discriminatory, against the principles of natural justice and service jurisprudence and violative of Article 14 and 16. Hence, whole action of the respondents is bad in law.

7. Levelling a variety of allegations and narrating the sequence of events in details, in all, the applicants claim that they are entitled to the benefit of GPF-cum-Old Pension Scheme, which was prevalent on the date of their initial appointments, as Assistant Professors but the competent authority has illegally declined their genuine claim, in this regard. On the strength of the aforesaid grounds, the applicants seek to quash the impugned orders, in the manner indicated hereinabove.

8. On the contrary, the respondents have cosmetically denied the claims of the applicants. The Respondents No. 2 and 3 have filed their written statement (which was duly adopted by Counsel for Respondents No.1&4), wherein it was pleaded that applicants were appointed on adhoc basis during the period 1996-2003. However, their regular appointments were made in pursuance of the fresh advertisement, on substantive vacant posts by the Department, after 1.1.2004. It was submitted that prior to 2004, GPF-cum-Old Pension Scheme was applicable, which has been replaced by Government of India, w.e.f. 1.1.2004, by introducing New Pension Scheme (for brevity "NPS"). The persons, who were appointed before 1.1.2004 are governed under the GPF-cum-Old Pension Scheme, and employees appointed after 1.1.2004, are covered under the NPS. However, it was acknowledged, that the Director, PGIMER, vide letter dated 21.1.2010 had recommended the matter to be put up and the Governing Body of PGIMER, in its meeting held on 28.04.2012 had constituted a Sub-Committee, to look into the grievance of the applicants. The Sub Committee recommended their case vide letter dated 14.9.2011 (Annexure A-14). Thereafter, the matter was placed before the Governing Body, vide Agenda Item No. F-6, in its meeting held on 28.4.2012. The Governing Body was informed about the recommendations of the Committee under Joint Secretary (HR) of the Ministry and that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier. The Governing Body appreciated the circumstances, and after detailed discussion, it agreed to approve the proposal as a special case. The decision of the Government

Body was referred to the Government of India, Ministry of Health & Family Welfare, vide letter dated 9.7.2012 (Annexure R-2/1). The Government of India, vide letter dated 1.9.2017 (Annexure A-36), has sought various informations / clarifications, which were duly submitted vide letter dated 8.9.2017 (Annexure A-37). However, the Ministry has rejected the representations and claims of the applicants, vide impugned order dated 12.10.2017 (Annexure A-1). In other words, the PGIMER has admitted the claim of the applicants, as genuine, but it was denied by the concerned Ministry, vide impugned order, Annexure A-1.

9. Similarly, the case of the respondents, further proceeds, that as per Regulation No. 61 of Schedule-1 appended to PGIMER, Chandigarh Regulations, 1967, Director of the PGIMER, has been empowered to appoint Faculty, on adhoc basis, for two years. The Governing Body, being an apex body, having the higher dignitary members and competent authority, the meeting is conducted once or twice in a year. Since the recruitment of the faculty is a time consuming process, keeping in view the public interest, exigency of service and heavy rush of patients, the institute filled up these vacancies on adhoc basis, in various disciplines in various departments, as a stop gap arrangement, till final process of recruitment is made. Instead of reproducing the entire contents of the written statement in toto, and in order to avoid the repetition of facts, suffice it to say, that while duly acknowledging the factual matrix and reiterating the validity of the impugned letters / orders, all the respondents have vaguely denied all other allegations and grounds, contained in the OA, and prayed for its dismissal.

10. Controverting the pleadings of the written statement filed by the respondents and reiterating the grounds contained in the OA, the applicants have filed the rejoinder, and prayed for the acceptance of the O.A. That is how, we are seized of the matter.

11. Having heard the learned counsel for the parties, having gone through the record and legal provisions with their valuable assistance & after bestowal of thought over the entire matter, we are of the firm view that the instant OA deserves to be accepted, in the manner and for the reasons mentioned here-in-below.

12. As depicted hereinabove, the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, to decide the real controversy between the parties. Such being the material on record and legal position, now the short and significant question, that arises for our consideration, in this case is as to whether the services of the applicants would be reckoned from the date of their initial appointments, for all intents and purposes, including the benefit of GPF-Old Pension Scheme, in the given peculiar facts and special circumstances of this case or not?

13. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this relevant connection.

14. Ex-facie, the main celebrated arguments of the learned counsel for the respondents and their objections projected in the impugned orders, that since the PGIMER, Chandigarh, has not taken any approval of the Department of Personnel & Training (DoP&T) before extending the adhoc appointments, till the regular appointments of the applicants, so they are not entitled for the

benefit of the GPF-cum-Old Pension Scheme, and if it is granted to them, then it will open floodgates of litigation, for other institutions, are not only devoid of merit, but mis-placed as well and deserve to be repelled for, more than one, (following)reasons.

15. At the first instance, it is not a matter of dispute, that having possessed the requisite qualifications and experience etc, in pursuance of the advertisement and having successfully completed the recruitment process as per statutory rules and regulations of the PGIMER, all the Doctors (applicants) were duly appointed as Assistant Professors, in their respective fields, during the period ranging from 1996 to 2003, by the Competent Authority. Since then, they are performing the same duties with devotion, which are performed by regular appointees. Similarly, the clinical duties of all the Doctors (applicants) are the same, as performed by regular incumbents. Subsequently, the PGIMER advertised the posts manned by the applicants, for filling on regular basis. The applicants, have requisite qualifications & experience, and were eligible for regular appointments against the said posts, as well. They were duly selected and appointed, on regular basis, without any interruption maintaining and protecting their continuity in service, pay scale and other service benefits, including the increments, which they were drawing as adhoc appointees.

16. In that eventuality, for the purpose of pensionary benefits, the qualifying service of the applicants shall commence from the date, they took charge of the posts, to which they were first appointed, in temporary capacity, as that temporary service was followed, without interruption, by substantive permanent appointments in the same service/posts, as contemplated under

Rule 13 (Chapter III) of the Central Civil Services (Pension) Rules, 1972 (Annexure A-28).

17. Not only that, as indicated hereinabove, the applicants continued working, as such, uninterruptedly and without any break. Even the Respondents No.2 & 3, have duly acknowledged the factual matrix, in this regard, in their written statement. Therefore, in this manner, the initial service of the applicants would be reckoned for all intents and purposes including GPF-cum-Old Pension Scheme, in view of the observations of the Hon'ble Apex Court in the case of ***Rudra Kumar Sain and others v. Union of India & others,*** (2000) 8 SCC 25, wherein it was held that in service jurisprudence, a person, who possesses the requisite qualification for being appointed to a particular post, and then he is appointed with approval and consultation with the appropriate authority and continues in the post for a fairly long time, then such an appointee cannot be held to be stop-gap or fortuitous or purely adhoc. Such employee is entitled to benefit of his service with effect from his initial appointment (as in the present case).

18. Sequelly, it was held by Hon'ble Supreme Court in ***Dr. Chandra Prakash v. State of U.P*** (2002) 10 SCC 710, that the appellants (therein) who had been appointed against substantive vacancies and were continuing from 1965-1976 to 1983, and were enjoying all the benefits of regular service, are entitled to seniority from the date of initial appointments.

19. Similarly, Constitution Bench of Hon'ble Apex Court in the case of ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others***, (1990) 2 SCC

715, has held that once an incumbent is appointed to a post according to the rules, the seniority has to be counted from the date of initial appointment, for all intents and purposes. Moreover, the matter of counting initial service for the purpose of pensionary benefits, is no longer ***res-integra*** and is now well settled.

20. An identical question came to be decided by Division Bench of the Hon'ble Punjab & Haryana High Court in the case of ***Rai Singh and another v. Kurukshetra University, Kurukshetra***, Civil Writ Petition No.2246 of 2008, decided on August 18, 2008, in which it was held, that any service rendered on contract basis or adhoc service etc, is to be counted towards the pensionary benefits, as under:

> "4. Learned counsel for the petitioners relies upon a Full Bench judgment of this Court in Kesar Chand v. State of Punjab and others, 1988(2) PLR 223, wherein validity of Rule 3.17 (ii) of the Punjab Civil Services Rules, Volume II was considered, which provided for temporary or officiating service followed by regularization to be counted as qualifying service but excluded period of service in work charge establishment. It was held that if temporary or officiating service was to be counted towards qualifying service, it was illogical that period of service in a work charge establishment was not counted.
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> 6. As held in Kesar Chand (supra), pension is not a bounty and is for the service rendered. It is a social welfare measure to meet hardship in the old age. The employees can certainly be classified on rational basis for the purpose of grant or denial of pension. A cut off date can also be fixed unless the same is arbitrary or discriminatory. In absence of valid classification, discriminatory treatment is not permissible.

21. Likewise, the Hon'ble Punjab & Haryana High Court in the case of ***Harbans Lal Vs. The State of Punjab & Others***, CWP No.2371 of 2010 decided on 31.8.2010 (Annexure A-31), has, inter-alia, ruled as under :-

> "Mr. Shalender Mohan, Advocate for the petitioner has further argued that this issue has been considered in a number of judgments while interpreting Rule 3.17 A of the CSR Vol.2. Reference can be made to the judgments of this

Court in case of **Kashmir Chand** Vs. **Punjab State Electricity Board and others** 2005 (4) RSJ, 581 and **Ram Dia and others** Vs. **Uttar Haryana Bijli Vitran Nigam Ltd. and another** 2005(4) RSJ, 689, **Hari Chand** Vs. **Bhakra Beas Management Board and others**, 2005(2) RSJ, 373 and **Balbir Singh** Vs. **State of Haryana and others** 2004(4) RSJ, 71. Full Bench while dealing with a similar controversy in the case of **Kesar Chand** Vs. **State of Punjab** 1998 (2) PLR 223 has held as under:-

"Once the services of a work-charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged established before his regularization has not been taken into consideration for determining the qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularized subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these reasons the provisions of sub rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

9. The aforesaid view was further reiterated by this Court in the cases of Joginder Singh, Hazura Singh and Nasib Singh (supra). A conjoint reading of the rules, quoted above and the observations of the Full Bench would reveal that it is by now well established that period of service rendered on daily wage/work charges prior to regularization of services is liable to be counted for the purposes of gratuity and pension."

The consistent view of the judgment is that work charge service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. A Division Bench of this Court was seized of a case in which vires of Rule 3.17 A was challenged whereby half of the service paid out of contingency fund was to be counted as qualifying service. This rule has been struck down in a judgment of this Court in case of **Joginder Singh** v. **State of Haryana**, 1998 Vol.1, SCT 795. Once the entire service paid out of contingency, is liable to be counted for the purpose of qualifying service, a causal/daily rated service is also bound to be counted as qualifying service.

A Division Bench judgment in case of **Smt.Ramesh Tuli** Vs. **State of Punjab and others**, 2007(3) SCT, 791 examined the proposition as to what would be the qualifying service for pension as per Clause 6(6) of the 1992 Pension Scheme applicable to the Punjab Privately Management Recognized Schools Employees. In paragraph 6 of the judgment, the following observation has been made:-

"There is another aspect of the matter. Hon'ble the Supreme Court in the case of Vansant Gangaramsa Chandan v. State of Maharashtra, 1996(4) SCT 403: JT 1996 (Supp.) SC 544, has considered clause 23 of Chapter VI of a Pension Scheme of the Hyderabad Agricultural Committee, which is as under:-

"4.Clause 23 of Chapter VI in the scheme reads as under:
"Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee which ever later."

It was held that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement. The same cannot be arbitrarily denied. The clause was subjected to the principle of 'reading down' a well known tool of interpretation to sustain the constitutionality of a statutory provision and accordingly it was read down to mean that the qualifying service could commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing to the Contributory Provident Fund whichever was earlier.

The ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment, which is 17.8.1965 in the present case, or from an earlier date if the employer had started contributing to the Contributory Provident Fund whichever is earlier. Therefore, the petitioner would be entitled to count her service with effect from the date of her appointment and approval i.e. 17.8.1965."

The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners' initial date of appointment after regularization will be the date on which employee takes charge of the post. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004.

Reliance has been placed by the respondents on a Single Bench judgment in case of **Ramesh Singh and others** Vs. **State of Punjab** CWP No.5092 of 2010 decided on 22.3.2010). No benefit can be derived by the State on behalf of the judgment because Rule 3.17 of the Punjab Civil Service Rules Vol.II has not been discussed in the judgment. A request for extension of pension scheme has been repelled in the judgment on the ground that petitioners who were working in the Board on work charge

basis were regularized by the Board. Since, there was no scheme of pension in the Board, their claim of pension was rejected. On the other hand, the employees who had come from the department of Health on deputation to the Board, and who on repatriation to the parent department were held entitled to a pension by virtue of pension scheme applicable in the parent department. This judgment is not applicable on the facts in the present case.

The next question for consideration is whether the clarification issued by the State of Punjab, vide instructions dated 30.5.2008 (Annexure P-3) which runs against amendment made vide Annexure P-2. A similar issue has come up before the Hon'ble Division Bench of this Court in case **of Harjinder Singh** Vs. **State of Punjab 2004(3)** SCT 1. The Division Bench while interpreting the executive instructions vis-à-vis statutory rules namely, pension rules held as follow:-

"The above instructions issued by the Director Local Government purporting to interpret the Pension Rules are in fact contrary to the same. Besides, the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. However, as already notice above, there is nothing in the Pension rules which requires the 'qualifying service' to be computed from the date of the employee makes contribution towards C.P.Fund or from the date of his confirmation. Rather the position is that the 'qualifying service' is to be counted in terms of Rule 2(j) for the period of service rendered by the employee for which he is paid from the Municipal Funds which is the fund constituted under Section 51 of the Punjab Municipal Act. The emphasis on the words "appointed on regular basis" in the above memo on the basis of Rule 1 (3) (ii) of the Pension Rules is also misplaced. Rule 1(3)(ii) of the Pension Rules, in fact provides that the Pension Rules shall apply to the employees of the Committee who are appointed on or after the first day of April, 1990 on whole time regular basis and opt for the said rules.....".

The Bench, thereafter, concluded as follows:-

"17. Keeping in view the above facts and circumstances, it is evident that the stand of the respondents that the 'qualifying service' of the petitioner is to be counted from the date he started making contributions to the C.P. Fund is absolutely misconceived and baseless. The same is not supported by the Pension Rules applicable in respect of the petitioner. The petitioner, therefore, has been unnecessarily denied the benefit of pension, which as per the settled law, is not a bounty or a matter of grace nor an ex gratia payment payable at the sweet will and pleasure of the Municipal Council (respondent No.4). It is a payment for the past service rendered and is a social welfare measure to those who in the hey day of their life rendered service on an assurance that in their old age they would not be left in the lurch. The payment of pension is governed by the Pension Rules governing the grant of pension to the employees of the Municipal Council. It is the liability undertaken b the Municipal Council under the Pension Rules and whenever it becomes due and payable it is to be paid."

This view has been followed by a Division Bench of this Court in case of **Hans Raj** Vs. **State of Punjab and others**, 2005(3) RSJ, 262. In this case the Division Bench examined the Punjab Municipal Employees Pension and

> General Provident Fund Rules, 1994. Vide instructions dated 8.1.1999, the State of Punjab had provided that since the Pension Rules has been made applicable in lieu of CPF, the period to be considered as qualifying for pension has to be restricted to the period for which the employee was contributing to his CPF. These instructions were held contrary to the Pension Rules by the Division Bench. The Division Bench held that the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. The petitioner was held entitled to count his entire service from 1962 to 1998 as qualifying service for the purpose of pension. The condition that qualifying service would commence from the date of contribution to the CPF, has been rejected by the Division Bench.
>
> From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.
>
> In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter."

22. What cannot possibly be disputed here is that the judgment, Annexure A-31, has already attained the finality as ***SLP No. © No. 23578 of 2012*** filed by the State of Punjab, was dismissed vide order dated 30.7.2012 and ***Review Petition © No. 2038 of 2013*** was also dismissed, vide order dated 4.11.2015 (Annexure A-32), by Hon'ble Supreme Court. Therefore, it is held that the services of the applicants would be reckoned from the date of their respective initial appointments (1996 to 2003), for all the service benefits, including the benefit of GPF-cum-Old Pension Scheme, which was in operation, at that point of time.

23. In the same manner, the second feeble argument & ground to reject the claim of the applicants, vide impugned order, Annexure A-1, that if the request of faculty members of the Institute is allowed, then it will give rise and would open flood gates of litigation by a number of representations from various other Institutions/organizations, is again not, at all, tenable. Once, it is held that the applicants are legally entitled to the benefit of GPF-cum-Old Pension Scheme, as discussed here-in-above, then their claim cannot possibly be denied on the ground that it will give rise to a number of representations and would open flood gates of litigations, by various other Institutions/organizations for grant of similar relief. It is now well settled principle of law that the legitimate and legal right of the applicants cannot be denied to them, in the garb of plea of opening of Flood Gate Litigations. The Hon'ble Apex Court has held in the case of ***Coal India Ltd vs. Saroj Kumar Mishra***, 2008 (2) SCC (L&S) 321, that plea of opening of Flood Gate Litigation, is no ground to take away the valuable legal right of a person. Such arguments were held to be of desperate, only because there was possibility of Flood Gate Litigation. Same analogy was reiterated by the Hon'ble Apex Court in the cases of ***Zee Telefilms Ltd. and Anr. v. Union of India and Ors***. [(2005) 4 SCC 649], ***Woolwich Building Society Vs. Inland Revenue Commissioners (No.2)*** [(1992) 3 All ER 737] and ***Johnson Vs. Unisys Ltd***. [(2001) 2 All ER 801], wherein it was ruled that it is trite that only because floodgates of cases will be opened, by itself may not be a ground to close the doors of courts of justice. The doors of the courts must be kept open but the Court cannot shut its eyes. Thus, the contention raised and grounds

taken by the respondents, in the impugned order, to reject the claim of the applicants, are not only arbitrary, illegal but speculative as well. Hence the impugned orders deserve to be set aside, in the present set of circumstances.

24. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that earlier also the Government of India, has constituted a Committee to examine the issue of applicability of the GPF-cum-Old Pension Scheme to similarly situated faculty members on adhoc basis, before 1.1.2004 and thereafter appointed on regular basis in PGIMER or other similar institutions vide order dated 3.4.2011 (Annexure A-13). The Committee, duly considered the matter, and resolved as under:-

> "Following attended the meeting:
>
> 1. Sh. Debashish Panda, Joint Secretary (HR) Chairman
> 2. Ms. Chandian Mishra Dwivedi, CA Member
> 3. Sh. R.T. Venkatasamy, DS (IFD) Member
> 4. Ms. Vaisamma K. Daniel, Under Secretary Rep. of Director(AS)
> 5. Sh. P.C. Akela, Sr. Adm. Officer(I),PGI Member Convener"
>
> Sh. Attar Singh, Chief Administrative Officer, AIIMS, New Delhi did not attend the meeting.
>
> At the outset, the Chairman asked the details of the case from the Member Convener. It was informed to the members that there are about 23 faculty members who were appointed on adhoc basis (as per details in Annexure) without break prior to 01.01.2004 and have been working without break till their appointment on regular basis as Assistant Professors after 01.01.2004. They have represented for applicability of Old Pension Scheme in their case as they were appointed prior to 01.01.2004. It was also informed that the matter was earlier referred to the Govt. of India on 23.06.2009 and in response this Ministry of Health and Family Welfare, vide their letter dated 01.01.2010 intimated that the proposal was sent to DOPT and they have stated that
>
> > "Since PGIMER, Chandigarh, in their offer of appointment had Stated that only NPS will apply in these cases, it is for them to resolve the matter".
>
> The matter was placed before the Governing Body on 17.01.2011, the Governing Body recommended that Sub-Committee to examine the issue may be constituted in the Ministry as to whether any departure from the NPS can be considered in PGIMER or other similar institutions on the ground that the initial ad hoc appointments have taken effect from a date earlier than 01.01.2004. Accordingly a Sub-Committee was constituted under the Chairmanship of JS (HR).

> The Committee was informed that all these faculty members have been appointed against the regular vacancies and pay protection was also allowed to them on their appointment on regular basis.
>
> After due deliberations the Committee considered that there is a case / ground for extending benefits of CCS (Pension) Rules, 1972 (Old Pension Scheme) to these 23 faculty members. The request is further strengthened on the grounds that the meeting of Standing Selection Committee for selecting them on regular basis could not be held regularly, which is beyond the knowledge and control of these 23 faculty members. The Committee, however, further observed that it should be a onetime measure and should not be quoted as precedent in future.
>
> This committee recommends for extending the benefit of Old Pension Scheme to these 23 faculty members after approval by the Competent Authority".

25. Admittedly, the recommendations of the Committee have been accepted and implemented, as such the benefit of the GPF-cum-Old-Pension Scheme was granted to the similarly situated eligible persons. Therefore, since the respondents have extended this benefit to similarly situated faculty-members of PGIMER, so they cannot possibly be now permitted to discriminate the applicants, in this relevant connection. Thus, the applicants in the instant case are also held legally entitled to the similar treatment and benefit of GPF-cum-Old Pension Scheme, in the similar circumstances of the case on the principle of parity and equality, enshrined under Articles 14 and 16 of the Constitution of India, in view of the observations of Hon'ble Apex Court in cases ***Man Singh Vs. State of Haryana and others*** AIR 2008 SC 2481 and ***Rajendra Yadav Vs. State of M.P. and Others*** 2013 (2) AISLJ, 120, wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned

as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness, which is totally lacking in the instant case.

26. This is not the end of the matter. What cannot possibly be disputed is that in the wake of representations of the applicants, the Director of the PGIMER, vide letter dated 21.1.2010, favourably recommended their cases and forwarded it to be put up and the Governing Body of the PGIMER (Central Government), in its meeting, held in January, 2011, had constituted a 6 Member sub-Committee, to look into the grievance of the applicants. The Committee had also favourably recommended their case, vide letter dated 14.9.2011 (Annexure A-14). Then, the matter was considered by the Governing Body under Agenda No. F-6 on 28.04.2012 and it was resolved that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier.

27. Meaning thereby, had the meeting of the Governing Body was timely held, then the service of the applicants would have been regularized much prior thereto. In other words, since the respondents failed to convene the timely meeting of the Governing Body, so the applicants, cannot, possibly be blamed, in any manner, in this regard. Concededly, the Governing Body appreciated the circumstances and after detailed discussion, agreed to approve the proposal to grant the benefit of GPF-cum-Old Pension Scheme, to the applicants, as a special case, vide Agenda

Item No. F-6, in its meeting held on 28.4.2012, and it was resolved as under :-

> "The matter was discussed in detail. The Governing Body was informed about the recommendations of the Committee under Joint Secretary (HR) of the Ministry and that all these faculty members were on ad-hoc basis for a long period and could have been regularized prior to 01.01.2004, had the Selection Committee met earlier. The Governing Body appreciated the circumstances but at the same time the fact remains that these faculty members were actually appointed on regular basis only after 01.01.2004. After detailed discussion, the Governing Body agreed to approve the proposal as a special case, which could not be cited as a precedence, subject to the approval of the government".

28. Surprisingly enough, the Ministry of Health and the Competent Authority, without assigning any cogent reasons, and without any detailed discussion of legal / rule position and entitlement of the applicants, have taken a somersault, and rejected their claim, on speculative grounds. Admittedly, as per Regulation No. 61 of Schedule-1 appended to PGIMER, Chandigarh Regulations, 1967, its Director has been empowered to appoint Faculty, on adhoc basis, for two years. It was duly acknowledged and explained by Respondents No.2&3 in their written statement that since, the meeting of the Governing Body, is held once or twice a year, so keeping in view the public interest, exigency of service and heavy rush of patients, the institute filled up these vacancies on adhoc basis, in various disciplines in various departments, as a stop gap arrangement, till final process of recruitment is made. As the applicants, continued on their respective posts, till their regular appointments, so the mere fact the PGIMER has not obtained the approval of the DoP&T, is not a ground, much less cogent, to deny the legitimate claims of the applicants, in this relevant connection, as contrary projected on behalf of the respondents. It was for the competent authorities to get alleged approval from the DoP&T (if

any), and the applicants cannot possibly be blamed, in any manner, in this regard, and their legitimate right cannot be taken away. Thus, any such administrative instructions, requiring the approval of the DoP&T, for extension of adhoc service, pail into insignificance, in view of the failure of the authorities. The respondents, therefore, now cannot possibly be heard to say, rather estopped, from their own act and conduct, to deny the pointed benefits of GPF-cum-Old Pension Scheme to the applicants.

29. The matter did not rest there. As indicated earlier, that the Ministry of Health and the competent authority, in the impugned orders, have rejected the claims of the applicants, without assigning any cogent reasons. The impugned orders are, thus, sketchy, non-reasoned and result of non-application of mind. Such orders, cannot, even otherwise, be legally sustained in view of the (following) law laid down by Hon'ble Apex Court.

30. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*** (2009) 4 SCC 240 has in para 8 held as under:-

> "8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India** reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

31. Sequelly, similar question came to be decided by Hon'ble Apex Court in a celebrated judgment in the case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others*** 1970 SCC (1)

764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution. The same view was again reiterated by Hon'ble Apex Court in the case of ***Divisional Forest Officer Vs. Madhuusudan Rao*** JT 2008 (2) SC 253. Such authorities are required to pass reasoned and speaking orders, adversely effecting civil rights of the employees, which is totally lacking in the present case.

32. Therefore, if the entire indicated facts and material on record, as discussed hereinabove, are put together, and analyzed with regard to the legal position, then to us, no one can escape in recording an inescapable and irresistible conclusion, that the entire service of the applicants, would be reckoned from the date of their initial appointments, for all intents and purposes, including the benefit of GPF-cum-Old Pension Scheme, in the obtaining circumstances of the case. Hence, the contrary arguments and the pointed reasons projected on behalf of the respondents, in the impugned orders, deserve to be and are hereby repelled, under the present set of circumstances.

As such, the ratio of law laid down in the indicated judgments, ***mutatis mutandis,*** is applicable to the present controversy and is the complete answer to the problem in hand. In case, the legitimate right of the applicants of GPF-cum-Old Pension Scheme is denied to them, in that eventuality, it will inculcate and perpetuate, unbearable monetary loss and great injustice to them, which is not legally permissible.

33. No other point worth consideration has either been urged or pressed by the learned counsel for the parties.

34. In the light of the aforesaid prismatic reasons, the instant OA is accepted, as prayed for. As a consequences thereof, impugned orders dated 12.10.2017 (Annexure A-1), dated 15.11.2013 (Annexure A-2), dated 12.08.2014 (Annexure A-3) and any other such orders / instructions, having the effect of denial of benefit of GPF-cum-Old Pension Scheme to the applicants, are hereby set aside. At the same time, the competent authority is directed to grant the benefit of GPF-cum-Old Pension Scheme to them, prevalent at the relevant time of their respective initial appointments, along with all the consequential benefits, arising therefrom, in accordance with rules and law. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 13.08.2018

'HC'