IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPLE SEAT AT JABALPUR

Writ Petition No.- 14095 /2018 (Bhagwan Charan Dwivedi Vs State of M.P.and others)

Reply on behalf of Respondents:-

1. The present case pertains to petitioner, who was engaged on daily rate, under Public Health Engineering Division, Sagar on 30.06.1980 and rendered his services as daily rated employee from 30.06.1980 to 13.05.19990, in the department. His services were regularized in work charge establishment, in another department namely, Water Resource Department, vide Superintending Engineer, (E/M), Water Resource Department, Bhopal order dated 10.05.1990. He joined as a Assistant Fitter in work charge establishment in the office of Executive Engineer, E/M, Heavy Machinery Division, Water Resource Department, Sagar on date 14.05.1990 and after around 27 years of work charge services, he retired from Water Resource Department on 30.04.2017. After his retirement Water Resource Department is paying him pension as per – "M.P. (Work Charged and Contingency paid Employees) Pension Rules 1979" by counting his entire work charge services i.e. from 14.05.1990 to 30.04.2017.

2. That the present Writ petition is filed by the petitioner for sanction and release of pension after calculating the period of services rendered by him from 03.06.1980 to 13.05.1990, in the Public Health Engineering Division, Sagar, as daily wager, prior to his regularization in work charge establishment, in Water Resource Department, Sagar.

3. That the petitioner claimed that his entire service period of daily wage is to be counted as daily wager from contingency fund. He has claimed that as per M.P. (Work Charged and Contingency paid Employees) Pension Rules 1979, the period of service rendered by the employee from work charge / contingency fund and later on regularized as work charge employee is to be counted for the purpose of pension. For his claim he has relied on the judgment of Shrikrishna Shrivastav Vs State of M.P. & ors [MPLJ 2003 (4) 376], WP No. 16266/2015 (Mahesh Prasad Shukla vs State of M.P. and others) , decided on 30.09.2015 & WP No. 2175/2018(Shriniwas Tiwari vs State of M.P and others) , decided on 30.01.2018.

4. That the M.P. (Work Charged and Contingency paid Employees) Pension Rules 1979, provides definition for Contingency Paid employee as below :-

> 2(a), "Contingency paid employee" means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies.

5. That in the judgment passed in Shrikrishna Shrivastav Vs State of M.P. & ors [MPLJ 2003 (4) 376], WP No. 16266/2015 (Mahesh Prasad Shukla vs State of M.P. and others) , decided on 30.09.2015 & WP No. 2175/2018(Shriniwas Tiwari vs State of M.P and others) , decided on 30.01.2018, the Hon. Court has reached to the conclusion that during the daily rated services, the salary of the petitioners was withdrawn on monthly basis, from contingency fund and based on such conclusion court declared the whole daily wage service period

as contingency paid services and allowed for counting of these services for pension purpose.

6. That, It is humbly submitted that the ratio of “Shrikrishna Shrivastav, Mahesh Prasad Shukla or Shriniwas Tiwari ” case is not at all applicable in the petitioner's case because he was initially appointed as daily rated assistant fitter, he was paid on daily basis and his salary was never withdrawn from the contingency fund, in P.H.E. department.

7. That, It can be made clear here that daily rated employees are quite different than Contingency paid employees and do not cover under the definition provided in 2(a) of the M.P. (Work Charged and Contingency Paid Employees) Pension Rules, 1979. It is automatically clear that as the name indicates the daily rated employees are appointed on daily rate basis but paid on monthly basis (considering a month of 30 days) & their salary is withdrawn from the fund “12-wages” [**Head–20-2215-01-001-9999-2714-V-12-(001 to 008**)] which is a specific head of budget for payment of labors. On the other side the regular establishment employees named "Contingency paid employees" are charged to office contingency i.e. the budget provided for office expenditure.

8. That, it is further explained here that Public Health Engineering department is a works department. Some sanctioned posts only under work charged establishment exists in this department. Work charged employees salary is withdrawn from the fund provided for developmental works. Contingency paid establishment or contingency

fund, do not exist in Public Health Engineering department. Till now no employee's salary is withdrawn from contingency fund.

9. That, as for as service rules are concerned, considering the similarity in the nature of two services namely work charged services & Contingency paid services, one service rules combining these services with name M.P. (Work charged & Contingency Paid Employees) service Rules 1977, was enacted by state government/ concerned department.

10. That, some of the major differences between daily wage employees & "Contingency paid employees are enumerated in the table below: -

Sr No.	Basis of difference	Daily wage service	Contingency paid service
1	Establishment	Daily wage services do not come under any framed and sanctioned establishment under Govt. of M.P.	For Contingency paid service a regular establishment called- M.P. (Work charged & Contingency Paid Employees) is framed and sanctioned under Govt. of M.P. Specific number of posts are created and sanctioned by Govt. of M.P., Department of Finance under different departments, as per need.
2	Appointment	Daily rated employees were appointed without	By direct recruitment as per Recruitment Rules or absorption of

		following any government rules, regulations or legal procedure, without availability of any sanctioned substantive post and without any appointment order of competent authority.	daily wage employees as per policy issued by Govt. of M.P., as a newly appointed employee from the date of joining in service. Such appointment or absorption will be by a valid appointment order of competent authority.
3	Service Rules	No service rules are made for Daily wage employees. They are covered by M.P. Industrial Employment (standard standing orders) Act 1961, Rules 1963	Separate service rules jointly made for work charged & Contingency paid employees are enacted by state government/ concerned department.
4	Enumeration	Initially Daily wage employees were kept on daily rate decided by Labor Commissioner, M.P..	Govt. of M.P., Department of Finance declares separate regular scale for each post of work charged & Contingency paid employees, for which they become entitled after three years of satisfactory services after induction.
5	Budget head of salary	Daily wage employee's salary is drawn from the budget provided under the **Head** – **20-2215-01-001- 9999 -2714 -v-12-** (**001 to 008**).	Contingency paid employee's salary is drawn from the budget provided for office contingency.
5	Existence	Daily wage employees are kept in almost all	In very few departments like

		the departments of state government.	veterinary, tribal, mining etc. some posts are made for contingency paid employees. **No such post exists in Public health engineering department.**

11. Thus it can be submitted that the petitioner was initially engaged in daily rated services & served as a daily rated employee till 13.05.1990 & he was not in Contingency paid services. It is important to point out here that the daily rated services are illegal services but the contingency paid services are legal and pensionable.

12. That, the service rules of the State Government were not applicable to the petitioner, till he was a daily wage worker. He came under the ambit of service rules when he was absorbed in work charge establishment post i.e. on date 14.05.1990, as a newly & freshly appointed employee without protection of seniority or pay & in accordance with the provisions of Recruitment Rules framed by the concerned Irrigation Department i.e. Recruitment Rules -1977 & became eligible for pension under Rules- M. P. (Work Charged and Contingency paid Employees) Pension Rules 1979. His legal services started from the date of absorption in work charge establishment. In appointment letter as well as in both of these rules, no provision exists for counting of previous illegal Daily wage services. Copies of the Recruitment Rules 1977 & Pension Rules 1979 are annexed as **Annexure R-1 & R-2.**

13. That, by joining the work charge services, as per appointment letter issued by Superintending Engineer, (E/M), Water Resource Department, Bhopal, order dated 10.05.1990, which was subjected to Irrigation Department Recruitment Rules – 1977 & M. P. (Work Charged and Contingency paid Employees) Pension Rules, 1979, the petitioner accepted all the conditions and provisions of appointment letter as well as these 02 rules. Neither in the appointment letter nor in these 02 rules, have any provision for counting of previous Daily wage services. Thus, the PPO generated was completely according to the service conditions and applicable rules and regulations.

14. . That, the fact that his daily rated services will not be counted for pension purposes was known to the petitioner on the day of joining the work charge services i.e. 14.05.1990. The “cause of action” for objecting appointment letter & these 02 rules, namely Irrigation Department Recruitment Rules – 1977 & M. P. (Work Charged and Contingency paid Employees) Pension Rules, 1979, aroused on that date only. It is wrongly mentioned by the petitioner, in Para 5.4 of the petition that only after issue of PPO for pension, he came to know about not counting of daily wage services. Since beginning to the end of his work charge services, he remained silent about his service conditions and these 02 rules, which is about 27 years. He filed this petition after 27 years of arising “cause of action.” Thus the petition suffers from delay, latches and acquiescence & the claim cannot be considered on the ground of merits.

15. That, if this matter of dispute is considered under the doctrine of "Continuous cause of action " and "continuous wrong" and the delay and latches are ignored in view of the pension related benefits, then

the writ petition filed after a long delay and many years after the dispute arose is also liable to be dismissed on the ground of doctrine of acquiescence. It has been held by the Hon'ble Supreme Court in many of its judicial precedents that **acquiescence** actually destroys the rights of the person. The Hon'ble Supreme Court in its judgment dated 16.11.2021 passed in Civil Appeal No. 8223/2009 (Chairman State Bank of India vs M.J. James) states as follows:-

> 28. …….If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India and Others v. Tarsem Singh2008 (8) SCC 648, may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in paragraph 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Others1979 (2) SCC 409. Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam and Another v. Jaswant Singh and Another 2006 (11) SCC 464, after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England:
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> "12. The statement of law has also been summarised in Halsbury's Laws of England, para 911, p. 395 as follows:
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> "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:
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> (i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of latches."

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial

> repercussions on the financial management of the Nigam.
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> Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

16. That the engagement of the petitioner as a daily wage worker under Public Health Engineering Division Sagar, was totally illegal. As per the information available departmentally, no rule/procedure was followed in his appointment. There is no evidence of any legal procedure being followed in his appointment nor has any legal order been issued in relation to his appointment. No posts for daily wage workers are sanctioned in the department and were not sanctioned in the past also. The petitioner was not employed against the sanctioned posts. Accordingly, the petitioner was employed without any recruitment rule or any recruitment process and without any educational qualification, without any vacant post and without appointment order. Service rules of the State Government do not apply to such daily wage workers. Even if his employment is considered under the M.P. Industrial Employment (Permanent Orders) Act 1961 and Rules 1963, it is found that the provisions regarding the appointment of industrial workers under the Industrial Employment Act, mentioned in S.No. 4 & 4A have not been followed, which are as follows :--

> 4: Recruitment. — The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on, which standing orders are exhibited.
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> 4-A. Letter of appointment. — Every employee shall be given a letter of appointment, in which

among other things, his name, age, qualification, designation, classification: pay-scale, allowance,

17. That, the daily rated services of petitioner were totally illegal as per Hon'ble Apex Court judgment passed on 10-04-2006 in Civil Appeal No. 3595-3612/1995 (Secretary, State of Karnataka and Others Vs Uma Devi & Others) & Hon'ble High Court Jabalpur judgment passed on 06-08-2015 in WP No.198/1999 (Manshukh Lal Saraf Vs Arun kumar Tiwari & Others) which was finally affirmed by the Apex Court judgment passed on 11.04-2017 in SLP (C) CC No. 35282/2017 (Arun Kumar Tiwari Vs Mansukh Lal Saraf & Others). It is legally well established principal that illegal services are neither pensionable nor can be counted for pension purposes with work charge establishment services. Copies of the Apex court judgment dated 10.04.2006 and 11.04.2017 are annexed as **Annexure R-3 & R-4.**

18. That the Hon'ble High Court Division Bench Jabalpur in the Writ Appeal No. 40/2023 (Bharat Kumar Sen vs. State of M.P. and others), decided on 13.01.2023, in Writ Appeal No. 226/2018 (State of M.P. and others Vs Ishrat Mohammad), decided on 06.03.2019, Hon'ble High Court Division Bench at Gwalior in Writ appeal No. 2155/2024 (Anil kumar Saxena Vs State of M.P. & others), decided on 02.12.2024, Hon'ble High Court at Indore in Writ Petition No. 1160/2015 (Hiralal vs. State of M.P. and others) , decided on 06.08.2018, Hon'ble High Court Jabalpur in Writ Petition No. 29982/2023 (Ashok Kumar Sharma vs. State of M.P. and others) decided on 19.12.2023, in Writ Petition No. 1140/2023 (Manohar Anjali Jain vs. State of M.P. and others) decided on 27.03.2024, & ,

in Writ Petition No. 15847/2018 (Shishir Sharma vs. State of M.P. and others) decided on 14.02.2020 , consistently held that the services of daily wage employees who have not been recruited on the original sanctioned posts without following the prescribed recruitment procedure and not in accordance with the recruitment rules, is illegal and hence their services as daily wage employees are not eligible for pension and such services cannot be included in the calculation for pension purposes. Copies of the Hon. High court judgment dated 13.01.2023, 06.03.2019, 02.12.2024 and 06.08.2018 are annexed as **Annexure R-5, R-6,R-7 & R-8.**

19. That it is most humbly submitted that the issue of consideration of services rendered by daily wage employee before regularization or absorption on regular post has been considered on various occasions by Hon. Courts and it has been consistently held that the services of an employee on a regular post for the purpose of pension/family pension can be counted only after absorption or regularization on a sanctioned post.

20. That it is most humbly submitted that the full Bench of the Hon'ble High Court had itself held in the case of Mamta Shukla Vs. State of Madhya Pradesh 2011 (3) MPLJ 210 that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977 and that an employee is eligible for the benefit of family pension in accordance with the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 after completing qualifying service in accordance with the provisions of Recruitment Rules framed by the

concerned Department for work charged and contingency paid employees or in accordance with the definition of Rule 2 of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 in regard to “contingency paid employee”, “work-charged employee” and permanent employee.” Full Bench of Hon’ble High Court of Madhya Pradesh had held that :-

> “24. On the basis of above discussion, we hold in regard to the substantial questions of law Nos: 2 and 3 that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Pension Rules, 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. We further hold that an employee, who was not appointed in accordance with the provisions of Recruitment Rules framed by the concerned department, i.e., the Recruitment Rules of 1977, would not be eligible to count his past service as qualifying service for the purpose of grant of pension in accordance with the Pension Rules of 1979 and we answer the substantial questions of law Nos. 2 and 3 accordingly.
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> 25. In regard to substantial question of law No. 1 Earlier Division Bench of this Court in W.P. No. 1273/2000, State of M.P. vs. Ramsingh and another, as held that a daily wager employee would not fall within the definition of work charged and contingency paid employee, hence his case would not be covered by Madhya Pradesh Work charged and Contingency Paid Employees Pension Rules, 1979, has not been noticed by the subsequent Division Bench of this

Court in Rahisha Begum vs. State of M.P. And other, 2010(4) MPLJ 332. However, in the subsequent case, the Division Bench has held that if an employee comes within the definition of work charged and contingency paid employee as defined the Pension Rules of 1979, then he is eligible to count his past service for the purpose of qualifying service in accordance with the Rules of 1979. In our opinion, there is no conflict between the Division Bench judgments, because the findings of the Division Benches are based on different factual aspects. Accordingly, we answer the substantial question of law No. 1 that there is no conflict of opinion between the two Division Bench judgments. Hence, the decision of the Division Bench in the case of Rahisha Begum vs. State of M.P. and others, 2010(4) MPLJ 332, is not incuriam. We answer substantial question of law No. 1 accordingly."

Copy of the Judgment passed in Mamta Shukla (supra) is annexed as **Annexure R-9.**

21. That, while dealing with the claim of the employees appointed in Government service following the closure of Adult and Non-formal education Project for consideration of their services in the said Project for pensionary benefits, this Hon'ble Apex Court has held in the case of Parmeshwar Nanda & Ors. Vs. The State of Jharkhand & Ors. 2020 INSC 149 that when a fresh appointment on sanctioned post is made without a provision for counting past services rendered on a non-sanctioned post, the employee is to be considered as a fresh appointee and his past services rendered on a non-sanctioned post

cannot be considered for grant of pensionary benefits. Copy of the Apex court judgment passed in Parmeshwar Nanda (Supra) is annexed as **Annexure R-10.**

22. Hon'ble Apex Court in the case of Uday Pratap Thakur & Anr. Vs. State of Bihar & Ors. 2023 INSC 461, has held that services rendered by an employee, on which he was appointed without due process of selection and without following the recruitment rules & not against clear vacant substantive post, cannot be counted for the purpose of pension / quantum of pension.

23. It is submitted that the petitioner was working as daily wagers and not as a Contingency Paid employee and he was not regularized in service, but was appointed afresh with effect from 14.05.1990. Accordingly, his daily rated services cannot be counted for pension purposes.

24. That the present petitioner is not entitled to get any relief as claimed by him in the Writ Petition.

25. That, other grounds shall be urged at the time of hearing.