

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

**S.B. Civil Writ Petition No. 6620/2003**

Babu Lal Meena S/o Shri Buddha Ram Meena, aged 38 years,  
R/o Village and Post Surer, Tehsil Rajgarh, District Alwar.  
Presently serving as L.D.C. in the office of D.T.O. Karauli.

----Petitioner

Versus

1. State of Rajasthan, through Commissioner, Transport,  
Government of Rajasthan, Jaipur.
2. Regional Transport Officer, Jaipur.
3. District Transport Officer, Karauli.

----Respondents

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For Petitioner(s)	:	Mr. Vijay Pathak
For Respondent(s)	:	Ms. Ritika Naruka, AAAG & Mr. Kamlendra Singh for Mr. S.S. Naruka, AAG

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**HON'BLE MR. JUSTICE GANESH RAM MEENA**

**Order**

<b>Arguments concluded on</b>	<b>:::</b>	<b>November 28, 2025</b>
<b>Reserved on</b>	<b>:::</b>	<b>November 28, 2025</b>
<b>Pronounced on</b>	<b>:::</b>	<b>January 28, 2026</b>

1. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India with the following prayers:-

*"(i) To issue directions to the respondents for counting the length of service rendered by the petitioner from 18.10.1986 till 02.11.1992 to be continuous and regular for the purpose of giving the benefit of seniority, promotion and selection scale and to determine the seniority of the petitioner on the basis of his appointment in the*

*year 1986 and accordingly the respondents be directed to issue appropriate orders so that the petitioner be given due benefit of promotion on the post of L.D.C. from an earlier date; while for rectifying the seniority list dated 20/06/2003.*

*(ii) to issue writ, order or direction giving a declaration against the respondents to treat date 18.10.1986 as the date of initial appointment so as to make the petitioner eligible and entitled for all consequential benefits in the cadre;*

*(iii) any other relief which this Hon'ble Court and deems just and proper in the facts circumstances of the case may also be passed in favour of the petitioner."*

2. The facts borne out from the pleadings are that vide order dated 18.10.1986 (Annexure-6) issued under the signatures of the Regional Transport Officer, Jaipur-II, Jaipur, the petitioner was appointed as a Class-IV employee on daily wages basis. Thereafter, the petitioner was transferred from one place to other. The said order has been passed pursuant to the order dated 16.10.1986. Vide order dated 18.10.1986, the petitioner was posted at Baretha Check Post, Dholpur. Pursuant to the order dated 18.10.1986, which was passed in terms of the order dated 16.10.1986, the petitioner joined his duties before the respondent-authorities on the said post. Vide order dated 22.04.1987 issued under the signatures of

Regional Transport Officer, Jaipur-II, Jaipur, the petitioner was transferred from Baretha Check Post, Dholpur, to the office of Transport Officer Hindaun on temporary basis. Further, vide order dated 10.07.1987 the petitioner was transferred back to Baretha Check Post, Dholpur. By another order dated 18.07.1991 the Additional Transport Commissioner (Administration) Rajasthan, Jaipur, the petitioner was transferred in the Principal Office at Jaipur. The petitioner continuously worked on a substantive post which is clear from the order dated 16.01.1987 (Annexure-5).

Afterwards the petitioner received a letter issued under the signatures of Dy. Transport Commissioner (Admn.) by which the petitioner was directed to appear for the interview scheduled to be held on 20.10.1992 at 10.00 A.M. in the Office of Transport Commissioner, Jaleb Chowk, Jaipur (Raj.). Vide order dated 02.11.1992 (Annexure-7) the petitioner was confirmed on the said post. When the petitioner was not given seniority, he submitted a notice for demand of justice to the Commissioner, Transport Government of Rajasthan, Regional Transport Officer, Jaipur and District Transport Officer Karauli. The petitioner in the notice for demand of justice prayed to rectify the mistake. On 20.06.2003 a seniority list was issued in which the name of the present petitioner appears at serial No. 124 in which the date of joining of the petitioner has been shown as

02.11.1992. Aggrieved by the inaction of the respondent in not rectifying the mistake committed by the respondents, the present petitioner has filed this writ petition.

3. Mr. Vijay Pathak, learned counsel appearing for the petitioner submitted that the respondents have acted illegally and arbitrarily, and their action has deprived the petitioner of his rightful claim to secure a proper place in the cadre of Class-IV servants and has further deprived the petitioner of his right of promotion at an early date on the post of L.D.C. The petitioner was appointed in the year 1986 on daily wages basis and continuously served the department from one place to another, while being transferred at a subsequent date was confirmed at that time when regular selections were made. The concerned authorities have treated the date of confirmation as the date of appointment of the petitioner along with all other recruitees who were appointed in the year 1992 for the first time. Thus, the action on the part of the respondents has deprived the petitioner of the benefit of service period rendered by him from 1986 to 1992 and which has resulted in incorrect determination of seniority, as the respondents have treated the petitioner, an appointee of the year 1992. He also submitted that the respondents have not taken care to follow the relevant rules in the present case context of the matter. Rule 5 of the Rules of 1963 is relevant which defines "Constitution of Service" and which consists of

"persons recruited to the service in accordance with the provisions of the Rules". Rule 6 of the Rules of 1963 also provides for the methods of recruitment. The recruitment to the service after commencement of the Rules are thus:-

- (i) Direct Recruitment in accordance with Part-IV of the Rules.
- (ii) Transfer of an employee from one department to another on a corresponding post.
- (iii) By absorption of work charge employee.
- (iv) By absorption of part time employee.

Learned counsel for the petitioner submitted that if the Appointing Authority is satisfied that suitable persons are not available for appointment by either method of appointment in a particular year, appointment by other method in relaxation of the prescribed proportion may be made. There is also provision under Rule 18 of the Rules of 1963 for urgent temporary appointments and hence there was no reason for the concerned authorities to overlook the claim of the petitioner and to deny the benefit of the service rendered by him. The respondents authorities also erred in ignoring the provisions of Rule 8, 19 and 20, which are very clear and specific. Rule 19 relates to seniority and Rule 20 relates to the period of probation. The period of probation has been prescribed and according to the facts as related to the present case, the petitioner was given appointment against a

substantive vacancy and the selection was made as per the Rules, as per the mode of the recruitment provided under Rule 6 of the Rules of 1963. The provisions of Rule 20 are very clear that "such of them as have previous to their appointment by promotion/special selection or by direct recruitment against the substantive vacancies, officiated temporarily on the post which is followed by the regular selection, may be permitted by the appointing authority to count such officiating or temporary service towards the period of probation" Meaning thereby the temporary period of service rendered by the employee is to be counted for the purpose of determination of seniority entitling all benefits to which the employee is entitled such as promotion and salary benefits and even the benefit of selection scale.

4. In support of the submissions, counsel appearing for the petitioner has placed reliance upon the following orders :-

*(i) Vijay Kumar Joshi V/s State of Rajasthan & Anr. (S.B. Civil Writ Petition No. 2961/2016) decided on 05.08.2024.*

*(ii) Masood Akhtar Khan and Ors. V/s state of Madhya Pradesh and Ors. reported in (1990) 4 SCC 24 and delivered by Hon'ble Apex Court.*

*(iii) Badrilal V/s State of Rajasthan and Ors. (D.B. Special Appeal (Writ) No. 937/2022 decided on 26.08.2025 by the Division Bench of this Court.*

5. Mr. S.S. Naruka, learned AAG appearing for the respondents opposed the submissions advanced by the learned counsel appearing for the petitioner and in the reply filed by the respondents, has raised the preliminary objection that the writ petition filed by the petitioner is not maintainable because same suffers from delay and laches. It has also been submitted in the preliminary objection that the cause of action accrued to the petitioner in the year 1992 when he was appointed on the post of Class-IV employee vide order dated 02.11.1992 (Annexure-7). The present writ petition has been filed by the petitioner after a delay of 11 years from the aforesaid order. There is no explanation with regard to the said delay, and in absence thereof, the writ petition filed by the petitioner deserves to be dismissed.

The another preliminary objection raised by the counsel appearing for the respondents is that the above subject matter falls within the definition of "service matters" as defined under Section 2(f) of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976 (for short 'the Act of 1976'). In such circumstances, the petitioner has an efficacious statutory remedy of filing an appeal before the Rajasthan Civil Services Appellate Tribunal. It has also been

submitted that the petitioner cannot be permitted to deviate from the normal route and cannot seek the liberty to invoke the extraordinary jurisdiction of the Court.

Another preliminary objection taken by the respondents in the reply to the writ petition is that the petitioner was initially appointed as daily wager employee and thereafter he was appointed as a Class-IV employee on 02.11.1992 (Annexure-7). Vide order dated 24.08.2000 the petitioner was promoted on the post of LDC against the vacancies of the year 1998-99. It has also been submitted that, in case, any order is passed in favour of the petitioner, then the petitioner's seniority will be changed and that will also change the promotions of other persons. If the seniority of other persons is affected then those persons are necessary to be impleaded as party respondents. Thus, the writ petition filed by the petitioner suffers from non-joinder of the necessary parties.

The another preliminary objection raised by the respondents in the reply to the writ petition is that the petitioner's claim for seniority is totally misconceived because the petitioner was initially appointed as a daily wager employee on 18.10.1986 and he was not holding any post in substantive capacity. The initial appointment of the petitioner was not in accordance with the Rajasthan Class-IV Services (Recruitment & Other Conditions) Rules, 1963 (for short 'the

Rules of 1963'). As per Rule 19 of the Rules 1963 the seniority reckoned from the date of substantive appointment. The petitioner was substantively appointed vide order dated 02.11.1992 in the pay scale of Class-IV employee. Thus, for the necessary purpose, the seniority will be counted from the date. The selection grade and other benefits will also be counted from the date of daily recruitment as per Rules of 1963 and as per the order for grant of selection grade. The petitioner has no case in his favour, therefore, the writ petition deserves to be dismissed.

6. Considered the submissions advanced by both the counsels appearing for the respective parties and gone through the entire material made available to the Court, including the judgments cited.

7. Learned AAG appearing for the respondents has raised a preliminary objection that the subject matter raised in the resent writ petition falls within the definition of 'Court Service Matters' as defined in section 2 of the Act of 1976 and the petitioner has a statutory remedy of appeal before the Rajasthan Civil Services Appellate Tribunal.

8. The writ petition filed by the petitioner has already been admitted for hearing vide order dated 05.11.2003 and in such situation the preliminary raised by the learned AAG is not sustainable.

9. The another preliminary raised by the learned AAG is that if any relief is granted in favour of the petitioner as regards the seniority, that will change the promotions of other persons/ employees but no any such person has been impleaded as a party respondents in the instant writ petition.

10. The petitioner has filed the instant writ petition agitating his grievances and the Court considering the issue raised in the petition, has admitted the petition for hearing and therefore, this objection is also not sustainable.

11. The main thrust of the arguments of the learned counsel appearing for the petitioner is that since the petitioner was appointed vide order dated 18.10.1986 against a vacant post and has been continued for a long and was even subjected to transfer from one place to other as like a substantive appointee and performing the same work as is being performed by a regularly selected candidate and has later been regularized vide order dated 02.11.1992. The services of the petitioner prior to 1992 also deserve to be counted for all purposes including the seniority, promotion etc.

12. As far as seniority and promotions are concerned, an employee is required to be in a substantive capacity.

13. The petitioner was initially appointed vide order dated 18.10.1986 on ad-hoc basis on daily wages basis as an employee/ Guard against a vacant post at Transport Check

Post, Baretha, District Dholpur. Vide another order dated 22.04.1987 the petitioner was posted at Transport Office, Hindaun against a sanctioned post. Thereafter, vide order dated 10.07.1987 the petitioner is said to have been posted at Transport Check Post, Baretha. Vide another order dated 18.07.1991 the petitioner was transferred to the Head Office, Jaipur. Vide order dated 16.01.1987, the Government of Rajasthan, Transport Department, instructed the State Transport Officer, Jaipur-II that since one post of Class-IV employee was allotted vide order dated 10.12.1986 then the services of the petitioner are to be governed by the same. Vide letter dated 26.09.1992 the petitioner was called for interview and was appointed on regular basis as a Class-IV employee vide order dated 02.11.1992.

14. Now the issue whether the period from 18.10.1986 to 02.11.1992 would likely to be counted for the purpose of seniority, promotion etc., treating the petitioner as a substantive appointee?

15. The Government of Rajasthan is a Welfare State and has to take the decision in the welfare of the employees and the persons rendering the services to the Government. The petitioner was appointed against a clear sanctioned post and continued for a long and then later on his services have been regularized. It is not in dispute that the petitioner was performing all the duties like a regularly selected candidate.

The petitioner has also been subjected to transfer by giving appointment at various places and that too on a clear sanctioned post. If a person has been appointed on ad-hoc basis against a sanctioned post and performing all the duties as like a regularly selected candidate then it is the basic duty of the Welfare State to treat him as a substantive appointee as he is drawing all the emoluments against a sanctioned post performing all the duties which are being performed by a regularly appointed candidate. It is the duty of the Welfare State to make appointments regularly on the sanctioned posts and if for any reason someone is appointed on ad-hoc basis against the sanctioned post and is being continued for indefinite period and later on absorbed in the services then he is required to be given the same benefits by treating his services as like a regular selected candidate.

16. The Hon'ble Apex Court in the case of **Masood Akhtar Khan & Ors. (supra)** has observed as under:-

*"It is not and Cannot be contented that the tenure of the present posts is only six months. The post is intended to be a permanent one and, therefore, if appointment is to be made to the said post, consultation with the Commission is obligatory. In fact, consultation with the Commission for appointment to such posts is waived only if on account of emergency, the Commission cannot be consulted without detriment to public service. Even then, the*

*Government is obliged to intimate such emergency appointment to the Commission. Merely because, initially the appointment was made for a period of six months, it does not mean that the tenure of the post itself was only six months. Mr. Ramamurthi's second contention was that there were no special rules for appointment to the said posts and, therefore, it is the general Rules of 1981 (supra) which applied and according to Rule 12 of the said Rules, the seniority is to be counted from the date of initial appointment. We do not read any such provision in Rule 12. On the contrary, Rule 12 (a) (I) makes it clear that where the appointment has to be made in consultation with the Commission, the seniority is firstly from the date of the selection by the Commission and secondly according to the order of merits given by the Commission. Hence none of the authorities relied upon by Mr. Ramamurthi, viz., Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors., MANU/SC/0291/1990 : [1990]2SCR900 , D.N. Agrawal and Anr. v. State of Madhya Pradesh and Ors. MANU/SC/0252/1990 : [1990]2SCR131 and Union of India and Ors. Etc. v. Ansusekhar Guin and Ors. Etc MANU/SC/0548/1988 : AIR1989SC377 helps him. These authorities unequivocally make it clear that if the initial appointment is not made according to the Rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority."*

17. The claim of the appellant for treating him as regular employee arises on the basis of the judgment passed by the Constitution Bench in the case of **Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.: (2006) 4 SCC 1**, wherein the Supreme Court held as under:-

*"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now*

*employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.*

*54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."*

18. The aforesaid position of law was again considered by the Supreme Court recently in the case of **Jaggo Vs. Union of India: 2024 SCC Online SC 3826**, has held as under:-

*"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such*

*exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations."*

.....

25. *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

- *Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
- *Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

- *Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
- *Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*
- *Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."*

19. Again in the case of ***Shripal and another Vs. Nagar Nigam, Ghaziabad: 2025 SCC online SC 221***, the Apex Court held as under:-

*".17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic*

*labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment Rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period."*

20. Relying upon the judgments delivered in the cases of ***Uma Devi (3) & Ors. (supra), Jaggo (supra) and Shripal & Anr. (supra)***, the Hon'ble Division Bench of this Court in the case of ***Badrilal v. State of Rajasthan & Anr. (D.B. Special Appeal (Writ) No.937/2022) decided on 26.08.2025*** has observed in para 6 as under:-

*"6. Thus we examined the facts of the case, we find that the appellant has continued to serve the respondents for almost 28 years till he attained superannuation on 29.02.2024. The services would, therefore, come within the ambit of perennial in nature and therefore, it cannot be said that there was no post existing for the work which he had been performing. The labour temporary and daily wages as used for denying him the benefit as a clear misuse of power.*

*Keeping in line the consideration as laid down hereinabove, we find that the view taken by the learned Single Judge is not in consonance with the law as settled by the Supreme Court and the judgment passed by the learned Single Judge dated 06.05.2022, therefore, cannot be sustained. The learned Single Judge has failed to take into consideration as on the day when Umadevi's judgment was pronounced, the petitioner has completed more than ten years of service. Keeping in view thereto, we hold that the petitioner was entitled to be regularised on completion of ten years of service, i.e., w.e.f. 10.07.1996. We are pained to observed that respondents have failed to perform their legal duty for implementing Umadevi's judgment in the case of petitioner."*

21. In the present case the petitioner is engaged /appointed against a clear sanctioned post which was allotted to the Office by the State Government.

22. The Hon'ble Apex Court in the case of **Dharm Singh Vs. State of UP: 2025 INSC 998** has held that:-

*"17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect*

*that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.*

*18. Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.*

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

**i. Regularization and creation of**

**Supernumerary posts:** All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.

ii. xxxxx

iii. xxxxx

iv. xxxxx

v. xxxxx

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice

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

23. From the observations of the Hon'ble Courts, as quoted above, and the facts of this case, it emerges that:-

- (i) Long standing and uninterrupted service of the petitioner could not be brushed aside by labeling his initial appointment as ad-hoc or contractual;
- (ii) The case of the petitioner is to be seen in the light of:-

- (a) his sustained contribution;
- (b) the integral nature of his work performed by him and the fact that his entry was not through any illegal or erroneous manner;
- (iii) The petitioner is continuous in service from very inception. His transfer from one place to other in the name of re-engagement is mere an act of respondents depriving the petitioner from claiming the rights as the petitioner was initially engaged against a clear sanctioned post.
- (iv) In the facts and circumstances of this case, the respondents could not be permitted to contend that the appointment of the petitioner at the initial stage was not as per the procedure prescribed under the Rules as the work performed by him was perennial and essential to the functioning of the respondents- Offices and was engaged against a clear sanctioned post under the directions of the State Government vide order dated 10.12.1986 as is evident from the letter dated 06.01.1987 (Annex.5).

24. As per Rajasthan Service Rules, only an employee who has been appointed in a substantive capacity can be subjected to transfer from one place to other. In the preset case, the petitioner has been subjected to transfer at various places including the Headquarter of the respondents in the name of fresh engagements against a clear sanctioned post. Such engagements have to be treated as transfer of an

appointee in substantive capacity. The consistent performance of the petitioner over a long period and claiming the benefits of seniority and other service benefits with effect from his initial inception in the services cannot be deprived stating that he has been engaged on ad-hoc basis.

25. It is not the case of the respondents that the petitioner is not eligible or not having requisite qualification for holding the post against which he was engaged i.e. Class-IV. The prolonged, continuous and unblemished service of the petitioner, performing all essential tasks even while named as an ad-hoc employee demands fair consideration of his service as a substantive appointment.

26. Rule 12(b) of the Rajasthan Civil Services (Pension) Rules, 1996, provides for qualifying service for pension. Rule 12(b) of the Rules of 1996 is quoted as under:-

*"QUALIFYING SERVICE*

*12. Commencement of qualifying services*

*(A) xxxx*

*(b) Subject to the provisions of these rules, the qualifying service of a Government servant shall commence from the date he takes over charge of the post to which he is **first appointed**, to 02.11.1992 be also counted for the purposes of grant of pension. Since the date of birth of the petitioner is 07.08.1965 and has attained the age of superannuation and must have retired, therefore, he should be paid all the retiral benefits*

*according to the directions as above, either substantively or in an officiating or **temporary capacity.**"*

27. The aforesaid rule clearly says that even the service of an employee in officiating and temporary capacity has also to be counted for the purpose of grant of pension. The petitioner also gains support of the said rule.

28. In view of the discussion made above, the present writ petition deserves to be allowed and is accordingly allowed.

29. The respondents are directed to treat the petitioner as a substantive and regular appointee with effect from his date of initial appointment i.e. 18.10.1986. The services rendered by the petitioner from 18.10.1986 till 02.11.1992 be counted for the purposes of reckoning the seniority and consequential benefits like promotion and pay-scales. The services of the petitioner from the period 18.10.1986 to 02.11.1992 be also counted for the purposes of grant of pension. Since the date of birth of the petitioner is 07.08.1965 and has attained the age of superannuation and must have retired, therefore, he should be paid all the retiral benefits according to the directions as above.

30. In view of the order passed in the main petition, the stay application and pending application/s, if any also stand disposed of.

**(GANESH RAM MEENA),J**

**SHARMA N.K., DY REGISTRAR**