

**High Court of Judicature at Allahabad**  
**Sitting at Lucknow**

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Neutral Citation No. - 2023:AHC-LKO:40164-DB

**A.F.R.**

**RESERVED**

**Judgment Reserved on 21.02.2023**

**Judgment Delivered on 31.05.2023**

**Court No. - 1**

**1. Case :- CIVIL MISC REVIEW APPLICATION No. - 121 of 2022**

**Applicant :-** Board Of Revenue Through Its Chairman U.P. Lko. And 2 Others (In Splad 259/2020)

**Opposite Party :-** Ram Ji Shukla

**Counsel for Applicant :-** C.S.C.

**Counsel for Opposite Party :-** Devi Prasad Maurya

**Along with**

**2. Case :- SPECIAL APPEAL DEFECTIVE No. - 307 of 2022**

**Appellant :-** State Of U.P. Thru. Its Secy. Revenue Lko. And 5 Others

**Respondent :-** Ganesh Prasad Yadav And 10 Others

**Counsel for Appellant :-** C.S.C.

**Counsel for Respondent :-** Shailendra Singh Rajawat

**3. Case :- CIVIL MISC REVIEW APPLICATION No. - 117 of 2022**

**Applicant :-** Sri Chandra Singh (In Spla 398 Of 2021)

**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. (Home) Civil Sectr. Lko. And Others

**Counsel for Applicant :-** Yogendra Mishra,Lalta Prasad Misra

**4. Case :- SPECIAL APPEAL DEFECTIVE No. - 84 of 2023**

**Appellant :-** State Of U.P. Thru. Prin./Addl.Chief Secy. Revenue Civil Sectr. Lko. And Others

**Respondent :-** Ram Kesh Sharma Counsel for Appellant :- C.S.C.

**Counsel for Respondent :-** Dilip Kumar Gautam

**Hon'ble Devendra Kumar Upadhyaya J.**

**Hon'ble Subhash Vidyarthi J.**

**(Per: Hon'ble Subhash Vidyarthi J.)**

- 1.** Heard Dr. L. P. Mishra, Sri S. S. Rajawat, Sri Yogendra Kumar Mishra, Sri Dileep Gautam, Sri Devi Prasad Maurya, Sri Kuldeep Pati

Tripathi, learned Additional Advocate General assisted by Sri Rohit Nandan Shukla, learned Standing Counsel, Sri Shailendra Kumar Singh, learned Chief Standing Counsel assisted by Sri Vivek Shukla, the learned Additional Chief Standing Counsel and Sri. Amitabh Rai, the learned Additional Chief Standing Counsel for the respective parties.

2. Review Application No. 121 of 2022 has been filed for review of the judgment and order dated 21.06.2021 passed by a coordinate Bench of this Court whereby the Special Appeal Defective No. 259 of 2020 filed by the appellant against the judgment and order dated 26.02.2019 passed by the learned Single Judge allowing Writ Petition No. 8737 (S/S) of 2011 filed by the opposite party-petitioner and holding that the opposite party-petitioner is entitled for retiral benefits, including pension, taking into account his services rendered as a Seasonal Collection Amin on temporary basis, has been set aside.
3. The opposite party-petitioner in Writ Petition No. 8737 (S/S) of 2011 was initially appointed as Seasonal Collection Peon on 01.08.1979 and thereafter he was appointed as regular Collection Peon under the quota meant for direct recruitment from amongst Seasonal Collection Peon under the provisions of the relevant Service Rules. The case set up by the opposite party-petitioner is that his appointment as Seasonal Collection Peon was a temporary appointment and, as such, in terms of the provisions contained in U. P. Retirement Benefit Rules, 1961, the services rendered by him as a Seasonal Collection Peon are to be counted for the purposes of reckoning the “qualifying service” for payment of pension.
4. Review Application No. 117 of 2022 has been filed for review of the judgment and order dated 22.04.2022 passed by this Bench whereby the special appeal filed by the appellant against the judgment and order dated 17.09.2021 dismissing Writ Petition No. 20874 (S/S) of 2021, was dismissed and the order passed by the Hon’ble Single Judge holding that services rendered by the petitioner as a Seasonal Collection Amin cannot be taken into consideration as qualifying service for the purpose of payment of pension, has been affirmed.

5. The case set up by the opposite party-petitioner in Writ Petition No. 20874 (S/S) of 2021 was that his appointment as Seasonal Collection Peon was a temporary appointment and, as such, in terms of the provisions contained in U.P. Retirement Benefit Rules, 1961, the services rendered by him as Seasonal Collection Peon are to be counted for the purposes of reckoning the “qualifying service”.
6. Special Appeal Defective No. 84 of 2023 has been filed by the State against the judgment and order dated 13.09.2022 passed by an Hon’ble Single Judge allowing Writ A No. 4305 of 2021 and directing the respondents to compute pensionary benefits payable to the petitioner after taking into account the service rendered by the petitioner as a Seasonal Collection Amin.
7. The Special Appeal Defective No. 307 of 2022 has been filed by the State against the judgment and order dated 23.09.2022, passed by Hon’ble Single Judge, whereby the petition was allowed in terms of the aforesaid order dated 13.09.2022, passed in Writ-A No.4305 of 2021.
8. As to whether the services rendered as a Seasonal Collection Peon are to be taken into account for the purposes of reckoning the qualifying service for pension or not, is the issue involved in all these connected matters.
9. Presently, the service conditions of the Collection Amins are regulated by The Uttar Pradesh Collection Amins’ Rules, 1974 (which will hereinafter be referred to as ‘the Rules of 1974), which came into being with effect from 24.08.1974.
10. On 24.05.2022, this Court had passed an order directing the State to furnish information on the following points: -
  - (i) *As to whether there are any service rules/executive instructions/Government Order for appointment of seasonal employees such as Seasonal Collection Amins and Seasonal Collection Peons.*
  - (ii) *as to whether the post of seasonal employees i.e. Seasonal Collection Peons and Seasonal Collection Amins were ever created or they were engaged without availability of any substantive posts.*

*(iii) once seasonal employees were engaged by the revenue authorities in the tehsils/sub divisions, from they were / are paid their salary/emolument. The learned State Counsel shall produce all relevant documents which may throw some light as to the nature of engagement of Seasonal Employees such as, Seasonal Collection Amins and Seasonal Collection Peons.*

11. In response to first query, the learned State counsel has submitted that Seasonal Collection Amins are appointed under Para 19 of the U. P. Collection Manual.
12. Para-19 of the U. P. Collection Manual provides that the Sub-Divisional Magistrate shall keep a close watch on the need for appointment of seasonal Amins for assistance of the appointed Amins, on annual basis. It further provides that the Sub-Divisional Magistrate will submit a report to the Collector for sanction of additional seasonal employees by showing cause therefor and presenting region - wise data of the demands to be recovered under various categories, for making a request to the Divisional Commissioner.
13. In response to the second query, the State has informed that various Government Orders and orders passed by the Board of Revenue deal with appointment of Seasonal Collection Amin / peon, but no statutory service Rule has been framed in this regard. A Government Order dated 13.09.1999 specifically declares that the seasonal employees working under Consolidated Collection Scheme are not full time government employees and on 15.07.2000, the Board of Revenue had issued a Circular to all the Collectors in the State, reiterating the recitals made in the aforesaid Government Order dated 13.09.1999.
14. In response to the third query, the State has informed that Seasonal Collection Amins / Peons are paid salary from the same head, from which the salary of the regular Collection Amins / regular Peons is paid.
15. It has been submitted on behalf of the State that the seasonal employees are not appointed in accordance with any statutory service Rules framed by the Government and their service conditions are not governed by any such Rules.

16. In **Ghanshyam Mishra versus State of U. P. and others**, 2013 SCC OnLine All 3809, the issue involved was as to whether the service rendered by the petitioner in the capacity of Seasonal Collection Amin on temporary basis can be taken into consideration for the purposes of computing qualifying service. A Single Judge Bench of this Court held that: -

*“On the dictum of Apex Court, the ad-hoc service rendered cannot be kept at par with regular service and benefit of the same cannot be extended for computing ten years regular service. On the same analogy once term **“temporary employee”** is of general category wherein incumbents engaged as per exigencies of service are of various sub-categories such as seasonal, causal, daily rated, ad-hoc services then the same cannot be kept at par with regular service, and once petitioner’s services had never been made regular then certainly in such a situation and in this background as petitioner continued to be seasonal temporary employee and continued on the strength of interim order as such no relief or reprieve could be given to him as he has not to his credit **“10 years of regular service”**, which is per-requisite term and condition for grant of pension to a temporary employee also.*

17. Subsequently, on 21.10.2020 the State Legislature promulgated The Uttar Pradesh Qualifying Service for Pension and Validation Ordinance, 2020 (U. P. Ordinance No. 19 of 2020), which was replaced by The Uttar Pradesh Qualifying Service for Pension and Validation Act, 2021”, (U. P. Act No.1 of 2021) with effect from 04.03.2021, which was enacted *to provide for qualifying service for pension and to validate certain actions taken in this behalf and for matters connected therewith or incidental thereto.*
18. The Statement of Object and Reasons of the aforesaid Act states that *“Pension and gratuity admissible to a retired Government servant are determined in relation to the length of qualifying service of the Government servant. Although the term **“Qualifying Service”** is described in the Uttar Pradesh Civil Service Regulation and the Uttar Pradesh Retirement Benefit Rules, 1961, however the definition of the said term is open to subjective interpretation which leads to administrative difficulties. It has, therefore, been decided to make a law defining the term **“Qualifying Service”** and to validate such definition with effect from April 1, 1961 which is the date of commencement of the Uttar Pradesh Retirement Benefit Rules, 1961.”*

19. Sections 2 and 3 of U. P. Act No. 1 of 2021 are being quoted herein below: -

*“2. Notwithstanding anything contained in any rule, regulation or Government order for the purposes of entitlement of pension to an officer, “Qualifying Service” means the services rendered by an officer appointed on a temporary or permanent post in accordance with the provisions of the service rules prescribed by the Government for the post.*

*3. Notwithstanding any judgment, decree or order of any Court, anything done or purporting to have been done and any action taken or purporting to have been taken under or in relation to sub-rule (8) of rule 3 of the Uttar Pradesh Retirement Benefit Rules, 1961 before the commencement of this Act, shall be deemed to be and always to have been done or taken under the provisions of this Act and to be and always to have been valid as if the provisions of this Act were in force at all material time with effect from April 1, 1961.*

20. Sri Kuldeep Pati Tripathi, the learned Additional Advocate General, Sri. Amitabh Rai, the learned Additional Chief Standing Counsel and Sri. Rohit Nandan Shukla, the learned Standing Counsel, have submitted that the Rules of 1974 do not contain any provision for making appointment to a post of Collection Amin on a seasonal basis and, therefore, any service rendered by an employee prior to his appointment under the Rules of 1974, would not be in furtherance of an appointment made in accordance with the service rules and it will not be reckoned as “qualifying service” under Section 2 of the Act 1 of 2021.
21. The learned State Counsel have also submitted that where there is a conflict between the provisions contained in any Act, Rules and executive instructions, the Act will prevail over the Rules and the executive instructions. In support of the above submissions, learned Standing Counsel relied upon a decision of Hon’ble Supreme Court in the case of **S. K. Naushad Rahman Versus Union of India and others**, AIR 2022 SC 1494 and thus have argued that U. P. Act No. 1 of 2021 will prevail in case there is any inconsistency between the provision of the Act and those of any rules or any executive instructions.



22. Relying upon a decision of Hon'ble Supreme Court in the case of **G. J. Farnandes Versus State of Maysoor**, AIR 1967 SC 1753, the learned State Counsel have also submitted that executive instructions do not have any statutory force and no writ petition can lie for enforcement of any right based on the executive instructions.
23. Per contra, Dr. Lalta Prasad Mishra, the learned counsel appearing on behalf of the petitioner-respondents in Review Petition No. 121 of 2022 has submitted that Rule 3 (i) of the Rules of 1974 defines 'Seasonal Amins' and therefore the aforesaid post is contemplated in the Rules of 1974.
24. Clauses (h), (i) and (j) of Rule 3 of U. P. Collection Amins' Service Rules, 1974 (hereinafter referred to as 'the Rules of 1974') defines the terms 'members of service', 'seasonal amins' and 'service' as follows: -
- “(h) “Member of the service” means a person substantively appointed under these rules or the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service.*
- (i) “Seasonal Amin” means an Amin appointed for Rabi or Kharif or for both the reasons;*
- (j) “Service” means the Uttar Pradesh Collection Amins' Service.”*
25. Rule 4 of the aforesaid Rules defines the term 'strength of service' as follows: -
- “4. Strength of Service. -***
- (1) the strength of service shall be such as may be determined by the Governor from time to time.*
- (2) The permanent strength of the service shall, until orders by reading the same have been passed under subrule one, be as given below:*
- collection Amin is (ordinary grade) 5341*
- collection Ameens (selection grade) 593;*
- Provided that –*
- (a) the Collector may leave and failed or the Governor may hold in appearance anywhere can't post without thereby entitling any person to compensation; and*
- (b) the Governor may create such additional permanent or temporary posts as may be considered necessary.”*

26. Rule 5 of the aforesaid Rules contains the following provision for the source of recruitment

***“5. Source of recruitment. -***

*(1) Recruitment to posts in the ordinary grade of the service shall be made on the result of a competitive examination as provided in part V of these Rules:*

*Provided that subject to availability of suitable candidates, up to fifteen per cent of the vacancies shall be filled by promotion from amongst such substantively appointed Collection Peons –*

*(a) who have passed at least High School Examination of the board of High School and Intermediate Education, Uttar Pradesh, or an Examination recognised by the government as equivalent thereto; and*

*(b) who have worked in the Collection Organization of the Revenue Department for a period of at least six fasls:*

*Provided that...”*

27. It is relevant to note that the Rules of 1974 contain no provision for making appointment on seasonal basis. Although a certain percentage of posts of ordinary cadre of the service are reserved for being filled in by Seasonal Collection Amins, the Seasonal Collection Amins themselves are not included amongst the strength of service as defined in Rule 4 of the Rules of 1974. Therefore, a mere mention of Seasonal Amins in the Rules, without any provisions for appointment of the Seasonal Amins, will not make the appointment of Seasonal Collection Amins as per Rules of 1974.
28. Two things are significant to note regarding appointment of seasonal collection Amins. First is that the provision for their appointment is contained in the U. P. Collection Manual, which is merely a collection of Executive Instructions which is neither a Statute nor Rules framed under any Statute. Second, the seasonal posts are sanctioned by the Divisional Commissioner on the request made by the Collector in furtherance of a report submitted by the Sub-Divisional Magistrate, whereas the strength of service of collection Amins under the U. P. Collection Amins’ Service Rules, 1974, is determined by the Governor, as provided in Rule 4 of the Rules of 1974.
29. Dr. Mishra has next submitted that the Circular dated 22.02.1991 issued by the Board of Revenue provides that the appointment of



Seasonal Collection Amin and Seasonal Collection Peon will be made on pay-scales sanctioned for the post, which indicates that the post was sanctioned. This submission is also not acceptable for the reason that Rule 4 (1) of the Rules of 1974 specifically provides that the strength of service shall be such as may be determined by the Governor from time to time, which clearly indicates the authority to sanction the posts of Amins under the Rules of 1974 vests in the Governor only, whereas as per Para 19 of the U. P. Collection Manual, the seasonal posts of Collection Amins are sanctioned by the Divisional Commissioner. Therefore, a mere direction regarding fixation of pay scales of Seasonable Collection Amins will not make their posts sanctioned under the Rules.

30. Dr. Mishra has further submitted that the pension is not a bounty, it is a succor and that pension is a property protected by Article 300-A of the Constitution of India and it cannot be taken away except in accordance with the law and the law 'does not include the government order'. He has submitted that the provisions of law relating to grant of pension to the employees have to be construed liberally.
31. **We may observe in this regard that there can be no dispute against the proposition that pension cannot be taken away except in accordance with the law, but at the same time, the pension cannot be ordered to be paid except in accordance with the law, and in any case, it cannot be ordered to be paid in violation of the specific provisions of law, which in the present case is the U. P. Act No. 1 of 2021.**

(Emphasis supplied by the Court)

32. It is true that the provisions of law regarding payment of pension to retired employees are to be interpreted liberally, but the question of liberal interpretation would arise only when there is any ambiguity in the provision of law relating to grant of pension, in which case, the provision would be interpreted liberally. However, here the provision contained in Section 2 of the U. P. Act No.1 of 2021 are not ambiguous and, therefore, question of liberal interpretation of its provisions does not arise at all in this case. In **Vijay Narayan Thatte**

v. **State of Maharashtra**, (2009) 9 SCC 92, the Hon'ble Supreme Court reiterated this well established principle of interpretation of statutes in the following words: -

*“22. In our opinion, when the language of the statute is plain and clear then the literal rule of interpretation has to be applied and there is ordinarily no scope for consideration of equity, public interest or seeking the intention of the legislature. It is only when the language of the statute is not clear or ambiguous or there is some conflict, etc. or the plain language leads to some absurdity that one can depart from the literal rule of interpretation. A perusal of the proviso to Section 6 shows that the language of the proviso is clear. Hence the literal rule of interpretation must be applied to it. **When there is a conflict between the law and equity it is the law which must prevail.** As stated in the Latin maxim *dura lex sed lex* which means **“the law is hard but it is the law”**.”*

(Emphasis supplied)

33. Dr. Mishra has next submitted that the Seasonal Collection Amins are appointed against temporary or permanent posts and when there are no Rules governing the appointments, the appointments have to be made as per Government Orders. We find ourselves unable to accept this submission also as the Seasonal Collection Amins are engaged on seasonal basis as per exigencies of work after sanction made by the Divisional Commissioner, on a request made by the Collector in furtherance of a report to be submitted by the Sub-Divisional Magistrate and they are not appointed against any temporary or permanent posts created by the Government. It is not that there are no Rules governing the appointments of Collection Amins, but those Rules provide that the posts of Collection Amins shall be sanctioned by the Governor and the said Rules do not contain any provision for appointment of Seasonal Collection Amins and, therefore, the appointment of Seasonal Collection Amins made under executive instructions on posts sanctioned by the Divisional Commissioner for a particular season only cannot be treated as an appointment made in accordance with the Rules.
34. The learned counsel for the respondents next submitted that the mere factum of appointment gives rise to a presumption that the

appointment was made against a sanctioned post, otherwise payment cannot be drawn from the consolidated fund. In this regard we are of the considered opinion that when there are specific provisions of law authorizing the Governor to sanction the posts of Collection Amins, any appointment made on posts not sanctioned by the Governor can, by no stretch of imagination, be presumed to have been made on a sanctioned post and, therefore, we are unable to accept this submission also.

35. Dr. Mishra has relied upon the judgments in the cases of **Prem Singh versus State of U. P.**, (2019) 10 SCC 516, wherein the Hon'ble Supreme Court read down Rule 3 (8) of the U. P. Retirement Benefits Rules, 1961 and held that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid Rule for grant of pension.
36. In **Prem Singh** (Supra) the employee concerned was appointed as a welder in the year 1965 in a work-charged establishment. He was transferred from one place to another and thereafter ultimately the Selection Committee recommended for regularization of his services. His services were regularized on 13-03-2002 and he was posted as a pump operator in the regular establishment. He superannuated on 31-01-2007. Then he filed a writ petition in the High Court on 31-07-2008 with the prayer to count the period spent in the work-charged establishment as qualifying service under the Rules of 1965. In the present case, the Appellant was being engaged as seasonal collection Amin, on a seasonal basis and not on regular basis. The U. P. Act No. 1 of 2021 had not been enacted till decision of Prem Singh's case and, therefore, Prem Singh is not an authority for interpreting the provisions of the aforesaid Act No.1 of 2021. Therefore, the law laid down in Prem Singh has no application in this case.
37. Sri. Y. K. Mishra appearing for the petitioner-respondent in Review Petition No. 117 of 2022 has submitted that **State of Uttar Pradesh and others vs. Mahendra Singh**, Special Appeal (Defective) No. 1003 of 2020 was decided on 04.02.2021, after promulgation of the

Ordinance 19 of 2020 and in that case, a co-ordinate Bench of this Court had held that: -

*“It is clear from perusal of Section 2 of the Ordinance that it would have effect notwithstanding anything contained in U.P. Retirement Benefit Rules, 1961 or Regulation 361 and 370 of the Civil Service Regulation. Though it has been informed at the bar that in certain writ petitions, validity of the aforesaid U.P. Ordinance has been challenged, however, even if for purpose of adjudicating the present appeal the Ordinance is accepted as it is, section 2 thereof would inure to the benefit to the opposite party-petitioner and not to the benefit of appellants. The word “Qualifying Service” has been defined in Section 2 of the aforesaid U.P. Ordinance to mean the services rendered by an officer appointed on a temporary or permanent post in accordance with the provisions of the service rules prescribed by the Government for the post.*

*As discussed aforesaid, the appellants have admitted the appointment of the opposite party-petitioner on temporary post of Godown Chaukidar from 04.09.1981 till the date of his appointment on a regular post in 1997. Therefore, under this very U.P. Ordinance, the petitioner is entitled to his claim for counting the period of his service from the date of his appointment on 04.09.1981 on a temporary post till his regularization on the permanent post in the year 1997.”*

38. The Division Bench while deciding **Mahendra Singh** (Supra) has though noticed Section 2 of the Ordinance, which is in *pari materia* with Section 2 of the U. P. Act No. 1 of 2021, however, there is no discussion or mention or finding as to whether the employee was appointed “in accordance with the provisions of the service rules”. In the aforesaid view of the matter, the judgment in **Mahendra Singh** (Supra) is not a binding precedent regarding the impact of U. P. Act No. 1 of 2021 (before that, the Ordinance) in matters where the initial appointment of an employee was made on ad-hoc basis / as daily wager / work charge employee / seasonal employee or any other non regular category of employment. Our view finds support by the judgment of the Hon’ble Supreme Court in the case of **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.**, (2003) 2 SCC 111, wherein it was reiterated that “*A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom.*”

39. Sri. Y. K. Mishra next submitted that numerous Writ Petitions have been allowed by counting the service rendered by the employee as Seasonal Collection Amin while computing the qualifying service for payment of pension and, therefore, this Court should take the same view on the ground of parity as also to balance the equities.
40. The aforesaid submission of Sri. Y. K. Mishra does not appeal to us for numerous reasons. First, the submission is vague, as he has not placed before this Court any of the so called numerous decisions referred by him. Secondly, the mere fact of numerous Writ Petitions having been allowed would not affect the provisions of law, unless the law has been interpreted and settled by any judgment which has a binding precedential value. Thirdly, equity can only supplement the law and it cannot supplant the law. In any case, the equity cannot override the express provisions of law.
41. In **BSNL v. Mishri Lal**, (2011) 14 SCC 739, the writ petition was filed praying for quashing of the Recruitment Rules, 2005 as well as the letters by which the writ petitioners were told to appear in the limited internal competitive examination for promotion. The writ petition was allowed and the order was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the Appeal and held that the decision to fill up the posts in question by limited internal competitive examination was a policy decision and the High Court could not have found fault with it. It is well settled that the Court cannot ordinarily interfere with policy decisions. The Hon'ble Supreme Court further held that *"There is no question of equity in this case because it is well settled that law prevails over equity if there is a conflict. Equity can only supplement the law and not supplant it. As the Latin maxim states "dura lex sed lex" which means "the law is hard, but it is the law"*.
42. Other learned Counsel appearing in the case have also advanced their submissions, but the same are overlapping the submissions recorded and dealt with in the earlier part of this judgment and, therefore, the same are not being repeated.

43. In terms of the provisions contained in Section 2 of U. P. Act No.1 of 2021 qualifying service requires- (i) the employee concerned should have been appointed either on a temporary or permanent post and, (ii) his appointment should have been made in terms of the provisions contained in Service Rules.
44. The Seasonal Collection Amins are engaged as per exigencies of work and they are not appointed against any temporary or permanent post. Further, they are not appointed in terms of the provisions contained in any service Rules. At the cost of repetition it may be observed that para 19 of the U. P. Collection Manual provides that the Sub Divisional Magistrate shall minutely supervise the requirements of the appointments of Seasonal Collection Amin on annual basis for assisting the Amins and will submit a report to the Collector, who will made a request to the Divisional Commissioner for sanctioning the appointment of Additional Seasonal Employees. However, the U. P. Collection Manual is a merely a collection of administrative instructions and it is not a statute or statutory rules.
45. In **Chandra Singh vs. State of U.P. and Ors.** 2022 (3) ALJ 781, this Court held that: -

*“13. A Seasonal Collection Amin is appointed for a limited time only for a specified duty, on the completion of which he is discharged. Duty performed as a Seasonal Collection Amin intermittently, will not fall within the category “continuous temporary or officiating service under the Government of Uttar Pradesh” within the purview of Rule 352 (a) of the Civil Service Regulations reproduced above. It will also not fall within the purview of “services rendered by an officer appointed on a temporary or permanent post” occurring in Section 2 of the U.P. Act No. 1 of 2021. Therefore, the service rendered by petitioner as seasonal collection Amin cannot be added while computing qualifying service as defined under Article 361 of Civil Service Regulation or Section 2 of The Uttar Pradesh Qualifying Service of Pension and Validation Act, 2021.”*

46. The Hon'ble Single Judge had dismissed the Writ Petition holding that the post of Collection Amin is a seasonal post and it is not a regular post and therefore the competent authority had rightly not counted the services rendered by the petitioner to be his regular



service. While dismissing the Special Appeal filed against the aforesaid order passed by Hon'ble Single Judge, the Division Bench has taken into consideration the provisions of U. P. Act No.1 of 2021 and has held that the services rendered on seasonal basis as Collection Amin will not fall within the purview of 'service rendered by an officer appointed on temporary or permanent basis' and as has been discussed above, such appointment is not in accordance with any service rules.

47. Review Petition No. 117 of 2022 has been filed for review of the aforesaid judgment and in view of the foregoing discussion, we do not find any error in the aforesaid judgment, much less an error apparent on the face of the record, warranting review of the aforesaid judgment. Therefore, we are of the considered opinion that the judgment dated 22.04.2022, passed in Special Appeal No.398 of 2021 does not suffer from any error, much less an error which is apparent on the face of record. The Review Petition No.117 of 2022 lacks merit and it is liable to be dismissed.
48. Now we come to Review Petition No. 121 of 2022, which seeks review of the judgment dated 21.06.2021 passed in Special Appeal Defective No. 259 of 2020. The aforesaid Special Appeal was dismissed on the ground that: -

*“The Government Order dated 1.7.1989 provides that temporary Government Servants who have completed minimum 10 years of service would be entitled for pension, gratuity and family pension on the same rate as are payable to the permanent employee under the relevant Rules. However, while rejecting the representation of the respondent-petitioner, the competent authority has considered only the period of service rendered by the respondent-petitioner after becoming permanent i.e., 7 years 6 months 2 days and since he had not completed 10 years of service after becoming permanent, therefore, the pension has been denied.*

*It is not in dispute that the Government Order dated 1.7.1989 is in force.”*

49. The Division Bench decided the Special Appeal after following the judgment in the case of **Board of Revenue v. Prasad Narain Upadhyay**, (2006) 2 All LJ 66, which was also a case decided prior to

enactment of U. P. Act No. 1 of 2021 which had followed the Ordinance containing similar provisions. In that case, the respondent had worked as a Collection Peon since 10.02.1962 till he retired on attaining the age of superannuation on 31.07.1999 after working for more than 37 years. The Hon'ble Single Judge found that in the Service Book, his employment was mentioned as Collection Peon (Temporary) but subsequently it was mentioned in the service book that he was working as Seasonal Collection Peon. The notice of retirement dated 05.05.1999 mentioned the designation of the petitioner as Collection Peon and not a Seasonal Collection Peon. In the year 1996 the appellants had made a recommendation to the Board of Revenue for regularization of the petitioner's service but no order could be issued and in the meantime he retired on 31.07.1999. The Division Bench decided the Appeal after taking note of the fact that the pensionary benefit was denied for the only reason that a formal order of confirmation or regularization had not been issued by the appellants. In this background, the Division Bench held that: -

*"12. The term "qualifying service" is defined in section 1 Chapter 16 of Article 361 of the Civil Service Regulations, which provides that the service of an officer does not qualify for pension unless it conforms to the following three conditions:—*

*(A) The service must be under Government.*

*(B) The employment must be substantive and permanent.*

*(C) The service must be paid by Government.*

*13. In the present case, so far as the condition Nos. A and C are concerned, they are satisfied and the dispute is only with respect to condition No. B, i.e., lack of permanent character of service. However, in our view, the aforesaid provisions stand obliterated after the amendment of Fundamental Rule 56 by U. P. Act No. 24 of 1975 which allows retirement of a temporary employees also and provides in clause (e) that a retiring pension is payable and other retiral benefits, if any, shall be available to every Government servant who retires or is required or allowed to retire under this rule. Since the aforesaid Amendment Rule 56 was made by an Act of Legislature, the provisions contained otherwise under Civil Service Regulations, which are pre-constitutional, would have to give way to the provisions of*

*Fundamental Rule 56. In other words, the provisions of Fundamental Rule 56 shall prevail over the Civil Service Regulations, if they are inconsistent. Conditions (supra) of Article 361 of Civil Service Regulations are clearly inconsistent with Fundamental Rule 56 and thus is inoperative.”*

*14. A similar controversy came up for consideration earlier before this Court in the case of Dr. Hari Shankar Ashopa v. State of U.P. 1989 (59) FLR 110. After referring to the Fundamental Rule 56 and various provisions contained in Civil Service Regulations, this Court observed as under:—*

*“Clause (e) of Rule 56 unequivocally recognizes, declares and guarantees retiring pension to every Government servant who retires on attaining the age of superannuation, or who is prematurely retired or who retires voluntarily. To be precise, every Government servant (whether permanent or temporary) who retires under clause (a) or clause (b), or who is required to retire, or who is allowed to retire under clause (c) of Rule 56, becomes entitled for a retiring pension, of course, the first and third conditions stipulated in article 361 of the Regulations are satisfied.”*

*15. In this view of the matter, the contention of the appellants that since the petitioner-respondent was not a permanent confirmed employee and hence not entitled for pension, is clearly misconceived and is rejected.”*

- 50.** Although U. P. Act No. 1 of 2021 had come into force with effect from 04.03.2021, it escaped attention of the Division Bench while it was deciding the Special Appeal Defective No. 259 of 2020 on 21.06.2021. Therefore, we are of the considered view that there is an apparent error in the judgment dated 21.06.2021 passed by the Division Bench dismissing the Special Appeal Defective No. 259 of 2020 without taking into consideration the provision of U. P. Act No. 1 of 2021. Accordingly Review Petition No.121 of 2022 deserves to be allowed.
- 51.** Special Appeal Defective No. 84 of 2023 has been filed by the State against the judgment and order dated 13.09.2022 passed by Hon’ble Single Judge allowing Writ A No. 4305 of 2021 and directing the respondents to compute pensionary benefits payable to the petitioner after taking into account the service rendered by the petitioner as a Seasonal Collection Amin. In view of the foregoing discussion, this

Special Appeal deserves to be allowed and the order passed by the Hon'ble Single Judge is liable to be set aside.

52. The Special Appeal Defective No. 307 of 2022 has been filed by the State against the judgment and order dated 23.09.2022, passed by Hon'ble Single Judge, whereby the petition was allowed in terms of the aforesaid order dated 13.09.2022, passed in Writ-A No.4305 of 2021 and, therefore, this Special Appeal also deserves to be allowed and the order passed by the Hon'ble Single Judge is liable to be set aside.

**ORDER**

53. **Review Petition No.121 of 2022 is allowed.** The judgment and order dated 21.06.2021 dismissing Special Appeal Defective No. 259 of 2020 is hereby set aside. Consequently, the Special Appeal is allowed and the judgment and order dated 26.02.2019 passed in Writ Petition No. 8737 (S/S) of 2011 is also set aside and the aforesaid Writ Petition is dismissed for the reason that the service rendered by the petitioner as seasonal collection was not on any temporary or permanent post, in furtherance of an appointment made in accordance with any Rules framed by the Government.
54. **The Special Appeal (D) No. 307 of 2022 is allowed** and the judgment and order dated 23.09.2022 passed in Writ A No. 6005 of 2022 is also set aside and the aforesaid Writ Petition is dismissed.
55. **Review Petition No. 117 of 2022 is dismissed.**
56. **The Special Appeal (D) No. 84 of 2023 is hereby allowed** and the judgment and order dated 13.09.2022 passed in Writ A No. 4305 of 2021 is also set aside and the aforesaid Writ Petition is dismissed.
57. There will be no order as to costs.

**(Subhash Vidyarthi J.) (Devendra Kumar Upadhyaya J.)**

**Order Date - 31.05.2023**  
**Pradeep/-**