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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 10.02.2026***
Judgment pronounced on: 10.03.2026
Judgment uploaded on: 10.03.2026

\+ W.P.(C) 1265/2018 & CM APPL. 9919/2025

GOVT. OF NCT OF DELHI AND ANR .....Petitioners

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.

versus

DR. YOGINDER GUPTA AND ANR. .....Respondents

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Arjun Panwar, Mr. Amrit Koul, Ms. Muskaan Dutta and Mr. Prahil Sharma, Advs. for R-1.

Mr. Vardhman Kaushik, Adv. for R-2.

Mr. Ujjal Banerjee, Mr. Rohan J. Alva, Mr. Anmol Sehgal, Mr. Anant Sanghi, Advs. for R-3 to 23.

Mr. S.B. Upadhyay, Sr. Adv. with Ms. Kumud Lata Das, Mr. Nishant Kumar, Mr. Harshajay Singh, Mr. Siddhant Narayan and Ms. Pooja Rathore, Advs. for impleaded Respondents – Dr. R.N. Das, Dr. Anupma Singh and Dr. Dinesh Chawla.

Ms. Meghna De and Ms. L.. Gangmei, Advs. for applicant in CM APPL.9919/2025.

\+ W.P.(C) 5221/2018

DR. P.S. SARANGI & ORS .....Petitioners

Through: Mr. Vikas Singh, Sr. Adv. with Mr. Varun Singh, Ms. Deepieka

Kalia, Ms. Bhumi Sharma and Mr. Sudeep Chandra, Advs.
Mr. Kirtiman Singh, Sr. Adv. with Mr. Ujjal Banerjee, Mr. Rohan J. Alva, Mr. Anmol Sehgal, Mr. Anant Sanghi, Mr. Ritwik Saha, Advs.

versus

GOVT. OF NCT OF DELHI & ORS .....Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.
Mr. Vardhman Kaushik, Adv. for R-2.
Mr. Shanker Raju and Mr. Nilansh Gaur, Advs. for R-4 to R-11

\+ W.P.(C) 10928/2019 & CM APPL. 55140/2019

DR. KUMUD BHARTI .....Petitioner

Through: Mr. Mukesh Kumar and Mr. Parkash Chander, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS. .....Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs. for R-1.
Mr. Vardhman Kaushik, Adv. for R-2.

\+ W.P.(C) 167/2019

DR. MAHESH CHAUHAN .....Petitioner

Through: Mr. Neeraj Kumar Gupta, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS. .....Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.
Mr. Vardhman Kaushik, Adv. for R-2.

\+ W.P.(C) 4929/2019, CM APPL. 21908/2019, CM APPL. 21909/2019 & CM APPL. 65124/2025

DR. RADHA DUBEY .....Petitioner

Through: Mr. Rakesh Khanna, Sr. Adv, Mr. Shree Prakash Sinha, Mr. Rakesh Mishra, Ms. Asmita, Mr. Rishabh Kumar, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS. .....Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.
Mr. Vardhman Kaushik, Adv. for R-2.

\+ W.P.(C) 7531/2022, CM APPL. 23035/2022, CM APPL. 23036/2022, CM APPL. 23037/2022, CM APPL. 23038/2022 & CM APPL. 6628/2025

DR REETA MONGIA .....Petitioner

Through: Mr. Varun Singh, Mr. Shikher Upadhyay and Ms. Bhumi Sharma, Advs.
Mr. Santosh Kumar, Sr. Adv. with Mr. Vijay Kumar, Adv. for Petitioner No.3.

versus

GOVT OF NCT OF DELHI & ORS. .....Respondents

Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam

and Mr. Mohnish Sehrawat, Advs. for R-1.
Mr. Vardhman Kaushik, Adv. for R-2.

\+ W.P.(C) 835/2020
DR. MEERA SAINI AND ORS. .....Petitioners
Through: Mr. Ujjal Banerjee and Mr. Anmol Sehgal, Advs.

versus

GOVT. OF NCT OF DELHI AND ANR. .....Respondents
Through: Mrs. Avnish Ahlawat, SC GNCTD-Services, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Writ Petitions seek to set aside the Orders dated 23.05.2017, 25.07.2019, 20.08.2018, 19.02.2019, 23.12.2021 and 23.09.2019 [hereinafter referred to as 'Impugned Orders'] passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi [hereinafter referred to as 'the Tribunal'], in various Original Applications ('OAs'). Since the issues are common, with the consent of learned Counsel representing the parties, all these Writ Petitions are disposed of by this common order.

2. For the sake of convenience, the expression "Applicants" shall hereinafter be used as a compendious reference to Respondent No.1 in

W.P.(C) 1265/2018 as well as to the Petitioners in the connected Writ Petitions, unless the context otherwise requires.

3. By the Impugned Order dated 23.05.2017, passed in O.A. Nos.604/2014 and 238/2015, the Tribunal rejected the claim of the concerned Applicants for the grant of seniority by counting their contractual service, while directing that such period be considered only for the limited purpose of qualifying service towards pension, in accordance with the applicable rules. Further, *vide* the Impugned Order dated 23.12.2021 passed in O.A. No.3556/2018, the Tribunal directed to consider the period spent on contractual service for the purpose of qualifying service towards pension, however, it said that the same shall be subject to the decision of this Court in the Writ Petition filed assailing the decision of the Tribunal in O.A. No.604/2018, i.e., W.P.(C) 1265/2018.

4. By the Impugned Orders dated 25.07.2019 and 23.09.2019, passed in the O.A. Nos.4442/2014 and 2837/2019, respectively, the Tribunal, while consistently rejecting the claim for grant of seniority by counting contractual service, granted limited relief of counting such service towards qualifying service for pension, however, in the Impugned Orders dated 20.08.2018 and 19.02.2019 in O.A. Nos.1246/2017 and 4018/2016, respectively, even the benefit of counting such service for pension was declined.

5. Therefore, the issue that arises for consideration before this Court is whether the period of contractual service rendered by the Applicants, prior to their regular appointment in accordance with the

Recruitment Rules, is liable to be counted for the purpose of seniority; and, if not, whether such period is required to be reckoned at least towards qualifying service for pension under the applicable service rules.

FACTUAL MATRIX:

6. In order to appreciate the controversy in its proper perspective, it is necessary to notice the relevant facts, as emerging from the respective OAs and the Impugned Orders passed therein.

7. With the coming into force of the constitutional framework under Article 239AA of the Constitution of India, the Government of National Capital Territory of Delhi (GNCTD) was constituted in the year 1992. Consequent thereto, a number of hospitals, dispensaries and health centres were established under its administrative control, and certain existing medical institutions were also placed under GNCTD for the purpose of providing healthcare services to the residents of Delhi.

8. At the relevant time, there was no independent cadre of doctors under the GNCTD. The medical requirements of the institutions functioning under GNCTD were met either by drawing doctors from the Central Health Services ('CHS') on deputation/placement, or by engaging doctors on contractual basis.

9. The Applicants in the present batch of matters were initially engaged by the Health and Family Welfare Department of GNCTD [hereinafter referred to as 'the Health Department'] on an contractual

basis on various dates against sanctioned posts. The engagements were made for fixed tenures, which were extended from time to time. A consolidated chart, indicating the relevant years/dates of (i.) initial contractual engagement, (ii.) regular appointment, and (iii.) discontinuation (where applicable), is set out herein below for ready reference:

W.P.(C) No.	**O.A. No.**	**Year of initial Contractual engagement**	**Date of Regular appointment**	**Period of Discontinuation of service (if any)**
1265/2018	604/2014	1999	23.12.2009	-
5221/2018	238/2015	1996-2006	23.12.2009	-
10928/2019	4442/2014	2002	23.12.2009	-
167/2019	1246/2017	2000	23.12.2009	-
4929/2019	4018/2016	1996	03.11.2010	23.11.2007 - 02.11.2010
7531/2022	3556/2018	1996	23.12.2009	-
835/2020	2837/2019	1999-2006	23.12.2009	-

10. It was the case of the Applicants in the OAs that the engagement of doctors on contractual basis was preceded by an assessment process and such assessment was at a level equivalent to

that adopted for appointment to the regular CHS cadre, and the duties discharged by them during the contractual period were identical to those performed by regularly appointed doctors. However, it is not in dispute that at the stage of such initial engagement, the appointments were not made through the regular selection process contemplated under the applicable Recruitment Rules.

11. In the year 1997, certain contractual doctors engaged under GNCTD filed O.A. Nos.2564/1997, 2984/1997 and connected matters before the Tribunal, claiming parity in pay scale and service benefits with regularly appointed Junior Medical Officers (JMOs) under CHS, contending that despite selection through public advertisement and discharge of identical duties, they were paid only a consolidated remuneration of Rs.6,000/- per month. The Tribunal allowed the OAs and directed that the contractual doctors be granted the same pay scale, allowances and service benefits, including leave and increments, as admissible to regularly appointed JMOs, deemed their service to be continuous notwithstanding minor contractual breaks, and further directed consideration of age relaxation to the extent of contractual service rendered, if they appeared before UPSC for regular appointment.

12. In the year 2006, the GNCTD took a policy decision to constitute its own independent health cadre. *Vide* Cabinet Decision No.1139 dated 13.11.2006, it was resolved to form a new service titled "Delhi Health Services" ('DHS') for managing health delivery in the GNCTD. At the official level, it was agreed that the initial constitution of the new cadre would comprise:

i. Members of the CHS who opted to join the proposed DHS cadre; and

ii. Individuals appointed by the GNCTD on a contractual basis against ex-cadre posts from the year 1995-1996 onwards, as per the advice of the Ministry of Health and Family Welfare.

13. It was further agreed that, for future management of the new service, the Ministry would not fill vacant posts of General Duty Medical Officers ('GDMOs') and Non-Teaching Specialists (NTSs) under CHS, and such vacant posts would instead be transferred to the proposed DHS cadre.

14. The aforesaid policy proposal was thereafter approved by the GNCTD Cabinet and consequential steps were initiated for operationalising the new cadre. In consultation with the Ministry of Health and Family Welfare, it was decided that, at the first instance, the GDMOS and NTSs cadres would be constituted, with the Public Health and Teaching cadres to be added at a later stage.

15. Pursuant thereto, and in consultation with the Union Public Service Commission ('UPSC'), the Delhi Health Services (Allopathy) Rules, 2009 [hereinafter referred to as 'the 2009 DHS Rules'] were notified w.e.f. 23.12.2009.

16. The 2009 DHS Rules specifically provided for the initial constitution of the service. Rule 6 of the 2009 DHS Rules [hereinafter referred to as 'Rule 6'] assumes significance in the context of the dispute in the present case. It provides for the initial constitution of the

service by deeming officers appointed under the CHS Rules, 1996 and serving in the GNCTD, upon exercising option, as members of the service in their respective grades, and further by regularising contractual appointees appointed on or before 18.12.2006, subject to assessment of suitability and fulfillment of prescribed qualifications, at the entry level of the concerned sub-cadre.

17. Upon the coming into force of the 2009 DHS Rules, and with a view to effecting the initial constitution of the DHS by including eligible contractual doctors, the UPSC undertook an assessment of suitability in terms of Rule 6(2). Assessment Boards were constituted, and between 27.03.2012 and 04.04.2012, the suitability of 532 doctors, comprising 320 GDMOs and 212 NTSs, was evaluated.

18. All the Applicants in the present batch of matters were found suitable in the said assessment process, and their names were recommended for inclusion in the respective sub-cadres by the UPSC. Consequent upon the recommendations of the UPSC, the GNCTD issued orders dated 15.05.2012 appointing the said doctors to their respective sub-cadres under the DHS with immediate effect.

19. Thereafter, *vide* letter dated 30.04.2013, the GNCTD informed the UPSC that the doctors inducted into the DHS pursuant to the suitability assessment had represented that their date of induction should not be later than 23.12.2009, i.e., the date of notification of the 2009 DHS Rules. Upon consultation with the Law Department, the Health Department recommended the grant of *ab initio* regular status w.e.f. 23.12.2009. The UPSC concurred with this proposal and, *vide*

letter dated 16.01.2014, approved adoption of 23.12.2009 as the date of induction under Rules 5(2) and 6(2) of the 2009 DHS Rules. Consequent thereto, a Notification dated 20.08.2014 was issued.

20. *Vide* the aforesaid Notification dated 20.08.2014, the names of 528 Medical Officers were notified as having been inducted into the DHS at the stage of initial constitution of the service w.e.f. 23.12.2009.

21. Further, the Health Department initiated steps for finalisation of the seniority of GDMOs and NTSs Cadre under the 2009 DHS Rules. In this regard, revised tentative seniority lists for the aforesaid two cadres were published on 08.03.2018 and 13.03.2018, respectively.

22. At this stage, it is necessary to advert to the peculiar facts of W.P.(C) 4929/2019 arising out of O.A. No.4018/2016. As noticed in the Impugned Order, the Petitioner therein had proceeded on leave for 20 days from 03.04.2006 to 22.04.2006 and did not rejoin within the stipulated period. Consequently, her contractual services were terminated *vide* order dated 23.11.2007 [hereinafter referred to as 'Termination Order']. The challenge to the termination before the Tribunal, and thereafter before this Court, did not succeed. However, in SLP No.23809/2010, the Supreme Court, *vide* interim order dated 16.08.2010, directed that the Petitioner be taken back into service. In compliance thereof, she was reinstated on 03.11.2010. The SLP was ultimately disposed of on 19.08.2015 with a direction that the Petitioner be treated as eligible to be considered for regularization by

the UPSC. Significantly, the Termination Order was not set aside/touched upon by the Supreme Court.

23. The Petitioner thereafter claimed entitlement to the pay scale and other service benefits at par with the recruits of the year 1996. The said claim was rejected by the Department *vide* order dated 16.11.2015, which led to the filing of O.A. No.4018/2016. The Tribunal, upon consideration, dismissed the said O.A.

24. Further, insofar as pensionary benefits and applicability of the old pension scheme were concerned, the Health Department, *vide* order dated 18.07.2017, rejected the claim by holding that grant of the old pension scheme would be contrary to Rules 14(c) and 9(4) of the 2009 DHS Rules.

25. Meanwhile, aggrieved by the fixation of 23.12.2009 as the date of induction for all purposes, the Applicants approached the Tribunal by filing separate OAs. The principal grievance raised was that they had rendered long years of service on a contractual basis prior to 23.12.2009. Though their initial engagements were for limited periods, the same were extended from time to time and, according to them, without any substantive break in service.

26. It was contended before the Tribunal that from the date of their initial appointment on a contractual basis, the Applicants had been discharging duties identical to those performed by regularly appointed doctors under CHS and, thereafter, under the DHS. Emphasis was laid on the fact that their initial appointments were made pursuant to public advertisement and after assessment by duly constituted Boards

of GNCTD. On that premise, it was urged that their initial entry was not *dehors* the 2009 DHS Rules and that the entire length of service rendered on an contract basis ought to be taken into account for the purpose of seniority.

27. The Applicants accordingly sought a direction that their seniority be reckoned from the date of their initial contractual engagement and that they be accorded regular status from that date with all consequential benefits. In addition to seniority, a claim was also raised in certain matters that the period of contractual service be counted towards qualifying service for pension, on the ground that such service was continuous in nature and rendered against sanctioned posts.

28. In essence, the challenge before the Tribunal was to the Notification dated 20.08.2014, to the extent it confined the benefit of induction and seniority to 23.12.2009. The Applicants sought recognition of their pre-2009 contractual service both for purposes of *inter se* seniority and, in the alternative or additionally, for reckoning qualifying service under the applicable pension rules.

29. A brief chart indicating *(i)* the findings/remarks recorded in the respective Impugned Orders, and *(ii)* the reliefs now prayed for before this Court in the present Writ Petitions, has been prepared for ready reference:

W.P. (C) No.	O.A. No.	Remarks in the Impugned Order	Relief sought before this Court
1265/	604/	i. Seniority from the date	Setting aside the

2018	2014	of initial contractual appointment declined; ii. Contractual service directed to be counted only towards qualifying service for pension, subject to rules.	Impugned Order dated 23.05.2017, thereby granting seniority from date of initial contractual engagement; and counting of the entire pre-2009 service for all consequential benefits, including pension.
5221/ 2018	238/ 2015	Same view as in O.A. 604/2014.	i. Setting aside the Impugned Order dated 23.05.2017 to the extent that the Tribunal rejected the claim of the Petitioners for grant of seniority. ii. Quashing the Notification dated 20.08.2014.
10928 /2019	4442/ 2014	i. Seniority claim rejected; ii. Contractual service permitted to be counted towards qualifying service for pension.	i. Setting aside the Impugned Order dated 25.07.2019. ii. Quashing/Modifying the Notification dated 20.08.2014. iii. Setting aside or modifying the Rule 9(4) of the 2009 DHS Rules.
167/ 2019	1246/ 2017	i. Benefit of counting contractual service for pension refused in view of ineligibility under applicable pension rules.	i. Setting aside the Impugned Order dated 20.08.2018, thereby granting seniority from initial engagement and direction to count contractual service also

			for pensionary benefits. ii. Quashing the Rule 14(2)(c) of the 2009 DHS Rules.
4929/ 2019	4018/ 2016	i. In view of the termination dated 23.11.2007 and break in service, continuity not accepted and also parity in pay and seniority rejected. ii. Pension claim also declined in light of Rules 14(c) and 9(4) of the 2009 DHS Rules.	i. Quashing the Impugned Order dated 19.02.2019, thereby recognising the entire service, including the period prior to termination for seniority. ii. Granting of parity in pay and pension under the old pension scheme.
7531/ 2022	3556/ 2018	i. Contractual service directed to be considered, however, relief is made subject to the outcome of W.P.(C) 1265/2018.	i. Setting aside the Impugned Order dated 23.12.2021, thereby granting unconditional counting of contractual service for seniority and pension without being made subject to other Writ Petitions. ii. Quashing the Rules 6(2), 9(4) and 14(2)(c) of the 2009 DHS Rules.
835/ 2020	2837/ 2019	i. Seniority from initial contractual appointment declined. ii. Contractual service directed to be counted for pension in accordance with rules.	i. Quashing the Impugned Order dated 23.09.2019. ii. Quashing the Rules 6(2), 9(4), 14(2)(b), 14(2)(c). iii. Quashing the revised tentative seniority list

			dated 08.03.2018 and 13.03.2018.

30. Thus, across the Impugned Orders, the Tribunal's analysis proceeded primarily on the following factual premises:

i. The initial engagement of the Applicants was not through the regular recruitment process prescribed under the Recruitment Rules;

ii. Regular appointment was made only after due selection;

iii. Seniority is ordinarily reckoned from the date of regular appointment unless statutory rules provide otherwise; and

iv. Counting of past service for pension is governed by specific statutory provisions, distinct from principles governing seniority.

31. It is in the aforesaid factual and legal backdrop that the present batch of Writ Petitions has been preferred, assailing the findings of the Tribunal to the extent adverse to the respective Petitioners.

CONTENTIONS ON BEHALF OF THE GNCTD:

32. Heard learned Counsel for the parties at length and, with their able assistance, perused the paperbook.

33. The submissions advanced by the learned Counsel for the GNCTD, common to the present batch of matters, are as under:

i. The Applicants were initially engaged purely on contractual basis for fixed tenures to meet administrative exigencies. Such engagements were not made through the regular recruitment process prescribed under the applicable Recruitment Rules and did not confer any right to regular appointment or to seniority. The mere fact that such engagements were preceded by an advertisement or assessment does not elevate them to appointments made in accordance with the statutory recruitment rules.

ii. The 2009 DHS Rules constitute a complete code in respect of constitution of the cadre, induction and fixation of seniority. Under Rule 6(2), contractual doctors appointed on or before 18.12.2006 could be considered for induction only upon assessment of suitability by the UPSC and upon being found fit. It is only upon such induction that they became members of the service. Therefore, seniority could not, in law, be reckoned from a date prior to their deemed appointment under the 2009 DHS Rules.

iii. The adoption of 23.12.2009, i.e., the date of notification of the 2009 DHS Rules, as the date of induction for the purpose of seniority was not arbitrary, but was done after due consultation with the Law Department and with concurrence of the UPSC. The Notification dated 20.08.2014 merely gave effect to this considered decision and ensured uniformity at the stage of initial constitution.

iv. Seniority is a statutory right and must flow strictly from the rules. In the absence of any provision in the 2009 DHS Rules permitting retrospective seniority from the date of contractual engagement, no such benefit can be granted. Contractual service, by its very nature, does not create a lien on a post nor form part of cadre service unless specifically provided.

v. The entitlement to count past service for pension is governed by specific statutory provisions. In certain matters, the Tribunal granted limited relief of counting contractual service towards qualifying service, subject to fulfillment of the applicable rules. However, in O.A. Nos.1246/2017 and 4018/2016, such relief was rightly declined as the Applicants did not satisfy the statutory conditions or were governed by the New Pension Scheme. Reliance is placed on Rules 14(c) and 9(4) of the 2009 DHS Rules to submit that grant of the old pension scheme would be contrary to the said Rules.

vi. Insofar as W.P.(C) 4929/2019 is concerned, it is submitted that the Petitioner therein suffered termination of service on 23.11.2007 on account of unauthorized absence. Though she was taken back into service pursuant to interim orders of the Supreme Court, the Termination Order was never set aside. There was thus a clear break in service, rendering her claim of continuity for seniority or pension untenable.

vii. The Tribunal has correctly held that seniority cannot be granted from the date of initial contractual appointment, and

counting of such service for pension, if permissible, must strictly conform to the governing rules. The present Writ Petitions, according to the GNCTD, seek a benefit which is neither contemplated under the 2009 DHS Rules nor supported by settled principles governing service jurisprudence.

34. No other submissions have been advanced by the learned Counsel for the GNCTD.

CONTENTIONS ON BEHALF OF THE RESPONDENTS IN W.P.(C) 1265/2018:

35. The submissions advanced by the learned Counsel for the Respondents in the W.P.(C) 1265/2018, as urged before this Court, are summarised hereunder:

i. Pension is not a bounty but a valuable right earned for past service and constitutes a measure of social security post-retirement. Any interpretation of the Rules which arbitrarily denies pensionary benefit, despite long and continuous service rendered against sanctioned posts, would defeat the object of the pension scheme.

ii. Reliance is placed on ***S.D. Jayaprakash & Ors. v. Union of India***[1]**;** ***State of H.P. v. Sheela Devi***[2]**;** and ***Uday Pratap Thakur v. State of Bihar***[3], to contend that service rendered on contractual or work-charged basis prior to regularization is liable to be counted towards qualifying service for pension, where the

[1] 2025 SCC OnLine SC 973
[2] 2023 SCC OnLine SC 1272
[3] 2023 SCC OnLine SC 527

rules so permit. It is further urged that the CCS (Pension) Rules, 1972 [hereinafter referred to as 'CCSP Rules'] must be construed purposively and any restrictive interpretation defeating legitimate pensionary benefits ought to be eschewed.

iii. Placing reliance on decisions of various High Courts in ***Indian Institute of Technology v. Dr. Praveen Kumar***[4]***; Vasant Gangaram v. State of Maharashtra***[5]***;*** and ***Harbans Lal v. State of Punjab***[6], it is submitted that where the initial engagement was pursuant to a valid advertisement and the service continued without break, the employee cannot be deprived of pensionary benefits merely because regularization was granted from a later date.

36. No other submissions have been advanced by the learned Counsel for the Respondents in the aforesaid Writ Petition.

CONTENTIONS ON BEHALF OF THE PETITIONERS IN W.P.(C) 5221/2018:

37. The submissions advanced by the learned Counsel for the Petitioners in the W.P.(C) 5221/2018 are summarised hereunder:

i. The initial appointments of the Petitioners on contractual basis were made against sanctioned posts after due advertisement and selection, in a manner known to law. In the absence of any specific rule to the contrary, continuous length of service must ordinarily be taken into account for determining seniority,

[4] 2025 SCC OnLine Jhar 3350
[5] (1996) 10 SCC 148
[6] 2010 SCC OnLine P&H 8181

consistent with Articles 14 and 16 of the Constitution of India. Reliance is placed upon the decisions of the Supreme Court in ***State of U.P. v. Manbodhan Lal Srivastava***[7]***;*** *and* ***A Janardhana v. Union of India & Ors.***[8]

ii. Placing reliance on the decision in ***Vijay Dhankar & Ors. v. GNCTD & Ors.***[9], it is urged that Rule 6(2) of the 2009 DHS Rules recognises the validity of prior contractual appointments at the stage of initial constitution, and therefore the Petitioners' past service deserves due weightage.

iii. Insofar as pension is concerned, the employees who had been working continuously prior to 01.01.2004, though regularised subsequently, are entitled to have their qualifying service counted from the initial date of appointment. Reliance is placed on ***Harbans Lal*** *(supra)*; ***Sheela Devi*** *(supra)* and ***S.D. Jayaprakash*** *(supra)* to submit that past contractual service, when followed by regularisation, must be counted towards pensionary benefits.

38. No other submissions have been made on behalf of the learned Counsel representing the Petitioners in the aforesaid Writ Petition.

ANALYSIS AND FINDINGS IN W.P.(C) 1265/2018 AND 5221/2018:

[7] 1958 SCR 533
[8] (1983) 3 SCC 601
[9] 2012 SCC OnLine CAT 4728

39. This Court has considered the rival submissions advanced on behalf of the GNCTD as well as the respective Respondents/Petitioners in W.P.(C) 1265/2018 and W.P.(C) 5221/2018. Since both matters arise out of the common Impugned Order dated 23.05.2017, passed in O.A. Nos.604/2014 and 238/2015 and involve overlapping issues of seniority and pension, they are being examined together.

A. Whether contractual service is liable to be counted for seniority in the case of the present fact.

40. The principal submission of the GNCTD is that the Applicants were initially engaged purely on contractual basis and not through the regular recruitment process contemplated under the applicable Recruitment Rules. It is urged that the 2009 DHS Rules constitute a complete code and that, in the absence of any express provision granting retrospective seniority, no such benefit can be claimed.

41. On the other hand, the Applicants contend that their appointments were made against sanctioned posts after due advertisement and assessment, they discharged duties identical to regularly appointed Doctors and their induction under Rule 6(2) of the 2009 DHS Rules is itself a recognition of the validity and continuity of their prior service.

42. At the very outset, it is pertinent to refer to some of the relevant rules of the 2009 DHS Rule. The same are extracted as under:

> *"**2. Definitions.**-*
>
> *In these rules, unless the context otherwise requires-*

(a) "Commission" means the Union Public Service Commission.

(b) "Controlling Authority" means the Health and Family Welfare Department, Government of NCT of Delhi.

(c) "Duty Post" means any post, whether permanent or temporary, specified in Schedule-II.

(h) "Service" means the Delhi Health Service (Allopathy).

(i) "Sub Cadre" means any of the two streams of the Service, namely General Duty, and Non teaching Specialist as the case may be.

***

5. Members of the Service.-

***(**1) The following persons shall be members of the Service, namely:-*

(a) Persons appointed under sub-rule (5) of rule 4.
(b) Persons appointed to duty posts under rule 6, and
(c) Persons appointed to duty posts under rule 7.

(2) A person, appointed under clause (b) of the Sub-rule (1) shall, on such appointment, be deemed to be the member of the Service in the appropriate Grade applicable to him in Schedule-II.

(3) A person appointed under clause (c) of the Sub (1) shall be the Member of the Service in the appropriate grade applicable to him in Schedule-II from the date of such appointment.

***

6. Initial Constitution of the Service.-

(1) All the officers appointed under the Central Health Service Rules, 1996, who are working in the Government of NCT of Delhi as on the date of publication of these rules in the official gazette and who opt to be part of this service shall be deemed to have been appointed under these rules and they shall be members of the service in the respective grades.

(2) All officers appointed on contract basis/ad-hoc basis on or before 18th December 2006, i.e., the date of issue of the Government of Delhi's O.M. No. F.70/49/2006/H&FW/SSHFW/463-475 dated 18th December, 2006, on the basis of their suitability as assessed by the Commission and requisite educational qualifications and experience prescribed for the post and being found fit, shall be deemed to have been appointed under these Rules and assigned to the Sub- Cadre of General Duty Medical Officers or Non-teaching Specialists, as the case may be, and they shall be members of the

Service at the entry level of the respective Sub-Cadre at the initial constitution stage.

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9. Seniority.-

(1) The relative seniority of members of the service appointed to a grade in the respective sub-cadres or in the respective specialty of the sub-cadre of the Service, as the case may be, at the time of initial constitution of the service under rule 6(1), shall be as obtaining on the date of commencement of these rules.

Provided that if the seniority of any such members had not been specifically determined on the said date, the same shall be determined on the basis of the rules governing the fixation of seniority as were applicable to the members of the Service prior to the commencement of these rules or in consultation with the Commission as the case may be.

(2) The seniority of officers recruited to the Service other than those appointed under rule 6(1) shall be determined in accordance with the general instructions issued by the Government in the matter from time to time.

(3) The seniority of persons recruited to the Service in accordance with subrule (5) of rule 4 shall be fixed in the manner provided therein.

(4) The protection, if any accorded in towards increments drawn by the doctors who worked on contract/ad hoc basis prior to placement at the initial constitution stage shall not be taken into account for determining the length of service or seniority for consideration for promotion on time scale basis subsequent to their placement at the initial constitution stage.

***

14. Pension & other conditions of Service.-

(1) The conditions of service of the members of the service in respect of matters not expressly provided for in these rules, shall, mutatis mutandis and subject to any special orders issued by the Government in respect of the service, by the same as those applicable to officers of the Central Civil Services in general.

(2) (a) Officers appointed under Sub-Rule (1) of Rule 6, prior to 1.1.2004, before the commencement of these Rules, shall be governed by the CCS (Pension) Rules, 1972.

(b) Officers appointed under Sub-rule (1) of Rule 6, after 1.1.2004, shall be governed by the new Pensions Scheme.

(c) Officers appointed under Sub-rule (2) of Rule 6 will be governed by the new Pensions Scheme, applicable after 1.1.2004.

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16. Power to relax.-

Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons."

43. A conjoint reading of Rules 2, 5 and 6 of the 2009 DHS Rules makes the legislative scheme abundantly clear. "Service" under Rule 2(h) of the said Rules is a defined expression referring specifically to the DHS (Allopathy). Membership of that Service is not automatic upon rendering duties for the Health Department. It accrues only in the manner contemplated under Rule 5 of the said Rules. Rule 5(1) exhaustively enumerates the categories of persons who shall be members of the Service. Clause (b) thereof brings within the fold only those "appointed to duty posts under Rule 6". Thus, entry into the Service is statutorily structured and is traceable to a specific source of appointment under the 2009 DHS Rules.

44. Rule 6, in turn, is a transitional provision dealing with "Initial Constitution of the Service." Sub-rule (1) pertains to officers already borne on the CHS who opted to join the newly constituted cadre. Sub-rule (2) carves out a separate enabling window for contractual appointees appointed on or before 18.12.2006, but subjects their induction to an essential precondition, assessment of suitability by the Commission and fulfillment of prescribed qualifications. Only upon such assessment and being found fit are they "deemed to have been

appointed under these Rules" and assigned to the Sub-Cadre "at the entry level" at the initial constitution stage.

45. The expression "deemed to have been appointed under these Rules" cannot be read in isolation. The deeming fiction is expressly tied to the stage of "initial constitution" and to assignment "at the entry level" of the respective sub-cadre. The legal fiction, therefore, is limited and purposive. It facilitates absorption into the newly created cadre without undergoing a fresh process of open recruitment. It does not, either expressly or by necessary implication, relate back the appointment to the date of initial contractual engagement. To read such retrospectivity into Rule 6(2) would amount to judicial legislation.

46. This interpretation is reinforced by Rule 9 of the 2009 DHS Rules. Rule 9(1) specifically preserves the relative seniority of those appointed under Rule 6(1), i.e., CHS officers, as obtaining on the date of commencement of the Rules. In contrast, there is no corresponding provision granting preservation or carry-forward of seniority to those inducted under Rule 6(2). On the contrary, Rule 9(4) explicitly stipulates that protection accorded in respect of increments drawn during contractual service prior to placement at the initial constitution stage "shall not be taken into account for determining the length of service or seniority" for promotional purposes thereafter. The statutory intent is, therefore, explicit. Past contractual service may receive limited financial protection, but it is not to be reckoned for seniority within the cadre.

47. The structure of Rule 9 thus draws a clear distinction between *(i)* preservation of existing seniority in the case of officers already borne on a regular cadre, and *(ii)* fresh integration at the entry level in the case of contractual appointees. If the rule-making authority had intended to confer retrospective seniority upon such appointees, it would have so provided in express terms, particularly when it consciously addressed the subject of seniority in detail.

48. The cumulative effect of Rules 5, 6 and 9 of the 2009 DHS Rules is that membership of the service, fixation of seniority and determination of pensionary regime are all anchored to the statutory event of appointment under the 2009 DHS Rules. The prior contractual engagement, though a factual precursor, does not by itself constitute entry into the service. It is only upon induction, pursuant to assessment by the UPSC, that the appointee acquires the legal status of a "member of the Service".

49. The presence of Rule 16 of the 2009 DHS Rules conferring a power to relax, also assumes significance. Where the rule-making authority intended flexibility, it expressly provided a mechanism for relaxation in consultation with the UPSC. In the absence of invocation of such power, the Court cannot, under the guise of interpretation, dilute the plain language of the Rules to create a benefit of retrospective seniority which the statutory scheme consciously withholds.

50. In light of the above statutory architecture, it becomes evident that the Tribunal correctly appreciated that the Applicants' initial

contractual engagement was *dehors* the cadre and that their regular entry into the service occurred only upon induction under Rule 6(2).

51. The reliance placed by the Petitioners in W.P.(C) 5221/2018 on ***Manbodhan Lal Srivastava*** *(supra)* and ***A. Janardhana*** *(supra)* does not advance their case beyond a point. Those decisions reiterate that, in the absence of a specific rule to the contrary, continuous length of service may be relevant. However, in the present case, there exists a specific statutory framework governing induction and seniority, namely the 2009 DHS Rules. Once the field is occupied by statutory rules, general equitable principles cannot override the scheme of the Rules.

52. Further, the reliance placed by the Petitioners in W.P.(C) 5221/2018 on ***Vijay Dhankar*** *(supra)* is misconceived. In the said decision, the Tribunal examined the constitutional validity of Rule 6(2) of the 2009 DHS Rules and upheld the prescription of 18.12.2006 as a rational cut-off date for inclusion of contractual appointees at the stage of initial constitution of the DHS, subject to suitability assessment by the UPSC. The judgment merely affirms the policy competence of the Government in structuring the initial constitution of a newly created service and does not hold that prior contractual service must be granted retrospective seniority or weightage beyond what is expressly provided in the Rules. On the contrary, it recognises the limited and conditional nature of induction under Rule 6(2), and therefore does not advance the Petitioners' claim for reckoning past contractual service for seniority or promotional benefits.

53. Equally, the contention that delay on the part of the State in framing the Rules should not prejudice the Applicants cannot lead to conferment of seniority *dehors* the Rules. Seniority is a statutory right. It cannot be claimed on the basis of long service alone, particularly when such service was admittedly contractual and not borne on the cadre.

54. This Court also finds merit in the submission of the GNCTD that contractual engagement, by its very nature, does not create a *lien* on a post nor does it confer membership of the service. The deeming provision in Rule 6(2) operates only from the stage of initial constitution and cannot be extended by implication to rewrite the date of entry into service for purposes of seniority.

55. In view of the above, this Court is of the considered opinion that the Tribunal was justified in declining the prayer for reckoning seniority from the date of initial contractual engagement.

56. The challenge to the Notification dated 20.08.2014, whereby 23.12.2009 was fixed as the date of induction into the DHS pursuant to Rule 6(2), also does not merit interference. The said Notification merely operationalised the statutory scheme by specifying the date on which the Petitioners stood inducted at the entry level after due process, and does not create or extinguish rights *dehors* the 2009 DHS Rules. In the absence of any demonstrated arbitrariness or violation of the 2009 DHS Rules, no ground for interference in the exercise of writ jurisdiction is made out.

B. Whether contractual service is liable to be counted for pension

57. The next and more nuanced issue pertains to pensionary benefits. In W.P.(C) 1265/2018, the Tribunal directed that the period rendered by the Applicants on contractual basis be taken into consideration towards qualifying service for pension, subject to and in accordance with the applicable rules.

58. The GNCTD has assailed even this limited relief, contending that officers inducted under Rule 6(2) are statutorily governed by Rule 14(2)(c) and, consequently, by the New Pension Scheme, and that the Rules do not envisage reckoning of pre-induction contractual service for pensionary purposes.

59. The Applicants, on the other hand, rely upon the decisions in ***Sheela Devi*** *(supra)* and ***S.D. Jayaprakash*** *(supra)* to contend that past contractual service, followed by regularisation, must be counted towards qualifying service for pension where the governing rules so permit.

60. At this juncture, it becomes relevant to refer to some of the provisions of the CCSP Rules, which are extracted hereunder:

> *"**3. Definitions.-***
>
> *(1) In these rules, unless the context otherwise requires:*
>
> *(q) 'Qualifying Service' means service rendered while on duty or otherwise **which shall be taken into account for the purpose of pensions and gratuities admissible under these rules**.*
>
> ***
>
> ***13. Commencement of qualifying service.-***
>
> *Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge*

of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.

Provided further that:

(a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.

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17. Counting of service on contract.-

(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either:

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract."

(Emphasis supplied)

61. A plain reading of the aforesaid provisions indicates that the CCSP Rules do not adopt an inflexible approach in excluding pre-regularisation service. While Rule 13 provides that qualifying service ordinarily commences from the date of first appointment to a post, whether substantive, officiating or temporary, it expressly permits counting of temporary or officiating service where it is followed, without interruption, by substantive appointment.

62. More significantly, Rule 17 specifically contemplates a situation where an employee initially engaged on contract is subsequently appointed substantively in a pensionable establishment, and enables such contractual service to be counted, subject to exercise of option and compliance with the prescribed conditions. The statutory framework, therefore, recognises that prior contractual service is not *per se* alien to pensionary reckoning. Its inclusion depends upon fulfilment of the conditions stipulated therein.

63. It is in this statutory backdrop that the Tribunal examined the matter. In the Impugned Order, it noticed that qualifying service ordinarily begins from substantive appointment. At the same time, it recorded that where service has been rendered against sanctioned posts and is followed by regularisation without interruption, the CCSP Rules themselves contemplate counting of such service, if the statutory requirements are met. The direction issued is thus rooted in the text of the CCSP Rules.

64. The Tribunal also adverted to its earlier findings in O.A. No.2564/1997, where the Applicants, though styled as contractual

appointees, were held entitled to parity in pay on the principle of equal pay for equal work. That determination recognised the substantive nature of duties discharged by them against sanctioned posts. While such a finding does not, by itself, confer pensionary entitlement, it constitutes a relevant factual backdrop in examining whether the nature of service rendered can be considered under the pension rules.

65. This Court is conscious that the statutory scheme contains clear internal limitations which cannot be overlooked. Rule 9(4) of the 2009 DHS Rules incorporates an express embargo by stipulating that the protection, if any, granted in respect of increments earned during the contractual period prior to placement at the stage of initial constitution shall not be reckoned for determining length of service or seniority for promotion on time-scale basis.

66. Similarly, Rule 14(2)(c) of the 2009 DHS Rules mandates that officers appointed under Rule 6(2) shall be governed by the New Pension Scheme applicable after 01.01.2004. The language employed is explicit and admits of no discretion. These provisions demonstrate that while the Rules make a structured accommodation for induction of contractual appointees, they simultaneously impose clear boundaries in matters of seniority and pension regime.

67. However, this Court is equally guided by the settled principle that pension is not a matter of grace but a deferred portion of compensation for past service. Pensionary provisions, being measures of social security, must receive a fair and beneficial construction. At

the same time, it is equally trite that the right to pension must emanate from, and be circumscribed by, the governing statutory rules.

68. The view taken by the Tribunal also finds support in subsequent judicial pronouncements. In ***Sheela Devi*** *(supra)*, the Supreme Court recognised that where employees had rendered contractual service which was later followed by regularisation, such service could not be ignored for pensionary purposes if the governing rules permitted its reckoning. The principle was reiterated in ***S.D. Jayaprakash*** *(supra)*, where the Court, in the context of temporary and contractual appointees subsequently regularised, directed that the pre-regularisation service be considered in terms of Rule 17 of the CCSP Rules. These decisions underscore that the determinative factor is not the nomenclature of the initial appointment, but whether the statutory mechanism enables counting of such service upon subsequent substantive appointment.

69. Similar reasoning is discernible in ***Dr. Praveen Kumar*** *(supra)*, where the Jharkhand High Court examined the applicability of the pension regime in light of the date of initiation of the recruitment process, and in ***Harbans Lal*** *(supra)* decision by the Punjab and Haryana High Court, wherein the daily-wage service preceding regularisation was directed to be counted towards qualifying service for pension. While each of these decisions turned on their respective statutory frameworks, the common thread is that service rendered continuously against sanctioned posts and followed by regularisation cannot be excluded from pensionary consideration by a purely formalistic approach. It is this principle, subject always to the

controlling statutory rules, that informs and sustains the limited direction issued by the Tribunal in the present case.

70. Viewed in that perspective, it is the considered view of this Court that the Tribunal has not conferred any blanket or automatic benefit upon the Applicants. It has merely directed that the period of contractual service be considered towards qualifying service "in accordance with the applicable rules." Such a direction does not dilute the embargo under Rule 9(4) nor does it override Rule 14(2)(c). It mandates only a rule-compliant examination within the statutory framework.

71. This Court, therefore, finds no infirmity in the approach adopted by the Tribunal in O.A. Nos.604/2014 and 238/2015 in directing consideration of past contractual service for pension, subject to satisfaction of statutory preconditions. The direction neither creates a right *dehors* the 2009 DHS Rules nor expands their scope, it merely ensures that service, if otherwise admissible under the CCSP Rules, is not excluded by a mechanical or hyper-technical application of the statutory scheme.

72. In view of the foregoing discussion, this Court holds that:

i. The Applicants are not entitled to reckoning of seniority from the date of their initial contractual engagement.

ii. The fixation of 23.12.2009 as the date of induction under the 2009 DHS Rules does not suffer from illegality warranting interference.

iii. The direction of the Tribunal to consider counting of contractual service towards qualifying service for pension, in accordance with the applicable rules, is justified and does not call for interference.

73. Consequently, W.P.(C) 1265/2018 and W.P.(C) 5221/2018 are liable to be dismissed, subject to the above observations.

74. In view of the findings of this Court on the principal questions relating to (i) reckoning of seniority from the date of initial contractual engagement, and (ii) counting of such service towards qualifying service for pension, which constituted the core controversy in the present batch, this Court now proceeds to examine each Writ Petition separately on its own facts and the reliefs claimed therein.

IN W.P.(C)7531/2022:

75. This Writ Petition assails the Impugned Order dated 23.12.2021 passed by the Tribunal in O.A. No.3556/2018.

76. The submissions advanced on behalf of the GNCTD are in line with the contentions already noticed in Paragraph No.33 hereinabove. It is reiterated that seniority cannot be claimed from the date of initial contractual engagement and that any counting of such service must strictly conform to the statutory framework under the 2009 DHS Rules and the applicable pension rules.

77. The Petitioners contend that they were appointed on a contractual basis in the year 1996 against sanctioned posts and had

rendered continuous service prior to their induction under the 2009 DHS Rules. It is urged that once their suitability was assessed by the UPSC under Rule 6(2) and they were inducted at the stage of initial constitution, their past service ought to be duly recognised both for seniority and pension.

78. The principal grievance, however, is directed against the nature of the relief granted by the Tribunal. It is submitted that although the Tribunal directed consideration of the period spent on contractual service, it made such consideration subject to the outcome of W.P.(C) 1265/2018.

79. A perusal of the Impugned Order dated 23.12.2021 shows that the Tribunal did not grant unconditional relief. While directing the Respondents to consider the counting of the contractual service, the Tribunal expressly made the same subject to the decision of this Court in W.P.(C) 1265/2018, which involved an identical issue concerning seniority and pension.

80. In the preceding part of this judgment, this Court has already adjudicated upon the issues which formed the basis of the conditional direction. At the cost of repetition, this Court has held that:

i. Seniority cannot be granted from the date of initial contractual engagement; and

ii. Counting of such service for pension is permissible only in accordance with the applicable statutory rules.

81. In that view of the matter, the conditional direction issued by the Tribunal no longer survives as contingent. The issue having now been decided in the present batch, the relief granted in O.A. No.3556/2018 must operate in terms of the conclusions recorded herein.

82. Accordingly, it is clarified that the Petitioners in W.P.(C) 7531/2022 shall not be entitled to seniority from the date of their initial contractual engagement. However, their claim for counting of contractual service towards qualifying service for pension shall be examined by the GNCTD strictly in accordance with the applicable pension rules and in terms of the principles upheld in Paragraph Nos.57-71 above.

83. With the above clarification, W.P.(C) 7531/2022 stands disposed of.

IN W.P.(C) 10928/2019:

84. This Court now proceeds to examine W.P.(C) 10928/2019, which arises out of O.A. No.4442/2014 and challenges the Impugned Order dated 25.07.2019 passed by the Tribunal.

85. The submissions advanced on behalf of the GNCTD are in consonance with the contentions already recorded in Paragraph No.33 hereinabove.

86. On behalf of the Petitioners, it is contended that they were appointed in the year 2002 after due advertisement and selection against sanctioned posts and continued to serve without interruption.

It is urged that the nature of duties discharged by them was identical to that of regularly appointed doctors and that their subsequent induction under Rule 6(2) was merely a formal recognition of their long-standing service.

87. The Petitioners assail the Impugned Order insofar as it rejects their claim for seniority from the date of initial contractual engagement and seek quashing/modification of the Notification dated 20.08.2014. A further challenge is laid to Rule 9(4) of the 2009 DHS Rules, contending that the same operates to their detriment in matters of seniority and pension.

88. A perusal of the Impugned Order dated 25.07.2019 shows that the Tribunal, while rejecting the claim for seniority from the date of initial contractual appointment, directed that the period of contractual service be counted towards qualifying service for pension, subject to the governing rules.

89. The issue relating to seniority from the date of initial contractual engagement stands concluded by the findings of this Court in Paragraph Nos.40-56 above. This Court has held that in the presence of a specific statutory framework under the 2009 DHS Rules, seniority cannot be claimed retrospectively from the date of contractual engagement, and that the fixation of 23.12.2009 as the date of induction does not warrant interference.

90. Insofar as the challenge to Rule 9(4) of the 2009 DHS Rules is concerned, this Court finds that the said Rule forms part of the statutory scheme governing the constitution and conditions of service

under the DHS. The Petitioners have not demonstrated that the Rule is *ultra vires* the parent statute or violative of any constitutional mandate. Merely because its operation does not advance their claim for retrospective seniority would not render it invalid.

91. As regards pension, the Tribunal has granted limited relief by directing counting of contractual service towards qualifying service in accordance with the applicable rules. In light of the conclusions of this Court in Paragraph Nos.57-71, such direction is in consonance with settled principles and does not suffer from any infirmity.

92. Accordingly, W.P.(C) 10928/2019 is liable to be dismissed. The rejection of the claim for retrospective seniority is upheld. The direction of the Tribunal permitting counting of contractual service for pension, subject to statutory rules, is affirmed.

IN W.P.(C) 167/2019:

93. This Court now proceeds to examine W.P.(C) 167/2019, which arises out of O.A. No.1246/2017 and assails the Impugned Order dated 20.08.2018 passed by the Tribunal.

94. The submissions advanced on behalf of the GNCTD are in line with the contentions already recorded in Paragraph No.33 hereinabove. It is submitted that seniority cannot be reckoned from the date of initial contractual engagement. Insofar as the pension is concerned, it is urged that the Tribunal rightly declined the benefit of counting contractual service towards qualifying service, as the Petitioner was governed by the New Pension Scheme and did not

satisfy the eligibility conditions under the applicable statutory provisions.

95. On behalf of the Petitioner, it is contended that she had rendered long years of uninterrupted contractual service against sanctioned posts prior to her induction under the 2009 DHS Rules. While the claim for retrospective seniority has been pressed, the principal grievance now survives with respect to pensionary benefits.

96. Insofar as the claim for seniority from the date of initial contractual engagement is concerned, the same stands concluded by the findings in the earlier part of this judgment. For the reasons already recorded, the Petitioner is not entitled to seniority from a date prior to her induction under the 2009 DHS Rules.

97. However, with regard to pension, this Court has held that contractual service rendered against sanctioned posts, if otherwise continuous and followed by induction under the 2009 DHS Rules, is liable to be counted towards qualifying service for pension, subject to the applicable statutory provisions.

98. The Impugned Order dated 20.08.2018 declined such benefit to the Petitioner. In view of the determination of the issue in W.P.(C) 1265/2018 and W.P.(C) 5221/2018, the Petitioner herein is entitled to parity.

99. Accordingly, W.P.(C) 167/2019 is partly allowed. The rejection of the claim for retrospective seniority is upheld. However, the Impugned Order is set aside to the limited extent it denies counting of

contractual service towards qualifying service for pension. The Respondents are directed to re-compute the Petitioner's qualifying service for pension by including the period of contractual service, subject to fulfillment of the statutory conditions, within a period of twelve weeks.

100. The Writ Petition is disposed of in the above terms.

IN W.P.(C) 4929/2019:

101. This Court now takes up W.P.(C) 4929/2019, which arises out of O.A. No.4018/2016 and assails the Impugned Order dated 19.02.2019 passed by the Tribunal.

102. The submissions advanced on behalf of the GNCTD are in terms of the contentions already recorded in Paragraph No.33 hereinabove. It is contended that the Petitioner was initially engaged on contractual basis, her services came to be terminated on 23.11.2007 on account of unauthorized absence and the said Termination Order was never set aside.

103. It is further submitted that though the Petitioner was taken back into service pursuant to interim orders of the Supreme Court, there was a clear break in service between 23.11.2007 and 03.11.2010. Consequently, any claim for continuity of service for purposes of seniority or pension is legally untenable. It is further urged that the Petitioner is governed by the statutory framework of the 2009 DHS Rules and cannot claim benefits *dehors* the Rules.

104. On behalf of the Petitioner, it is contended that she was initially appointed in 1996 on contractual basis after due selection and had rendered several years of service before proceeding on leave. It is urged that she was ultimately reinstated pursuant to orders of the Supreme Court and was directed to be treated as eligible for consideration for regularization by the UPSC. It is submitted that the break in service ought not to be put against her, particularly when she was taken back into service and thereafter inducted under the 2009 DHS Rules. The Petitioner claims parity with other similarly situated doctors in matters of seniority and pension.

105. The Impugned Order dated 19.02.2019 records that the Petitioner's contractual services were terminated on 23.11.2007 due to unauthorized absence, the challenge to the termination did not culminate in the order being set aside and she was taken back into service only pursuant to interim directions of the Supreme Court. The Tribunal held that the termination order having remained intact, there was a clear break in service.

106. Insofar as the claim for seniority from the date of initial contractual engagement is concerned, the same stands concluded by the findings of this Court in the earlier part of this judgment. The Petitioner cannot claim seniority from a date prior to her induction under the 2009 DHS Rules.

107. However, the present case stands on a distinct footing in relation to pension. This Court has held in the other connected matters that contractual service rendered against sanctioned posts, if otherwise

eligible under the governing rules, is liable to be counted towards qualifying service for pension.

108. The question that arises here is whether the period prior to 23.11.2007 and the period commencing from 03.11.2010 can be taken into account for pensionary benefits.

109. Admittedly, the Termination Order dated 23.11.2007 was never set aside. The Petitioner was taken back into service pursuant to interim directions, but no declaration of continuity of service was granted by the Supreme Court. In the absence of the Termination Order being quashed, the break in service cannot be ignored for all purposes.

110. In these circumstances, it becomes pertinent to adjudicate whether the Petitioner would be entitled to treat the entire period as continuous service. However, at this stage, the contractual service actually rendered by her prior to termination (i.e., up to 23.11.2007) and the service rendered after her rejoining on 03.11.2010 may be considered for purposes of qualifying service for pension, subject to the statutory framework and excluding the interregnum period.

111. To this limited extent, the Impugned Order warrants interference. The denial of retrospective seniority is upheld. However, for purposes of pension, the Respondents shall compute the Petitioner's qualifying service by including the periods during which she actually rendered service on contractual basis and thereafter upon induction, but excluding the period between 23.11.2007 and 03.11.2010.

112. W.P.(C) 4929/2019 is accordingly partly allowed in the above terms. The necessary exercise shall be undertaken within twelve weeks.

113. It is, however, clarified that the remaining issues arising in the present Writ Petition shall be considered and decided after further hearing the matter.

IN W.P.(C) 835/2020:

114. This Court now takes up W.P.(C) 835/2020, which arises out of O.A. No.2837/2019 and assails the Impugned Order dated 23.09.2019 passed by the Tribunal.

115. The submissions advanced on behalf of the GNCTD are in terms of the contentions already recorded in Paragraph No.33 hereinabove. It is contended that the seniority list in question was only a revised tentative list prepared in accordance with the 2009 DHS Rules and the Notification dated 20.08.2014 fixing 23.12.2009 as the date of induction.

116. On behalf of the Petitioners, it is contended that the revised tentative seniority list failed to reflect their long years of contractual service and that there was a genuine apprehension that promotions may be effected on its basis, thereby prejudicing their rights.

117. The Tribunal, in the Impugned Order, specifically noted that the very nomenclature of the lists published by the Respondents was "revised tentative seniority list". It was observed that the record was not clear as to when the earlier tentative list had been published and

that the Applicants as well as various other employees had already submitted their representations.

118. The Tribunal reasoned that it would naturally take some time for the Respondents to consider the representations and finalise the seniority list. The apprehension expressed by the Applicants that promotions might be effected on the basis of the revised tentative seniority list was found to be without basis.

119. The Tribunal further adverted to the order dated 07.07.2018 and clarified that the said order merely mentioned that the tentative seniority list may be taken into account by all the HODs in "all protocols" till the final list was published. It was nowhere stated that promotions would be effected on the basis of the tentative seniority list. On this reasoning, no interference was considered warranted at that stage.

120. In addition, the Tribunal reiterated that seniority must be governed by the 2009 DHS Rules and that contractual service could not be reckoned for fixation of *inter se* seniority in the absence of an enabling provision.

121. The reasoning so adopted by the Tribunal is consistent with the statutory scheme and also accords with the conclusions in the earlier part of this judgment, wherein this Court has upheld the fixation of seniority with reference to 23.12.2009 and have held that contractual service cannot be counted for seniority.

122. This Court, therefore, finds no infirmity in the Impugned Order. The challenge to the revised tentative seniority list was rightly repelled.

123. Insofar as pension is concerned, the entitlement of the Petitioners to counting of contractual service towards qualifying service shall be governed by the directions issued in the W.P.(C) 1265/2018 and W.P. (C) 5221/2018.

124. W.P.(C) 835/2020 is accordingly dismissed, subject to the observations regarding pension as recorded hereinabove.

CONCLUSION:

125. In view of the foregoing discussion, the principal issue raised in this batch of Writ Petitions, namely, the claim of seniority from the date of initial contractual engagement, stands answered against the Applicants. This Court has held that, under the statutory scheme of the 2009 DHS Rules, seniority can be reckoned only from the date of induction into the Service and not from any anterior date of contractual engagement.

126. Insofar as pension is concerned, this Court has clarified that contractual service rendered against sanctioned posts, if otherwise continuous and followed by induction under the 2009 DHS Rules, shall be counted towards qualifying service strictly in accordance with the applicable statutory provisions, however, such counting shall not confer any right to retrospective seniority or disturb *inter se* position in the cadre.

127. The Writ Petitions are accordingly disposed of in the following terms:

i. W.P.(C) 1265/2018 and W.P.(C) 5221/2018: The challenge to fixation of 23.12.2009 as the date of induction and to denial of retrospective seniority is rejected. However, it is held that contractual service rendered against sanctioned posts shall be liable to be counted towards qualifying service for pension, subject to the governing statutory provisions. Hence, the said Writ Petitions are dismissed, subject to hereinabove stated directions.

ii. W.P.(C) 7531/2022 and W.P.(C) 10928/2019: The rejection of the claim for retrospective seniority is upheld. The directions of the Tribunal permitting counting of contractual service towards pension, subject to statutory conditions, are affirmed. Thus, W.P.(C) 7531/2022 is disposed of in aforestated terms and W.P.(C) 10928/2019 is dismissed.

iii. W.P.(C) 167/2019: The denial of retrospective seniority is upheld. However, the Writ Petition is partly allowed to the extent that the Petitioner shall be entitled to counting of contractual service towards qualifying service for pension, subject to statutory conditions. Thus, the present Writ Petition is disposed of in aforesatated terms.

iv. W.P.(C) 835/2020: The challenge to the revised tentative seniority list is rejected and the reasoning of the Tribunal is affirmed. The Writ Petition is dismissed, subject to the observations regarding pension in terms of the present judgment.

v. W.P.(C) 4929/2019: The claim for retrospective seniority is rejected. The Writ Petition is partly allowed to the limited extent that, for purposes of pension, the periods during which the Petitioner actually rendered service shall be counted towards qualifying service, excluding the interregnum during which she remained out of service pursuant to termination. Other issues shall be considered on 01.04.2026. List this Petition on 01.04.2026 in the Supplementary List.

128. All pending applications, except in W.P.(C) 4929/2019, also stand closed.

129. Before parting, this Court deems it appropriate to reiterate, in one composite direction, that wherever relief has been granted with respect to pension, the competent authority shall undertake the exercise of re-computation of qualifying service strictly in accordance with the applicable statutory framework, keeping in view the observations contained in the present judgment. The said directions shall be completed within a period of twelve weeks. It is clarified that the benefit, if found admissible, shall be confined only to qualifying service for pension and shall not, in any manner, alter the seniority or *inter se* position of any member of the Service.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MARCH 10, 2026
s.godara/shah