



2026:DHC:3682-DB



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

+ W.P.(C) 5198/2026 and CM APPLs. 25464-465/2026

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS)

.....Petitioner

Through: Mr. Tanveer Oberoi, Advocate

versus

DR. RAKESH LODHA & ORS.

.....Respondents

Through: Ms. Geetanjali Mohan,
Advocate

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

29.04.2026

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C. HARI SHANKAR, J.

1. This writ petition assails judgment dated 25 July 2025 instituted by the respondents before the Central Administrative Tribunal¹. The respondents are Professors in the All India Institute of Medical Sciences². They had been appointed on *ad hoc* basis between 1997 and 1999. They continued on *ad hoc* basis till 2005.

2. In 2005, Advertisement 03/2005 (FC) was issued by the AIIMS for recruiting Professors in the disciplines which were held by the respondents.

¹ "the Tribunal", hereinafter

² "AIIMS", hereinafter



3. The respondents applied for the said posts and, on qualifying in the selection, were declared successful and were appointed in the same post which they were holding on *ad hoc* basis on 23 September 2025. Ms. Mohan, learned counsel for the respondents, points out that there was no gap between the *ad hoc* service rendered by the respondents and their being appointed consequent to the aforesaid examination.

4. As such, it is clear that the respondents continued on *ad hoc* basis from the time of their original appointment.

5. The respondents claimed the benefit of the Old Pension Scheme³, which was applicable to persons who had joined with them at the time when they were appointed on *ad hoc* basis. Their case was that as they had continued on *ad hoc* basis, without a break, till they were regularly appointed as Professors in their respective disciplines, they were entitled to count their *ad hoc* service towards pensionary benefits and therefore, entitled to the benefit of the OPS.

6. An identical issue involving Professors in the PGIMER, Chandigarh had been decided by the Chandigarh Bench of the Tribunal in *Dr. Neelam Aggarwal and Ors. v. UOI*⁴. The Chandigarh Bench of the Tribunal clearly held that as the Doctors had served continuously after their *ad hoc* appointment and, consequent on undertaking the examination for regular selection, were regularly selected in the same discipline without a break, they were entitled to count their *ad hoc* service towards pensionary benefits and were

³ “OPS”, hereinafter

⁴ OA 060/00105/2018, decided on 13 March 2018



therefore entitled to the benefit of the OPS.

7. The aforesaid decision was carried in appeal to the High Court of Punjab and Haryana which, by judgment dated 22 October 2018 in CWP 26482/2018, dismissed the writ petition. The matter was carried further to the Supreme Court in SLP. The Supreme Court by order dated 10 January 2020 dismissed the SLP on limitation keeping the question of law open.

8. Mr. Oberoi, learned counsel for the petitioner, does not dispute the fact that this case is on all fours with *Dr. Neelam Aggarwal* on facts. His submission is however, as the question of law is left open by the Supreme Court, the position of law is still in a state of flux.

9. This Court has, in a recent decision in *UOI v Kanwaljit Deol*⁵, examined the impact of the Supreme Court, dismissing an SLP leaving the question of law open. We have clearly held that the judgment of the Court, which is under challenge before the Supreme Court attains finality, and it cannot be said that it has lost precedential value. We may reproduce the paragraphs from the said decision as follows:

“22 On the precedential value of the judgment of the High Court, when the Civil Appeal preferred thereagainst is dismissed by the Supreme Court leaving the question of law open, this Court had an occasion to observe recently in *SSC v. Darpan Sharma*⁶ as under:

“17 On the implication of a question of law being left open by the Supreme Court, while dismissing an appeal or a

⁵ 2024 SCC OnLine Del 8805

⁶ 2024 SCC OnLine Del 8280



Special Leave Petition, a Division Bench of the High Court of Gujarat in *Collector v. Liquidator Petrofills Cooperative Ltd.*, ruled thus:

‘27. When the Supreme Court records that the question of law is kept open, *undoubtedly it is meant to be reconsidered in future by the Supreme Court only. The question of law, as correctly contended by Shri P. Chidambaram, is not kept open for the High Court.* This is precisely what was held and observed by the Division Bench of this Court in an unreported decision in Tax Appeal No. 380/2013 dated 9/12/2013. We are in full agreement with the view expressed therein. It was a case where an issue of unabsorbed depreciation under section 32(2) of the Income Tax Act, 1961, was raised by the Revenue before the High Court. An identical issue was already decided by the High Court in case of *General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax*⁷ by allowing the appeal of the assessee and setting aside the order of the Commissioner. The judgment of the High Court was carried in appeal before the Supreme Court. The Supreme Court dismissed the SLP making it clear that the question of law is kept open. When a similar question came up before the High Court in the Tax Appeal, the Revenue argued that when the Supreme Court has left the question of law open, it would be open for the High Court to reconsider the issue regardless of the judgment of another Division Bench in case of *General Motors Pvt. Ltd. v. Deputy Commissioner of Income Tax*. It was in this background, Division Bench made the following observations:

“10. Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of *General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax* (supra), as such, Special Leave to Appeal was preferred before the Honble Supreme Court and the same came to be dismissed by the Honble Supreme Court on the ground of delay and kept the question of law open, this Court may consider the

⁷ (2013) 354 ITR 244



question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax*** (supra). Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Honble Supreme Court kept the question of law open. Therefore, it cannot be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently by this Court Coordinate Bench. It can be said that the said question of law is kept open by the Honble Supreme Court to consider subsequently in other cases by the Honble Supreme Court. So far as this Court is concerned, the decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax*** (supra) is binding unless a contrary view is taken and the matter is referred to the Larger Bench. In view of the decision of the Division Bench of this Court in the case of ***General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax*** (supra) which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now.”

28 We are in full agreement with the view so expressed and in our understanding brings about a correct legal position. *When a question of law is kept open by the Supreme Court not entertaining a SLP against the judgment of the High Court, in fact, what is done is neither to confirm nor to dilute the ratio of the judgment under challenge. That however, does not mean that the High Court in a future case is allowed to take a fresh view ignoring the law of precedence. It only means that the Supreme Court refused to bind itself or put its seal on the ratio propounded by the High Court in the*



judgment under challenge. Therefore, when an identical question comes up before the same High Court and is presented for consideration before a Bench of coordinate strength, by virtue of principles of law of precedence, the Bench would be bound by the ratio of the earlier judgment of the High Court, unless persuaded to refer it to a larger Bench. This is precisely what has been recorded by the Division Bench in the said case and this is why the Bench was of the opinion that it had either to follow the ratio in case of General Motors or make a reference to the larger Bench. This per-se however, would not mean that the review consideration is shut out, if the review is otherwise maintainable. Normally, in almost all the cases, the same Bench would be reconsidering the matter on the grounds raised in the review petition. If in the process, it is found that the proposition of law laid down suffers from some error apparent on face of the record, review certainly would be available. In other words, if a decision has become final, it would continue to bind the Bench of coordinate strength of the same High Court in future though in SLP the Supreme Court it might have been observed that the question of law is kept open. But when a review petition comes before the same Bench, it is the judgment in review which is being criticised. It would have the same limitations as in any other case of review where SLP may not have been filed. Nothing more nothing less. In other words, the expression “question of law is kept open” does not put any additional fetters on the High Court exercising review powers.”

(Emphasis supplied)

10. We may also observe that a similar dispute has come up before this Bench in *Union of India v. Dr. Khursheed Khatoon*⁸, in which too, we have followed earlier decisions and adopted the view which the Tribunal has taken in the present case. The relevant paragraphs from *Dr. Khursheed Khatoon* may be reproduced thus:

“10. In the said decisions, the Court has held that a period of

⁸ 2026 SCC OnLine Del 1564



contractual service, if continuous till regularisation, would be entitled to be counted towards pensionary benefits. We may, to advantage, reproduce paras 2, 6 and 8 of the judgment of the Supreme Court in *S.D. Jayaprakash*⁹ and paras 3, 57, 61 and 71 of the decision in *Dr Yoginder Gupta*¹⁰, thus:

Paras from *S.D. Jayaprakash*

“2. These appeals arise from the Karnataka High Court's order dated 23-3-2021 by which it held that the appellants, who were initially appointed on contractual basis and subsequently regularised, will not be entitled to seniority, service benefits, and pension for the period of their contractual service. Upon consideration of the relevant rules and the decision of this Court in *State of H.P. v. Sheela Devi*¹¹, we have partly allowed the present appeals and directed the respondent i.e. Union of India to grant pensionary benefit to the appellants in accordance with law.

6. Before commencing our analysis, it is necessary to note the scope of prayers made before the CAT and High Court, and before this Court. The prayer before the CAT is for regularisation with retrospective effect, protection of pay, and grant of seniority and service and pension benefits by counting the period of contractual service. Pursuant to the High Court's impugned order dated 23-3-2021, only the appellants' pay has been protected while their prayers for seniority, service and pension benefits by including the contractual period have been rejected. The submissions before this Court have been limited to the grant of pensionary benefits by including the contractual period, through reliance on the decision in *Sheela Devi* (supra). The issues relating to grant of retrospective regularisation, seniority and service benefits during the contractual period have not been argued before us. We are therefore confining ourselves to the issue of pension.

8. This rule fell for consideration and interpretation in *Sheela Devi* (supra), where this Court held that although Rule 2(g) of the Pension Rules excludes contractual employees from their application, Rule 17 applies once

⁹ *S.D. Jayaprakash v. Union of India*, 2025 SCC OnLine SC 973

¹⁰ Judgment dated 10 March 2026 in WP (C) 1265/2018

¹¹ 2023 SCC OnLine SC 1272



such contractual employee is regularised on a later date. The effect is that upon regularisation, the Pension Rules become applicable and Rule 17 requires that past service as a contractual employee is to be taken into account for calculating pension. In this light, and considering that Rule 17 requires the regularised employee to exercise an option to either retain the Government's contribution to Contributory provident fund, or to refund such amount or forgo the same if they have not been paid in lieu of counting the service period for which such benefits may have been payable, this Court in *Sheela Devi* (supra) issued the following directions:

“11. In view of the above reasoning, this court is of the opinion that there is no merit in the appeal however, the following directions are issued:

(i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged i.e. prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.

(ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.

(iii) The options should be processed and completed within eight weeks from the last date of receiving options.

(iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued.”

From *Dr Yoginder Gupta*

3. By the impugned order dated 23-5-2017, 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.

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.

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.

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.”

11. The decision to count the respondent's *ad hoc* service towards her pensionary benefits is, therefore, in sync with the exposition of the law by the Supreme Court in *S.D. Jayaprakash* and by the Coordinate Division Bench of this Court in *Dr Yoginder Gupta*.”



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11. The case is, therefore, covered on all fours by the judgment of the Chandigarh Bench of the Tribunal which has been affirmed by the Punjab and Haryana High Court on merits.

12. We do not, therefore, find this to be a case deserving of interference.

13. The writ petition is dismissed in *limine*.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

APRIL 29, 2026/yg