



2023:DHC:7626



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

% **Date of order: 21st September, 2023**

+ **W.P.(C) 11407/2021**

GEETA DEVI & ORS. Petitioners

Through: **Mr.Parveen Kumar, Advocate**

versus

EXPORT INSPECTION COUNCIL & ORS. Respondents

Through: **Mr.L.R.Khatana, Advocate for R-1 to 3, 4 and 5**

**Mr.Dev. P. Bhardwaj, CGSC with
Ms.Chaahat Khanna, Advocate for R-2 and 6**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 and 14,16 and 21 of the Constitution of India seeks the following reliefs:

“(a) declare the Petitioners eligible under CCS (Pension) Rules, 1972;

b) direct the respondents to grant 50 % of casual service period rendered. by all petitioners for all pensionary benefits according to CCS (Pension) Rules, 1972;



c) direct the respondents to grant full contract service period rendered by the petitioner no. 1,2 and 4 to 6 for all pensionary benefits according to CCS (Pension) Rules, 1972

d) direct the respondents to grant full contract service period rendered by the petitioner no. 1, 2 and 4 to 6 for full Earned leaves according to CCS (Leave) Rules, 1972 ;

e) direct the respondent to grant 50 % service rendered w.e.f O 1.09.1993 to 06.01.2009 to Petitioner no. 3 for the purpose of retirement benefits and one day leaves for 10 days of work according to DOPT OM no. 51016/2/90 Estt. (C)dt. 10th September 1993.

f) grant 9 % interest on t he payable benefit from the payable date;

g) grant exemplary cost of litigation against the respondents and in favour of the petitioners;

h) pass any such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioners were appointed during the period of November, 1985 to April, 1992 on different positions as casual employees of the respondent and were appointed on contract basis *vide* order dated 25th September, 1991 to 30th September 1993. The Department of Personnel Training vide Office Memorandum no. 510106/2/90 Estt.(C) dated 10th September 1993 conferred the status of “temporary” on the petitioners w.e.f. 1st September 1993.

3. The petitioners have been regularized in the period of 20th February, 2007 to 6th January, 2009. The details of the same has been enunciated



herein below:

S. No.	NAME	Date of joining on Daily/Casual Basis (3)	Date of completing 240 days / 1 year (4)	Date of Granting Contract Status (5)	Date of Regularization (6)	Date of Superannuation
1.	Ms. Geeta Devi W/O Late Sh. Man Singh, under his late husband	07.02.1986	07.10.1986/ 06.02.1986	25.09.1991	12.03.2007	Died on job on 21.07.16
2.	Sh.Godhan Singh Bist	26.11.1985	01.08.1986 25.11.1986	25.09.1991	20.02.2007	Working
3.	Sh. Yuvraj Vikas	20.04.1992	20.12.1992 19.03.1993	01.09.1993 Temporary	06.01.2009	Working
4.	Sh. V.J. Methews	10.03.1986	10.11.1986 09.03.1987	30.10.1992	06.01.2009	30.04.2020
5.	Sh.M. Sreekumar	16.07.1986	16.03.1987 15.07.1987	30.10.1992	06.01.2009	31.03.2015
6.	Sh. K.V. Rajendran	08.04.1986	08.12.1986	30.10.1992	21.03.2007	29.11.2019

4. Upon regularization of the petitioners, they were put in the category of the New Pension Scheme w.e.f. 1st January 2004 and the past service of the petitioners were not considered for the same.

5. On 9th December, 2014, the petitioner no.5 made representation to respondent no. 1 for consideration of their past service. The representation of the petitioner no. 5 was rejected by the respondent no.1 vide letter dated 24th



2023:DHC:7626



December, 2014.

6. On 1st July, 2019, the petitioner no. 4 made a representation to the respondent no. 1 for consideration of his past service and putting him under CCS(Pension) Rules and General Provident Fund instead of New Pension Scheme and on 3rd July 2019, the petitioner no. 6 made similar representation to the respondent no.1.

7. Moreover, on 21st August 2019, the petitioner no. 4 again made a representation to the respondent no. 1 thereafter, on 3rd March 2021, late petitioner no.1's wife made representation to respondent no.1 for consideration of its past services and in accordance with the Government guidelines dated 11th October 2018, grant pensionary benefits under GPF and past service benefit. Late petitioner no.1's wife again sent a representation on 6th July 2021 to the respondent no.1.

8. Aggrieved by no replies/ action taken against the said representation of the petitioners, the petitioner filed the instant petition.

9. Learned counsel appearing on behalf of the petitioners submitted that the respondents' organization falls under of pensionable department by virtue of CCS (Pension) Rules,1972 and entitled leave under CCS (Leaved) Rules,1972 read with S.O. 2922 dated 24th October, 1981.

10. It is submitted that as per GI MF O.M. No. F.12 (I)-EV/68 dated 14th May, 1968 and OM No. 12011/1/85-Estt. (C) dated 10th March, 1986 read with per Rule 14 of the CCS (Pension) Rules,1972, the petitioners became eligible for half service as casual workers to taken into account for the purpose of terminal benefits.



11. It is contended that the petitioner nos. 1, 2 and 4 to 6 becomes eligible for full counting of contract service for Pension as per the provisions of Rule 17 of CCS (Pension) Rules. However, the respondent has arbitrarily put them under New Pension Scheme w.e.f. from dated 1st January, 2004.

12. It is submitted that the respondent intentionally and with ulterior motives, put the petitioners in New Pension Scheme, and resulted to be bad in law. In addition, the respondent nos. 1 to 5 failed to act *bonafide* thereby refused to consider the petitioners various representations so far submitted.

13. It is submitted that the petitioner no. 3 by virtue of DOPT OM no. 510106/2/90 Estt. (C) dated 10th September 1993, becomes eligible for 50% service rendered under Temporary status for the purpose of retirement benefits as well as one day leaves for ten days of work.

14. It is contended by the petitioners that the respondents in its reply to the representation of the petitioner no. 5 dated 24th December, 2014, pertaining to petitioner's representation seeking consideration of past service, was wrongly rejected on the ground that the same is covered by the judgment of the Hon'ble Supreme Court in *Secretary State of Karnataka v. Umadevi*, (2006) 4 SCC 1.

15. In light of the aforementioned submissions, the petitioner prays that the instant petition may be allowed and the reliefs as claimed by the petitioner may be granted.

16. *Per Contra*, the respondent vehemently opposed the instant petition and submitted that the same is not maintainable, hence, on account of delay and laches the petition is liable to be dismissed. It was further contended



that the instant petition has been filed by the wife of an ex-employee, and his terminal dues were duly settled by the employer and same has been accepted by his legal heirs.

17. It is submitted that the reliefs as sought by the petitioner in their favour, is irrelevant, misleading and misconceived and therefore, strongly denied. The petitioners are not eligible for the pension in terms of the CCS (Pension) Rules and are eligible for New Pension Scheme w.e.f. 1st January 2004, which has been duly granted to them.

18. It is vehemently submitted that the petitioners were not engaged against a sanctioned post/ vacancy by a competent authority to make such appointments. They were appointed on daily wages, ad-hoc or contract basis as and when required for a short interval of time. Hence, they could not be equated to a regular employee who is appointed against a vacancy by the competent authority.

19. It is further submitted that in case of the petitioner no. 3, who was working as an electrician, a post of Gestetner Operator was converted into that of a Dispatch Rider to accommodate him for making regular appointment.

20. It is contended that as per the offers of appointment of the petitioners it was specifically mentioned that the petitioners services will have effect from the date of their joining and that they will be governed by the New Pension Scheme as applicable to employees of Central Government.

21. It is further contended that the petitioners had duly accepted the offer of appointment and had joined their respective posts.



22. Hence, in view of the foregoing submissions, the respondent seeks that this Court may be pleased to dismiss this revision petition, thereby, upholding the impugned order.

23. Heard both the parties at length.

24. This Court has perused the material on record.

25. The petitioners were appointed to work as casual employees during the period of November 1985 to April 1992 and were subsequently regularized in the period of February 2007 to January 2009. It is the case of the petitioners' that they are seeking regularization from the date of appointment as casual employees and not from the date when they were regularized alongwith the benefits of retirement under CCS (Pension) Rules and not as per New Pension Scheme.

26. The respondent has contended in this regard that as per the law laid down in the judgment of *Uma Devi (Supra)* by the Hon'ble Supreme Court as well as the offer letters of the petitioners, the employees which have been appointed as casual employees cannot seek regularization on the basis that they have been working with them for a long period of time. Such long period of working does not vest any right for regularization of the employees.

27. Hence, the petitioners will be considered regular employees from the date they were appointed as regular employees and not prior thereto. Furthermore, as per the rules of the respondent, the New Pension Scheme is applicable on the petitioners.

28. Before delving into merits of the case, it is pertinent to enunciate the



law on whether there is a vested right of the employees for regularization of the services of the employees working for a long period in the organization.

29. The regularization of the employment cannot be claimed as a matter of right. The employees who were working on contract basis, if regularized, then the same would be considered from the date on which they are employed as regular employee and not from the date of joining the organization, since the said vacancy was not in existence when the said contractual employees were working on contractual position.

30. Therefore, merely because the contractual employee was working in the organization from a long time, if subsequently regularized, it would not entitle the employee to claim benefits from the date of appointment as contractual employee, and instead it will be from the date when the said employee is employed on the regular basis.

31. The aforesaid principle has been discussed by the Hon'ble Supreme Court in the judgment of ***Ganesh Digambar Jambhrunkar V. State of Maharashtra***, SLP (C) No. 2543/20230 dated 12th September 2023 held as follows:

“The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis. We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for



appointment through the current recruitment process. The High Court has rejected their claim mainly on the 5 ground that they have no right to seek regularization of their service. We do not think any different view can be taken”

32. Furthermore, this Court will now reiterate the principles enunciated by the Constitution Bench in the judgment of ***Secretary State of Karnataka v. Umadevi, (2006) 4 SCC 1***, wherein it held as follows:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not



ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of



Karnataka. Therein, after Dharwad decision [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that



some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent.



The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

33. The said principle was further enunciated in the case of ***State Of Manipur And Anr vs Ksh. Moirangninthou Singh, (2007) 10 SCC 544***, and the following was observed by the Hon'ble Supreme Court therein:

“6- The Division Bench held that the learned Single Judge had no power to direct amendment of the Act and the Rules, and we fully agree with this view since the Act can be amended only by the Legislature and the Rules can only be amended by the State Government, or the empowered under the Manipur Home Guards Act, 1947. However, the Division Bench upheld the other directions given in the Judgment of the learned Single Judge.

7- We are of the opinion that in view of the Constitution Bench Judgment of this Court in Secretary, State of Karnataka and Ors. v. Uma Devi and Ors., [2006] 4 SCC 1, this Court cannot direct regularization in service. Since the Court has no power to direct regularization, it also follows that it has no power to direct grant of benefits payable to the regular employees.”

34. Now for the purpose of the adjudication of the instant matter it is pertinent to reproduce the appointment letters of the petitioner nos. 3 to 6. Clause 1 which is common in all the offer letter is mentioned as follow:

*“1. The appointment will take effect from the date you join. You will be on probation for a period of two years from the date of your joining. The period of probation will be liable to such extension as may be deemed fit at EIC's sole discretion.
During the period of probation, the appointment may be terminated at*



any time without notice and without any reason being assigned thereof'. In case you wish to resign, a month's notice will be required to be submitted or in lieu of that one month's pay will have to be paid to the Agency."

35. Upon bare perusal of the said Clause of the offer letter, it is clearly established that the regularized appointment of the employees will be in effect from the date when the same was regularized and not from the date when they were appointed as casual employees with the respondent no.1.

36. Moreover, the as per Clause 6 of the said appointment letters, it is evident that the New Pension Scheme will applicable upon the petitioners and the same has been reproduced herein below:

"6. Your services will be liable for transfer to any of the offices of the Export Inspection Agencies of any other office under the-administrative and technical control of. The Export Inspection Council of India anywhere in India or abroad.

(a) You will not be entitled to any travelling allowance for reporting for duty, now or on termination of your appointment under the agency, and

(b) You will be governed by new Pension Scheme as applicable to. Central Government employees."

37. As per the above said Clause, the offer letter clearly prescribes that the petitioner shall be governed by the New Pension Scheme.

38. It is pertinent to note that the said terms and conditions of the offer letters were being accepted by the petitioners. Moreover, the offer letter also states that the employment of the petitioners to the said posts is fresh employment. Therefore, no previous record employment is taken into



account.

39. This Court is of the view that the petitioners' despite acceding to the terms and conditions of their offer letter cannot later claim regularization from a past date. Similarly, with regards to their claims of the pension, they cannot claim pension as per CCS (Pension) Rules since, as per the offer letter, they have acceded to being governed by the New Pension Scheme.

40. The petitioners have misused the remedy of writ petition by filing the instant petition due to the reason that, the petitioners after consenting to the terms and conditions of their employment cannot go back on the same.

41. This Court is of the considered view that there is no violation of any rights of the petitioners. The respondent no. 1 is acting as per its statutory rules and accordingly, has provided the benefits to the petitioners' as are applicable to them.

42. Furthermore, the petitioner cannot claim regularization from the date of their appointment as a casual employee having a vested right since the regularized employees are appointed on a vacant post by the competent authority unlike a casual employee, which the authorities may appoint as and when the need arises for the same.

43. The petitioner in the instant case is seeking writ of mandamus which cannot be demanded *ex debito justitiae*, it may be issued by the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases where there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

44. The Court should exercise its power under Article 226 very cautiously



2023:DHC:7626



and sparingly in exceptional circumstances only in a case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

45. In the instant case, there is no such circumstance which merits the interference of this Court. The petitioners do not have a legal right of claiming regularization from the date of its appointment as a casual employee and moreover, they are not entitled to any such pension claims as pleaded by them.

46. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and the same is liable to be dismissed.

47. Accordingly, the instant petition stands dismissed along with pending applications, if any.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 21, 2023

SV/DB/av

[Click here to check corrigendum, if any](#)