

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Acting Chief Justice Sujoy Paul

And

The Hon'ble Justice Chaitali Chatterjee (Das)

WPCT 20 OF 2025

The Union of India and Others

Versus

Smt. Shyamali Bhuinya and Others

For the Petitioners/Union of India: Mr. Sanajit Kumar Ghosh, Adv.

:Ms. Jayita Dhar Chakraborty, Adv.

Reserved on:

12.11.2025

Judgment on:

17.11.2025

Per, Sujoy Paul, ACJ:-

1. This petition filed under Article 227 of the Constitution assails the order of Central Administrative Tribunal (Tribunal), Kolkata Bench, Kolkata in OA/350/1390 of 2021 decided on 18.09.2024. The tribunal allowed the original application on the basis of judgment of Supreme Court in ***Yashwant Hari Katakkar Versus Union of India and Others***¹.

2. Learned Counsel for the petitioner department stated that the original applicant joined the department as casual employee on 07.04.1986. The employee got “temporary status” on 03.04.1995. The original applicant earlier filed OA 1418 of 2018 which was disposed of by the tribunal on 16.11.2018. The tribunal directed the department to consider and decide the representation of applicant regarding his claim of regularisation and pension. In turn, by speaking order dated 06.05.2021, the department rejected the representations which became subject matter of challenge in the instant OA 350/1390/2021. In the meantime, the original applicant died on 07.02.2022 and OA was contested by legal representative i.e. widow and daughter of original applicant. The tribunal opined that the original applicant worked for several decades and therefore he shall be deemed to be regularised/permanent and hence their dependents are entitled for pensionary benefits. Criticising this order of tribunal, the learned counsel for the department submits that the department framed the policy for regularisation only on 06.08.2013 (Annexure A8). The original applicant retired on attaining the age of superannuation on 30.11.2010. Since he retired before

¹ 1996 SCC (L&S) 464

the policy for regularisation came into being, question of his regularisation does not arise.

3. It is further submitted that the impugned order of tribunal is solely based on the judgment of Supreme Court in **Yashwant Hari Katakkar** (supra). By placing reliance on the Single Bench judgment of Allahabad High Court in the case of **Hira Lal Versus State of U.P and Others** ², it is submitted that in view of the Constitution Bench judgment of Supreme Court in **State of Karnataka and Others Versus Uma Devi and Others** ³, the judgment in **Katakkar** is no more a good law. Delhi High Court judgment in the case of **Superintending, Archaeologist, Archaeological Survey of India Versus Union of India and Another** was cited to contend that the judgment of **Yashwant Hari Katakkar** (supra) was distinguished by Delhi High Court by holding that in the instant case, the employee did not achieve the “quasi permanent” status whereas in **Yashwant Hari’s** case (supra) such a status was acquired. Hence the case is distinguishable. On the strength of these two cases, it is argued that order impugned deserves interference.

4. We have heard learned counsel for the applicant for sufficient length.

5. Admittedly the original applicant served the department from 07.04.1986 till 30.11.2010 (24 years). The tribunal reproduced the relevant portion of judgment of **Yashwant Hari Katakkar** which reads thus:-

“3.....It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The

² (2011) 10 ADJ 82

³ AIR 2006 SC 1806

appellant having served the Government for almost two decades it would be unfair to treat him temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits.....

(Emphasis Supplied)

6. It is apt to take legal journey on this aspect into account. After delivery of Constitution Bench judgment in the case of **Uma Devi** (supra), the question of regularisation again came up for consideration before Supreme Court in several cases. In **Shripal and Another Versus Nagar Nigam, Ghaziabad** ⁴, the Apex Court opined that judgment of **Uma Devi** (supra) cannot serve as a shield to justify exploitative engagements persisting for years without the employer undertaking legitimate recruitment.

7. It is noteworthy that in **Uma Devi** (supra), the direction was issued to the Government departments to frame policy of regularisation, if petitioner department sat tight over such directions and did not frame policy for regularisation upto 2013, the original applicant cannot be blamed for the same or deprived from the rights.

8. In **Shripal and Another** (supra) it was further held that it is manifest that the Appellant Workmen continuously rendered services over several years and sometimes beyond a decade and therefore under Indian Labour Laws and also morally, such continuance on casual/temporary basis is bad in law.

⁴ 2025 SCC Online SC 221

9. Likewise, in ***Dharam Singh and Others Versus State of U.P. and Another***⁵, it was held that the appellant were engaged on daily-wage basis when there were no rules in the department and stand of the department was that they were not engaged against any clear vacancy. The Apex Court opined that continuous engagement from 1989 shows that the duties are perennial in nature. After considering the judgment of ***Shripal and Another*** (supra) it was held that the judgment of ***Uma Devi*** (supra) cannot be deployed as a shield to justify exploitation through long term “ad hocism”. The use of outsourcing as a proxy, or the denial of the basic parity where identical duties are exacted over extended periods is bad in law.

10. It was poignantly held in the case of ***Dharam Singh*** (supra) that “state” is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. In the teeth of Article 14, 16 and 21 of Constitution, such action of department was considered and it was held that sensitivity to the human consequences of prolonged insecurity is not sentimentality, it is a constitutional discipline that should inform every decision affecting those who keep public offices running.

11. In view of the above judgments of Supreme Court, it cannot be said that the basic considerations against exploitation etc pointed out in the case of ***Yashwant Hari Katakhar*** stood diluted or fades into insignificance. Instead, the aforesaid principles laid down by Supreme Court shows that if an employee has

⁵ 2025 SCC Online SC 1735

continued for several decades, on casual/temporary basis, it amounts to exploitation.

12. In view of the principles laid down by recent Supreme Court judgments, in our opinion, it cannot be said that the consideration of **Yashwant Hari** has vanished into thin air. We are unable to persuade ourselves with the line of the argument of the petitioner based on the said Delhi and Allahabad High Court judgments which have lost much of their shine in view of the recent judgments of Supreme Court. Apart from this, so far the Delhi High Court judgment in **Union of India** (supra) is concerned, the Court distinguished the judgment of **Yashwant Hari** by holding that applicant before it did not achieve “quasi permanent” status. Pertinently, in the instant case, the original applicant achieved the “temporary status” way back on 23.04.1995. Thus, this Delhi High Court judgment does not improve the case of the department.

13. In view of the foregoing analysis, it can be safely held that the tribunal has taken a plausible view that the employee who continued from 07.04.1986 to 30.11.2010 cannot be termed as casual labour and he can be presumed to be a permanent employee. We are not inclined to disturb this plausible view. Thus, admission is declined. Petition is **dismissed**.

(Sujoy Paul, A.C.J.)

I Agree

[Chaitali Chatterjee (Das), J.]