

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 27693 of 2024

Indian Oil Corporation Limited

Vs.

Union of India & Anr.

For the Petitioner : Mr. Soumya Majumder, Id. Sr. Adv.
Ms. Sanjukta Dutta,
Mr. Ranajit Talukder.

**For the Respondent No.1/
UOI** : Mr. Tirtha Pati Acharya.

For the Respondent No. 2 : Mr. Suvadip Bhattacharjee,
Mr. Balaram Patra.

Hearing concluded on : 06.02.2025

Judgment on : 18.02.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred against the order dated 17th September, 2024 passed by the Central Government Industrial Tribunal, Kolkata in Reference Case No. 26 of 2008.
2. The petitioner's (Indian Oil Corporation Ltd.) case is that the company supplies fuel against consideration to the aircrafts of

various companies at the Aviation Fuel Station (AFS) of Dum Dum Airport. The facility storage tanks (2x5000 KL) which are at a distance from the main operating area are being operated infrequently and the facilities which are located in the main operating area are being operated more frequently.

3. Previously the aviation fuel from the Mourigram Terminal (nearest terminal from AFS) was carried **by tank trucks** to the AFS.

Since October 2018, by reason of a policy decision of the management, the entire process of completion of decantation, closing of all the valves of pipeline and receipt tank closure by workmen has been changed because of transportation of the fuel from Mourigram Terminal to AFS Dum Dum **through pipelines**.

4. The job of checking the refuellers at the time of transportation of the fuel from the storage tank to the aircrafts is done by the crew in the refuellers/vehicles. The job of maintenance of refuellers/vehicles has been largely outsourced not only by IOCL but also by other oil companies at the AFS Dum Dum Airport and also at the other airports of the country, whenever applicable.
5. The trade union concerned has purportedly espoused the cause of the seven workmen named in the order of reference, inter alia, contending that these seven workmen ought to be treated as casual workers of IOCL at AFS, Dum Dum and owing to their regular nature of duties in perennial work at the AFS establishment of IOCL, these seven workmen ought to be regularized in service of IOCL.

The conciliation proceeding having ended in a failure, the Central Government referred the industrial dispute to the learned Tribunal for adjudication **vide order of reference dated 7th November, 2008.**

6. In course of consideration of the pleadings and evidence, it appeared that the said changed system of carriage of fuel **involving less volume of work at AFS** had not been placed before the learned Tribunal. The same are however extremely vital and important for the purpose of adjudicating the issues referred to the learned Tribunal for adjudication.
7. Accordingly the company filed an application for recalling the order dated 1st February, 2024 which recorded the closure of evidence of the company. Another application was filed by the company seeking leave of the learned Tribunal to place additional evidence and materials through witness on behalf of the company.
8. The learned Tribunal by an order dated 17th September, 2024 has rejected both the applications.
9. On hearing the learned counsel for the parties and on perusal of the materials on record, it appears that the reference made by the Government of India is as follows:-

“Whether the seven workmen viz. S/Sri Ashrumoy Dutta, Gowtham Roy, Manoranjan Halder, Buddadeb Das, Suraj Das, Jayadev Pal and Kajal Das had ever been engaged by the Indian Oil Corporation Ltd. (IOCL) as casual labourers? If so, whether demand for regularization of their services in the

IOCL is just & legal? What relief they are entitled to and from which date.”

- 10.** The additional evidence including documents sought to be adduced before the authority has been stated in paragraph 5 and 6 of the application made for adducing additional evidence, which reads as follows:-

“5. The following documents would reveal that the system of filling up storage tank at AFS of Dum Dum Airport was changed from October, 2018:

- (a) SOP for commencing of Mourigram to Kolkata AFS ATF Pipeline dated 15/10/2018 with note endorsed thereon;*
- (b) Minutes of the meeting between Pipeline Division and Marketing Division at Kolkata AFS on 15.12.2017;*
- (c) Pre-commissioning Safety Audit Check List of Onshore Cross Country Pipelines from Mourigram to Kolkata AFS ATF pipeline;*
- (d) Report of Pre-commissioning Safety Audit carried out on 04.06.2018 at Mourigram Terminal & Kolkata AFS station.”*

6. The introduction of the aforesaid system (pipeline) of filling up the storage tank has substantially decreased the work load of the IOCL personnel deployed at AFS of the Netaji Subhas Chandra Bose International (N.S.C.B.I) Airport at Kolkata (Dum Dum Airport). The previous system of receiving tank trucks at AFS and processing necessary documents and quality control papers and then filling the storage tanks on checking the density and temperature and subsequent connection of the decantation hose with the tank trucks and opening of TT outlet valves and storage inlet valves has been done away with.

The entire process of completion of decantation, closing of all the valves of pipelines and receipt tank closure by workmen has been changed because of transportation of the fuel from the Mourigram Terminal to AFS Dum Dum through pipelines.

8. The company further states that by reason of easing out of the system of refueling of the storage tanks, there is hardly any work or requirement of permanent workmen and this work can also be done through outsourcing/private contractors.”

11. The order challenged is as follows :-

*“.....Having regards to the admitted date of death of the three workmen, date of retirement of other two workmen and remaining two workmen mentioned above still working for IOCL, this Tribunal finds the introduction of supply aviation fuel directly to the storage at Dum Dum Airport through pipelines w.e.f. October, 2018 **appears immaterial** for determination of the present case. More so, the issue under reference is with regard to the regularisation of the service of seven workmen engaged directly by IOCL as casual labourers. Further, it is settled law the admitted facts need not be proved.*

Accordingly, the petition dt. 06-06-2024 filed by the management is rejected.

The management by filing a petition dt.29-07-2024 has prayed for recall of the order dt.01-02-2024 whereby the evidence from the side of the management has been closed and case has been fixed for hearing argument. In view of the order passed above and on rejection of petition dt.06-06-2024 the petition dt.29-07-2024 become infructuous and accordingly the same is rejected.

Fix 19-11-2024 for hearing argument.

Sd/-

Presiding Officer
17-09-2024"

12. In **Jaggo vs Union of India & Ors., (2024 INSC 1034), decided on 20th December 2024**, the Supreme Court held:-

“25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade longterm obligations owed to employees. These practices manifest in several ways:

- **Misuse of "Temporary" Labels:** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
- **Arbitrary Termination:** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
- **Lack of Career Progression:** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
- **Using Outsourcing as a Shield:** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*
- **Denial of Basic Rights and Benefits:** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of*

social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in **Uma Devi** (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure.

However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in **Uma Devi** (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale.

By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."

13. The Supreme Court's decision in ***Jaggo v. Union of India (2024 INSC 1034)*** sets a significant precedent for the regularization of long-serving temporary employees in government institutions. The judgment clarifies that:-

- *Lengthy and uninterrupted service in essential functions can warrant regularization, even if initial appointments were irregular.*
- *The misuse of temporary or part-time labels to deny employees their rightful claims is unacceptable and contrary to principles of fairness and equity.*
- *The decision discourages the exploitation of workers through temporary contracts and arbitrary terminations, encouraging government institutions to adhere to fair employment practices.*
- *The judgment is likely to influence future cases involving similar disputes, guiding courts to look beyond the initial terms of engagement and consider the actual nature and duration of service.*
- *It reinforces the responsibility of government departments to lead by example in providing stable and fair employment, thereby setting a higher standard for the private sector as well.*

14. Thus in the guidelines of the Supreme Court, to consider a prayer for **regularization of a casual worker the criterias** are:-

- i. Length of service,
- ii. Whether working in the vacancy of a permanent post.
- iii. Whether the worker carried out the duties of a regular employee for a substantial period of his service.
- iv. Etc.

15. Reduction of work load (if any) while still on job on regular basis as a casual worker for a considerable period is not a consideration while deciding the right of a casual worker claiming regularization.

- 16. The order dated 17th September, 2024 passed by the Central Government Industrial Tribunal, Kolkata in Reference Case No. 26 of 2008, thus being in accordance with law requires no interference.**
- 17. WPA 27693 of 2024 is dismissed.**
- 18.** All connected application, if any, stands disposed of.
- 19.** Interim order, if any, stands vacated.
- 20.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)