



2025:DHC:410-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 697/2025, CM APPLs. 3339/2025 & 3340/2025****UNION OF INDIA & ORS.**

.....Petitioner

Through: Mr. Shashank Dixit and
Mr. Rohit Gupta, Advs.

versus

KAMLESH KUMARI

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****ORDER (ORAL)**

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23.01.2025**C. HARI SHANKAR, J.**

1. The husband of the respondent Amar Singh was engaged by the North Eastern Railway Authorities as a casual labour. He was granted temporary status on 1 January 1986. He died on 9 September 1993. Thereafter, the respondent Kamlesh Kumari was engaged as a casual labourer consequent on the death of her husband on compassionate basis. She was regularised on 15 April 1998.

2. The respondent applied for family pension. On her claim being denied, she approached the Central Administrative Tribunal¹ by way of OA No. 3308/2019.



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3. By judgment dated 22 August 2024, the Tribunal has allowed the said OA.
4. Aggrieved thereby, the Union of India, Ministry of Railways has approached this Court by way of the present writ petition.
5. We have heard Mr. Shashank Dixit, learned Counsel for the petitioner at some length.
6. The reasoning of the Tribunal in allowing the OA is contained in the following paragraphs from the impugned judgment: -

“7. Heard the learned counsels for the parties. Besides, the pleadings filed by the parties have also been examined and the relevant records has also been consulted. This Tribunal in the matter of *Suman Devi v UI & Ors*² has held as under: -

“The applicant is the wife of a deceased casual employee of the respondents - Railways. The O.A. has been filed seeking grant of retirement dues of the late husband of the applicant including family pension and consideration of her case for compassionate appointment, with all consequential benefits.

2. The brief facts of the case are that while working as casual employee with the respondents since December, 1972, the respondents in pursuance of a policy decision have screened the husband of the applicant along with others for decasualisation of his services. On his successful selection in the said screening, vide order dated 03.08.1992 (Annexure A-7), the name of the applicant along with others was empanelled as Group 'D'. In pursuance of the same, the respondents also issued the appointment orders on 13.10.1995 to the husband of the applicant. However, in the meanwhile, i.e. on 05.08.1993, the husband of the applicant expired. In view of the death of the husband of the applicant, the applicant vide Annexure A-1 submitted pension papers dated 16.10.1993 and the same were processed on 22.10.1993. However, as the respondents have not considered the same till date, the applicant filed the present O.A.



3. Heard Shri U. Srivastava, learned counsel for the applicant and Shri A.K. Srivastava, learned counsel appearing on behalf of the respondents, and also perused the pleadings on record.

4. Shri U. Srivastava, learned counsel appearing for the applicant, submits that the subject matter of this O.A. is squarely covered by a decision of the Hon'ble High Court of Delhi in *Union of India & Anr. v Jaywanti Devi*³ and, accordingly, prays for passing of the identical orders.

5. On the other hand, Shri A.K. Srivastava, learned counsel appearing for the respondents, opposed the claim of the applicant on various grounds.

6. A perusal of the order of the Hon'ble High Court of Delhi in *Jaywanti Devi (supra)* indicates that the facts therein are applicable to the instant case and identical submissions were considered by the Hon'ble High Court in the said decision before coming to final conclusion which was passed following the decision of the Hon'ble Apex Court in *Prabhawati Devi v Union of India & Ors*⁴, and, hence, we are of the view that there is no necessity to go into the rival contentions once again.

7. In the circumstances and for the reasons mentioned above, the O.A. is allowed and the respondents are directed to consider the claim of the applicant for pension in the light of the decision of the Hon'ble Apex Court in CA No.10492/1991 in *Prabhawati Devi v Union of India & Ors.*, dated 16.01.1995, and in the light of Rule 2311(3)(b) of the Indian Railways Establishment Manual read with para 801 of the Manual of Railway Pension Rules, however, without any interest, and also to consider the claim of the applicant for compassionate appointment, if she is otherwise eligible, within 90 days from the date of receipt of a copy of this order. No order as to costs."

The Hon'ble High Court of Delhi in W.P.(C) No. 4901/2008 decided on 19.11.2010 in the matter of *Union of India & anr. v Jaywanti Devi* has held as under: -

"10. However, we need not go into the said issue and notwithstanding neither counsel not drawing our attention to the correct legal position with reference to the rule applicable and a judicial pronouncement, we grant relief to the

³ Judgment dated 19.11.2010 in WP(C) 4901/2008

⁴ Judgment dated 16.01.1995 in C.A. 10492/1991



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respondent noting the decision of the Supreme Court in CA No.10492/1991 decided on 16.1.1995 ***Prabhawati Devi Vs. UOI & Ors.***

11. Appellant Prabhawati Devi before the Supreme Court was the widow of Late Bipin Kumar Rai who had acquired the status of a temporary railway servant being initially taken in the railway establishment as a casual worker and with effect from 27.4.1983 granted the status of a “substitute” employee. He died with the status of a “substitute” on 5.1.1987. Rule 2318 of the Indian Railway Establishment Manual provides that substitutes would be afforded all the rights and privileges admissible to temporary railway servant. The Supreme Court noted Rule 2311(3)(b) which entitle the family of a railway servant acquiring temporary status to be paid pension on rendering not less than one year continuous service. The pension payable was as per para 801 of the Manual of Railway Pension Rules.

12. Since neither party was at variance that husband of the respondent was accorded temporary status on 10.1.1986 and he worked for more than one continuous years till he died, in view of the decision of the Supreme Court aforementioned, we dispose of the writ petitioner with a direction that the claim of the respondent for pension would be considered in light of the decision of the Supreme Court in Prabhawati Devi’s case and in light of Rule 2311(3)(b) of the Indian Railway Establishment Manual read with para 801 of the Manual of Railway Pension Rules.

13. Qua respondent’s reliance upon the case of Ms. Santosh Kumari, suffice would it be to state that the facts which led to Santosh Kumar being paid pension was her husband being removed as a casual labourer and being directed to be reinstated by the Central Administrative Tribunal and in the interregnum persons junior to him being regularized upon screening. Before Santosh Kumari’s husband, Sh. Amin Chand could be screened and regularized, he died. In the second round of litigation fought by his wife for grant of pension, the Tribunal directed that but for the illegal order removing Amin Chand from service as a casual employee, he would have been screened and appointed on a regular basis evidenced by persons junior to him being regularly appointed. Since it impacted entitlement of Santosh Kumari to be paid family pension, the Tribunal issued the direction in question.

14. Obviously, Santosh Kumari’s case stands on a different



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factual foundation and the respondent cannot claim parity with Santosh Kumari.

15. Be that as it may, the writ petition stand disposed of issuing a mandamus in terms of para 12 above. Needful would be done within 12 weeks from today.”

8. In the facts and circumstance and for the reasons mentioned above, the OA is allowed and the respondents are directed to consider the claim of the applicant in light of the decision of Hon’ble Supreme Court mentioned (supra), within a period of 90 days from the date of receipt of a certified copy of this order. The arrear of pension shall also be paid within the above period without any interest. No order as to the costs”.

7. The Tribunal has, therefore, followed the judgment of the Division Bench of this Court in *UOI v Jaywanti Devi*.

8. Mr. Dixit seeks to contend that Jaywanti Devi’s case was distinguishable, as the respondent in that case was a temporary railway servant, whereas, the respondent in the present case was a casual railway servant who had been accorded temporary status. He seeks to rely on Clause 1501(i) of the Indian Railway Establishment Manual, which reads thus: -

“1501. (i) Temporary Railway Servants

Definition—A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", including 'casual labour with temporary status', a "contract" or "part-time" employee or an "apprentice".”

9. It is true that, Clause 1501(i) of the IREM seeks to draw a distinction between a “casual labour with temporary status” and “Temporary Government Servant”. However, to a query from the Court in the matter of payment of pension, a distinction can be drawn between a casual labourer and a temporary railway servant, once the



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casual labourer has been accorded temporary status, Mr. Dixit's only response is that a distinction is made in clause 1501(i) of the IREM.

10. Clause 1501(i) of the IREM is a clause which defines "temporary railway servant". It does not specifically deal with the availability of family pension.

11. For that purpose, the petitioner seeks to place reliance on Rule 18 (3) of the Railway Services (Pension) Rules 1993⁵ which reads thus: -

"Rule 18(3): In the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent railway servants under these rules."

12. The reading of Rule 18 (3) merely indicates that it relates to the family pension available to a temporary railway servant.

13. There is in fact no provision in the Pension Rules which says that a casual railway employee who has been accorded temporary status would not be entitled to family pension.

14. On facts, we find that in Jaywanti Devi, the opening sentence of the judgment of the Jaywanti Devi reads thus: -

"The husband of the respondent was engaged as a casual labourer by the Indian Railways on 15.3.1977 and was accorded the status of a temporary employee, date of the order is uncertain since neither party has filed a copy of the order in question."



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15. Thus, Jaywanti Devi is also a case in which the employee concerned joined the services of the Railways as casual labourer and was accorded temporary status. On that basis, there can hardly be a difference.

16. The Division Bench of this Court, has, after a detailed examination of the law and taking into account, *inter alia*, the judgment of the Supreme Court in ***Prabhawati Devi v UOI***, held that the respondent, being the wife of the deceased casual labourer who was accorded temporary status, was entitled to family pension.

17. While relying on the judgment in ***Prabhawati Devi v UOI***, the Division Bench has observed thus: -

“11. Appellant Prabhawati Devi before the Supreme Court was the widow of Late Bipin Kumar Rai who had acquired the status of a temporary railway servant being initially taken in the railway establishment as a casual worker and with effect from 27.4.1983 granted the status of a ‘substitute’ employee. He died with the status of a ‘substitute’ on 5.1.1987. Rule 2318 of the Indian Railway Establishment Manual provides that substitutes would be afforded all the rights and privileges admissible to temporary railway servant. The Supreme Court noted Rule 2311(3)(b) which entitle the family of a railway servant acquiring temporary status to be paid pension on rendering not less than one year continuous service. The pension payable was as per para 801 of the Manual of Railway Pension Rules.

12. Since neither party was at variance that husband of the respondent was accorded temporary status on 10.1.1986 and he worked for more than one continuous years till he died, in view of the decision of the Supreme Court aforementioned, we dispose of the writ petitioner with a direction that the claim of the respondent for pension would be considered in light of the decision of the Supreme Court in Prabhawati Devi’s case and in light of Rule 2311(3)(b) of the Indian Railway Establishment Manual read with para 801 of the Manual of Railway Pension Rules.”

18. It is clear, therefore, that the cases of Jaywanti Devi and

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Prabhawati Devi, also related to persons who were employed on casual basis and continued for years.

19. The status to which a casual labourer who continues on causal basis for years has now been re-visited by the Supreme Court in its recent judgment in *Jaggo v Union of India*⁶. The Supreme Court has in no uncertain terms, held in the said decision, that it is completely permissible for the Government to employ persons on casual basis and keep them as casual employees on years at a stretch. In such cases, the judgment of the Supreme Court indicates that the employees concerned could have a legitimate right to regularisation.

20. The relevant paras from *Jaggo* are reproduced thus:-

“15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed cleaning, sweeping, dusting, and



gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in *Uma Devi* (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. Union of India*⁷, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have



*accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of **Uma Devi** (supra).*

*7. The judgment in the case **Uma Devi** (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”*

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any *mala fide* or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment



security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of *Vizcaino v. Microsoft Corporation*⁸ serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

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 long-term 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



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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.”

21. In the present case, the husband of the respondent remained on casual basis for 13 years at a stretch, without being regularised. He thereafter, died.

22. Mr. Dixit sought to point out that, in *Jaywanti Devi*, the husband of the respondent *Jaywanti Devi* was decasualized after he was granted temporary status. “Decasualisation” we presume is a *euphemism* for regularisation.

23. The petitioner clearly cannot seek to take advantage of its own wrong in keeping the respondent as casual labourer for 13 years at a stretch, as a basis, not to deny him the benefit of the judgment of the coordinate Bench of this Court in *Jaywanti Devi*.

24. Following the decision in *Jaywanti Devi (supra)* and *Jaggo (supra)*, we are of the opinion that the Tribunal was correct in holding that the respondent was entitled to family pension.

25. We do not therefore, find any reason to interfere with the impugned order which is held up in entirety.

26. Let the impugned order be complied with within a period of six weeks from today.



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27. This writ petition stands dismissed in the aforesaid terms with no orders as to cost in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 23, 2025

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