



2025:DHC:760-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 9480/2021****BIRMA DEVI AND ORS**

.....Petitioners

Through: Ms. Annu Mehta, Mr. Rubinder
Ghumman and Ms. Celly Sadana, Advs.

versus

UOI AND ANR

.....Respondents

Through: Mr. Avnish Singh, SPC with
Mr. Mahendra Vikram Singh, Ms. Kanchan
Kumari, Mr. Vishal Kr. Yadav, Mr. Anant
Yadav and Ms. Pushplata Singh, Advs. for
UOI**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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03.02.2025**C. HARI SHANKAR, J.**

1. The petitioners were engaged as Class-IV Beldars on daily-wage basis, with the Archaeological Survey of India¹ in 1980.

2. On 10 September 1993, the Department of Personnel and Training² issued an Office Memorandum³, which envisaged grant of temporary status to casual employees, employed with Central Government offices on daily wage basis, who had rendered one year

¹ "ASI" hereinafter

² "DOPT" hereinafter

³ "OM" hereinafter



of continuous service. The provisions in that regard were contained in the “Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1993⁴”, appended as an appendix to the OM.

3. Of the various provisions contained in the 1993 Scheme, the following are relevant:

“4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

⁴ “the 1993 Scheme” hereinafter



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6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers.

11. Department of Personnel and Training will have the power to make amendments or relax any of the provisions in the scheme that may be considered necessary from time to time.”

4. Under the 1993 Scheme, the petitioners were granted temporary status w.e.f. 10 September 1993.

5. Without ever having been regularised thereafter, the petitioners superannuated as temporary Group D employees, on various dates between 2010-2014. Their respective date of superannuation may be set out thus:

S. No.	Particulars	Date of Superannuation
1.	Applicant No.1 (Birma Devi)	31.12.2013
2.	Applicant No.2 (Dhanno)	30.11.2010
3.	Applicant No.3 (Narayani)	31.01.2014
4.	Applicant No.4 (Silman)	31.05.2014
5.	Applicant No.5 (Sher Bahadur Ram)	31.12.2014

6. After their retirement, the petitioners represented to the ASI, for being granted pension.

7. The petitioners' representations were rejected by the ASI by order dated 27 April 2017. The letter purported to state that as per para 5 (v) of the 1993 Scheme, employees holding temporary status would



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be entitled to reckoning of half of their period of service towards pension after they were regularised. Inasmuch as the petitioners had never been regularised, the ASI sought to submit that they were not entitled to pension.

8. Aggrieved by the aforesaid decision, the petitioners approached the Central Administrative Tribunal⁵ by way of OA 910/2018, praying that the respondents be directed to grant pension to the petitioners, if necessary by extending/modifying the 1993 Scheme.

9. In their counter affidavit, the respondents contended that the 1993 Scheme provided for pension only in respect of temporary employees who had been regularised. It was further stated that the Scheme itself envisaged that two out of every three vacancies in Group-D in the respective offices where casual labourers were working would be filled up as per the existing recruitment rules and instructions issued by the DOPT. Regularisation would be on the basis of availability of vacancies. The counter affidavit placed reliance on the judgment of the Supreme Court in *State of Himachal Pradesh v Suresh Kumar Verma*⁶, to contend that appointment on daily wages could not be counted towards regular service.

10. The counter affidavit specifically averred that “the applicants could not be regularised during (their) period of temporary status, hence, question for grant of pension benefits does not arise where there is no provision for granting pension to casual labourers”. The

⁵ “the Tribunal” hereinafter

⁶ (1996) 7 SCC 562



counter affidavit went on to reiterate this position by averring that, as the petitioners had never been regularised as Group-D employees in terms of the 1993 Scheme, they were not entitled to retiral benefits. It was further contended that casual labourers were not holders of civil posts.

11. The Tribunal has, by the impugned judgment, observed and held as under:

“10. It is a fact that the applicant have worked continuously with the respondents in different capacities, i.e., as casual labourers and, thereafter, with temporary status, without a break in their service. Vide DoP&T O.M. dated 10.09.1993, the government issued detailed guidelines regarding grant of temporary status and regularisation of casual workers. As per this Government Scheme temporary status is to be conferred to all casual labourers who are in the employment on the date of issue of this O.M. and have been engaged for a period of at least 240 days.

11. It was further clarified in the O.M. that such casual labourers who acquire temporary status will not be brought to the permanent establishment unless they are selected through regular selection process for Group ‘D’ posts. The temporary status, however, entitles the casual labourers to their wages, DA, HRA, increments and leave entitlements. It is also indicated in the O.M. that after rendering three years of continuous service, casual labourers would be treated at par with temporary Group ‘D’ employees for certain benefits only. It is also indicated that two out of three vacancies in Group ‘D’ cadre in respective offices where casual labourers are working would be filled up as per extent recruitment rules. As clarified by the respondents in the counter affidavit, the applicants retired before having acquired temporary status and, therefore, the question of grant of pensionary benefit to them does not arise.

12. It is a fact that casual labourers have been engaged in different departments on various terms and conditions but after issuance of the O.M. dated 10.09.1993 by the DoP&T, the services of the casual labourers have been governed in terms of this O.M. dated 10.09.1993 by granting them temporary status and depending



upon the vacancies, they may also be regularized against Group 'D' posts. However, none of the applicants were regularized till their retirement. It has also been contested by the respondents that none of the juniors to the applicants have been regularized and granted post retiral benefits. Various other dues for which the applicants were entitled have already been paid to the applicants.

13. It is, thus, obvious that grant of regular status is only applicable to the temporary staff recruited against vacancies of Group 'D' staff, and that too, in the ratio prescribed vide DoP&T O.M. dated 10.09.1993. All the applicants have already retired without having attained status of regular employees and, therefore, their claim for pensionary benefit cannot be entertained at this stage. It is a matter of record that they remained temporary status employees and, therefore, they are not entitled for the pensionary benefits.

14. In view of the above, I am of the view that there is no merit in the present O.A. and the same is accordingly dismissed. There shall be no order as to costs."

12. Aggrieved by the judgment of the Tribunal, the applicants before the Tribunal have approached this Court under Article 226 of the Constitution of India.

Analysis

13. Having heard learned Ms. Annu Mehta, learned Counsel for the petitioners and Mr. Avnish Singh, learned Senior Panel Counsel for the UOI, we are unable to sustain the impugned judgment of the Central Administrative Tribunal⁷.

14. Mr. Singh submits that the petitioners are seeking the benefit of DOPT OM dated 10 September 1993. He points out that Clause 5(v) of the 1993 Scheme envisages counting of 50% of service rendered

⁷ "Tribunal" hereinafter



under temporary status for retiral benefits only after regularisation of the persons who have temporary status.

15. However, he acknowledges it is not the case of the respondents either before the Tribunal or before this Court that any exercise towards conducting regular selections ever took place on 10 September 1993 when the petitioners were granted temporary status and their respective dates of retirement. In the absence of any such exercise having been conducted, in our view, respondents cannot be heard to contend that, as the petitioners have not been regularised, they are not entitled to pension.

16. The petitioners, quite obviously, cannot regularise themselves. They have to be regularized by the respondents. Unless the respondents' conduct in exercise of regularization, the petitioners could not have been regularized.

17. In that view of the matter, we are unable to agree that Clause 5(v) would stand in the way of the petitioners.

18. We feel that the case of the petitioners is also supported by the judgment of the Supreme Court in *Yashwant Hari Katakhar v UOI*⁸ on which Ms. Mehta placed reliance. In that case, a Three-Judge Bench of the Supreme Court held that persons could not be kept on temporary basis for 18 and half years and thereafter denied pensionary benefits. The case of the petitioners is unquestionably better, as they

⁸ (1996) 7 SCC 113



remained on temporary status for more than 20 years in each case. The responsibility for answering why the petitioners were not regularised would, in such circumstances, fall on the respondents. The petitioners cannot, however, be denied pensionary benefits, following the judgment in *Katakkar*.

19. Moreover, the entire law with respect to persons who are kept for long period from casual and temporary status now stands revisited by the judgment of the Supreme Court in *Jaggo v UOI*⁹. We deem it appropriate to reproduce the following paragraphs from the said decision, 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

⁹ 2024 SCC OnLine SC 3826



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)*¹⁰ 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. UOI*¹¹, 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

¹⁰ State of Karnataka v. Uma Devi, (2006) 4 SCC 1

¹¹ (2024) 1 SCR 1230



*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 Declaration⁶ 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*¹² 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

¹² 97 F.3d 1187 (9th Cir. 1996)



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.”

20. Clearly, therefore, the Supreme Court has held that it is pernicious practice to keep persons on temporary basis for years without regularisation. Such a practice has been held to contravene International Labour Standards and expose the organisation to legal challenges and undermine employee monarch. The petitioner’s right would also be justified on the basis of the decision in *Jaggo*.

21. Insofar as *Uma Devi* is concerned, the Supreme Court has, in *Jaggo*, noted that *Uma Devi* which was intended to have been a social welfare measure, aimed at avoiding backdoor appointments, has been recognised over a period of time. Without entering further into that aspect, it cannot be said, in the present case, that the petitioners’ appointments were even irregular much less illegal. The petitioners were not only initially appointed as casual labourers, but were also granted temporary status after due process. Their case, therefore, is clearly not one of backdoor entry, as would justify invocation of *Uma Devi*.



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22. For all these reasons, we are of the opinion that the petitioners were entitled to pensionary benefits and could not have been denied pensionary benefits on the ground that they had not been regularised till they had superannuated.

23. As a result, the impugned judgment of the Tribunal is quashed and set aside. The petitioners are held to be entitled to pensionary benefits as would be available to regular employees holding the posts held by the petitioners on the date of their superannuation.

24. Let the resulted benefits be worked out by the respondents and paid to the petitioners within a period of eight weeks from today. In the event that the amounts are not released within eight weeks, the amount shall carry interest at the rate of 12% per annum from the date of the superannuation of the respective petitioners till the date when the amounts are released.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 3, 2025

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Click here to check corrigendum, if any