



2026:DHC:1459-DB



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

Judgment reserved on: 02.02.2026
Judgment delivered on: 19.02.2026

+ **LPA 785/2023**

GEETA DEVI & ORS.Appellants

Through: Mr. Parveen Kumar, Adv.

versus

EXPORT INSPECTION COUNCIL & ORS.Respondents

Through: Mr. L.R. Khatana, Adv. for R-1 to R-5.

Mr. Vijay Joshi, CGSC for R-6.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, C.J.**

1. This *intra-court* appeal has been instituted by the employees or their (legal representatives) of the Export Inspection Council (*hereinafter referred to as the 'Council'*), a statutory body created under an Act of Parliament, namely, Export (Quality Control and Inspection) Act, 1963 (*hereinafter referred to as the 'Act, 1963'*), assailing the judgment and order dated 21.09.2023 passed by the learned Single Judge whereby, *W.P.(C) 11407/2021* filed by the appellants, has been dismissed and their claim relating to their entitlement to be paid pension in terms of Central Civil

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Service (Pension) Rules, 1972 (*hereinafter referred to as the 'Rules, 1972'*) which is commonly known as Old Pension Scheme, (*hereinafter referred to as the 'OPS'*) has not been acceded to.

2. The following chart gives the details of initial joining/engagement of the appellants, date of completion of 240 days/1 year, date of granting contractual status, date of their alleged regularisation and date of superannuation.

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	29.10.1992	04.11.2008	30.04.2020
5.	Sh.M. Sreekumar	16.07.1986	16.03.1987 15.07.1987	29.10.1992	04.11.2008	31.03.2015
6.	Sh. K.V. Rajendran	08.04.1986	08.12.1986	31.10.1992	15.03.2007	29.11.2019

3. The appellants case as set up by them is that though, they were regularised on different dates between the period from 20.02.2007 to 06.01.2009, however, they ought to have been regularised under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 (*hereinafter referred to as the 'Scheme 1993'*), notified by the Department



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of Personnel and Training, Government of India (*hereinafter referred to as the 'DoPT'*), promulgated *vide* circular dated 10.09.1993, and accordingly, they ought to have been given the benefit of pension under the OPS and not under the New Pension Scheme (*hereinafter referred to as the 'NPS'*), which was introduced with effect from 01.01.2004.

4. Relying on the judgment of the Hon'ble Supreme Court in ***State of H.P. v. Sheela Devi, 2023 SCC OnLine SC 1272***, it has been contended by the learned counsel for the appellants that since initial appointment of the appellants was made as casual employees and later on, they were given contractual status which was followed by their regularisation without any interruption, and therefore, they are entitled to the benefit of Rule 17 of Rules, 1972.

5. Heavy reliance has been placed on behalf of the appellants on a Division Bench judgment of this Court in the case of ***Vasudev vs. Union of India, W.P.(C) 1004/2018***, and it has been contended that facts of the instant case are akin to the facts in the case of ***Vasudev (supra)*** where the employees of the Central Public Works Department, who were initially engaged on casual basis and subsequently regularised, were given the benefit of regularisation of their services with retrospective date, as a result of which, they were brought within the purview of OPS. The contention, thus, is that in view of the law laid down by the Coordinate Bench of this Court in ***Vasudev (supra)***, the appellants are also entitled to the benefit of regularisation in service with retrospective effect and thereby, they are eligible for the grant of pension in terms of OPS. Reliance has also been placed on behalf of the appellants on a judgment of the High Court of



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Himachal Pradesh in the case of *State of Himachal Pradesh & Others v. Sh. Matwar Singh & Another*, CWP No.2384/2018.

6. *Per contra*, the appeal has vehemently been opposed by the learned counsel representing the respondent-Council stating that it is not a case where casual employment or employment on contractual basis was followed by regularisation of the services of the appellants, without any interruption rather, it is a case where initially, the appellants were appointed on casual basis whereupon, they were subsequently given the contractual status and then they were given a fresh appointment between 20.02.2007 and 06.01.2009 on different dates. It has further been stated that the letter of offer of fresh appointment, pursuant to which the appellants were appointed, clearly stipulated therein that the appellants shall be governed by the NPS as applicable to Central Government Employees. It is further contended that pursuant to these fresh appointments, since the appellants had submitted their joining after accepting the offer without any protest or demur, they are estopped from claiming any benefit of the OPS.

7. We have heard learned counsel for the respective parties at length and have also perused the records available before us on this letter patent appeal.

8. As already observed above, respondent-Council is a statutory body created under the Act, 1963. The employees of the respondent-Council, thus, are not employees of the Central Government rather, they are the employees of a statutory body, and therefore, their conditions of service and other service related aspects are to be governed by either the Act under which the Council has been created or under the Rules made by the Council under Section 17 of the said Act.



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9. So far as the applicability of the Rules, 1972, on the employees of the respondent-Council is concerned, the respondent-Council has made Rules which were notified *vide* notification dated 24.10.1981, and the said Rules are called Export Inspection Council, Pension and General Provident Fund Rules, 1981 (*hereinafter referred to as the 'Rules, 1981'*). According to Rule 3 of the said Rules, as notified on 24.10.1981 by the respondent-Council, the benefit of the Rules, 1972 as amended from time to time, have been extended to all the whole time and regular employees of the respondent-Council. Thus, the applicability of the Rules, 1972, in the case of the employees of the respondent-Council is not doubted.

10. We, now, need to examine as to whether, in terms of Rule 17 of the Rules, 1972, the service rendered by the appellants on a contractual basis, is on a casual capacity, is to be taken into account for the purposes of pension or not. Rule 17 of the Rules, 1972 is extracted herein below:

"17. Counting of service on contract -

(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either :-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service ; or

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be



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deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.”

11. The Hon'ble Supreme Court in *Sheela Devi (supra)* has considered the said provision and has held that notwithstanding the provisions of Rule 2(g), Rule 17 will be applicable in case a person who is initially engaged on contract for a specified period, and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty. It may be noticed that Rule 2(g) of the Rules, 1972, provides for the applicability of the said Rules and sub-clause (g) of Rule 2 states that the Rules will not apply to persons employed on contract except where the contract provides otherwise. The Hon'ble Supreme Court has considered Rule 2(g) together with the provisions of Rule 17 and has come to the conclusion that Rule 2(g) saves the application of other provisions of Rules 1972, and therefore, if the opening phrase of Rule 2 is to be understood correctly, inference about non-applicability of Rule 17 to the contractual employees, who are regularised at a later stage, will be incorrect.

12. Rule 2 of the Rules, 1972 is extracted herein below:

“2. Application

Save as otherwise provided in these rules, [these rules shall apply to Government servants appointed on or before 31st day of December, 2003] including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to

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- (a) railway servants;
 - (b) persons in casual and daily rated employment;
 - (c) persons paid from contingencies;
 - (d) persons entitled to the benefit of a Contributory Provident Fund;
 - (e) members of the All India Services;
 - (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries;
 - (g) persons employed on contract except when the contract provides otherwise; and



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(h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.”

13. Thus, applicability of Rule 17 of the Rules 1972, even in case of persons employed on a contractual basis is already settled; however, what is to be noticed, in the facts of the instant case, is as to whether, the initial; appointment of the appellants on casual and contractual basis was followed by their appointment in substantive capacity without any interruption of duty.

14. It is not the case set up by the respondent-Council that the appointment of the appellants made between 20.02.2007 and 06.01.2009 was with any interruption of duty from the initial engagement of the appellants on casual/contractual basis. In fact, the case set up by the respondent-Council is that the offer of appointments issued to the appellants between 20.02.2007 and 06.01.2009 was in respect of direct recruitment/direct appointment and that it was not regularisation of their services and, therefore, appellants will not be entitled to the services rendered by them in casual/contractual capacity for the purposes of bringing them within the purview of the OPS.

15. As already noticed above, by means of the notification dated 24.10.1981, the respondent-Council has made applicable the provisions of Rules 1972, upon its employees and therefore, in our considered opinion, Rule 17 of the Rules 1972, will be applicable in the instant case as well with full force.

16. What Rule 17 of the Rules 1972, envisages is that in case any appointment on contractual basis is followed by appointment in a substantive capacity without any interruption of duty, such an employee



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shall be given an option to opt either (i) to retain the Government contribution in the Contributory Provident Fund with interest thereon, including any other compensation for that service or; (ii) to agree to refund to the Government the monetary benefits or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the monetary benefits have been payable.

17. Thus, it is crystal clear that for attracting Rule 17 of the Rules 1972, the initial appointment on a casual/contractual basis need not be followed by appointment in a substantive capacity. For extending the benefit of Rule 17, the only requirement is that the initial appointment on casual/contractual basis should be followed by an appointment in substantive capacity without interruption of duty. The appointment orders issued to the appellants between the period 20.02.2007 to 06.01.2009 indicate that the appointments of the appellants was made in substantive capacity and therefore, even if the appointments of the appellants is treated to be fresh appointments made during the said period, in our considered opinion, since such appointments were made in substantive capacity, as such, there is no reason why these appellants should be denied the benefit of Rule 17 of the Rules 1972.

18. The reliance by the appellants has been placed on *Vasudev (supra)*, however, the said judgment does not have any application to the facts of the instant case for the reason that in the said case, the employees who were initially engaged on a casual/contractual basis were denied the benefit of the Scheme, 1993. It is to be noticed that the Scheme, 1993 applies on all casual labourers who are in employment on the date of issue of the said Scheme 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,



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and thus, will be conferred with the temporary status and upon conferment of the temporary status, certain benefits would accrue to them such as (i) they shall be paid wages with reference to minimum of the pay scale for a corresponding Group 'D' Employee including, Dearness Allowance, House Rent Allowance and City Compensatory Allowance. The other benefit on conferment of the temporary status, as per the said Scheme, was that (ii) such employees shall also get the benefit of increments as applicable to a Group 'D' Employee and (iii) further they shall also be entitled to leave on *pro-rata* basis at the rate of one day for every ten days, (iv) such employees are also entitled to maternity leave and (v) for the benefit of 50% of service rendered under temporary status to be counted for the purpose of retirement benefits after their regularisation. This Scheme further provides that after rendering three years continuous service after conferment of temporary status, the casual labourer would be treated at par with the Group 'D' Employee for the purposes of contribution to the General Provident Fund and further that they shall also be eligible for certain other benefits as are applicable to temporary Group 'D' Employees.

19. Thus, as per Scheme 1993, the eligible casual labourers were to be granted, firstly, the temporary status and, thereafter, they were to be regularised. The judgment in *Vasudev (supra)* is based on the fact that despite the employees therein being eligible for the grant of temporary status and subsequent regularisation, they were denied the benefit of the Scheme, 1993 and thereafter, they were regularised with effect from a particular date in terms of the directions issued by the Central Administrative Tribunal/Court. The reasoning given in *Vasudev (supra)*, by the Division Bench of this Court, is that since the employees therein ought to have been



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given the benefit of consideration for their respective cases for regularisation under the Scheme, 1993 and had they been given the said benefit, they would have been regularised prior to the date of their regularisation as determined by the employer. It is in these circumstances that the Court in *Vasudev (supra)* held that employees were entitled to be regularised in their service with retrospective date and for consequential benefits, including the benefit of pension.

20. However, so far as the instant case is concerned, there is nothing on record that shows that the Scheme 1993, promulgated by the DoPT is applicable to the employees of the respondent-Council for the reason that there is no document which establishes either the adoption of such Scheme by the respondent-Council to its employees or any other such similar Scheme. Accordingly, the reliance placed by the learned counsel for the appellant on *Vasudev (supra)* is misconceived.

21. Having said that, so far as the applicability of Rule 17 of the Rules, 1972 is concerned, in view of the law laid down by the Hon'ble Supreme Court in *Sheela Devi (supra)*, in our considered opinion, the appellants are entitled to claim the said benefits.

22. We have already dealt with the submissions made on behalf of the respondent-Council that since the appointments of appellants were made on different dates between 20.02.2007 to 06.01.2009, and these appointments were not by way of regularisation, but rather, they were appointments by way of direct recruitment and fresh appointments, therefore, the benefit of Rule 17 will not be available to them. As already discussed, the pre-condition of the benefit of Rule 17 of the Rules, 1972 is not that the contractual engagement of an employee shall be followed by regularisation



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rather, the pre-condition is that such a contractual appointment should be followed by an appointment in substantive capacity to the same or another post, without interruption of duty.

23. The appointment orders, as discussed above, issued to the appellants, between 20.02.2007 to 06.01.2009 are indicative of the fact that such appointments were made in substantive capacity and since the appellants' initial engagement on casual/contractual basis was followed by appointment in substantive capacity without any interruption of duty, it cannot be doubted that Rules 1972, will apply to the appellants.

24. If we examine the impugned judgment rendered by the learned Single Judge in view of the discussions made above, what we find is that the substantive case set up by the appellant regarding the applicability and benefit of Rule 17 of the Rules, 1972, appears to have been lost sight of. The learned Single Judge instead, proceeded on the premise that in the light of the judgment of the Hon'ble Supreme Court in *Secretary State of Karnataka v. Umadevi, (2006) 4 SCC 1*, the appellants did not have any right to be regularised and, therefore, in that view of the matter, their regularisation could not be dated back and that they would be treated to have been regularised on different dates on which their appointment orders were issued between 20.02.2007 and 06.01.2009.

25. It is, however, not a case where appellants were regularised in service under any scheme or rule promulgated or notified by the respondent-Council. It has already been admitted by the respondent-Council that these appellants were appointed afresh and since their appointment letters clearly stipulated therein that they shall be governed by the NPS, the benefit of the OPS cannot be given. The admission to the effect that appointment of the



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appellants was made afresh by way of direct recruitment on various dates as indicated above, makes it abundantly clear that it was an appointment in substantive capacity and not by way of regularisation of services and, therefore, law laid down by Hon'ble Supreme Court in *Umadevi (supra)* is not attracted to the facts of the present case. As a matter of fact, the appointment of the appellants being in substantive capacity, Rule 17 of the Rules, 1972 will be attracted, as laid down by the Hon'ble Supreme Court in *Sheela Devi (supra)*.

26. For the aforesaid reasons, we are unable to agree with the impugned judgment and order passed by the learned Single Judge. Resultantly, the appeal is allowed and the judgment and order dated 21.09.2023 passed by the learned Single Judge in *W.P.(C) 11407/2021* is hereby set aside.

27. Consequently, the following directions are also issued:

- (i) The respondent-Council shall take immediate steps to invite options from the appellants (who comprise of the employees working presently and, in some cases, the legal heirs of the employees), indicating their option in terms of Rule 17 of the Rules, 1972 within ten weeks' from today.
- (ii) After receiving the options to be indicated in the notice as aforesaid, the concerned employees or their legal heirs who may exercise the relevant option shall be notified about the amounts required to be remitted in case any amount towards contribution is required.
- (iii) The options so exercised shall be processed and completed within eight weeks' thereafter,
- (iv) The entire process under this order shall be completed, fixing pension or family pension, as the case may be, within a period of five months from today.



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28. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

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