
AN ANALYSIS INTO THE ‘TEMPORARY EMPLOYEES’ AND THE ATTITUDE OF JUDICIARY TOWARDS THEIR REGULARIZATION

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ABSTRACT

In India, temporary workers often perform the same duties as permanent employees but face significant disparities in job security, wages, and benefits. Earlier judicial rulings, like *Daily Rated Casual Labour v. Union of India*, supported regularization based on the principles of equality and “equal pay for equal work.” However, the 2006 Supreme Court verdict in *Secretary of State, Karnataka v. Umadevi* shifted the focus, prioritizing adherence to constitutional procedures over social justice. In this paper, there is an attempt to understand this shift in a way which has left temporary workers in a precarious position, highlighting the need for balanced reforms that ensure fairness for all while upholding procedural integrity.

Proletarier aller Länder, vereinigt Euch! (Workers of the world, unite!)

- The Communist Manifesto (1848)

Introduction

Thousands of non-permanent workers are engaged in public employment alongside the permanent ones. They are discharging similar functions as the permanent ones; they are contributing the equal labour for more than five years, or even ten years. But why is there a persistent disparity between temporary and permanent workers regarding job security, wages, and working conditions? An effort to regularise the former was made through judicial involvement, owing to it, the process of regularisation was seen in light of the principle of 'equal pay for equal work' and Articles 14, 16, 39 etc. But in 2006, all the efforts were washed away in the name of appointment by 'constitutional scheme' and 'due procedure established by law'. These questions compel us to ponder upon labour rights in India, highlighting the struggle for equality and job security faced by millions.

Workmen and their Classification

The Model Standing Orders contained in Schedule I and Schedule IA of the Industrial Employment (Standing Orders) Central Rules, 1946¹, classifies the types of workmen² in any industrial establishment i.e., permanent, probationers, badlis, temporary, casuals and apprentices.

A permanent workman³ is 'employed on a permanent basis' and also includes an employee having completed a probationary period of three months. A probationer⁴ is employed provisionally to fill a permanent vacancy but has not completed 3 months of service. A badli⁵ worker is one who is hired to make up for the absence of a permanent workman or a probationer. A workman hired for any work of temporary character, that is to be completed within a limited

¹ Notification No. L.R. 11 (37), dated 18th December, 1946.

² Industrial Employment (Standing Orders) Central Rules, 1946. Rule 2(a), Schedule I, Acts of Parliament. (India)

³ *Id.* at Rule 2(b).

⁴ *Id.* at Rule 2(c).

⁵ *Id.* at Rule 2(d).

time, is a 'temporary' worker.⁶ A casual workman⁷ is on employment of casual nature⁸, while an apprentice⁹ is in the learning phase who gets paid an allowance during the training period.

Additionally, the term 'contract labour' under the Contract Labour (Regulation and Abolition) Act, 1970¹⁰ means a workman who has been 'hired in or in connection with the work of an establishment' by or through a contractor. Contract labour is such worker, whose name is borne neither on the payrolls nor on the muster rolls of regular workers in an establishment.¹¹

The Temporary Employee Class

The SC firstly in the case of *State Of Uttar Pradesh v. Kaushal Kishore Shukla*¹² and later in the case of *Indian Drugs & Pharmaceuticals Ltd v. Workman, Indian Drugs & Pharmaceuticals Ltd*¹³ has clarified the position and status of temporary employees, and how they differ from the permanent employees. The Court stated that temporary employees have no right to the post or to continue the service, or of being regularized and getting pay on regular basis¹⁴ unlike the permanent employee. The latter enjoys the service till the age of superannuation. If the appointment is not for any sanctioned post, the employee shall not be entitled to any scale of pay.¹⁵

There is a massive disparity between the temporary and the permanent worker particularly with respect to wages and working conditions. Although there is recommendation by Wage Boards for uniform wage rates, but it lacks effective implementation.¹⁶ The First Labour Commission Report of 1969 found that the working conditions are unsatisfactory, with major concerns being the working hours being irregular and longer than regulars, payments were made for period varying from one day to six months. Other benefits such as housing facilities, annual leave,

⁶ *Id.* at Rule 2(e).

⁷ *Id.* at Rule 2(f).

⁸ Report of the First National Commission on Labour 1969, Chapter XXIX, Page 479

⁹ *Supra* Note 3 at Rule 2(g).

¹⁰ The Contract Labour (Regulation and Abolition) Act, 1970 Section 2(1)(b) of Act No.37 of 1970, Acts of Parliament (India)

¹¹ Subir Bikas Mitra & Piyali Ghosh, *Engaging Contract Labour: Learnings from Landmark Judgements*, Management and Labour Studies, 47(1) at page 11

¹² *State Of Uttar Pradesh v. Kaushal Kishore Shukla* 1991(1) SCC 691.

¹³ *Indian Drugs & Pharmaceuticals Ltd v. Workman, Indian Drugs & Pharmaceuticals Ltd* 2007(1) SCC 408.

¹⁴ *Id.* at Para 13 & 14.

¹⁵ *Supra* note 12, at Para 7.

¹⁶ *Supra* note 9, at Page 420.

leave with wages, social security benefits were only illusory.¹⁷

One of the measures to lessen this disparity is regularization as held by the top court in the case of *Daily Rated Casual Labour v. Union of India*.¹⁸ The Court advocated for a distinct notion of 'equal pay for equal work'¹⁹ and emphasised on the 'socialist goal' of the state.

Regularization

Regularization simply refers to absorbing temporary labour in the regular workforce, essentially those temporary labour who are doing the similar work as the regular ones for a certain significant period of time. In cases of public employment, the process of regularization is definite. It must be preceded by a legislation, or in case there is no legislation for that purpose, rules or policies must be framed in compliance of proviso of Article 309 of Indian Constitution.²⁰ It is also evident that State and its instrumentalities have started to make irregular appointments without ensuring appropriate appointment procedure.²¹ This process has deprived countless workers of an opportunity to compete for the post.²²

Judicial Trend

The foremost effort for the entitlement of regularisation was made in the case of *Daily Rated Casual Labour v. Union of India*²³. The petitioners being the casual labourers in the Posts & Telegraphs Department, working for more than ten years, alleged that they were being exploited by the State in terms that they were paid lower wages as compared to the regular employees; and sought for the regularisation.²⁴ Moreover, they also could not enjoy the benefits of superannuation, increments, or leave benefits. The SC relied upon the Art. 14²⁵, 16, 38(2)²⁶

¹⁷ *Supra* note 9, at Page 421 & 422.

¹⁸ *Daily Rated Casual Labour v. Union of India* (1988) 1 SCC 122 at Para 7; Overruled by *Secretary of State, Karnataka v. Umadevi*, (2006) 4 SCC 1

¹⁹ *Randhir Singh v UOI* (1982) 1 SCC 618 [SC held that "equal pay for equal work for men and women means equal pay for equal works for everyone and as between the sexes."]

²⁰ *State of Bihar v. Project Uchcha Vidya, Sikshak Sangh*, 2006 INSC 5 at Para 49.

²¹ *Secretary of State, Karnataka v. Umadevi*, (2006) 4 SCC 1 at Para 3.

²² *Id.* at Para 3.

²³ *Daily Rated Casual Labour v. Union of India* (1988) 1 SCC 122

²⁴ *Uday Shankar & R. Venkat Prabhat, Indian Judiciary on Industrial Relations in Post-Liberalization Era*, 5 GNLU J.L. DEV. & POL. 1 (July 2015).

²⁵ The Court observed that by discharging similar works and functions as the regular employees, the daily rated casual labour cannot be bifurcated, and violates Art. 14.

²⁶ The Court observed that even though Art. 39(2) being a DPSP, the State cannot deny the minimum pay in the pay scale of the regular employees.

& 39(d) of the Indian Constitution and Art. 7 of International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966; and held that the State cannot compel anyone to work as a casual labour on mere 'starvation wages', by using its dominant position. The court held this act as hostile discrimination.²⁷ The Court advocated for the 'socialist model' and 'equal pay for equal work'²⁸ by questioning the purpose for employing casual labourers for many years; and cautioned that non-regularisation of casual workers for a period long enough is not a wise policy.²⁹ In this very context, P.N. Bhagwati J. applied the principle of 'equal pay for equal work' in the case of *Dhirendra Chamoli v. State of Uttar Pradesh*.³⁰

The ruling of the *Daily Rated* case became a well-settled position for matters of regularisation, and for the better, it was followed and relied on by later judgements. In 1992, the SC in the case of *State of Haryana v. Piara Singh*³¹ pointed out the fact that in cases where casual/ad hoc/temporary employees are continued for longer period, then it may be presumed that there is regular need for their services³²; and advocated for regularisation and the principle of 'equal pay for equal work'.³³ This very principle was followed later in *The Dharwad Distt. PWD Literate Daily Wages Employees v. State of Karnataka*³⁴, where the casual workers who have been working for a long period of time under instrumentalities of state were held to be regularised in service with parity in pay.³⁵

In 2006, the 5-judge bench of Supreme Court in the case of *Secretary of State, Karnataka v. Umadevi*, delivered a landmark judgement³⁶, overruling the *Daily Rated Casual Labour case*; and altered the trajectory for the matters of regularisation. The judgement has, at length, laid various explanations to justify its decision. The bench used the term 'litigious employment' to denote the class of temporary workers who were approaching the courts seeking permanency.

"A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are

²⁷ *Supra* note 24 at Para 7.

²⁸ *Supra* Note 12 at Page 12.

²⁹ *Id.* at Para 9.

³⁰ *Dhirendra Chamoli v. State of Uttar Pradesh* 1986 (1) SCC 637

³¹ *State of Haryana v. Piara Singh* 1992 (4) SCC 118

³² *Id.* at Para 49 & 51.

³³ Arnab Pal, *Landmark Judicial Pronouncements on Labour Law and Reforms Related to Regularization*, 2 JUS CORPUS L.J. 191 (August 2021).

³⁴ *The Dharwad Distt. PWD Literate Daily Wages Employees v. State of Karnataka* 1990 (2) SCC 396

³⁵ *Supra* Note 20.

³⁶ *Supra* Note 22/

passed apparently in exercise of the wide powers under Article 226 of the Constitution.”³⁷

The bench held the compliance of ‘constitutional scheme’ and ‘due process of selection’ as per appointment rules to be entitled for absorption or regularisation.³⁸ The bench cautioned the High Courts who were issuing directions, by virtue of Art. 226, for regularisation citing the *Daily Rated Casual Labour case*. In this regard, the court said that such direction is likely to prolong the legitimate selection procedure, and rather burdens the State.³⁹ The Court accepted that the persons may have opted for casual employment in such circumstances where they were not able to bargain, but it was also noted that directing such persons to continue permanently would discard or scrap the ‘constitutional scheme’⁴⁰, and such practice is likely to create additional form of public employment, which are not constitutionally legitimate.

The notion of ‘equal pay for equal work’, which was massively advocated for and understood as ‘equal pay for equal works for everyone and as between the sexes’ in the previous judgements, was interpreted in distinct angle in the *Umadevi verdict*. The judgement stated that regularising or conferring permanency to temporary workers, who were appointed not according to the appointment rules, does not equate to the principle of ‘equal pay for equal work’.⁴¹ This principle should not result into appointments without compliance of the ‘due procedure established by law’. The bench went on to suggest this practice as bypassing the principle of equality of opportunity.

The Articles 14 & 16, which were referred mostly by the earlier judgements, were also interpreted in a different perspective. The bench pointed out the difference between the regular and temporary employers: the regular ones are appointed by virtue of due procedure established by law and thus have a right to hold a post, while the latter enjoys no such right. In this manner, they do not form a ‘class’ and treating them as equals i.e., granting their claim for regular employment, would be unfair by virtue of Art. 14, because of a simple fact that they are not ‘equals’.⁴²

³⁷ Secretary of State, Karnataka v. Umadevi, (2006) 4 SCC 1 at Para 4

³⁸ *Supra* Note 22 at Para 34.

³⁹ *Id.* at Para 34 & 36.

⁴⁰ *Supra* Note 22 at Para 36.

⁴¹ *Supra* Note 22 at Para 35.

⁴² *Supra* Note 22 at Para 39.

Conclusion

In conclusion, the classification and regularization of workers in India remain complex, thanks to the *chains* of procedure upheld by the *Umadevi verdict*. The court chose to weigh the ‘constitutional scheme’ and ‘due procedures’ for appointment over the ‘social justice’ mandate, India’s socialist model, and the principle of ‘equal pay for equal work’.

The question of how to ensure, and to possibly maximize fair treatment for all workers in this regard remains open for discussion. Moving forward, legislation or policy reforms may offer a solution to balance job security while upholding procedural fairness without violating the equitable right of temporary employees who contribute equally. Ultimately, a more reasonable and equitable framework for regularization could help bridge this gap as it has been authoritatively held that judicial process should not become additional mode of recruitment⁴³, other than the ‘rules’.

⁴³ Secretary of State, Karnataka v. Umadevi, (2006) 4 SCC 1 at Para 24; Himachal Pradesh v. Suresh Kumar Verma (1996 (1) SCR 972