

Most Immediate
Court Case

No. 19/7/2011-EC.X
Government of India
Directorate General
Central Public Works Department

Nirman Bhawan, New Delhi
Phone No. 23062674, Fax 23063946
Email id : delddghq.cpwd@nic.in

Dated : 29th September 2016

To

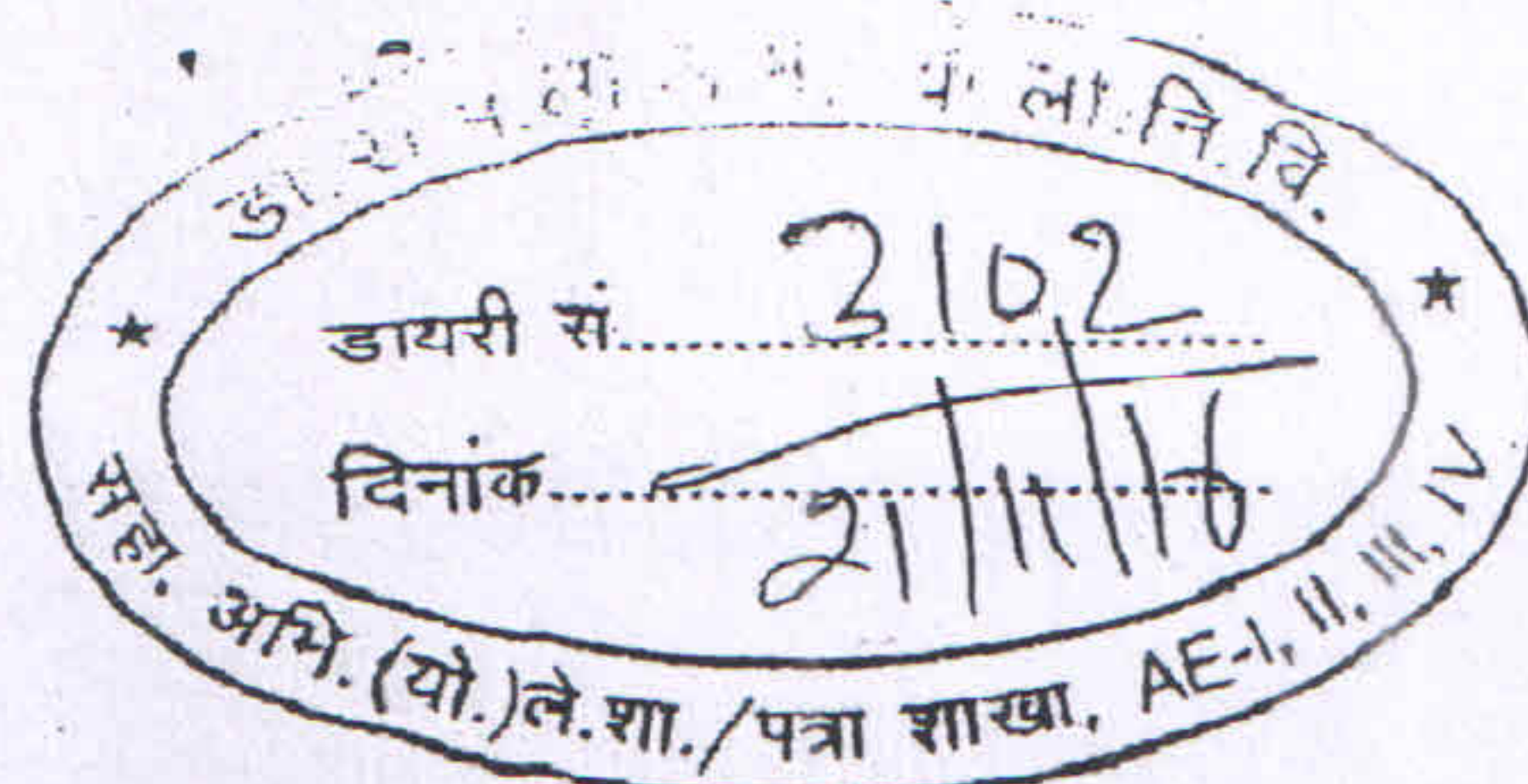
All SDGs of CPWD and PWD GNCTD
(Through CPWD Website)

Sub: Pending Litigation Cases / Industrial Disputes regarding Counting of past services rendered by the workmen (on muster roll/hand receipt or on temporary status) before their dates of regularization as qualifying services for the purpose of pension.

It has come to the notice of the Directorate that there are a number of pending Litigation Cases / Industrial Disputes regarding Counting of past services rendered by the workmen (on muster roll/hand receipt or on temporary status) before their dates of regularization as qualifying services for the purpose of pension. In order to minimize industrial disputes/court cases in such matters, all SDGs are requested to review the pending industrial disputes/court cases and settle/resolve them by issuing Speaking Orders to extend the benefits of counting of past services rendered by the workmen (on muster roll/hand receipt or on temporary status) before their dates of regularization as qualifying services for the purpose of pension, as admissible under MoF OM No.12(1-E-V)/65 dt.14.5.1968 and Rule 14 of CCS (Pension) Rules, 1972.

2. There is a provision under Rule 14 of CCS (Pension) Rules 1972 for counting of service rendered by workman before being regularized. "Half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to certain conditions as given in Rule 14."

- (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time for a portion of the day).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g. malis, chowkidars, khalasis, etc.



- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.
3. Attention is also drawn to the DoPT OM No. 49019/1/2006-Estt.(C) dated 11.12.2006 (copy enclosed) in accordance with which casual workers with 10 years or more service in duly sanctioned posts are required to be regularized.
4. Further DoPT has clarified vide O.M. No.49014/2/2014-Estt(C) dated 28.7.2016 that benefit of old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10th September 1993 even if they have been regularized on or after 01.01.2004.
5. Cases of all Similarly placed workers may be decided accordingly.

Encl. - 4 above.

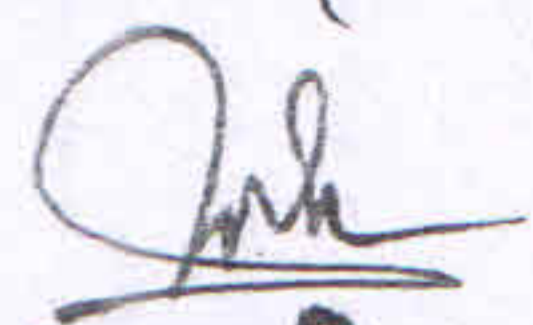
H Singh

(HARNAM SINGH)

DY.DIRECTOR GENERAL(HQ)

कार्यालय प्रमुख, लो.नि.वि.

- सं. ई-ईन-सी/पी/24(5)/2017/1961 दि. 17/5/18
- प्रतिनिधि:- मुख्य एवं सहायक कार्यालय हेतु प्रेषित:-
- ① प्र. मुख्यालय (अनु.) लो.नि.वि. नई दिल्ली।
- ② प्र. मुख्यालय (परियोजनाएं), लो.नि.वि. नई दिल्ली।
- ③ लो.नि.वि. के अन्तर्गत सभी अन्य कार्यालय।


 सहायक प्रशासनिक अधिकारी
 कार्यालय प्रमुख अभियंता
 लो.नि.वि., दिल्ली सरकार
 12वां तल, पुलिस मुख्यालय,
 नई दिल्ली-110002

No. 49019/1/2006-Estt©
Govt. of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, dated the 11th December, 2006

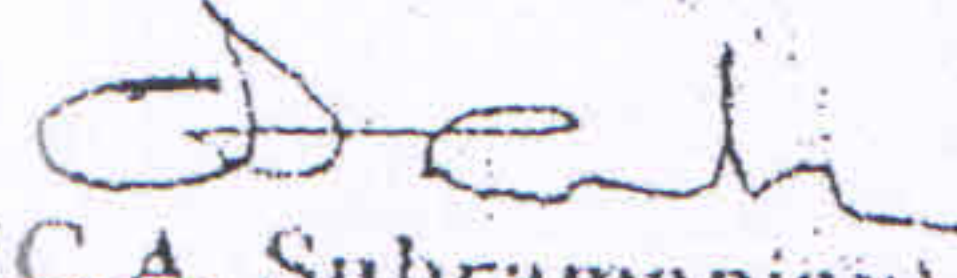
OFFICE MEMORANDUM

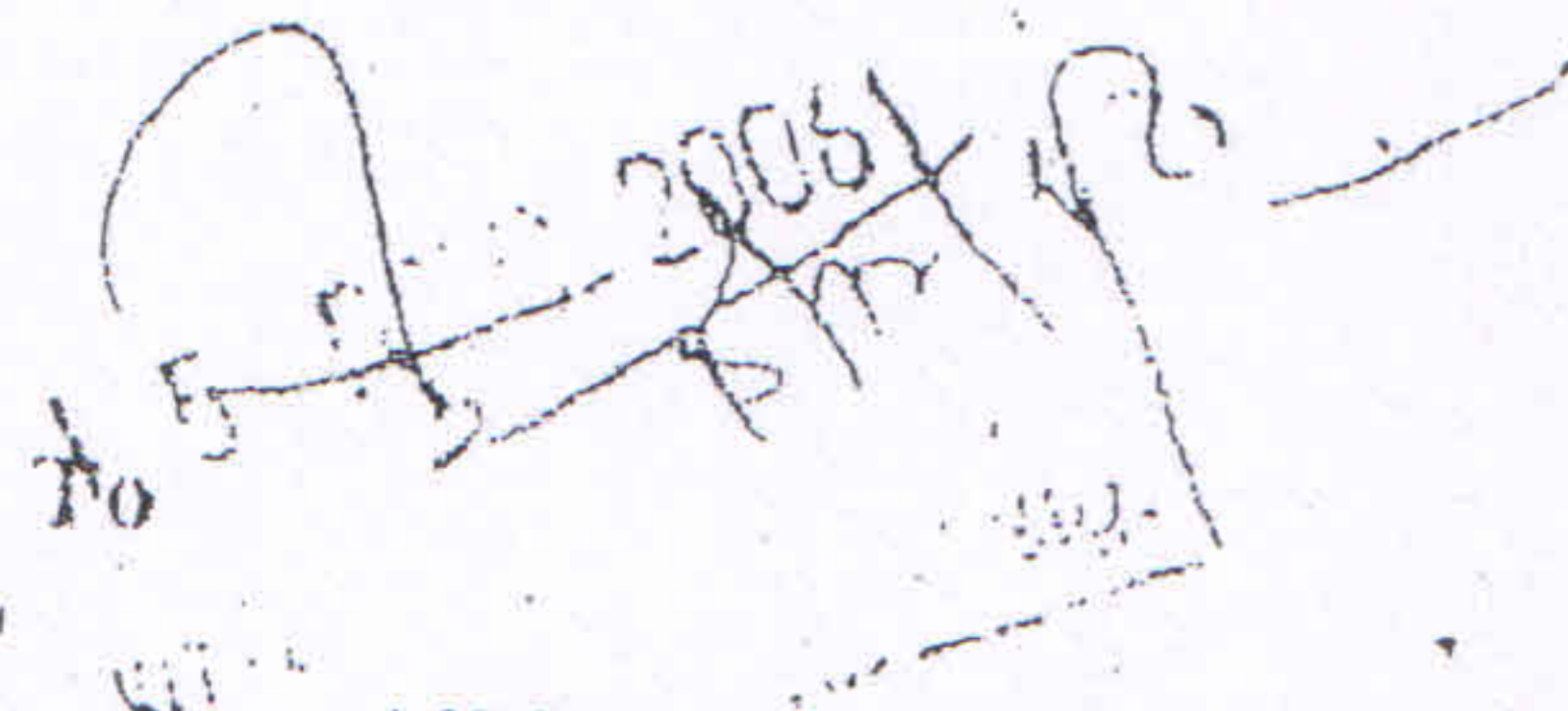
Subject: Regularisation of qualified workers appointed against sanctioned posts in irregular manner.

The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post can not be created. Attention is also invited to this Department's OM No. 28036/1/2001-Estt. (D) dated 23rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market.

2. A Constitution bench of the Supreme Court in civil appeal No. 3595-3612/1999 etc. in the case of Secretary State of Karnataka and Ors. Vs. Uma Devi and others has reiterated that any public appointment has to be in terms of the Constitutional scheme. However, the Supreme Court in para 44 of the aforesaid judgement dated 10.4.2006 has directed that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or tribunals. The Apex Court has clarified that if such appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

3. Accordingly the copy of the above judgement is forwarded to all Ministries/Departments for implementation of the aforesaid direction of the Supreme Court.


(C.A. Subramanian)
Director


All Ministries/Department of the Govt. of India etc.

No.49014/2/2014-Estt(C)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

North Block, New Delhi,
Dated the 28th July, 2016

OFFICE MEMORANDUM

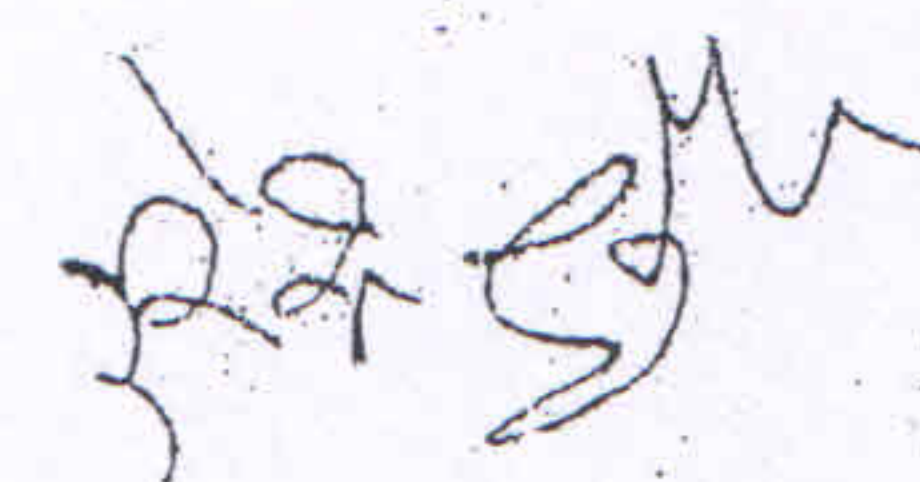
Subject: Casual labourers with temporary status – clarification regarding contribution of GPF and Pension under the Old Pension Scheme.

The undersigned is directed to refer to this Department's OM of even number dated 26th February, 2016 on the above subject and to say that some references have been received in this Department from various Ministries/Departments seeking a clarification with regard to the Para 7 of the referred OM.

2. The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department's O.M dated 26th April, 2004 had been quashed in a series of Orders/Judgements. The OM dated 26th February, 2016 restores the provisions of the Scheme as it existed prior to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10th September, 1993 even if they have been regularized on or after 01/01/2004.

3. As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/ Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS.

4. This issues with the concurrence of Department of Expenditure vide their I.D.No.1(15)/E-V/2015 dated 27.07.2016



(Mukesh Chaturvedi)
Director(E)
Tele: 23093176

To
All Ministries/Departments.