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

+ W.P.(C) 1108/2017

AMAR PAL & ANR Petitioners

Through: Mr. Rajeev Aggarwal, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **10.02.2017**

The petitioners were appointed as Mali/Beldar in the Horticulture Department of the MCD on 20.6.1998. About six months thereafter their services were terminated on 20.12.1998.

The petitioners raised an Industrial Dispute alleging illegal termination.

The Award dated 6.12.2003, answered the Industrial Reference in the negative and against the petitioners.

The petitioners, succeeded in WP(C) No.15983-84/2004, which was decided on 23.12.2005. The operative portion of the decision reads:

“38. As a result the respondent is directed to reinstate the

petitioner in service with such consequential benefits as are available in the position in which the petitioner was placed. Necessary orders in this behalf shall be passed within six weeks from the date of passing the present judgment.”

Learned counsel for the petitioners, has stated that the petitioners were paid backwages from 20.12.1998 till the order of reinstatement was passed on 17.5.2006.

The petitioners thereafter filed OA No.3003/2009, claiming regularization in terms of Regularisation Policy relating to Group ‘D’ employees passed by the MCD vide Resolution No. 709 dated 20.11.1978 and Resolution of 1980. OA No. 3003/2009 was disposed of vide the order dated 23.4.2010, directing the MCD to offer regular appointments to the petitioners, with all consequential benefits with effect from 1.4.2005 on Group ‘D’ post, as per the extant Policy. The order in this regard was to be passed within two months.

By the order dated 29.11.2010, services of the petitioners were regularized with effect from 1.4.2005 with continuity in service. Their pay was fixed notionally till the period they were not on duty and they were not entitled to salary for the said period.

The petitioners thereupon filed a contempt application No.701/2010,

which was disposed of on 1.12.2010, recording as under:

“With liberty to the respondent to modify his order dated 29.11.2010 with regard to the period from 1.4.2005 till the appointment is conferred upon him where the continuity is maintained, with all consequences, including the pay and allowances, this CP stands disposed of. This shall be done within a period of two months from the date of receipt of a copy of this order. Notice is discharged. It goes without saying that in case of non-compliance, applicant would be at liberty to revive the CP. No costs.”

We do have reservation as to the correctness of the observation in the said order in the contempt proceedings, which were essentially in the nature of execution proceedings. Be that as it may, the respondent-MCD vide the order dated 29.2.2012, modified their earlier order dated 29.11.2010 to the extent that the petitioners were held to be entitled to benefit of continuity of service from the date of regularisation, i.e., with effect from 1.4.2005. It was again reiterated that the petitioners would not be entitled to salary for the period they have not worked and their salary would be fixed notionally.

The petitioners thereafter approached the Tribunal once again in OA No.4229/2011, which has been dismissed vide the order dated 18.3.2016.

Having heard learned counsel for the petitioners, we perceive and

believe that the petitioners have been more adequately compensated and paid. In fact, the respondent MCD has been fairly generous, in view of the decision of the Supreme Court in *Karnataka & others v. Umadevi & others*, 2006 (4) SCALE 197. In equity and fairness no further payment is required and justified.

We do not think, in the facts of the present case, that the petitioners have cause to claim back wages as regular workers or otherwise entitled to more or additional benefits.

The writ petition is dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 10, 2017/tp