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

+ W.P.(C) 9888/2015

DAYA CHAND & ORS.

..... Petitioners

Through: Mr.A.K.Trivedi &  
Mr.Naveen Kumar Advocates

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Rahul Sharma &  
Mr.C.K.Bhatt, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

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**02.04.2018**

1. W.P.(C) 9888/2015 has been taken up today, as 29.03.2018 was declared a court holiday.

2. This is second round of litigation by the petitioners seeking their regularization with retrospective effect from 16.05.1989, which has been declined by the Central Administrative Tribunal *inter alia* on the ground that in the W.P.No.253/1988 the direction of the Supreme Court dated 31.10.1988, which was modified vide order dated 16.11.1988, was limited to the extent to formulate a scheme of

regularization of the persons similarly placed as the petitioners therein, within six months from the date of the order dated 16.11.1988. The regularization of the employees was contingent to the availability of the posts.

3. The petitioners herein were working as Beldar on work charged basis in various divisions of Irrigation & Flood Department, Govt. of NCT of Delhi. Some similarly situated employees filed Writ Petition No.253/1988 before the Supreme Court wherein directions were issued to the respondents to frame a scheme for regularization of the services of the petitioners therein as well for the employees similarly situated who have been in service for more than one year. The respondents were also directed not to terminate the services of such employees till the scheme is framed. The question of regularization was to be considered in the light of the scheme to be framed. The respondents were also directed to continue paying minimum salary w.e.f. 01.11.1988 to the petitioners and similarly situated employees i.e. the minimum salary payable to the persons regularly appointed and doing the same kind of work in the department.

4. On 16.11.1988, the Supreme Court modified the above order by fixing timeline and issued following directions:

*“The direction issued by this Court on 31<sup>st</sup> October, 1988 directing the respondents in this writ petition to prepare a scheme for the regularization of the employees concerned shall be complied with within six months from today. The order dated 31<sup>st</sup> October, 1988 stands modified to this extent.”*

5. In compliance of the above directions, the respondents formulated a scheme for regularization of the daily wage workers, who had worked for more than 240 days with the cut-off date as on 16.05.1989. While some employees were regularized w.e.f. 1989, the petitioners were regularized on different dates between the year 2002-2009.

6. Thereafter the petitioners challenged the date of their regularization by filing O.A.621/2010, which was disposed of by the Tribunal on 21.10.2010, directing the respondents to consider the regularization of the petitioners w.e.f. 16.05.1989.

7. The above decision of the Tribunal was challenged by the respondents Government of NCT of Delhi by filing Writ Petition No.4702/2011. The writ petition was disposed of by setting aside the direction of the Tribunal to the extent that the respondents were

directed to regularize the services of the petitioners from 16.05.1989. The matter was remanded to the Tribunal to determine the issue in respect of date of regularization of the petitioners, with reasons in support thereof.

8. The Tribunal re-examined the matter and dismissed the O.A. for the following reasons:

(i) The directions issued by the Supreme Court on 31.10.1988 which was modified vide order dated 16.11.1988, were only to frame a scheme for regularization of petitioners therein and the persons similarly placed as the petitioners, within six months from the date of the order.

(ii) There was no direction by the Supreme Court to regularize all the employees within this period as regularization could be contingent to the availability of the post.

(iii) The petitioners have been regularized during the period 2002-2009, subject to the availability of the post, hence, their contention that they all deserved to be regularized w.e.f. 1989 was rejected.

(iv) The contention taken at a belated stage that the petitioner should

have been placed in the surplus pool, was also not accepted by the Tribunal noting that if the grievance of the petitioner was that they were not placed in the surplus pool, then they should have raised this issue when they filed the O.A. in the year 2010.

9. The petitioners have not been able to point out in the two orders dated 31.10.1988 and 16.11.1988 that the Supreme Court has issued any direction to the respondents to regularize all the employees soon after framing a scheme. The limited directions issued by the Supreme Court were (i) to frame a scheme for regularization within six months from the date of order dated 16.11.1988; (ii) the services of the petitioners or similarly situated persons would not be terminated; and (iii) till the question of regularization is to be determined, the petitioners/similarly situated persons would be paid the minimum pay payable to the regularly appointed persons. None of the aforesaid directions was violated by the respondents in any manner whatsoever.

10. The petitioners have been regularized at their own turn depending on the vacancy position. It is not the case of the petitioners that any person junior to them has been promoted ignoring the seniority list. Therefore, the petitioners even cannot claim any

discrimination vis-à-vis those employees who were regularized in the year 1989 after the scheme was framed and implemented in compliance of the directions given by the Supreme Court vide orders dated 31.10.1988 and 16.11.1988. Merely because certain employees were regularized in the year 1989 just after the scheme came into force and the petitioners had to wait for regularization and have been regularized in a phased manner over a period of seven years i.e. from the year 2002 to 2009, itself does not give rise to any claim to seek their regularization with effect from the year 1988, in the absence of any such direction either in the policy or judicial pronouncement.

11. By regularizing the employees over a long period i.e. 1989 to 2009, itself suggests that regularization was as per the list prepared by the respondents strictly in accordance with the scheme framed by them pursuant to the orders of the Supreme Court. The petitioners cannot claim accrual of any right in their favour to seek regularization w.e.f. 1989. It is noteworthy that while issuing directions vide orders dated 31.10.1988 and 16.11.1988, the Supreme Court had taken care not only the interest of the petitioners in W.P.No.253/1988, but also all the similarly situated persons and the directions were given so as to

protect the interest of all similarly situated daily wage workers.

12. Since the claim of the petitioners to seek regularization w.e.f. 1989 is only under the policy framed by the respondents in compliance of the directions dated 31.10.1988 and 16.11.1988, there being nothing on record to suggest any flaw in the implementation of the policy while regularizing the employees, the Tribunal has rightly rejected their claim to seek regularization w.e.f. 1989.

13. In the absence of any averment in the O.A. that the policy framed in compliance of the directions of the Supreme Court was not implemented in its letter and spirit or that the regularization process was not subject to availability of the vacancies or that all the employees were required to be regularized at one go w.e.f 16.05.1989, the impugned order cannot be faulted with.

14. We find no infirmity or illegality in the order impugned.

15. The writ petition is dismissed.

**PRATIBHA RANI, J.**

**HIMA KOHLI, J.**

**APRIL 02, 2018**

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