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

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Decided on: 05.02.2020

+ W.P.(C) 8447/2016 & CM APPL. 34846/2016

SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Deep Mala, Adv.

versus

SRIPAL SINGH Respondent
Through: Mr. Rajiv Agarwal, Adv. With
Ms. Meghna De, Ms. Liu Gangmei, Adv.

+ W.P.(C) 8632/2018

SRI PAL SINGH Petitioner
Through: Mr. Rajiv Agarwal, Adv. With
Ms. Meghna De, Ms. Liu Gangmei, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent
Through: Ms. Deep Mala, Adv.
Ms. P.S. Singh, Sr. Panel Counsel with
Mr. Vibhav Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. On 23.09.2016, while issuing notice, the Court had noted as under:-

“It is the petitioner's case that the impugned order directs regularization of the respondent workman with effect from 01.11.2009 whereas he joined service only on 01.09.2011, therefore, for a period for which the respondent workman has not served the petitioner, such direction would be erroneous in law.

She further submits that at best the regularization of the workman can be from the date he has served the petitioner.”

2. The impugned order of the learned Labour Court had directed, *inter alia*, as under:-

“27. The plea of the Management regarding regularization of workman (daily wages employees) in phased manner policy is not applicable to this present case of the workman since the workman has initially joined in the year 1987. Further, the case law titled Secretary, State of Karnataka 85 Ors. Vs. Umadevi 85 Ors., with due respect, is also not applicable to the present case of the workman in consideration of the judgment ONGC Ltd. Vs. Petroleum Coal Labour Union 85 Ors. (Supra) and considering the facts of the present case as first the workman joined and then remained in litigation for very very long period.

28. In view of my above discussions and facts and circumstances, of the case, the Management is accordingly, directed to regularize the workman w.e.f 01.11.2009 in proper pay scale of Beldar with all consequential benefits. Issued no. 5 of the reference is decided accordingly in favour of the Workman.”

3. The learned counsel for the respondent submits that workman had been working with the management since the year 1987 and has been granted continuity of service. It is the respondent's case that as per the Resolution No. 709 dated 20.11.1978 of the MCD (at page 100 of W.P. (C) 8632/2018), regularization of the daily wagers, peons, chowkidars and drivers, is to be done in a phased manner. The resolution notes that the policy was extended for regularization of D/W Class-IV employees engaged for consecutive two years vide Resolution No. 936 dated 16.02.1984 and that no date of regularization was fixed between 01.04.1982 to 01.04.1988. However, for persons who were daily wagers between 1986 to 31.03.1988, their regularization would be with effect from 01.04.1994.

4. The learned counsel for the petitioner submits that the said policy was subject to availability of posts and financial position of the MCD. She further submits that all regularization was prospective. The policy itself specifies the date from which the regularization was to take effect. Upon a query put to the learned counsel for the petitioner whether any other workmen were regularized who were employed between 01.04.1986 to 31.03.1988, no answer is forthcoming. There is also no answer as to whether any such person was regularized from the date subsequent to the one mentioned in column 2 of the said policy i.e. with effect from 01.04.1994, when the said regularization was to take effect. Clearly there is no merit in the arguments of the petitioner. Hence, her arguments in this regard are rejected.

5. The learned counsel for the petitioner submits that the workman resumed work from 01.09.2011. Therefore, the regularization would at best be from the said date. The said argument is *ex facie* erroneous because the respondent was paid wages under section 17-B of the Industrial Disputes Act, 1947, right throughout till he was re-instated by the petitioner. Since there was continuity of service, with the petitioner paying 75% of the salary to the workman throughout the period and the 17-B wages being paid as per the applicable minimum wages, his service would obviously be counted as continued service, and there would be no question of his re-joining the service. Therefore, the petitioner's contention in this regard is untenable and is accordingly rejected. The order of the learned Industrial Tribunal, fixing the date of seniority with effect from 01.11.2009 does not call for any interference.

6. The petitioner ought to have brought to the Court requisite record apropos Class-IV employees who were working with the corporation from 01.04.1986 to 31.03.1988, and who were regularized in terms of the policy. The learned counsel for the respondent submits that all persons who joined the corporation in the year 1987 have been regularized with all consequential benefits. He refers to the dicta of this Court in *Dharamvir Singh v. M.C.D.*, W.P.(C) 6862/2011, decided on 24.01.2013, which referred to the same policy and upheld the order of regularization of the employees with effect from 01.04.1999. In the aforementioned case the petitioner joined MCD in the year 1990 whereas in the present case, the respondent had joined the service in the year 1987. Both were covered under the same policy. If a person who joined later, got the benefit of regularization, surely the petitioner would be clearly better placed for regularization apropos continuity of service. The Court in *Dharamvir (supra)*, has, *inter alia*, held as under:

“ 10. The submission that the petitioner was not in service on the relevant date, i.e. 01.04.1999 and, therefore, he cannot be regularized from the said date is wholly fallacious. The services of the petitioner had been illegally terminated on 19.10.1993. That termination was set aside vide award dated 02.02.1998 and he was held to be entitled to be reinstated with continuity and full back wages as fixed and revised under the Minimum Wages Act. Had the award been implemented in due course, the petitioner would have been in service on 01.04.1999, which is the relevant date according to the respondent. The respondent obviously delayed the implementation of the award due to which the petitioner was permitted to rejoin the services only on 21.10.2004. It is not the respondents case that after

obtaining the award dated 02.02.1998, the petitioner did not rejoin the services despite being required to do so by the respondent.

11. Once the petitioner had been directed to be reinstated with continuity, it is to be deemed that he was in continuous service till the date he is actually allowed to rejoin the service in implementation of the award. Therefore, to say that the petitioner cannot be granted regularization with effect from 01.04.1999 since he was actually not in service from 1993 till 01.04.1999 is completely flawed. It is little surprising as to how the respondent can now argue that the petitioner should not be regularized from 01.04.1999 onwards, when their submission before the tribunal was to the contrary and they had themselves urged that the petitioner is entitled to regularization with effect from 01.04.1999.

12. The observations of the tribunal that by holding that the petitioner was entitled to regularization with effect from 01.04.1999, the tribunal would be going beyond the terms of reference is also equally fallacious. Once the term of reference required the tribunal to examine whether the petitioner could be regularized with effect from 26.09.1990, and the respondent itself stated that he is entitled to regularization from 01.04.1999, there was no impediment in the tribunal granting the relief of regularization to the petitioner atleast from 01.04.1999. It is well settled that a Court can grant a lesser relief than what is prayed for by the claimant/petitioner. The real issue/reference required to be dealt with by the industrial tribunal was with regard to whether the petitioner is entitled to regularization. It is not a case that the petitioner was demanding regularization from a date prior to 26.09.1990. Merely because the date from which the petitioner, even according to the respondent, was entitled to regularization happened to be 01.04.1999, it does not mean that the industrial tribunal could not have granted the said relief by answering the reference accordingly.”

7. In view of the above, the respondent-workman is entitled for regularization with all consequential benefits from the year 01.04.1994 in terms of the aforesaid policy.

8. Computation in terms of this Court's orders shall be furnished to the learned counsel for the respondent-workman, by the petitioner within one month from the receipt of copy of this order. Monies shall be paid to the workman within four weeks thereafter. The order of regularization shall be issued within a period of eight weeks from the date of receipt of copy of this order.

9. The petitions are disposed off in the above terms.

FEBRUARY 05, 2019
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NAJMI WAZIRI, J

