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

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Decided on: 24.02.2020.

+ W.P.(C) 4402/2017 & CM APPL. 19214/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Gaurang Kanth, Ms. Biji Rajesh,
Mr. Aman Bakshi and Ms. Aarti A.
Mahto, Advocates.

versus

CHAMPA DEVI

..... Respondent

Through: Mr. Rajiv Agarwal, Ms. Meghna De,
Ms. L. Gangmei and Mr. Navlendu
Bhushan, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The petitioner is aggrieved by the order dated 05.10.2016 passed by the learned Labour Court, which directed it to regularise the services of the respondent from the date of her initial appointment. However, a policy has been formulated by the petitioner-municipal corporation, to regularize the services of its daily wagers: peons/chowkidars/drivers in a phased manner. For all the persons engaged as daily wagers from 01.04.1986 to 31.03.1988, their regularisation will take effect from 01.04.1994.

2. It is the petitioner's case that the respondent-workman would be entitled to regularisation of her service with effect from 01.01.2006 and not

from the earlier date because her initial date of appointment is from the said date.

3. The respondent-workman had filed a statement to the effect that her initial date of joining was 01.01.1987 and despite having worked for more than 35 years, she had not been regularised nor had she been paid equal pay for equal work.

4. It is not in dispute that by virtue of Resolution No. 1002 of 05.01.1967 of the Standing Committee of the MCD, the name of the respondent-workman is to be entered into the seniority list of muster roll attendant from the initial date of her joining in the employment.

5. The Court would note that this Court in *Harish Kumar v. Registrar*, 1990 SCC OnLine Del 775 has held, *inter alia*, as under:

“Temporary appointment with three months’ extension every time is unknown to any service law. Even in industrial and labour law such short-term appointments are frowned at and are treated as an “unfair labour practice.” In Government service and in public undertakings the appointments, even of Class IV employees, are made through the Employment Exchange. This provides for an independent channel of recruitment, based on merit and qualification. The manner of appointment and the short duration of appointment are not objective or rational and are, thus, open to the criticism of arbitrariness. Short-term appointments have resulted into strange phenomenon of a person continuing in service for 15 years only on short appointments of three months at a time without confirmation.”

6. The respondent-workman had spent 90 days of continuous employment from her joining; therefore, in terms of Model Standing Orders

framed under the Industrial Employment (Standing Orders) Act, 1946, the benefit of continuous employment would have to be given to her. She had also worked for 240 days in continuous employment.

7. The learned counsel for the petitioner submits that the respondent-workman was a part-time waterwoman and not a full-time employee who usually works for eight hours. She worked only from 7:30 a.m. to 1:30 p.m. in a primary school.

8. It is the respondent's contention that mere nomenclature of part-time waterwoman is not relevant because the total working hours have to be seen. The working hours may have started at 7:30 a.m. but she would, nevertheless, be required to appear before the school earlier, so as to prepare water for children and staff, who would be coming to school before 7:30 a.m. Furthermore, when the children would be leaving after school hours, in the afternoon at 1:30 p.m., the children as well as the teachers would require water. Besides, by the time when the school would shut down, it would be another 45 minutes when she would have had to stay back in the school to clean the premises and other related works. In effect, she would not be able to leave the school before about 2:15 p.m. or 2:30 p.m. This totals to seven and a half hours a day which is almost equal to a full day's work. A misleading nomenclature of the position in which she was employed will not determine her full-time work.

9. The respondent-workman argues that her merely being brought on to the muster roll with effect from 10.08.2004 as a daily wager attendant, is to side-step her claim that she was employed as a daily wager from 01.01.1987, and, her rights having accrued on the said date, she is entitled to and has rightly been awarded regularisation of service from 01.01.1987.

10. The Court would note that the petitioner-corporation had been given fourteen opportunities i.e. on 01.02.2013, 25.03.2013, 15.05.2013, 01.07.2013, 14.08.2013, 08.10.2013, 25.11.2013, 28.01.2014, 18.03.2014, 16.04.2014, 29.05.2014, 30.07.2014 and 03.09.2014 for filing of a written statement, but it chose not to do so and was proceeded *ex-parte*. There being no denial of the respondent-workman's claim, the corollary order of her regularisation w.e.f. 01.01.1987 cannot be faulted. This case, however, being a special one, inasmuch as the petitioner did not participate in the proceedings, therefore, it shall not be treated as a precedent in other case.

11. As noted hereinabove, regularisation of services of the employees, who were engaged between the period of 01.04.1986 to 31.03.1988, would take effect from 01.04.1994. Let it be so done within four weeks from the date of receipt of copy of this order.

12. The petition is disposed-off in terms of the above.

NAJMI WAZIRI, J

FEBRUARY 24, 2020

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