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

+ **W.P.(C) 6045/2020 and CM APPL. Nos. 21743-44/2020**

NORTH DELHI MUNICIPAL CORPORATIONPetitioner

Through : Ms. Namrata Mukim, Standing
Counsel.

versus

NARESH KUMARRespondent

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

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **29.01.2021**

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM APPL. No. 21744/2020

1. Allowed, subject to just exceptions.

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2. Mr. Rajiv Agarwal, who appears on behalf of the respondent-workman, says that he does not wish to file any counter-affidavit in the matter and that he will argue the matter based on the record. The statement of Mr. Agarwal is taken on record.

3. During the course of the arguments, what has emerged is as follows:

3.1. The respondent-workman was first engaged by the petitioner-corporation on 16.11.1988, *albeit* as a Chowkidar. It is not in dispute that the engagement of the respondent-workman was terminated by the petitioner-corporation on 19.09.1995.

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3.2. The respondent-workman assailed the termination of his engagement which resulted in an award being passed on 31.01.2001. This award was passed in ID No.492/1996. The Labour Court, *inter alia*, issued three directions:

- (i) The termination of the engagement of the respondent-workman was illegal.
- (ii) The respondent-workman should be reinstated by the petitioner-corporation.
- (iii) Lastly, the respondent-workman should be accorded continuity of service, back-wages, and other consequential benefits.

3.3. The petitioner-corporation carried the matter in appeal to this court by way of a writ petition i.e. WP(C) 2989/2002. This court dismissed the writ petition *vide* order dated 27.08.2007.

4. Mr. Agarwal has informed me that the respondent-workman, finally, re-joined the petitioner-corporation on 07.01.2009.

4.1. I am also informed by Mr. Agarwal that thereafter, a demand-notice dated 25.01.2011 was served on the petitioner-corporation. It appears that *via* this notice, the respondent-workman made a demand for regularization.

4.2. Since conciliation in the matter failed, a reference was made to the Labour Court on 03.05.2012. It is this reference which has resulted in the passing of the impugned order dated 25.01.2020. The reference is numbered as ID No. 377/2016 (Original ID No. 446/2012).

4.3. The operative directions issued in the impugned order are contained in paragraph 25 of the said order. These directions read as follows:



“25. In view of above discussion, workman is awarded his regularization since from the date, his juniors have been regularized by the management and is also awarded benefit of “Equal pay for Equal work” w.e.f. 16.11.1988. Accordingly, the reference is answered in affirmative. Award is passed accordingly.”

4.4. I may also indicate that in the very same order, the court has returned the following findings of fact. These findings of fact are contained in paragraph nos. 22 to 24 of the said order. For the sake of convenience, the same are extracted hereafter:

“22. It may be noted from the record that in the industrial dispute no.492/96, workman was allowed re-instatement with continuity of service. There is specific direction in the award in ID No.492/96 that workman shall be re-instated with continuity of service. It means that his services shall be taken without any break. The plea of the Ld. A.R of the management of not working by workman even for a single day during this period and he thus cannot claim his regularization since either from his initial date of appointment or from 01.04.1995 is thus without merits and substance.

23. MW-1 has admitted in her cross-examination that workmen employed from 01.04.1988 to 31.03.1990 have been regularized w.e.f. 01.04.1995. Considering to this factual position in the case in hand, it is directed that present workman shall be regularized from the date when his juniors have been regularized by the management.

24. So far as the question of “equal pay for equal work” is concerned, it may be noted that MW-1 in her cross-examination has admitted it correct that workman herein was discharging his duties as chowkidar like his other colleagues/co-workers. Their working hours and nature of duties were the same. In view of this position, there is no reason to deny the claim of the workman for “equal pay for equal work” even to the workman in the present case. It is held that workman is entitled for “equal pay for equal work” w.e.f. 16.11.1988 i.e. the date of his initial appointment.”



5. Ms. Namrata Mukim, who appears on behalf of the petitioner-corporation, makes the following submissions:

(i) The Industrial Tribunal could not have issued a direction for regularization.

(ii) The regularization, if at all, could have been ordered only from 2009 *albeit* as per the policy of the petitioner-corporation.

(iii) The Industrial Tribunal could not have held that the respondent-workman should be paid wages on the basis of “equal pay for equal work” w.e.f. 16.11.1988 i.e., the date from which he stood engaged with the petitioner-corporation.

6. List the matter on 14.04.2021, for further consideration, of the aforementioned aspects of the matter.

7. In the meanwhile, the Registry will summon the LCR, if the same has not already been received by it. In case the LCR has been received, the same will be placed in digital format before the Court prior to the next date of hearing.

7.1. The Registry will also furnish a copy of the LCR, in digital format, to the counsels for the parties before the next date of hearing in case a request is made in that behalf.

8. Interim order dated 07.09.2020 will continue to operate in the meanwhile.

RAJIV SHAKDHER, J

JANUARY 29, 2021

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[Click here to check corrigendum, if any](#)

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