

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.4229/2011

Order Reserved on: 11.03.2016  
Order pronounced on 18.03.2016

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri P. K. Basu, Member (A)

1. Shri Amar Pal  
S/o Late Shri Shish Pal  
R/o C/o B-185, Gali No.2  
Sadarpur Extension  
Karawal Nagar  
Delhi.

2. Shri Jai Bhagwan  
S/o Shri Lakmi Chand  
R/o House No.389  
Village: Mundka  
Delhi – 110 041. ... Applicants

(By Advocate: Ms. Neelam Tiwary with Mr. Sachin Kumar for Mr. Rajiv Agarwal)

Versus

North Delhi Municipal Corporation  
Through it's Commissioner (North)  
4<sup>th</sup> Floor, S.P.M.Civic Centre  
Mintro Road, New Delhi – 110 002. ... Respondent

(By Advocate: Shri Rahul Singh)

## **O R D E R**

### **By V. Ajay Kumar, Member (J):**

The applicants, who are working as Beldars in the respondent-Municipal Corporation of Delhi, filed the OA questioning the impugned Annexure A1 Office Order dated 29.11.2010 whereunder their services were regularized w.e.f. 01.04.2005, notionally, with continuity of service, to the limited extent in denying arrears of salary and pay for the period in which they were not on duty.

2. When the applicants were working as daily wage Malis/Beldars, under the Unified Municipal Corporation of Delhi, and when their services were terminated on 20.12.1998, they raised an Industrial Dispute and when the same was dismissed, they filed WP(C) No.15983-84/2004. The Hon'ble High Court of Delhi by its Judgement dated 23.12.2005, while setting aside the award of the Labour Court, observed as under:

"37. In the light of the above position on record and settled principles of law the award dated 6<sup>th</sup> December, 2003 cannot be sustained and is hereby set aside and quashed.

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.

39. This writ petition is allowed in the above terms. There shall be no order as to costs."

3. In pursuance of the aforesaid orders, the respondents vide Annexure A3 Office Order dated 17.05.2006, reinstated the applicants as Daily Wage Beldars/Malis.

4. Again when the applicants filed OA No.3003/2009 seeking a direction to the respondents to regularise their services as Group 'D' employees w.e.f. 01.04.2005 in the light of the MCD's policy vide Resolution No.709 dated 20.11.1978 as well as Resolution of 1980, this Tribunal by its Order dated 23.04.2010 allowed the said OA as under:

"4. On a careful consideration of the rival contentions of the parties and perusal of records, as we find that appointment on sanctioned post as daily wager is not disputed, applicants claim is not covered under the exceptions carved out in paragraph 53 of the decision rendered by the Apex Court in **Secretary, State of Karnataka & others v. Umadevi & others**, 2006 (4) SCALE 197.

5. Moreover, by reinstating the applicants from 1988 in 1999 on a legal fiction and deemed basis with grant of continuity in service, it is deemed that they have completed 240 days and the others having been granted the same benefits by the MCD is an invidious discrimination, which cannot be countenanced in law.

6. Resultantly, OA is allowed. Respondent-MCD is directed to offer regular appointment to the applicants with all consequences in law w.e.f. 1.4.2005 on a group 'D' post as per its policy. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs."

5. Alleging non-implementation of the aforesaid orders, the applicants filed CP No.701/2010 in OA No.3003/2009. While the said CP is pending, the respondents passed the impugned Annexure A1 Office Order dated 29.11.2010, whereby the services of the applicants were regularized w.e.f. 01.04.2005, notionally, with continuity of service, however, without payment of arrears of salary for the period when they were not on duty.

6. This Tribunal, after considering the said order, disposed of the CP by order dated 01.12.2010 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."

7. In pursuance of the aforesaid orders in the CP, the respondents vide their Annexure R1 Office Order dated 29.02.2012 modified the Annexure A1 - Office Order dated 29.11.2010 by stating that the applicants are entitled to the benefit of continuity of service from the date of regularization, i.e., w.e.f. 01.04.2005, however, they are not entitled to salary for the period they have not worked.

8. However, contending that the respondents failed to comply with the orders of this Tribunal dated 01.12.2010 in CP No.701/2010, in not modifying the order dated 29.11.2010, (impugned order in this OA), the applicant filed the present OA.

9. Heard the learned counsel for both sides and perused the pleadings on record.

10. It is seen that the applicants have not stated anything about the Annexure R1 Office Order dated 29.02.2012 in the OA whereunder the respondents under purported modification of the earlier order dated 29.11.2010, issued fresh orders.

11. Though the respondents in their counter in reply to para 1 of the OA averments, specifically stated that they have already modified the order dated 29.11.2010 by issuing the Annexure R1 Order dated 29.02.2012, but the applicant has not denied the same in his rejoinder to the said reply.

12. When the applicants are contending that the modified order dated 29.02.2012 is not in accordance with the orders of this Tribunal in CP No.701/2010 dated 01.12.2010, they could have sought for revival of the CP, as per the liberty granted therein, in accordance with law, but instead they filed the present OA.

13. Even otherwise, the present OA, questioning an Office Order dated 29.11.2010 which was already modified by another order dated 29.02.2012, is not maintainable under the law. However, it is for the applicants, if so advised, to avail the appropriate remedies in accordance with law.

14. In the circumstances and for the aforesaid reasons, the OA is dismissed. No order as to costs.

(P. K. Basu)  
Member (A)

(V. Ajay Kumar)  
Member (J)