

PETITIONER:
BABU LAL

Vs.

RESPONDENT:
NEW DELHI MUNICIPAL COMMITTEE

DATE OF JUDGMENT 13/07/1994

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
AGRAWAL, S.C. (J)

CITATION:
1994 AIR 2214 1994 SCC Supl. (2) 633
JT 1994 (4) 298 1994 SCALE (3) 163

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- This petition under Article 32 of the Constitution of India is sequel to the judgments of this Court in R.D. Gupta v. Lt. Governor, Delhi Admn.¹ and Narendra Kumar v. Dharam Dutt². The petition is on behalf of the Storm Water Drains Beldars (SWD Beldars) and Storm Water Drains Mates (SWD Mates) who are Class IV employees in the service of the New Delhi Municipal Committee (NDMC). The short question for our consideration is whether the SWD Beldars and SWD Mates are entitled to the pay scales recommended by the Shiv Shanker Committee (the SS Committee)? The SS Committee pay scales are claimed by the petitioners on the ground that the said pay scales have already been granted to Class IV employees of the NDMC who are similarly situated, doing the same/similar work and belong to the same/similar cadres.

2. It is not necessary to go into the factual details as the same have been covered in R.D. Gupta case¹ and Narendra Kumar case². The technical staff of the Delhi Electric Supply Undertaking (DESU) were not satisfied with the pay scales granted as a result of the recommendations of the Third Pay Commission and they demanded higher pay scales. The Government, therefore, constituted the SS Committee to go into the question of revision of pay scales of the technical staff of DESU. The higher pay scales recommended by the SS Committee were allowed to the technical staff of DESU. Later on, the DESU considered the demand of its ministerial staff and revised their pay scales also on the parity of the technical staff. Thereafter, the NDMC also allowed the benefit of pay scales as recommended by the SS Committee to its ministerial staff working in the electricity wing. The ministerial staff working in other departments of NDMC challenged the action of the NDMC in not extending the SS Committee pay scales to them and this Court in R.D. Gupta case¹ held that all the ministerial staff

working in the NDMC are entitled to get pay scales recommended by the SS Committee. It was held that the grant of SS Committee pay scales only to the ministerial staff working in the electricity wing could not be legally sustained as it suffered from the vice of discrimination.

3. The NDMC in its meeting dated 9-6-1988 resolved as under:

"The Committee as per the advice of the Law Department and the opinion given by our counsel, Justice V.D. Mishra on 26-2-1988 had decided that following categories of employees who constitute 496 posts created by the NDMC while forming the Electricity Cell vide resolution passed on 27-6-1978 should be extended the benefits

1. Office Superintendent
 2. HA/Accountant
 3. Personal Assistant
 4. Senior Clerk
- 1 (1987) 4 SCC 505: 1987 SCC (L&S) 470:
(1987) 5 ATC 65: (1987) 3 SCR 808
2 1993 SUPP (3) SCC 205: 1993 SCC (L&S)
977: (1993) 25 ATC 376

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5. Stenographers
6. Junior Clerk
7. Assistant Storekeepers
8. Adrema Operators
9. Assistant Adrema Operators
10. Assistant Record Keepers
11. Daftry
12. Peon
13. Bill Collector
14. Sorter
15. Ferro Printer
16. Chowkidar
17. Sewerman
18. Sweeper

Accordingly, the Committee passed orders to extend the benefits vide orders dated 26-2-1988 to all the above categories. These employees have already been paid a part of the arrears and salaries under S.S. scale. The CAP while checking the pay fixation have required a formal resolution of the Committee for processing the cases. Accordingly, this is noted to the Committee for information in continuation of Resolution No. 26 dated 9-2-1988."

Similarly, by another order dated 27-7-1988 the benefit of SS Committee pay scales was extended to the following employees :

"Under the orders of the Administrator dated 18-7-1988 the following allied categories of sweepers are extended the benefit of S.S. scales in terms of Resolution No. 26 dated 9-2-1988 read with Resolution No. 52 dated 9-6-1988 as they form the common cadre of sweepers.

1. Lorry Beldars
2. Dumping Ground Beldars
3. Bhistis
4. Rat Catchers
5. Verandha Beldars
6. Hawker Raid Van Beldars

7. Sweepers-cum-Chowkidars

8. Dog Catchers

Sd/-

Assistant Secretary (Health)"

It is further stated by the petitioners that the SS Committee pay scales have also been extended to SWD Lorry Beldars, Silt Lorry Beldars, Filth Cartmen, Rubbish Cartmen, Dumping Ground Mates and Sewermen-cum-Beldars.

4. This Court in Narendra Kumar case² directed the grant of SS Committee pay scales to Gunmen/Dog Shooters and Duplicating Machine Operators on the following reasoning : (SCC pp. 212-13, para 11)

"In Writ Petition No. 5 of 1990, the petitioners are Class IV employees of NDMC holding posts of Duplicating Machine Operators and

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Gunmen/Dog Shooters. Needless to say that NDMC has allowed the benefit of SS Committee's scales to Rat Catchers and Dog Catchers, vide order dated 22-7-1978 as already quoted above and we find no valid justification for denying such benefit to Duplicating Machine Operators and Gunmen/Dog Shooters. When such benefit has been allowed to Rat Catchers and Dog Catchers, there is no essential difference in the job work done by Gunmen/Dog Shooters. The Duplicating Machine Operators are also Class IV employees and such post is transferable and interchangeable from other Class IV employees of the NDMC who have already been granted the benefit of SSC's pay scales, vide order dated 9-6-1988 already mentioned above."

5. It is no doubt correct that the SS Committee did not make any recommendation in respect of Class IV employees of the NDMC. The SS Committee made its recommendations only in respect of the technical staff of DESU but the NDMC on its own extended the SS Committee pay scales not only to the ministerial staff but also to Class IV employees working in its electricity wing. Classifying the employees working in the electricity wing of the NDMC for favoured treatment became the cause for the judgment of this Court in R.D. Gupta case¹. This Court in Narendra Kumar case² further held that the NDMC cannot pick and choose employees for granting the benefit of SS Committee pay scales and denying the same to others who are similarly situated and belong to same/similar cadres.

6. The precise question for our consideration, therefore, is whether the petitioners before us belong to the same class to which the SS Committee pay scales have already been granted by the NDMC.

7. A 'Beldar' is essentially a Safai Karamchari. There are beldars under different nomenclature in the service of the NDMC. Beldars, Sewermen and Sweepers by whatever name they be called are part of the sanitary staff of the NDMC. They all belong to Class IV service and there can be no justification in classifying some of them for better treatment. The petitioners have pleaded in paras 4, 5 and 6 of the writ petition as under :

"4. That the duty of SWD Beldars is to scavenge and desalt the dirt and filth from the covered storm water drains constructed and maintained by Respondent 1 within its territorial jurisdiction. It is the function of the SWD Beldars and SWD Mates to keep the

said drains functional throughout the year. Apart from SWD Beldars and the Mates another category of employees who are connected with the work of keeping the said storm water drains clean and functional are SWD Lorry Beldars. At this stage it is relevant to state that similar work is also performed by Sewermen, Sewermates and SWD Lorry Beldars as they are also connected with the work of scavenging the dirt and filth from sewers so as to keep the sewerage system functional and to collect the dirt and filth from large dustbins known as Dalaos so as to protect the drainage and sewerage system from being choked. In this context it is relevant to state that whereas the work of SWD Beldars and SWD Mates is similar to the work done by above said other categories, the SWD Beldars and SWD Mates are treated as a different class for the purposes of pay scales and other service conditions.

5. It is stated that the SWD Beldars and SWD Mates were treated as belonging to the category of Sweepers till 1978. It is further stated that

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nature of the work of the SWD Beldars and SWD Mates is similar to the work of employees employed as Sweepers and in other categories such as SWD Lorry Beldars, Rubbish Lorry Beldars, Sewermen and Sewermates. The categories connected with the work of maintaining cleanliness of roads, sewerage system and storm water drains were known as 'Sweeper and Allied Categories'. It is further stated that till 1978, there were interchangeability of posts-between the Beldars and the Sweepers working with Respondent 1. A true copy of an Office Order issued by Respondent 1 on 4-3-1978, which supports the above averment of the petitioners is filed herewith as Annexure 1.

6. It is stated that the SWD Beldars and SWD Mates are subject to the administrative control of the Health Department of Respondent 1. The Health Department of Respondent 1 is the appointing and disciplinary authority of sweepers and allied categories including SWD Beldars and SWD Mates. Prior to 1978, SWD Beldars and SWD Mates were appointed in the same manner in which the employees belonging to sweepers and allied categories used to be appointed. All these categories belonged to a unified cadre. The promotional avenues of SWD Beldars and SWD Mates are the same as are available to the sweepers and any other allied categories. It is relevant to state at this stage that SWD Beldars are promoted as Mates on the basis of their seniority. From amongst the SWD Beldars and the Mates, the promotions are effected to the posts of Assistant Sanitary Inspector on the basis of 10 years' service and qualifying a departmental written test conducted by Respondent 1. The sweepers and other allied categories are also

considered along with SWD Beldars and SWD Mates for such promotions. From amongst the Assistant Sanitary Inspectors, the promotions are effected to the posts of Sanitary Inspectors and then to the post of Chief Sanitary Inspectors. From amongst the Chief Sanitary Inspectors, the promotion is effected to the post of Dy. Sanitary Officer and finally as a Sanitary Officer. It is stated that the channel of promotion for the beldars and the sweepers have been the same.....

8. In the counter-affidavit on behalf of the NDMC filed by its Secretary the averments in paras 4, 5 and 6 of the writ petition have been replied as under :

"With reference to paragraph Nos. 3 to 7 of the petition it is submitted that storm water drains beldar hereinafter called SWD Beldar, are in the pay scales of Rs 750-940; whereas SWD Mates are in pay scale of Rs 800-1150, which is the promotional post. At present there are about 235 regular SWD beldars and about 19 are working as SWD Mates. It is not disputed that even a person holding supervisory post has to perform the duties of subordinate staff, if necessary. Initially SWD Beldars were regularised on the completion of 5 seasons whereas the sweepers are appointed by direct recruitment and as such form a distinct and different category. A true and correct copy of said Recruitment Rule and Promotional Avenues Annex. III (Colly.) is annexed as Annexure III (Colly.).

In 1978 there were certain vacancies available in the category of sweepers and some of the SWD Beldars offered themselves to work as sweepers due to the convenience of the employee concerned. At that time there was no dispute- as to the pay scale of the sweepers and SWD Beldars or their avenue of promotion and therefore SWD Beldars were absorbed against the permanent vacancies available in the sweepers category. This

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kind of internal arrangement of transfer from SWD Beldars to the sweepers category does not make the post interchangeable as alleged or at all."

9. It seems to be the admitted position that the work of SWD Beldars and SWD Mates is almost similar to the work of Sewermen/Sewermates and SWD Lorry Beldars. They are Class IV employees and have same status and similar responsibilities. The NDMC has formed a group of various categories of Class IV employees called Safai Karamcharis for the purpose of promotion to the post of Assistant Sanitary Inspector. The SWD Beldars and SWD Mates are also included in the said group along with the sewermen, sewermates and other. In this view of the matter the action of the NDMC in denying the SS Committee pay scales to the petitioners is arbitrary, discriminatory and is violative of Articles 14 and 16 of the Constitution of India.

10. We, therefore, allow the writ petition and direct the NDMC and the Delhi Administration to grant the benefit of SS Committee pay scales to the Storm Water Drains Beldars and Storm Water Drains Mates with effect from 1-4-1994. Keeping

in view the facts and circumstances of this case, we are not inclined to grant the SS Committee pay scales to the SWD Beldars and SWD Mates from back date. No costs.

ORDER

JUDIS