

PETITIONER:
R.D. GUPTA & ORS. ETC.

Vs.

RESPONDENT:
LT. GOVERNOR. DELHI ADMN, & ORS. ETC.

DATE OF JUDGMENT 07/08/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
REDDY, O. CHINNAPPA (J)

CITATION:
1987 AIR 2086 1987 SCR (3) 808
1987 SCC (4) 505 JT 1987 (3) 259
1987 SCALE (2) 226
CITATOR INFO :
RF 1989 SC 19 (27)
F 1990 SC 883 (7)
RF 1991 SC 1173 (6)

ACT:

Civil Services--Pay Scales--Rates recommended for DESU employees--Whether can be made applicable to NDMC employees--Ministerial staff--All sections--To be treated alike--Entitlement to same pay scales--Civil engineers in Electricity wing--Whether can claim parity with electrical engineers.

HEADNOTE:

In the Union Territory of Delhi there are two main civic bodies viz. the New Delhi Municipal Committee and the Delhi Municipal Corporation. The NDMC was constituted under the Punjab Municipal Act, 1913 to discharge all civic functions including supply of water and electricity in the area falling within its jurisdiction. The Delhi Municipal Corporation was constituted in pursuance of the Delhi Municipal Corporation Act, 1957.

The NDMC forming a compact unit, had divided its civic work into various departments. Besides technical staff, it also engaged nontechnical staff such as Municipal staff, clerks etc. The non-technical staff constituted one unified cadre, liable to transfer from one department to another with common seniority.

The set up of the MCD was, however, different consisting of three separate and independent wings viz. the electricity, the general and the water, sewage and disposal wings. The electricity wing was designated as the Delhi Electricity Supply Undertaking and its employees were governed by a separate cadre and seniority list, Similarly, the general wing, performing other general civic duties and functions, and the third wing concerning with distribution of water and disposal of sewage etc.

To satisfy the demands of the employees of the MCD, NDMC etc. the Government accepted the recommendations of the Third Pay Commission. The New Delhi Municipal Committee as well as the general wing of the Municipal Corporation, Delhi accepted the pay scales recommended by the Third Pay Commis-

sion. However, the tech-
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nical staff of Delhi Electric Supply Undertaking were not satisfied and claimed higher scales of pay. The Government, therefore, constituted a Committee known as the Shiv Shankar Committee to go into the question of revision of pay scales etc. of the technical staff of the DESU. The Committee submitted its report in 1973. Subsequently, the DESU agreed to revise the pay scales of the non-technical staff also to the level recommended by the S.S. Committee.

The New Delhi Municipal Committee, by its Resolution dated 19.10.73, decided to give the benefit of the revised scales to the technical and ministerial staff working in its electricity wing as, in its view, such staff were performing same or similar functions and duties performed by the staff of DESU and hence parity should be maintained, and by Resolution dated 7.1.1974, it decided to give the benefit with effect from 1.4.72.

Two of the employees of the general wing filed a writ petition before the High Court for quashing the Resolution dated 7.1.1974 which sought to implement the earlier Resolution of 19.10.1973. The High Court held that the Resolution was discriminatory in nature, and restrained the implementation of the Resolution till the NDMC considered afresh the question of revision of pay scales for all sections of the ministerial staff after giving an opportunity to them.

In compliance with the above directions, the NDMC passed a revised Resolution dated 25.6.1975 treating all the non-technical staff as equal and granting uniform pay scales at the rates recommended by the Third Pay Commission and not at different rates for different wings. This Resolution was again challenged by some of the affected members of the electricity wing before the High Court, which disposed it of on the assurance given by the NDMC that the whole position would be reviewed after giving all the parties including the ministerial staff of the electricity wing due notice of the matter.

The Letters Patent Appeal, originally filed by the NDMC, and in which some of the affected employees of the electricity wing had got themselves impleaded as appellants, was allowed and the judgment of the Single Judge was set aside as it had been rendered without all the necessary parties being before the Court. The Special Leave Petition filed in the Supreme Court by two staff members of the general wing was dismissed in limine.

The NDMC, after giving opportunity to all sections of the emp-
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loyees to make their representation passed a Resolution on 27.6.78 constituting the electricity wing w.e.f. 1.5.78 composed of pump drivers, welders, carpenters, mechanics and 496 posts of ministerial staff, carrying scales of pay as per the S.S. Committee report and benefit of ex-gratia on DESU pattern, and treated these as ex-cadre posts and to be filled on deputation basis on rotation, for a period of three years in one spell.

Three writ petitions were filed in the High Court contending (a) that the ministerial staff should be treated on par with their counterparts in the electricity wing in the matter of pay and allowances, (b) that, as there was no difference between the civil and electrical engineers, civil engineers should be equated with the electrical engineers on DESU pattern, and (c) that since the employees of DESU were being paid ex-gratia amount the staff in the general wing should also be paid likewise.

The High Court, while upholding the order of the NDMC, modified the placement of the ex-cadre posts in the overall set-up. It evolved a Scheme according to which the S.S. Committee scales were to be given only to those who opted to work in the electricity department and the posts were to be filled on the basis of seniority-cum-option. It further directed that since higher scales of pay was linked with the service rendered in the electricity wing, S.S. Committee scales should be paid to all those who had worked in the electricity wing during the period subsequent to June 1975 till 30th May, 1982, that such payment would not amount to discriminatory payment and that after the 30th May, 1982 the postings should be done in accordance with seniority-cum-option formula. It also held that the civil engineers could not seek parity with electrical engineers in the electricity wing in the matter of pay scales as the junior engineers (Civil) had no common seniority with the electrical engineers in the electricity wing, that the posts were not interchangeable and that they could not draw comparison with the employment pattern of DESU because it was a separate and independent entity unlike the electricity wing of the NDMC and that the nature of the duties performed by the electrical engineers and civil engineers was different.

Upholding the refusal of the NDMC to grant ex-gratia payment to the staff of the general wing, it directed the NDMC to treat the amount already paid "as one-time special ad hoc payment not serving as a precedent."

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In the appeals before this Court it was contended on behalf of the ministerial staff in the general wing that the electricity wing was not a distinct and independent unit entitled to have its own scales of pay, that the ministerial staff of the NDMC belonged to a unified cadre and the staff members were liable to transfer from one branch to another and, as such, the NDMC could not create a cadre within a cadre and fix a different scale of pay for those in the carved out cadre, that the nature of duties performed by the ministerial staff in all the three units was more or less similar, if not identical, and hence the well-established rule of equal pay for equal work should govern the staff members, that instead of restricting the payment of S.S. Committee pay scales to the 496 ex-cadre posts in the electricity wing and directing the NDMC to fill up those posts on the basis of seniority-cum-option, the High Court should have directed the NDMC to give the S.S. Committee pay scales to all the members of the ministerial staff and also pay ex-gratia payment and should not have directed the NDMC to treat the adhoc payment as one time special adhoc payment and refrain from recovering the said amount.

The NDMC, in turn, filed two appeals against the High Court judgment directing the payment at S.S. Committee scales for the period from June 1975 to May, 1982 and filling up the ministerial posts in the electricity wing on seniority-cum-option basis instead of a three years deputation basis on rotational system and payment of arrears of pay etc. and for giving up the proceedings for recovery of the adhoc payment towards ex-gratia payment and contending that the Government or any State within the meaning of Article 12 of the Constitution had a right under law to create new departments or new cadres with different scales of pay and hence the appellants could not impugn the action of the NDMC in treating the ministerial staff in the electrical wing differently and giving them pay scales as per S.S. Committee Report.

On behalf of some of the staff members in the general

wing, it was contended that since the NDMC constituted an integrated unit with common fund, common budget etc., the High Court ought not to have sustained the payment of ex-gratia amount to only those persons working in the electricity wing and water works wing and should have made the payment applicable to all or to none.

In the writ petition and appeal filed on behalf of the Assistant and Junior Engineers (Civil), it was contended that there could not be any discrimination between civil engineers and electrical engineers and since the NDMC followed the pattern of scales of pay adopted by DESU

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which paid the Civil Engineers according to S.S. Committee pay scales they were as much entitled as the electrical engineers to be paid according to the S.S. Committee pay scales and also for payment of ex-gratia amount.

Allowing the appeals of the employees in the general wing and dismissing the appeals and WP of NDMC and the engineers (civil), this Court,

HELD: 1.1 All sections of the ministerial staff should be treated alike and all of them should be entitled to the same scales of pay for the work of equal nature done by them. [825C]

1.2 Merely because a member of the ministerial staff had been given a posting in the electricity wing either due to force of circumstances or due to voluntary preferment, he cannot stand on a better or higher footing or in a more advantageous position than his counterparts in the general wing. The ministerial staff in the NDMC constitute a unified cadre with a common recruitment policy, a common recruitment agency a common seniority list, and the posts in the three wings are inter-changeable and postings are made from the common pool according to administrative convenience and exigencies of service and not on the basis of any distinct policy or special qualification. [825B, 824H, 825A]

1.3 The only reason which prompted the NDMC to pass the resolution was that since DESU had implemented the S.S. Committee pay scales for its technical and non-technical staff, the NDMC should also follow suit in so far as its electricity wing is concerned. In doing so, the NDMC had failed to bear in mind several distinguishing features between its set up and the set up of the DESU and its staff pattern and the staff pattern of DESU. [825G]

The NDMC is governed by the Punjab Municipal Act, while the DESU is governed by the Delhi Municipal Corporation Act, 1957. The set-up of the NDMC is that of an integrated unit comprising all the three wings while the set-up under the Municipal Corporation Act of the MCD is that its three wings have to function as distinct and independent units. Such being the case, the DESU is a separate and independent unit of MCD and constituted an independent body. The DESU has its own budget and consequently it has freedom without reference to the other units. In contrast, the NDMC's revenue is the income derived from all the three wings of it and the expenses are governed by a common

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budget. Apart from the difference in the set-up, the ministerial staff in the NDMC are comprised in a unified cadre and the posts in the three wings are transferable and inter-changeable which is not so in the case of the staff of the DESU. [825H, 826A]

1.4 There is no room whatsoever for treating the electricity wing of the NDMC on par with the DESU and adopting the pattern of pay scales implemented by DESU and the decision taken by the NDMC originally to place the non-technical

staff in the electricity wing on a higher footing and give them alone the S.S. Committee pay scales cannot be legally sustained. The action of the NDMC clearly suffered from the vice of arbitrariness and discrimination. [826B-D]

2.1 The NDMC has no legal ground to project any justification of its action in making the posts in the electricity wing as ex-cadre posts and giving the benefit of S.S. Committee pay scales only to persons serving in those posts. [828A]

2.2 The resolution only sought to provide all the members of the staff the benefit of the higher scales of pay for a period of three years at some point of time in their service provided they opted to serve in the electricity wing but it did not provide an answer for the criticism that there was no justification to treat the ministerial staff in the electricity wing on a higher footing than the rest of the staff and give them a higher scale of pay. [826F-G]

2.3 The proposal would perpetuate the imbalance in the pay scales between the different sections of the staff working in the three wings of the NDMC. The system of deputation would lead to a long period of wait for large sections of the staff before getting postings in the electricity wing on deputation basis. The staff members would have to forego the higher scales of pay and come back to the lesser scales when the period of deputation was over. The insistence on the staff members being entitled to deputation service in the electricity wing only if they exercised their option to work in that wing introduces an element of compulsion among the members comprised in a unified cadre. These factors vitiate the revised proposal of the NDMC to make 496 posts as ex-cadre and to fill them up on deputation basis by adopting a rotational cum option system. [826G-H, 827A-B]

3. The scheme formulated by the High Court cannot be sustained or accepted. The High Court, apart from laying itself open to the criticism that it had gone beyond its power in formulating the scheme, has

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failed to provide for equal benefits for all the members of the ministerial staff. If the electricity wing is to be filled up on the basis of seniority cum option, those who had served earlier in the electricity wing would get a distinct advantage over the rest of the ministerial staff including the senior members in the matter of higher pay-scales. Besides, the seniority cum option system would give grater benefit to some and lesser benefit to some depending upon their age etc. Moreover, the insertion of the option clause would introduce an element of compulsion and make it appear that the staff working in the electricity wing perform more onerous and more skilled duties and hence they stand on a higher footing. It would also lead to packing all the senior members of the staff in the electricity wing and denuding the other two wings of the services of the senior ministerial staff. [827C-F]

4. Merely because some of the Civil engineers are assigned to do civil engineers' work in the electricity wing it cannot be said that they are not different from the electrical engineers and that they should be paid higher scales of pay. In the matter of promotions etc., they are governed by the common seniority list maintained for civil engineers and their posting to the electricity wing cannot make them a separate class by themselves. They cannot compare themselves with the civil engineers working in DESU because that is a separate and distinct unit, and all the engineers working therein constitute a single unit. There is no disparity of scales of pay between civil engineers work-

ing in the electricity wing and those working in the other wings. It cannot, therefore, be said that there is discrimination in the matter of pay scales. [828H, 829A-C]

5. The pattern of payment of ex-gratia payment adopted by the MCD cannot have any binding force on the NDMC because the three units of the MCD are different and distinct entities whereas the three wings of the NDMC are inter-dependent wings of the integrated Municipal Committee. [830A]

6.1 In the absence of justifiable reasons of compulsive nature, the payments whether as salary or as ex-gratia amounts have to be on the same and equal basis and not differently for the different wings. All the ministerial staff working in the NDMC are entitled to get pay scales as per S.S. Committee report and are also entitled to be given ex-gratia payment likewise. The grant of S.S. Committee pay scales to only the staff working in the electricity wing or the grant of ex-gratia payment to only the staff working in the electricity wing and the water works wing cannot be legally sustained as it suffers from the vice of discrimination. [830B, 831C]

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6.2 There should be uniformity not only in payment of S.S. Committee pay scales and the ex-gratia payment to the staff working in all the wings or departments of the NDMC but the payment should also be made from a date common to all. [831D]

[In so far as payment of uniform salary to all the ministerial staff as per S.S. Committee pay scales and payment of ex-gratia payment is concerned, the NDMC will give effect to this judgment with effect from 1st June, 1982. The amount involved should be distributed equally amongst all the ministerial staff and not confined to the ministerial staff of the electricity wing alone. In view of the financial commitment involved the NDMC is permitted to pay the difference in scales of pay and ex-gratia amount between June 1, 1982 to July 31, 1987 in three equal instalments within a period of 15 months.] [831F-H]

Randhir Singh v. Union of India, [1982] 3 SCR 298; Dharendra Chamoli v. State of U.P., [1986] 1 SCC 637; P. Ramachandra Iyer v. Union of India, AIR 1984 SC 541, Reserve Bank of India v.N.C. Paliwal, [1977] 1 SCR 377 and Reserve Bank of India v.C.N. Sahasranaman, [1986] (Suppl.) SCC 143, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2969 of 1983 etc.

From the Judgment and Order dated 17.5. 1982 of the Delhi High Court in Civil Writ No. 1231 of 1979.

G. Ramaswamy, Additional Solicitor General, Govinda Mukhoty, Dr. Y.S. Chitale, V.D. Misra, M.K. Ramamurthi, N.C. Talukdar, Mrs. C.M. Chopra, B.P. Maheshwari, R.S. Rama, M.A. Krishnamurthy, N.L. Kakkar, Dr. Meera Aggarwal and R.C. Misra for the appearing parties.

The Judgment of the Court was delivered by

NATARAJAN, J. The genesis for these appeals by special leave, the special leave petition and the petition under Article 32 of the Constitution is the grant of pay scales at the rates recommended by the Shiv Shanker Committee for the employees of the Delhi Electricity Supply Undertaking to only a section of the ministerial staff of the New Delhi Municipal Committee who happened to be working in the electricity wing of the said Committee at the relevant time.

There is a good deal of factual material and historical background to be covered

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for a full and proper appreciation of the contentions of the appellants and the petitioners on the one hand and the respondents on the other in these appeals and petitions. We will, therefore, concern ourselves with that exercise before taking up the contentions of the parties.

In the Union Territory of Delhi there are two main civic bodies viz. the New Delhi Municipal Committee (for short of NDMC) and the Delhi Municipal Corporation (for short the MCD). The NDMC comprises of New Delhi as it existed prior to 1947 and was constituted under the Punjab Municipal Act, 1911. The NDMC discharges all civic functions including supply of water and electricity in the areas falling within its jurisdiction. In 1957 the Delhi Municipal Corporation Act came to be enacted and in pursuance thereof, the Delhi Municipal Corporation was constituted amalgamating within itself a few other smaller civic bodies which existed independent of the NDMC and the resultant position was that the rest of the areas fell within the jurisdiction of the Municipal Corporation of Delhi.

The NDMC, forming a compact unit, had divided its civic work into various departments. Besides engaging technical staff the NDMC engaged non-technical staff such as Municipal staff, clerks etc, for working in the various departments including the electricity and water supply departments. In so far as the non-technical staff are concerned, they constitute one unified cadre and are liable to transfer from one department to another. They are governed by a common channel of seniority. in respect of each class of employees with common seniority list.

The set up of the MCD is, however, different since the Delhi Municipal Corporation Act provides for the constitution of three separate and independent wings viz. the electricity, the general and the water. sewage and disposal wings. The electricity wing came to be designated as the Delhi Electricity Supply Undertaking (hereinafter referred to as DESU) and is governed by an independent budget and headed by a separate and independent General Manager and its employees are governed by a separate cadre and a separate seniority list. The general wing of the MCD performs the other general civic duties and functions. The third wing is concerned with the distribution of water and the disposal of sewage etc. and it is also independent of the general wing.

To satisfy the demands of the employees of the MCD, NDMC etc. the Government accepted the report of the Third Pay commission

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appointed by it and the pay scales, as recommended by the Pay Commission were accepted by the NDMC as well as the general wing of the MCD. The technical staff of DESU claimed higher scales of pay as they were not satisfied with the pay scales recommended by the Pay Commission. The Government, therefore, constituted a Committee known as the Shiv Shanker Committee (hereinafter the S.S. Committee for short) to go into the question of revision of pay scales etc. of the technical staff alone of DESU and the Committee submitted its report in 1973. The non-technical or ministerial staff of DESU who were not covered by the report of the S.S. Committee demanded and agitated that they should also be granted pay at the rates recommended by the S.S. Committee. The DESU conceded the demand of the ministerial staff at its meetings held in May 1973 and decided to revise the pay scales of the non-technical staff also working in DESU to

the level recommended by the S.S. Committee.

Since the technical and ministerial staff working in DESU were granted the SS Committee pay scales by the MCD, the NDMC was of the view that the technical and ministerial staff working in the electricity wing of NDMC should also have the benefit of revised pay scales recommended by the SS Committee. This view was taken on the assumption that the staff working in the electricity wing of the NDMC were performing the same or similar functions and duties as those performed by the staff of DESU and hence parity of pay and allowances should be maintained. Accordingly, the NDMC passed a Resolution No. 154 on 19.10.1973 that the benefits of pay and allowances as per SS Committee Report be given to the staff of the electricity wing of NDMC. By another Resolution dated 7.1.1974 the NDMC decided to give the benefit of the revised pay scales with effect from i.4.72 to fall in line with the actions of the DESU.

The grant of SS Committee pay scales to only those members of the ministerial staff working in the electricity wing brought about discontentment amongst the staff working in the general wing of the NDMC. They claimed they should also be paid at the rates prescribed by the SS Committee and not as per the scales of pay recommended by the Third Pay Commission. Two of the employees of the general wing filed a writ petition W. No. 307 of 1974 against NDMC and the Delhi Administration praying for quashing of the Resolution dated 7.1.1974 for implementing the earlier Resolution passed in favour of the staff of the electricity wing. Prakash Narain, J. (as he then was) did not quash the Resolution but instead issued a writ of prohibition against the NDMC not to implement the Resolution. The learned Judge held that

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the Resolution was discriminatory in nature but since the staff working in the electricity wing had not been made parties and furthermore the petitioners had not filed the petition in a representative capacity, the proper course would be to forbear the implementation of the Resolution by the NDMC till such time the NDMC considered afresh the question of the revision of pay scales for all sections of the ministerial staff in accordance with law.

In compliance with the directions of the learned Judge the NDMC considered the matter afresh and taking into consideration its financial constraints, it passed a revised Resolution on 25.6.75 which resulted in all the non-technical staff being treated equal and being granted uniform pay scales at the rates recommended by the Third Pay Commission and not at different rates for different wings. This resolution led to discontent amongst the ministerial staff of the electricity wing since their pay scales were reduced to the rates recommended by the Third Pay Commission. Consequently, some of the affected members of the electrical wing filed a writ petition CW No. 1388 of 1975 before the Delhi High Court challenging the Resolution of the NDMC dated 25.6.75. The High Court disposed of the writ petition on 18.2.77 on the assurance given by the NDMC that the whole position would be reviewed after giving all the parties including the ministerial staff of the electricity wing due notice of the matter. As against the judgment of Prakash Narain, J. the NDMC also filed a Letters Patent Appeal. However, in view of the subsequent Resolutions that had been passed the NDMC withdrew itself from the appeal. But at the instance of some of the affected employees of the electricity wing who had got themselves impleaded as appellants, the appeal was allowed on the short ground that the judgment of the learned single judge could not be sustained as it had been rendered

without all the necessary parties being before the court.

The two staff members of the general wing who had originally filed CW No. 307 of 1974 filed a Special Leave Petition (SLP No. 3597 of 1978) against the judgment of the Division Bench of the Delhi High Court in LPA No. 78 of 1975. This Court dismissed the special leave petition in limine with an observation that it was hoped that the NDMC would comply with the direction of the Delhi High Court that it should evolve a formula satisfactory to all sections of the ministerial staff working in the different wings of the NDMC and if the revised scheme formulated by the NDMC was not satisfactory to any section of the staff, it would be open to the affected party to seek appropriate reliefs from the High Court once again.

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The NDMC after giving opportunity to all sections of the employees to make their representations, passed a resolution on 27.6. 1978 constituting the electricity wing with effect from 1.5.78 or such subsequent date as may be fixed with 28 posts of pump drivers, two posts of welders, 3 posts of carpenters and one post of pump mechanic and 496 posts of ministerial staff and to give all of them scales of pay as per SS Committee Report. The NDMC further resolved as follows:-

"D. 496 posts referred to above will be treated as ex-cadre posts and will be filled on deputation basis on rotation, the period of deputation in one spell being three years. These posts will be in SS Committee's scales and will carry the benefit of ex-gratia of DESU pattern.

E. An equal number of posts may be created in general wing to form deputation reserve.

F. The employees holding the ex-cadre posts from the date of constitution of the wing will be entitled to have their pay fixed in the SS Committee scales or would draw deputation allowance as permissible under normal rules. During the period of deputation they will continue to remain as members of the unified cadre and will be eligible for promotion to higher posts on that basis.

G. While the existing vacancies in the ex-cadre categories will be filled straightaway on seniority-cum-option basis, the existing incumbents will hold the ex-cadre posts for a period of three years from the date of constitution of the wing on deputation basis. On expiry of the three years, one third of them with longest stay will be replaced every year by transfer from the general wing on the basis of seniority cum option. Such of the existing incumbents who become due for promotion to higher post will have to forego their deputation, if they accept the promotion and will be transferred to general wing. "

The above resolution was not to the liking of the ministerial staff working in the electricity wing and hence one Shri R. Chaudhary and 190 other staff members in the electricity wing filed a Writ Petition CW No. 4072 of 78 under Article 32 of the Constitution before this Court but withdrew the same as the Court was not inclined to grant admission. Thereafter three petitions under Article 226 of the

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Constitution viz. CW Nos. 1231, 557 & 280 of 1978 came to be

filed in the Delhi High Court. In CW No. 1231 of 1979, some of the petitioners were Junior Engineers (Civil) some of the petitioners were Assistant Engineers (Civil) and some of the petitioners were Draftsman (Civil). While the grievance of the ministerial staff among the petitioners was that they should be treated on par with the ministerial staff of the electricity wing in the matter of pay and allowances the grievance of the Junior and Assistant Engineers (Civil) and Draftsman (Civil) was that none of their posts was borne on the cadre of the electricity wing albeit on a transferable basis as there is no difference between the Civil Engineers and the Electrical Engineers as they attend to the civil engineering works in the electricity wing also and it is for that reason the civil engineers in DESU have been equated with the electrical engineers.

In so far as CW No. 280 of 1979 is concerned, the petition pertained to the grant of ex-gratia payment to only a section of the NDMC employees. Ever since 1972, the employees and their unions were demanding ex-gratia payment on the ground that since the employees of DESU were being paid ex-gratia amount, they should also be paid likewise. The Delhi Administration, by its letter dated 1.2.72 permitted the NDMC to make ex-gratia payment to the employees of the electricity wing on the same lines as was being followed in DESU. Similarly, on 7.2.1973, the Delhi Administration permitted the grant of ex-gratia payment to the employees working in the Water Supply & Sewage Disposal wing of the NDMC also on the ground their counterparts in the Water Supply & Sewage Disposal undertaking in the MCD were being paid ex-gratia amount. The ministerial staff in the general wing who were not granted the ex-gratia payment raised a protest. Eventually, the NDMC passed a resolution at its meeting held on 25.7. 1977 that ex-gratia payment be made to all employees of common categories such as clerks, superintendents etc. and that the payment be made subject to the conditions that the employees will refund the amount if the proposal was not approved by the Delhi Administration. Subsequently, it turned out that the Delhi Administration did not approve the proposal of paying ex-gratia amount to all the employees as the expenditure would cast a heavy burden on the finances of the NDMC and furthermore it will lead to similar demands being raised by employees in the other local bodies of Delhi. Consequently, the NDMC called upon the staff of the general wing to refund the ad hoc payment of Rs.300 given by way of advance towards ex-gratia payment. To challenge the negation of ex-gratia payment to them CW No. 280 of 1978 was filed.

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The High Court rendered a common judgment covering all the three Writ Petitions. The High Court took the view that the contention of the ministerial staff that all of them, irrespective of the department of their work should be paid as-per SS Committee Report failing which none should be paid at that rate was an extreme stand and cannot therefore be accepted. The High Court was of the opinion that the impugned resolution of the NDMC was acceptable to the extent it reflected the desire of the NDMC to grant SS Committee scales of pay to as a large section of the staff as possible and to that extent the resolution was a beneficial measure for the ministerial staff. The High Court also held that since the NDMC wanted to equate the electricity wing with the DESU, it is but proper that only those members of the ministerial staff who were prepared to work in the electricity wing can be given the SS Committee pay scales and not the others, who preferred to remain in the general wing

itself. However, in so far as the decision of the NDMC to introduce a system of deputation on rotational basis to the electricity wing is concerned, the High Court was of the view that the proposal may work hardship to the ministerial staff both ways i.e. in seniority being overlooked at the time of the deputation posting and secondly in the emoluments getting reduced after the period of deputation was over and as such a more fair and equitable formula in accordance with service jurisprudence should be evolved. In accordance with that view, the High Court evolved the following formula to be adopted by the NDMC:-

"We, therefore, feel that in accordance with the equality principle the proper approach would be that SSC scale will be given amongst the ministerial staff only to those persons

(a) who would opt to work in the electricity department.

(b) it would be given strictly in accordance with the seniority, i.e. to say the option will first be asked from the senior persons and if they are agreeable to work in the electricity wing they will be posted there and be eligible to get the higher SSC scale. If and when any vacancy arises either because of promotion or retirement or any other eventuality the post will be filled up on the same principle of seniority cum option. Thus a unified principle and rule will apply to all the ministerial staff, namely that the senior most person working in the electricity cell will be eligible to get the SSC scale. No question of discrimination will thus arise, because the electricity cell will be automatically manned by the senior most of the ministerial staff. Thus no

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ministerial staff is discriminated against because each would be eligible in his own turn of seniority. This would really amount to as if a separate department of the electricity wing has been constituted."

The High Court, while therefore upholding the order of the NDMC modified the placement of the ex-cadre posts in the over-all set up and also suggested the manner in which the posts should be filled up viz. on the basis of seniority cum option. Thereby, the High Court has done away with the rotational system every three years and further directed that since the higher scale of pay was linked up with the service rendered in the electricity wing, the SSC scales should be paid to all those who had worked in the electricity wing during the period subsequent to June 75 till 30.5.82, that such payment will not amount to discriminatory payment and that after 30.5.82 the postings should be made in accordance with the seniority cum option formula.

In so far as the engineers (Civil) and draftsman (Civil) are concerned, the High Court declined to sustain their grievance. The High Court noticed that the Junior Engineers (Civil) have no common seniority with the electrical engineers in the electricity wing, that the posts are not interchangeable and that they cannot draw comparison from the employment pattern of engineers in DESU because the DESU was a separate and independent entity unlike the electricity wing of the NDMC, that the nature of duties performed by the electrical engineers and civil engineers was different and for all these reasons the High Court held that the civil

engineers cannot seek parity with the electrical engineers in the electricity wing in the matter of pay scales.

The last question to be dealt with by the High Court pertained to the refusal to grant ex-gratia payment to the staff of the general wing. The High Court saw justification in the payment of ex-gratia payments to the employees in the electricity wing and the water supply and sewage disposal wing alone because of the nature of their duties and because of the precedent afforded by the MCD in granting such payment to the staff of the DESU and the Water Supply and Sewage Disposal Department. However, the High Court took into consideration the long delay that had occurred and the hardship that would result to the employees of the general wing by complying with the order of refund and therefore directed the NDMC to treat the payment of Rs.300 "as one time special ad hoc payment not serving as a precedent" and refrain from recovering the said amount.

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It is in this situation the appeals and petitions have come to be filed. CA No. 2969 of 1973 has been filed by the members of ministerial staff in the general wing to contend that instead of restricting the payment of SS Committee pay scales to the 496 ex-cadre posts in the electricity wing and directing the NDMC to fill up those posts on the basis of seniority cum option, the High Court should have directed the NDMC to give the SS Committee pay scales to all the members of the ministerial staff. Likewise the appellants would contend that the High Court should have directed the NDMC to pay them also ex-gratia payment and should not have directed the NDMC to treat the ad hoc payment "as one time special ad hoc payment" and refrain from recovering the said amount. The NDMC in turn has filed two appeals CA No. 2971 of 1983 and CA No. 2970 of 1983. The former appeal has been filed against that part of the judgment relating to CW 1231 of 1979 wherein the High Court had directed payment at SS Committee's scales for the period June 1975 to May 1982 and also directed ministerial posts in the electricity wing to be filled up on seniority cum option basis instead of a three years deputation basis on rotational system. Likewise the direction of the High Court to give up the proceedings for recovery of the ad hoc payment towards ex-gratia payment is also impugned in the appeal. Civil Appeal No. 2970 of 1983 is directed against that portion of the judgment relating to CW 557 of 1979 which has been filed by the non-technical staff of the electricity wing praying for payment of arrears of pay for the total period subsequent to the sanction. CA No. 6074 of 1983 has been filed by the Assistant Engineers (Civil) & Junior Engineers (Civil) to contend that the High Court should have sustained their claim for parity with the electrical engineers in the electricity wing and directed the NDMC to pay them also at the SS Committee pay scales and also to give them ex-gratia payment as in the case of all the persons employed in the electricity wing. SLP NO. 11270 of 1982 has been filed by some of the staff members in the general wing to contend that since the NDMC constituted an integrated unit with common fund, common budget etc., the High Court ought not to have sustained the payment of exgratia amount to only those persons working in the electricity wing and should have made the payment applicable for all or to none. As common questions are raised in this petition, special leave is granted and the appeal shall be assigned a number. WP NO. 9256 of 1983 has been filed by the Assistant & Junior Engineers (Civil) to contend that there cannot be any discrimination between Civil Engineers and Electrical Engineers and as such they are as much

entitled as the electrical engineers to be paid according to SS Committee pay scales and also for payment of ex-gratia amount.

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We will now take up for consideration the merit of the contentions of the parties in the appeals and petitions. As we propose to deal with the several contentions of the parties in the course of our discussion in the judgment, we do not think it necessary to set out the contentions of the parties separately.

We will first take up for consideration the case of the appellants in CA No. 2969 of 1983 viz. the ministerial staff in the general wing of the NDMC. Mr. Mukhoty learned counsel for the appellants urged before us that the electricity wing of the NDMC is not a distinct and independent unit entitled to have its own scales of pay and secondly the ministerial staff of the NDMC belong to a unified cadre and the staff members are liable to transfer from one branch of the NDMC to another and as such the NDMC cannot create a cadre within a cadre and fix different scales of pay for those in the carved out cadre. It was further urged by him that the nature of the duties performed by the ministerial staff in all the three wings of the NDMC is more or less similar, if not identical, and hence the well-established rule of equal pay for equal work should govern the staff members. In support of his argument the learned counsel relied on the decisions of this Court in *Randhir Singh v. Union of India*, [1982] 3 SCR 298; *Dhirendra Chamoli v. State of U.P.*, [1986] 1 SCC 637 and *P. Rarnachandra Iyer v. Union of India*, AIR 1984 SC 541.

Controverting the arguments of Mr. Mukhoty, Mr. Misra, learned counsel for the NDMC and Mr. Ramamurthy, learned counsel for the non-technical staff working in the electrical wing, argued that the Government or any State within the meaning of Article 12 of the Constitution has a right under law to create new departments or new cadres with different scales of pay and hence the appellants cannot impugn the action of the NDMC in treating the ministerial staff in the electrical wing differently and giving them pay scales as per SS Committee Report. In support of their arguments, the learned counsel placed reliance on the decisions in *Reserve Bank of India v. N.C. Paliwal*, [1977] 1 SCR 377 & *Reserve Bank of India v. C.N. Sahasranaman*, [1986] (Suppl.) SCC 143.

On a consideration of the matter we find the grievance of the ministerial staff of the general wing to be well founded. Admittedly, the ministerial staff in the NDMC constitute a unified cadre. The recruitment policy for the selection of the ministerial staff is a common one and the recruitment is also done by a common agency. They are governed by a common seniority list. The ministerial posts in the three

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wings of the NDMC viz. the general wing, the electricity wing and the water works wing are interchangeable posts and the postings are made from the common pool according to administrative convenience and exigencies of service and not on the basis of any distinct policy or special qualifications. Therefore, it would be futile to say that merely because a member of the ministerial staff had been given a posting in the electricity wing, either due to force of circumstances or due to voluntary preferment, he stands on a better or higher footing or in a more advantageous position than his counter parts in the general wing. It is not the case of the respondents that the ministerial staff in the electricity wing perform more onerous or more exacting

duties than the ministerial staff in the general wing. It therefore follows that all sections of the ministerial staff should be treated alike and all of them held entitled to the same scales of pay for the work of equal nature done by them. This Court has held in Randhir Singh's case that the mere fact that persons belong to different departments of the Government cannot by itself be a sufficient circumstance to justify different scales of pay and that "where all things are equal, that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments." In Dhirendra Chamoli's case, the principle was reiterated and it was held that when "the persons engaged by the Nehru Yuvak kendras performed the same duties as those performed by class IV employees appointed on regular basis against sanctioned posts, it is difficult to understand how the Central Government can deny to those employees the same salaries and conditions of service as class IV employees regularly appointed against sanctioned posts. To the same effect is the decision rendered in P. Ramachandra Iyer's case which related to discriminatory treatment being meted out to three Professors employed by the Indian Council of Agriculture Research.

It is relevant at this juncture to scrutinise the reason which impelled the NDMC to pass the resolution in 1973 for giving the SS Committee pay scales to the staff of the electricity wing alone. The only reason which prompted the NDMC to pass the resolution was that since DESU had implemented the SS Committee pay scales for its technical and non-technical staff, the NDMC should also follow suit in so far as its electricity wing is concerned. In doing so, the NDMC had failed to bear in mind several distinguishing features between its set up and the set up of the DESU and its staff pattern and the staff pattern of DESU. The NDMC, as already stated, is governed by the Punjab Municipal Act while DESU is governed by the Delhi Municipal

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Corporation Act, 1957. The set up of the NDMC is that of an integrated unit comprising all the three wings while the set up under the Municipal Corporation Act of the MCD is that its three wings have to function as distinct and independent units. Such being the case, the DESU is a separate and independent unit of MCD and constitutes an independent body. The DESU has its own budget and consequently it has freedom of action without reference to the other units. In contrast, the NDMC's revenues is the income derived from all the three wings of it and the expenses are governed by a common budget. Having regard to all these factors, there is no room whatever for treating the electricity wing of the NDMC on part with the DESU and adopting the pattern of pay scales implemented by DESU. Apart from the difference in the set up, it has also to be borne in mind that the ministerial staff in the NDMC are comprised in a unified cadre and the posts in the three wings are transferable and interchangeable which is not so in the case of the staff of the DESU. If regard is had to all these factors, the decision taken up the NDMC originally to place the non-technical staff in the electricity wing on a higher footing and give them alone the SS Committee pay scales cannot be legally sustained. The action of the NDMC clearly suffered from the vice of arbitrariness and discrimination.

That takes us to the validity of the further resolutions passed by the NDMC. When it was directed by the High Court to reconsider the matter in the light of the grievances

expressed by the staff of the general wing, the NDMC decided to make 496 posts in the electricity wing ex-cadre posts and fill up those posts on deputation basis combined with a rotational system to be enforced once in every three years. By the revised resolution, fair distribution of higher pay benefits was sought to be given to all the ministerial staff, but nevertheless the vice of discrimination as between the staff of the electricity wing and the staff of the general wing continued to persist. The resolution only sought to provide all the members of the staff the benefit of the higher scales of pay for a period of three years at some point of time in their service provided they opted to serve in the electricity wing but it did not provide an answer for the criticism that there was no justification to treat the ministerial staff in the electricity wing on a higher footing than the rest of the staff and give them a higher scale of pay. Secondly, the proposal would perpetuate the imbalance in the pay scales between different sections of the staff working in the three wings of the NDMC. Thirdly, the system of deputation would lead to a long period of wait for large sections of the staff before getting postings in the electricity wing on deputation basis. Fourthly, the staff members would have to

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forego the higher scales of pay and come back to the lesser scales when the period of deputation was over. Lastly, the insistence on the staff members being entitled to deputation service in the electricity wing only if they exercised their option to work in that wing introduces an element of compulsion amongst the members comprised in a unified cadre. These factors vitiated the revised proposal of the NDMC to make 496 posts as ex-cadre posts and to fill them up on deputation basis by adopting a rotational cum option system.

The High Court realised in some measure the vitiating features present in the revised scheme evolved by the NDMC. However, instead of deprecating the scheme in its entirety, the High Court has tried to formulate a scheme of its own. The High Court has taken the view that the 496 posts ex-cadred in the electricity wing can be treated as special or senior posts which can be filled up on the basis of seniority cum option. The High Court, apart from laying itself open to the criticism that it had gone beyond its powers in formulating a new scheme, has failed to provide for equal benefits for all the members of the ministerial staff. If the electricity wing is to be filled up on the basis of seniority cum option, those who had served earlier in the electricity wing would get a distinct advantage over the rest of the ministerial staff including the senior members of the matter of higher pay-scales. Besides, the seniority cum option system would give greater benefit to some and lesser benefit to some depending upon their age etc. Moreover, the insertion of the option clause would introduce an element of compulsion and make it appear that the staff working in the electricity wing perform more onerous and more skilled duties and hence they stand on a higher footing. It would also lead to packing all the senior members of the staff in the electricity wing and denuding the other two wings of the services of the senior ministerial staff. For all these reasons we find the scheme formulated by the High Court also cannot be sustained or accepted.

The NDMC itself had fully realised at one point of time that its original resolution was not fair to all the members of the ministerial staff and hence it reconsidered the matter and resolved that the benefit of higher pay should either be given to all the staff or to none and as its

finances did not permit the former option, it was obliged to adopt the latter option and hence all the staff members would be uniformly paid at pay scales recommended by the Third Pay Commission. The NDMC was however forced by the Delhi Municipal Administration to treat the electricity wing as a different unit and to restrict the grant of higher pay scales only to that unit. In as much as the ground put
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forward by the NDMC to discriminate between the ministerial staff in the general wing and the electricity wing is lack of funds and not on the ground of any distinction between the two wings, the NDMC has no legal ground to project in justification of its action in making the posts in the electricity wing as ex-cadre posts and giving the benefit of SS Committee pay scales only to persons serving in those posts.

We are, therefore of the view that the appellants in CA No. 2969 of 1983 are entitled to succeed in their appeal. We will deal with the manner in which they should be given relief, after considering the other appeals and petitions.

Our next concern will be to deal with CA No. 6074 of 1983 and WP No. 9266 of 1983 which have been filed by the Junior Engineers (Civil) and Assistant Engineers (Civil). Their grievance is that though they are on par with the Electrical Engineers except that the nature of their technical services differ, their services are treated as inferior or as less skillful and they are deprived the benefit of SS Committee pay scales. They would contend that the civil engineering works designed and executed by them constitute an integral part of the work of the electrical wing and hence they cannot be discriminated in the matter of fixation of their scales of pay. The last contention is that since the NDMC has followed the DESU pattern of scales of pay, the Civil Engineers are also entitled to the SS Committee pay scales because the DESU pays its civil engineers accordingly. Dr. Chitale appearing for the Civil Engineers strenuously argued that since the Civil Engineers have been equated with the Electrical Engineers by DESU, the NDMC also must give parity of treatment for all the Civil Engineers and give them the benefit of the higher scales of pay. We do not feel persuaded to accept the contention of Dr. Chitale. The case of the Civil Engineers does not stand on the same footing as that of the ministerial staff. This is because of several factors adverted to below. As has been pointed out by the High Court the Civil Engineering department is a separate and self-contained one and the civil engineers are transferred within the civil engineering unit itself i.e. from one division to another by the Chief Engineer (Civil). The Civil Engineers posted in the water works division are not paid according to the SS Committee pay scales. The Junior Engineers (Civil) do not have any common seniority with the electrical engineers and the posts are not inter-transferable. All the engineers, in which ever wing or department they are posted, are paid according to the pay scales recommended by the Third Pay Commission. There is no discrimination in payment of salary as between them. Merely because some of the Civil Engineers

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are assigned to do civil engineering works in the electricity wing they cannot be heard to say that they are not different from the electrical engineers and that they should be paid higher scales of pay. In the matter of promotions etc. they are governed by the common seniority list maintained for Civil Engineers. As such their posting to the electricity wing cannot make them a separate class by themselves. It

is of no avail to the Civil Engineers to compare themselves with the Civil Engineers working in DESU because DESU is a separate and distinct unit and all the engineers working therein constitute a single unit. Unlike in the case of the ministerial staff, there is no disparity of scales of pay between Civil Engineers working in the electricity wing and the Civil Engineers working in the other wings. Such being the case the appellants and petitioners herein have no basis to contend that they have been discriminated in the matter of fixation of pay scales.

We are therefore of the view that C.A. No. 6074 of 1983 and W.P. No. 9266 of 1983 should fail.

We are lastly left with the controversy regarding the payment of ex-gratia amount by the NDMC only to those employees who are working in the electricity wing and the water works wing. We have already set out the history as to how ex-gratia payment was sanctioned to the staff members of the electricity wing and then the water works wing and why it was not extended to the general wing etc. By way of an adhoc arrangement, the NDMC had given an advance of Rs.300 for the period ending with 31.3. 1976 subject to the approval of the Delhi Administration. As the Delhi Administration declined to give its approval, the NDMC called upon the concerned staff to refund the ad hoc payment of Rs.300 in fifteen monthly instalments. To challenge the denial of ex-gratia payment to them, the affected staff had filed CW No. 2807 of 1979. The High Court, it may be remembered, had sustained the stand of the NDMC but nevertheless directed the NDMC to treat the adhoc payment as a special payment and to desist from recovering it.

We are unable to appreciate the reasoning of the High Court and sustain its conclusion on this aspect of the matter. The High Court has failed to see that no rational or acceptable reason is put forward for justifying the ex-gratia payment only to the ministerial staff working in the electricity wing and the water works wing and denying the same to the staff working in the general wing. The only reason given is that the payment of ex-gratia amount is patterned on the lines of the DESU and the Water Supply and Sewage Disposal Undertaking of the MCD.

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The pattern of payment adopted by the MCD cannot have any binding force on the NDMC because the three units of MCD are different and distinct entities whereas the three wings of the NDMC are interdependent wings of an integrated Municipal Committee. Therefore, in the absence of justifiable reasons of a compulsive nature the payments, whether as salary or as ex-gratia amount have to be on the same and equal basis and not differently for the different wings of the NDMC. In fact, what all we have said regarding the payment of uniform pay at the scales recommended by SS Committee would squarely apply to the payment of ex-gratia amount also. Hence CA No. 2969 of 1983 and SLP No. 11270 of 1982 (S.C.A. No. 1688 of 1987) deserve to succeed.

In the light of our conclusion, the two appeals CA NO. 2971 and 2970 of 1983 filed by the NDMC have to fail in so far as the main issues are concerned. Mr. Misra, learned counsel for the NDMC contended before us that it was open to the NDMC to constitute different cadres among its employees as laid down in Paliwal's case and furthermore the grant of SS Committee pay scales and ex-gratia payments to all the employees would seriously affect the finances of the NDMC. The decisions in Reserve Bank of India v. C. Paliwal (supra) & Reserve Bank of India v. C.N. Sahasranaman (supra) relied on by Mr. Misra are of no assistance in this case because

what we are concerned is whether different pay scales and allowances can be given to a section of the staff when they belong to a unified cadre and are governed by common recruitment policy, common seniority list and common transfer policy. It was urged by the learned counsel that the High Court was not justified in directing payment at the SS Committee pay scales for the employees of the electricity wing from June 1975 to May 1982 as that would result in the NDMC paying Rs.51,98,079 and in addition the payment of the arrears calculated on the difference in pay with reference to the SS Committee pay scales for the period between 1.4.1972 to 30.9.1973 would cost another Rs.7,30,062 thus in all casting a financial burden of more than Rs.50 lakhs on the NDMC. In the view we propose taking of the matter in the light of our conclusions, this grievance does not call for discussion.

Mr. Ramamurthy, learned counsel appearing for the members of the staff working in the electricity wing voiced forth the grievance of those employees. The straight and simple argument of the learned counsel was that in the controversy between the ministerial staff of the general wing on the one hand and the NDMC on the other, the staff of the electricity wing who had been granted revised pay scales at the SS

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Committee rates have not been paid their due share of the salary and that they are entitled to be paid salary at the revised rate from 1.4.1972 failing which at least from 1982 onwards. The argument though appealing by itself cannot be accepted because then it would mean that the staff members of the electricity wing would be scoring an advantage over their fellow employees in the general wing merely because they were by accident or by compulsion working in the electricity wing at the relevant time the impugned resolutions came to be passed by the NDMC.

In the result we hold that all the ministerial staff working in the NDMC are entitled to get pay scales as per SS Committee Report and likewise all of them are entitled to be given ex-gratia payment. The grant of SS Committee pay scales to only the staff working in the electricity wing or the grant of ex-gratia payment to only the staff working in the electricity wing and the water works wing cannot be legally sustained as it suffers from the vice of discrimination. As a consequence of these findings it follows that there should be uniformity not only in the payment of the SS Committee pay scales and the ex-gratia amount to the staff working in all the wings or departments of the NDMC but the payment should also be made from a date common to all. However, having regard to the long lapse of time and the financial implications involved in the matter it will not be fair and proper to direct the NDMC to pay all the members of the staff at SS Committee rates from 1.4.72 to 30.9.73 and from June 1975 to May 1982. But at the same time we cannot also totally deprive the staff, particularly those who have been looking forward to receiving higher scales of pay granted by the NDMC, and the benefit of the ex-gratia payments. We, therefore, direct that the sum of Rs.59, 10,160 and the agreed amount of ex-gratia payment be equally distributed, among all the members of the staff, with such adjustments by deductions as may be required to be made in the case of persons who have received payment in excess of their share under the above-said formula. In so far as payment of uniform salary to all the ministerial staff as per SS Committee pay scales and payment of ex-gratia amount is concerned, the NDMC will give effect to our judgment with

effect from 1st June 1982 since the High Court's direction for payment extends upto the end of May 1982 and in respect of which payment we have directed the amount involved to be distributed equally among all the ministerial staff and not confine it to the ministerial staff of the electricity wing alone. Taking into consideration the financial commitment involved for the NDMC, it is permitted to pay the difference in the scales of pay and ex-gratia amount between the period 1.6.82 to 31.7.87 in three

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equated instalments within a period of 15 months from the date of our judgment. The Delhi Administration will give the necessary sanction to the NDMC for disbursement of funds and payment of arrears and future pay in accordance with our judgment.

In the result CA No. 2969 of 1983 and (SLP No. 1127 of 1982) numbered as CA No. 1688. of 1987 will stand allowed to the extent relief is given. CA Nos. 2970 of 1983 and 2971 of 1983 filed by the NDMC and CA No. 6074 of 1983 and WP No. 9266 of 1983 filed by the engineers (civil) will stand dismissed.

There will be no order as to costs in all the appeals and the writ petition.

N.P.V.

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