

PETITIONER:
NARENDRA KUMAR AND ANR. ETC.

Vs.

RESPONDENT:
DHARAM DUTT AND ANR. ETC.

DATE OF JUDGMENT 17/03/1993

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
KULDIP SINGH (J)

CITATION:
1993 SCR (2) 413 1993 SCC Supl. (3) 205
JT 1993 (2) 423 1993 SCALE (2) 53

ACT:

Constitution of India, Article 39(d)--'Doctrine of equal pay for equal work'--Implementation of--Shiv Shankar Committee's pay scales--Extension of to New Delhi Municipal Committee staff--Technical staff in electricity wing and the ministerial staff in general wing, electricity wing and water works wing granted benefit--Employees in other sections, departments--Whether entitled to equal pay.

HEADNOTE:

The New Delhi Municipal Committee by its resolution dated 19.10. 1973 extended the benefit of higher pay scales recommended in the Shiv Shankar Committee Report, to its staff working in the electricity wing. Following this, the employees working in the general wing of the NDMC also raised demand for granting them the benefit of those pay scales. In the meantime, by its resolution dated 27.6.1978 the NDMC constituted, with effect from 1.5.1978, the electricity wing composed of 28 technical and 496 ministerial posts and decided to give all of them scales of pay as per S.S. Committee's Report. In the writ petitions filed in the High Court the ministerial staff failed to receive full relief.

This Court in R.D. Gupta & Ors. etc. v. Lt. Governor, Delhi Administration & Ors. etc., [1987] 3 SCR 808 found that the entire ministerial staff in the NDMC constitutes a unified cadre. The ministerial posts in the general wing, the electricity wing and the water works wing are interchangeable posts 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 qualifications. It was thus held that all sections of the ministerial staff should be treated alike and all of them were entitled to the same scales of pay for the work of equal nature done by them.

In order to extend the benefit of R.D. Gupta's case, the NDMC by its order dated 9.6.1988, revised the pay scales of 18 categories of employees who constituted 496 posts forming the electricity cell. By another order

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dated 27.7.1988 the NDMC extended the benefit of S.S. Committee's scales to eight allied categories of sweepers,

subsequently, all the drivers of the NDMC were extended benefit of R.D. Gupta's case.

On the question: whether the petitioners fall within the cadre of ministerial staff or fall in similar cadres which have already been granted the benefit of S.S. Committee's pay scales.

Disposing of the writ petitions, the Court,

HELD: 1. There is no valid justification for discriminating the employees of the Auto Workshop which forms a part and parcel of the electricity wing of the NDMC, since the benefit of the pay scales recommended by the S.S. Committee has been allowed by the NDMC to the 18 categories of employees which include daftry, peon, chowkidar, sweeper etc. [422D-E]

2. The NDMC having allowed the benefit of S.S. Committee's scales to rat catchers and dog catchers vide order dated 27.7.1988, there is no valid justification for denying such benefit to duplicating machine operators and gunmen/dog shooters. There is no essential difference in the job work done by gunmen/dog shooters. The post of duplicating machine operators is transferable and interchangeable from other class IV employees of the NDMC who have already been granted benefit of S.S. Committee's pay scales vide order dated 9.6.1988. [422E]

3. Both the posts of Junior Technical Assistant (Hindi) and Assistant Store-Keeper are such posts which clearly fall within the ministerial cadre. They are thus entitled to the benefit of S.S. Committee's scales. [423B]

4. The benefit of S.S. Committee's pay scales having already been extended to the pump drivers in the electricity wing, there is no valid ground or justification to deny such benefit to the pump drivers working in the water supply, horticulture and civil wings of NDMC. [423C]

5. The employees of Junior Navyug School run by NDMC fall in a different cadre altogether and-as such cannot claim the benefit of S.S. Committee's pay scales on the basis of R.D. Gupta's judgment. Their posts are not interchangeable or transferable from any other post under the NDMC. The nature and the duties performed by them are totally different and they cannot be granted the benefit of the S.S. Committee's pay scales

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on the basis of any equality with the other employees of NDMC who have been granted such benefit. [423D-E]

6. The telephone operators working in the NDMC fall in a separate cadre and their posts are neither interchangeable nor transferable with the other members of the service in the NDMC. That apart, the petitioners are trained Telephone Operators and Senior Telephone Operators and as such do not fall within the category of ministerial staff and are not entitled to the benefit of S.S. Committee's pay scales on the basis of R.D. Gupta's case. [423F]

7. The respondent-Delhi Administration and NDMC are directed to take appropriate steps within three months and make payment of the entire arrears and grant future benefit in the pay scales as recommended by S.S. Committee. [424B]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) No.3 of 1990 etc. etc.

(Under Article 32 of the Constitution of India).

K.T.S. Tulsi, Addl. Solicitor General, M.K. Ramamurthy, Govinda Mukhoty and N. Santosh Hegde, Ms. C. Ramamurthi,

M.A. Krishna Moorthy, M.A. Chinnaswamy, H. Subramaniam, Ms. C.M. Chopra, A Bhattacharjee, G.S. Chatterjee, H.K. Puri, M.P. Jha, Serva Mitter, R.K. Maheshwari, Vineet Maheshwari, Ms. Niranjana Singh, B.D. Prasad, K. Swamy and B.K. Prasad for the appearing parties.

The Judgment of the Court was delivered by KASLIWAL, J. All these cases are an upshot of the case R.D. Gupta & Ors. etc. v. Lt. Governor, Delhi Administration & Ors. etc., [1987] 3 S.C.R. 808. It is not necessary for us to give the background and history of the constitution of the two main civic bodies namely, New Delhi Municipal Committee (in short 'MDMC') and the Municipal Corporation of Delhi (in short 'MCD'), in the Union Territory of Delhi as the same has already been mentioned in detail in the above R.D. Gupta's case (supra). We would thus mention only such details which are relevant and necessary for the purpose of deciding the above cases. All the above cases relate to the employees of the NDMC who are claiming the benefit of the report of Shiv Shankar Committee (in short 'SSC') in respect of the grant of pay scales

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as allowed to other employees of NDMC in R.D. Gupta's case.

The Government accepted the report of the Third Pay Commission and granted pay-scales as recommended to the employees of NDMC as well as to the MCD. The technical staff of the Delhi Electricity Supply Undertaking (in short 'DESU') claimed higher scales of pay as they were not satisfied with the pay-scales recommended by the Third Pay Commission. The Government therefore constituted Shiv Shankar Committee to go into the question of revision of pay-scales of the technical staff of DESU. The SSC submitted its report in 1973 according to which higher pay-scales were allowed to the technical staff of DESU. The non-technical/ministerial staff of DESU who were not covered by the report of the SSC demanded that they should also be granted pay-scales as recommended by the SSC. The DESU considered the demand of the ministerial staff at its meeting held in May 1973 and decided to revise the pay-scales of the non-technical staff also working in DESU.

Since the technical as well as the ministerial staff working in the DESU were granted the pay-scales recommended by SSC, the NDMC also, by its resolution No.154 dated 19.10.1973 allowed the benefits of pay-scales as recommended by SSC to its staff working in the electricity wing. In view of the fact that the benefit of the SSC pay-scales was granted by the NDMC to the ministerial staff working in the electricity wing only, the employees working in the general wing of the NDMC also raised a demand for granting them also the benefit of the pay-scales recommended by SSC. Many orders were passed from time to time and writ petitions were also filed by the concerned parties, but we do not think it necessary to give the details as the same have been narrated in R.D. Gupta's case and we come to the resolution of the NDMC dated 27.6.1978 constituting the electricity wing with effect from 1.5.1978 or such subsequent date as may be fixed composed of 28 posts of pump drivers, two posts of welders, three 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 SSC Committee Report. Three petitions under Article 226 of the Constitution viz. CW Nos. 1231, 557 and 280 of 1978 were filed in the Delhi High Court. We are only concerned with the grievance of the ministerial staff who were claiming to be treated at par with the ministerial staff of the electricity wing in the matter of pay and allowances. The ministerial staff in the general

wing having not received the full relief in the High Court filed C.A. 2969 of 1973

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before this Court. It was claimed in the said appeal 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. In R.D. Gupta's case, this Court decided many appeals by a common order, but we are only concerned with the C.A. No. 2969 of 1983 which relates to the ministerial staff in the general wing of the NDMC. It was contended by the appellants in the said appeal that the electricity wing of the NDMC was not a distinct and independent unit entitled to have its own scales of pay and secondly the ministerial staff of the NDMC belonged to a unified cadre and the staff members were 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 also urged 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. This Court in R.D. Gupta's case held that the grievance of the ministerial staff of the general wing was well founded. The ministerial staff in the NDMC constituted 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 three 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. It was held that 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 its counterparts in the general wing. It was thus held that all sections of the ministerial staff should be treated alike and all of them were entitled to the same scales of pay for the work of equal nature done by them.

After the above decision in R.D. Gupta's case, the employees of NDMC working in different departments have filed the above writ petitions under Article 32 of the Constitution or Civil Miscellaneous Petitions in

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R.D. Gupta's case which have been directed by this Court to be treated as Writ Petitions by order dated 17.11.1989. In all these cases the employees have prayed for granting the same pay-scales including the ex-gratia benefits as was recommended by SSC.

Writ Petition No.1 of 1990 has been filed by NDMC Workshop Employees Association on behalf of the employees of Auto Workshop of NDMC. In Writ Petition No.5 of 1990, the petitioners are Class IV employees of NDMC holding the posts of Duplicating Machine Operators and Gunmen/Dog Shooters. In Writ Petition No.3 of 1990, the petitioners were initially appointed as Junior Clerks and subsequently promoted to the posts of Junior Technical Assistants (Hindi)

also knows as Translator (Hindi). In Writ Petition No.13 of 1990, the petitioner is working on the post of Assistant Store-Keeper. In Writ Petition No.292 of 1990, the petitioners are pump drivers in the water supply, horticulture and civil wings of NDMC. In Writ Petition No.1109 of 1990, the petitioners are the employees of Junior Navyug School run by NDMC. In Writ Petition No.409 of 1990, the petitioners are working as Telephone Operators under the NDMC.

The short controversy to be decided in the above cases is whether the petitioners fall within the cadre of ministerial staff or fall in similar cadres which have already been granted the benefit of SSC pay-scales? It is no longer in controversy now that the ministerial staff working in all the wings are also entitled to the same benefit of SSC pay-scales as has been given to the ministerial staff working in the electricity wing of the NDMC. It has already been decided in R.D. Gupta's case that the entire ministerial staff in the NDMC constitutes a unified cadre. The ministerial post in the three wings of the NDMC viz., the General Wing, the Electricity Wing the 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.

It may be further noted that the NDMC itself in order to extend the benefit of R.D. Gupta's case in a meeting dated 9.6.1988 resolved as under:-

"IMPLEMENTATION OF BENEFIT OF S.S. SCALE
EXTENSION OF BENEFITS SUPREME COURT JUDGMENT
SLP. 11270 OF 1982 SHRI R.D. GUPTA
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AND OTHERS VERSUS LG. DELHI AND OTHERS.

The Committee as per the advice of the Law Deptt. and the opinion given by our counsel, justice V.D. Mishra on 26.2.1988 had decided that following categories of employees who constitutes 496 posts created by the NDMC while forming the Electricity Cell vide Reso. passed on 27.6.1978 should be extended the benefits:-

1. Office Supdt.
2. HA/Accountant
3. Personal Asstt.
4. Sr. Clear
5. Stenographers
6. Jr. Clerk
7. Asstt. Storekeepers
8. Adrema Operators
9. Asstt. Adrema Operators
10. Asstt. 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

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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 Reso. No.26 dated 9.2.1988.

ADMINISTRATOR'S DECISION Information noted." By another order dated 27.7.1988 the benefit of S.S. Committee's scales was extended to the following cadre of employees:-

"NEW DELHI MUNICIPAL COMMITTEE

DATED: 27.7.1988

OFFICE ORDER

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 Reso. No.26 dated 9.2.1988 read with Reso. No.52 dated 9.6.1988 as they form the common cadre of sweepers.

1. Lorry Belders
2. Dumping ground beldars
3. Bhisties
4. Rat catchers
5. Verandha Beldars
6. Hawker Raid Van beldars
7. Sweepers-cum-chockidars
8. Dog catchers.

Sd/- Asstt. Secy. (Health)

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Copy to:-

1. All Estts.: with the request to fix the pay of the above mentioned categories in the S.S. Scales.
2. DS (E)
3. A.S. (AIC)
4. P.A. to Secy. NDMC
5. C.A.0.
6. O.S. (CBS)
7. Supdt. A/Cs.
8. File
9. P.A. to F.A.
10. OS (CE-1)

The case is laid before the Committee of Officers presided over by the Administrator for consideration and decision if the benefit of Supreme Court Judgment dated 7.8.1987 be extended to all the Drivers in anticipation of the approval of the Lt. Governor, Delhi and in the anticipation of the confirmation of the Minutes of the Committee.

ADMINISTRATOR'S DECISION

Resolved by the Committee of Officers and decided by the Administrator that benefit of Supreme Court judgment dated 7th Aug. 87 is extended to all the Drivers of the Committee in the anticipation of the approval of the L.G. Delhi. The action be taken in anticipation of confirmation of the minutes of the Committee.'

In Writ Petition No.1 of 1990, the contention of the petitioners is that they are employees working in the Auto Workshop of NDMC which is a part and parcel of the electricity establishment and their duties are mini-, sterial in nature. It has been further contended that the Auto Workshop'

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employees have to work throughout on the ground beneath the vehicles belonging to all departments whether it belongs to electricity, water or the administrative staff and they have

to work for such time till a vehicle is fit for traffic and have to maintain the vehicle not only for administrative staff but also for the electrical, health, water etc. It has been further urged that Auto Workshop employees are part and parcel of electrical wing and their appointments, promotions, pension, salaries, increments, transfers, maintenance of personal filing is done by the electricity establishment. Moreover, their services are inter-transferable such as drivers, cleaners, helper, peon, chowkidar, sweepers, fitters, khalasis working in the Auto Workshop can be and are transferred to other departments. It has also been urged that a discriminatory treatment has been given in the case of the petitioners inasmuch as a fitter which is a promotional post from amongst peon or chowkidar or sweeper is getting less pay-scale than the peon or chowkidar and likewise cleaner which is a promotional post is getting less pay-scale than a chowkidar, peon and sweeper.

We find force in the submission of the petitioners. As already mentioned above the benefit of the pay-scales recommended by the SSC has been allowed to the NDMC to the 18 categories of employees which includes, daftary, peon, chowkidar, sweeper etc. and we find no valid justification for discriminating the employees of the Auto Workshop which forms a part and parcel of the electricity wing of the NDMC. In Writ Petition No.5 of 1990, the petitioners are Class IV employees of NDMC holding posts of Duplicating Machine Operators and 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 27.7.1978 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.

In Writ Petition No.3 of 1990, the petitioners are working as Junior

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Technical Assistants (Hindi) and are also known as Translator (Hindi). In Writ Petition No.13 of 1990, the petitioner is working on the post of Assistant Store-Keeper. Both the above posts of Junior technical Assistants (Hindi) and Assistant Store-Keeper are such posts which clearly fall within the ministerial cadre. Learned counsel appearing for the NDMC was unable to show any material on record for taking a contrary view.

In Writ Petition No.292 of 1990, the petitioners are pump drivers employed in the water supply, horticulture and civil wings of NDMC. The benefit of SSC pay-scales has already been extended to the pump drivers in the electricity wing and there is no valid ground or justification to deny such benefit to the pump drivers working in the water supply, horticulture and civil wings of NDMC.

In Writ Petition No.1109 of 1990, the petitioners are the employees of Junior Navyug School run by NDMC. In our view, the employees of the school though run by NDMC fall in a different cadre altogether and as such cannot claim the benefit of SSC pay-scales on the basis of R.D. Gupta's Judgment. It is not their case that their posts are interchangeable or transferable from any other post under

NDMC. The nature and the duties performed by the petitioners are totally different and they cannot be granted the benefit of the SSC pay-scales on the basis of any equality with the other employees of NDMC who have been granted such benefit.

In Writ Petition No.409 of 1990, the petitioners are working as Telephone Operators. The Telephone Operators fall in a separate cadre and their posts are neither interchangeable nor transferable with the other members of the service in NDMC. That apart the petitioners are Trained Telephone Operators and Senior Telephone Operators and as such do not fall within the category of ministerial staff and'-as such are not entitled to the benefit of SSC pay-scales on the basis of R.D. Gupta's case.

In the above cases we are only concerned with the granting of benefit of SSC pay-scales on the basis of R.D. Gupta's case and as such we are holding that the petitioners working in the Navyug School in Writ Petition No.1109 of 1990 and Telephone Operators in Writ Petition No. 409 of 1990 are not entitled to the benefit of the SSC pay-scales. These petitioners are free to make their claim if any, for the revision of their pay-scales to the competent authorities.

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In the result, we allow Writ Petition Nos. 1, 3, 5, 13, and 292 of 1990 and grant them the benefit of SSC pay-scales in the same manner as granted to other employees vide Resolution No.26 dated 9.2.1988 read with Resolution No.52 dated 9.6.1988. The respondent-Delhi Administration and NDMC shall take appropriate steps within three months of the notice of this order and make payment of the entire arrears and grant future benefit in the pay-scales as recommended by SS Committee. The Writ Petition Nos.1109 of 1990 and 409 of 1990 are dismissed. No order as to costs.

P.S.S.

Petitions disposed of

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