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NEW DELHI MUNICIPAL COUNCIL

v.

P.P. GARG AND ANR.

FEBRUARY 20, 2007

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[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Service Law:

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Pay Scale—NDMC—Mechanics (Auto)—Appointed as Assistant Engineer (E & M)—Continued to work in Auto workshop—As Mechanic (Auto) drawing pay scale as per Shiv Shankar Committee Report—But on being posted as Assistant Engineer (E & M) granted pay scale according to Pay Commission Report—Claim for pay-scale as per Shiv Shankar Committee Report—Held, employees even after their promotion as Assistant Engineers (E & M) having been posted and continued in Auto Workshop which forms part of Electrical Wing of NDMC are entitled to Shiv Shankar Committee pay scale—New Delhi Municipal Council Act, 1994.

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Respondents were recruited as Mechanics (Auto) in the Auto Workshop of appellant-NDMC. They were getting the pay scale as per Shiv Shankar Committee Report. Subsequently they were appointed as Assistant Engineers (E & M), which according to the appellant formed part of Civil Engineering Wing, in the pay scale recommended by the Pay Commission. The respondents filed writ petitions before the High Court claiming Shiv Shankar Committee pay scale on the ground that they had all along been working in the Auto Workshop Department of the NDMC and were retained in Auto Workshop after promotion to the post of Assistant Engineer (E & M). The NDMC contested the writ petition stating that its work force was divided between the Civil Engineering Department and the Electrical Wing. Though the respondents were initially recruited as Mechanic (Auto) in Auto Workshop pay-scales wherein were governed by Shiv Shankar Committee Report, they were subsequently posted as Assistant Engineers (E & M) in the Hot Mix Plant in the Civil Engineering Wing which had its independent seniority list, recruitment rules and pay-scales fixed in accordance with the recommendations made by the Pay Commission, and, as such, they were not entitled to pay scale as per Shiv Shankar Committee. The single Judge of the

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High Court allowed the writ petition. The writ appeal of NDMC having been dismissed by the Division Bench of the High Court, it filed the present appeal A

Dismissing the appeal, the Court

HELD: Except for a bald statement that the post of Assistant Engineer (E & M) had been created in the Hot Mix Plant, which was a part of the Civil Wing of NDMC, there is no other corroborating evidence to support the said statement of the NDMC. Nothing has been shown on behalf of NDMC to establish the stand taken on its behalf that the posts in question had, in fact, been created in the Hot Mix Plant or that the same formed part of the Civil Wing. In the circumstances, the High Court was justified in arriving at the conclusion that since the respondents/writ-petitioners, even after their promotion to the post of Assistant Engineers (E & M), had been posted and continued to work in the Auto Workshop, which forms a part of the Electrical Wing of the NDMC, they were entitled to the Shiv Shankar Committee pay-scale. [Para 11] [851-B-D] B C D

R.D. Gupta v. Lt. Governor, Delhi Admn. & Ors., [1987] 4 SCC 505, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 864 of 2007.

From the final Judgment and Order dated 15.2.2005 of the High Court of Delhi at New Delhi in L.P.A. No. 34/2004. E

Rakesh K. Khanna, Surya Kant, Rashmi Khanna and Jahanvi Warah for the Appellant.

Inderjeet Swaroop, Prem Kumar and Manjeet Chawla for the Respondents. F

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted. G

2. The New Delhi Municipal Committee was constituted under the Punjab Municipal Act, 1911. It was later on renamed and reconstituted as the New Delhi Municipal Council by virtue of the New Delhi Municipal Council Ordinance notified on 25th May, 1994, which was later on replaced by the New Delhi Municipal Council Act, 1994 with effect from 5th July 1994. The H

A work force of the New Delhi Municipal Council (hereinafter referred to as the 'NDMC') is divided between the Civil Engineering Department and the Electrical Wing. According to the NDMC, a Hot Mix Plant forms part of the Civil Engineering Wing of NDMC and in 1974 the post of Assistant Engineer (E & M) was created in the Hot Mix Plant. The role of the Assistant Engineer (E & M) was confined to looking after the electrical and mechanical circuits of vehicles owned by the NDMC whereas Electrical Engineers working in the electricity wing were looking after the supply and distribution of electricity in the NDMC area. According to the NDMC, not only were the two posts different in terms of nature of duty and qualification, but they also belong to different departments and enjoy different pay-scales.

C The respondents in this appeal had been recruited as Mechanic (Auto) in the Auto Workshop of NDMC which is a part and parcel of the electricity establishment and were enjoying pay-scales as per the recommendations of the Shiv Shankar Committee. Subsequently, they were appointed to the post of Assistant Engineer (E & M), which according to the NDMC formed part of the Civil Engineering Wing having their independent seniority list, recruitment rules and pay-scales fixed in accordance with the recommendations made by the Pay Commission. Consequent upon their promotion to the post of Assistant Engineer (E & M), the pay of the respondents was also refixed from the Shiv Shankar Committed pay-scale to the pay-scale recommended by the Pay Commission.

E 3. On 27th October, 1997, long after promotion to the post of Assistant Engineer (E & M), the respondents filed Writ Petition No. 4805/1997 in the Delhi High Court *inter alia* for issuance of an appropriate writ to direct the NDMC to fix the pay of the respondents in the Shiv Shankar Committee pay-scale for their promotional post of Assistant Engineer (E & M) with effect from the date of their respective promotions. By his judgment dated 21st August, 2003, the Single Judge of the Delhi High Court allowed the writ petition upon holding that since the auto workshop of the NDMC had been held by this Court to be part and parcel of the electricity establishment, the writ petitioners were entitled to receive the Shiv Shankar Committee pay-scale.

F An appeal, being L.P.A.No.34/2004, preferred by the appellant herein was dismissed by the Division Bench of the High Court by a very brief order upon holding that the contention of the appellant that on promotion the respondents were transferred to the Civil Wing could not be accepted as even after promotion they were working in the Auto Workshop itself, which forms part of the Electricity Wing.

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4. Mr. Rakesh Khanna, learned senior counsel appearing for the NDMC, repeated the stand taken on behalf of NDMC before the Delhi High Court. He admitted that the writ petitioners-respondents herein, had been appointed in the initial stage in the Auto Workshop of NDMC, which admittedly formed part of the Electrical Wing. The salaries of the writ petitioners were, therefore, fixed in the pay-scales as recommended by the Shiv Shankar Committee which had been accepted by the NDMC. Subsequently, however with the creation of the post of Assistant Engineer (E & M) in the Hot Mix Plant, the writ petitioners-respondents consciously accepted promotion to the post of Assistant Engineer (E & M) which was created in the year 1974 and formed part of the Civil Engineering Wing which had different sets of pay-scales fixed on the basis of the recommendations of the Pay Commission. After having enjoyed the said scale for about 10 years, the writ petitioners-respondents made a claim for fixation of their pay-scale according to the recommendations of the Shiv Shankar Committee pay-scale purportedly on the ground that since after promotion they were continued to be stationed in the Auto Workshop, which formed part of the Electrical Wing, they were entitled to the benefit of the Shiv Shankar Committee pay-scale.

5. Mr. Khanna urged that both the Single Judge, as also the Division Bench of the Delhi High Court, had completely disregarded the fact that the post of Assistant Engineer (E & M) had been created in the Hot Mix Plant which was part of the Civil Wing, and notwithstanding the posting of the writ petitioners-respondents in the Auto Workshop, they were part and parcel of the Civil Wing. Mr. Khanna submitted that the Delhi High Court had proceeded on the erroneous assumption that since the writ petitioners-respondents had been posted in the Auto Workshop even after their promotion to the post of Assistant Engineer (E & M), they must be held to be part of the Electrical Wing of the NDMC. Mr. Khanna urged that the said basic error in understanding the manner in which the writ petitioners-respondents had been promoted and thereafter posted in the Auto Workshop Department, has resulted in a judgment which is liable to be set aside.

6. In conclusion, Mr. Khanna referred to the judgment of this Court in the case of *R.D. Gupta v. Lt. Governor, Delhi Admn. & Ors.*, reported in [1987] 4 SCC 505, wherein it was held that the Civil Engineering Department was separate and self-contained and that the employees of the said department were not entitled to the benefit of the Shiv Shankar Committee pay-scale.

7. On behalf of the writ petitioners-respondents, it was urged that the

A writ-petitioners-respondents, who had all along been working in the Auto Workshop Department of the NDMC, had been retained in the Auto Workshop after promotion to the post of Assistant Engineer (E & M). It was denied that the said promotional post was part of the Hot Mix Plant or that the same formed part of the Civil Wing. On the other hand, it was the definite contention of the writ petitioners-respondents that having been recruited in the Auto Workshop, which admittedly was part of the Electrical Wing of the NDMC, they had been retained in the Auto Workshop even after their promotion to the post of Assistant Engineer (E & M) and they continued to belong to the Electrical Wing and were thus entitled to the Shiv Shankar Committee pay-scale.

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8: It was urged that the decision in *R.D. Gupta's* case (supra) referred to and relied upon by Mr. Rakesh Khanna had no application to the facts of the present case since the writ petitioners claimed to be a part of the Electrical Wing, whereas in *R.D. Gupta's* case it was the Assistant Engineers (Civil) who had raised grievance before this Court that they were at par with Electrical Engineers. Appearing for the respondents, Mrs. Inderjeet Swaroop submitted that the said decision had been rendered on a totally different set of facts and had been rightly held by the learned Single Judge not to be of any help to the NDMC.

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9. From the aforesaid submissions it will be evident that the only question for decision in this appeal is whether the writ petitioners-respondents on their promotion to the post of Assistant Engineer (E & M) were transferred to the Civil Wing from the Electrical Wing to which they had been originally recruited. The question as to whether the writ petitioners-respondents would be entitled to the Shiv Shankar Committee pay-scale, which is applicable to the Electrical Wing only, will depend on the answer of the said question.

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10. There is no difficulty with regard to the initial recruitment of the writ petitioners-respondents in the Electrical Wing since the Auto Workshop was admittedly a part of the of the Electrical Wing. The difficulty arose with the promotion of the writ petitioners to the post of Assistant Engineer (E &M), which according to the appellant were posts which were created in the Civil Department in the Hot Mix Plant. It has been contended on behalf of the NDMC that the Hot Mix Plant was a part of the Civil Department and the writ petitioners-respondents had consciously accepted promotion to the said posts which entailed a transfer of their services from the Electrical Wing to the Civil Wing of the NDMC, carrying with it all its consequences.

On behalf of the appellant-NDMC an attempt has been made to show that the work performed by the writ petitioners-respondents were confined to looking after the electrical and mechanical circuits of vehicles owned by the NDMC and their nature of work could by no stretch of imagination be compared to the work performed by the electrical engineers who were looking after the supply and distribution of electricity in the NDMC area.

11. Unfortunately, except for a bald statement that the post of Assistant Engineer (E & M) had been created in the Hot Mix Plant, which was a part of the Civil Wing of NDMC, there is no other corroborating evidence to support the said statement. Nothing has been shown on behalf of NDMC to establish the stand taken on its behalf that the posts in question had, been created in the Hot Mix Plant or that the same formed part of the Civil Wing. In the said circumstances, the Single Judge of the Delhi High Court was justified in arriving at the conclusion that since the writ-petitioners, even after their promotion to the post of Assistant Engineer (E & M), had been posted in the Auto Workshop, which forms a part of the Electrical Wing of the NDMC, they were entitled to the Shiv Shankar Committee pay-scale. The Division Bench while considering the appeal also accepted the said position and on the same reasoning categorically rejected the contention raised on behalf of NDMC that the writ petitioners on promotion had been transferred to the Civil Wing. The Division Bench observed that such a contention could not be accepted as even after the promotion, the writ petitioners continued to work in the Auto Workshop which formed part of the Electrical Wing.

12. As indicated hereinabove, nothing has been shown on behalf of NDMC which could have persuaded us to take a view which was different from that of the Single Judge and the Division Bench of the Delhi High Court.

13. In such circumstances, we see no reason to interfere with the decision of the High Court and the appeal is accordingly dismissed but without any order as to costs.

R.P.

Appeal dismissed.