
(2004) 09 DEL CK 0090
In the Delhi High Court
Case No : WP (C) 428 of 1988

Brij Raj Saran Sharma and Others

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Delhi Municipal Corporation Act, 1957 — Section 98

Citation : (2004) 09 DEL CK 0090

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : V. Shekhar, for the Appellant; Amita Gupta, for the Respondent

Judgement

S. Ravindra Bhat, J.—These are petitions under Article 226 of the Constitution of India. They involve common issues for determination of this Court, as to the entitlement of petitioners to be promoted to the post of Surveillance Workers/ Basic Health Worker (hereafter called SW/BHC) in the respondent corporation ("MCD"). The petitioners have also impugned a circular dated 16.03.1988 by which certain eligibility conditions were framed in respect to promotion to those posts.

2. In CWP 839/89 and CWP 1058/89, certain additional pleas have been raised with regard to the entitlement of the petitioners to the post of SW/BHC on the ground that they were selected sometime in 1979/81, but nevertheless given the pay of Beldars, a lower post, and that they worked in higher posts for substantial periods. They consequently plead about their entitlement to be treated as having occupied those posts, and seek a direction to that effect.

Facts:-

3. All the writ petitions disclose certain common factual features. In exercise of powers u/s 98(i)(c) of the Delhi Municipal Corporation Act (hereafter called the "Act"), the MCD framed recruitment regulations in the year 1973 (hereafter

""old Rules""). This appears to have been given effect to in 1974. The rules pertain to recruitment to various posts which included the post of SW/BHC, (which are Class-III posts). The posts of SW/BHC were to be filled from the feeder category of Anti Malaria/Anti Larval Beldars and other posts of equal or similar status (such as Anti Malaria/Anti Larval Jamadars/DDT Jamadars and DDT Beldars). The old rules prescribed, among others that the post of SW/BHC was to be filled 50% by direct recruitment and the balance 50% by promotion from the said feeder category (hereafter called ""Beldars """, for the sake of brevity).

4. According to the then prevalent thinking of the MCD, Beldars were essentially regarded as a seasonal category of employees. A large number of Beldars were recruited on daily wage basis during the monsoon period as a part of the anti-malaria campaign.

Apparently, in due course of time, the need to continue them was felt. As a result, the corporation had a large number of Beldars on daily wage basis. They were continued for long periods of time. The unsettled position with regard to their employment led to disquiet on part of such daily wagers. They, accordingly, moved this Court under Article 226 of the Constitution for regularization of their employment and extension of regular pay scales.

5. A learned Single Judge (Hon""ble P.K. Bahri, J.) passed an interim order on 17.12.1987 in CWP 2698/86 and connected cases. The directions, inter alia, so far as they are material for the purposes of the present proceedings are reproduced as follows :-

""1. The respondent shall prepare a joint seniority list of all these categories of workers/Beldars . Their seniority would be determined on the basis of the dates of their initial appointment. Their length of service would be counted in the manner that if the worker even has been employed for four months or five months in a year, and has worked every year for the said period without break. If the initial date of appointment of some workers is the same, then their inter-se seniority would be according to the age.

2. The jobs being performed by some workers, say for period of ten or eleven months in a year, would be converted into the jobs for the regular jobs for the whole year keeping in view the nature of the work involved.....""

6. The order also directed the MCD to extend pay and allowances to the Beldars as if they were holding regular Class IV posts. The directions were made absolute on 14.03.1988 by the final order of this Court which disposed of the batch of writ petitions seeking regularization.

7. In 1978-79, the MCD sought to fill existing vacancies by resorting to direct recruitment. This move was resisted by existing Beldars recruited prior to that date, as per the rules. They, through a registered Union, filed a Civil Suit No. 379/1978 before the Sub-Judge, First Class, Delhi. This Suit remained pending for a long time. During that time, new recruitment regulations were framed w.e.f.

12.08.1985 which materially altered the situation. In those regulations ("the 1985 regulations") a 95% quota was prescribed for direct recruitment to the post of SW/BHC and only 5% was earmarked for promotion. The learned Sub-Judge, after considering the evidence led and material placed by the parties, decreed that MCD was bound to consider the claim of all eligible candidates, namely "Beldars", from the year 1978 till 12.08.1985, for the purposes of filling up of the vacancies arising during that period, in the cadre of SW/BHC. It was also noticed that during this period 400 such vacancies were in existence out of which departmental candidates were entitled to the promotional, 50% quota as per the old rules. The judgment also incidentally noticed the stand of the MCD that the first such 250 vacancies in the post of SW/BHC cadre had been filled up by direct recruitment. The directions contained in the decree, Therefore, were for strict compliance with the rules as existed between 1978/1985. The decree became final and binding. It was not challenged by MCD.

8. The recruitment rules which came into force on 12.08.1985 prescribed the following:-

- a) 95% : 5% quota for direct recruitment and promotion respectively for the purpose of filling up the post of SW/BHC;
- b) Eligibility for direct recruitment to the post of SW/BHC was that the candidate had to be a matriculate from a recognised University/Board and also had to possess a Sanitary Inspectors" Diploma from a recognised Institution.

9. Consequent upon the directions of this Court (in the petitions filed by the Beldars seeking regularization) the MCD formulated its policy and issued a circular and an office order. The circular dated 16.03.1988 (hereafter "impugned circular") related to the filling up of the posts of SW/BHC. This circular has been assailed in all the three petitions and it would be necessary to extract the same. The material portion of this circular is Therefore reproduced as follows :-

"CIRCULAR

Applications are invited for the post of Surveillance Worker/Basic Health Worker in the scale of Rs.975-1540 plus allowances admissible under the rules from the Anti Malaria/DDT Beldars and Jamadars working on regular basis in the Anti Malaria Operations.

The candidates who fulfill the following qualifications and had been in the Municipal Service up to 12.08.1985 may send their applications through the concerned Drawing and Disbursing Officers by getting their Bio-Data verified from them.

- i) 6 months experience in the case of matriculation and
- ii) 10 years experience in the case of Middle pass.

The last date for the receipt of these applications will be 04.04.1988.

Dy. Health Officer (Malaria)""

10. On 18.03.1988, the MCD issued an office order seeking to implement the directions of this Court made on 17.12.1987 and 14.03.1988, for regularizing daily wage Beldars. After reciting the directions of this Court, the office order stated that the criteria for seniority was continuous service from the date of initial appointment. The office order further directed that :

""The persons whose names figure in Serial No. 1 to 1100 in the seniority list shall henceforth be retained in duty on regular scale of pay till further orders and the service of other employees who have obtained Court stay orders but do not fall in Serial No. 1 to 1100 of the seniority list be discontinued from 18.03.1988(AN).""

11. After the issue of the above office order dated 18.03.1988, the MCD prepared the seniority list of Beldars and regularized services of these petitioners. It would also be relevant to note at this stage that the process of regularization meant creation of posts which appears to have been done by virtue of a resolution of the corporation dated 04.05.1988. This document, filed by the MCD, finds place at pages 113-115 of the paper book in CWP No. 1058/89.

12. The petitioners, as stated earlier, were duly regularized pursuant to the orders of the Court and the office order dated 18.03.1988. They allege that contrary to the rules and the policies of the MCD, their applications for promotion to the post of SW/BHC were not entertained. All of them aver that they possess the prescribed qualification for direct recruitment to that post, namely, matriculation and Sanitary Inspectors' Diploma from a recognised Institution. All the petitioners seek appropriated directions to the MCD to consider their cases for promotion to the post of SW/BHC. They impugn the circular of 16.3.1988 as ultra virus the Rules. The cut off date prescribed, viz. 12.8.1985 has been impugned, as arbitrary.

13. Mr. V. Shekhar, learned counsel for the petitioners submitted that the circular dated 16.03.1988 was illegal because it permitted appointment of ineligible persons. His submission was that once the recruitment rules prescribed the conditions of eligibility for filling up the post of SW/BHC, namely, matriculation from a recognised Board/University and the requirement of possessing a Sanitary Inspectors Diploma, the MCD could not have, through the impugned circular dated 16.03.1988 lowered such a standard and considered the cases of Beldars, (albeit in its employment), who did not possess such qualifications. Learned counsel also submitted that administrative or executive instructions/orders can only supplement, never supplant, the law. In other words, instructions or executive orders can fill in gaps but never be contrary to express provisions of rules or regulations having the force of law. The impugned circular dated 16.03.1988, according to him permitted consideration of such otherwise ineligible persons. He, Therefore, submitted that circular was liable to be quashed as arbitrary and ultra virus the rules.

14. Learned counsel for the petitioner also submitted that the prescription of a cut off date, namely, 12.08.1985 as the point in time when the Beldars had to be in service (for consideration in the promotion quota) was arbitrary. According to him the prescription of such a cut off date had no nexus with the object sought to be achieved, namely, filling up of posts of SW/BHC. For this purpose, counsel for the petitioner has relied upon the decision of the Supreme Court in D.S. Nakara Vs. Union of India.

15. It was further submitted by Mr. Shekhar that the MCD has resorted to an arbitrary policy of pick and choose while promoting Beldars. In this regard, the petitions are lacking in material particulars. Nevertheless certain instances were brought to the notice of the Court through inter-locutory applications, notably, CM No. 2109/91. Persons indicated in that application were promoted on 11.01.1990 by an order of MCD which among others cited that promotion was pursuant to the directions of the decree assed by the learned Sub-Judge. This application was disposed off by order dated 09.12.1991 when the petitioner was directed to be given hearing in connection with his claim for promotion. Thereafter the petitioner appears to have made a representation which, it is alleged, was not considered in its proper perspective. He, consequently filed CM No. 1160/92 seeking a direction to dispose of the representation with a speaking order. That application was directed to be placed for consideration along with the main writ petition by an order dated 16.05.1994. That order also made all subsequent promotions subject to the decision in these proceedings. Arguments have Therefore been addressed with regard to the pick and choose policy adopted by the MCD while promoting Beldars to the post of SW/BHC. No particulars with reference to seniority lists have however been furnished. Such persons said to be promoted wrongly have also not been imp leaded as parties. In CWP No. 428/88, an application being CM 1391 89 was filed by the registered Union, namely, Pragati Sheel Anti Malaria Chaturth Shreni Karmachari Union. The Union sought and was granted leave to implead itself as a party in the proceedings by order of this Court.

16. The claim in the petitions was resisted on behalf of the MCD by Mr. Piyush Sharma and Ms.Amita Gupta. Learned counsel for the respondents submitted that the claim made by the petitioners about over looking of their cases for promotion is not correct.

According to the MCD, the petitioners' submissions have to be viewed in the perspective of the directions contained in the decree of the Sub-Judge. That decree emphatically directed that the old Rules were to be applied in respect of posts that fell vacant till 12.08.1985. Those rules, it is submitted, prescribed a 50% : 50% quota for direct recruitment and promotion respectively. Counsel for the MCD submits that the circular dated 16.03.1988 relates to filling up of posts as per the old rules and, Therefore, the eligibility conditions spelt out in those rules were applicable. Accordingly, it is submitted that the old rules had no doubt indicated that the eligibility for appointment by direct recruitment to the post of

SW/BHC was matriculation and diploma of Sanitary Inspector. However, it was submitted that the rules had been amended by Resolution No. 809 and they merely provided an eligibility of six months experience in the case of matriculates and 10 years in the case of Middle pass, in respect of the channel of promotion from the various categories of Beldars. Thus, it was submitted, that the eligibility criteria spelt out in the circular dated 16.03.1988 could not be faulted with.

17. As far as the contention with regard to the cut off date was concerned, counsel for the respondents submitted that the same was not arbitrary. It was urged by them that the date, namely, 12.08.1985 had a rational basis i.e. the coming into force of the new rules. They further submitted that this date was kept as the cut off point up to which the old rules were to be applied in respect of the vacancies which arose till then. This date was also required to be the determinative factor as per the decree of the Sub-Judge which had to become final. Learned counsel submitted that in the absence of any challenge to that decree, or its modification in appropriate proceedings, the MCD was bound to honour the date indicated by the learned Civil Judge.

18. The contention of the petitioners about adoption of an arbitrary pick and choose policy by the MCD was refuted. It was contended that no material particulars were forthcoming in the pleadings. The MCD relied upon its stand taken in the counter affidavit to CM No. 1160/92 to the effect that after directions of this Court dated 17.12.1987 and 14.03.1988, the office order dated 18.03.1988 was issued for preparation of a seniority list and consequent regularization of all Beldars. It was submitted that thereafter a provisional seniority list had been prepared on 22.11.1991. This provisional list was finalized by order dated 17.02.1992 after considering the representations and objections of all parties. It was also urged that 200 posts falling in the quota of promotion from the category of Beldars for the period 1978-85 was being filled strictly as per that final seniority list. The MCD refuted the charge of pick and choose policy by specifically stating that the four instances quoted in CM 1160/92 were of persons senior to the petitioners. The relative positions of those persons vis-a-vis the petitioners was also disclosed. It was, Therefore, contended that there was no force in the allegation of the MCD resorting to a pick and choose policy.

19. This Court had after considering the support for the parties, directed the MCD by order dated 27.08.2004 to produce the seniority list indicated in its counter affidavit to CM 1160/92. In compliance, counsel for the respondent had produced the same Copies of the list had been furnished to the petitioners" counsel.

20. The facts noticed above disclose the following :-

- a) The post of Beldar is a feeder category to the post of SW/BHC;
- b) Under the old rules framed by the MCD, the post of SW/BHC was to be filled up both direct recruitment and promotion. For the purpose, a quota of 50% : 50% had been provided;

- c) Filling up of direct recruitment quota by the MCD in 1978 led to dissatisfaction among existing Beldars who filed a Civil Suit;
- d) The MCD had, in the meanwhile, adopted a policy of recruiting daily wage Beldars in various categories and keeping them for long stretches of time without regularization. This led to a demand for their regularization.
- e) During pendency of the civil proceedings for enforcement of the 1973/74 rules by the Beldars, new recruitment rules were formulated w.e.f. 1985. This was noticed by the learned Civil Judge, who in his decree dated 21.07.1987 directed that all vacancies between the period 1978-95 were to be filled strictly as per the old (1973) rules;
- f) In 1986/87, the daily wage Beldars including the petitioners (refer para 1, CM 1160/92 in CWP No. 839/89) preferred writ petitions for their regularization. Orders were passed in these proceedings on 17.12.1987 and 14.03.1988 to prepare a common seniority list and thereafter regularize such daily wage Beldars, who were about 1100 in number. The petitioners fell in this category since they were working as Beldars at that point of time;
- g) Acting in furtherance of the directions of this Court and the decree of the learned Civil Judge, MCD issued two circulars. The first, dated 16.03.1988 indicated its policy to promote Beldars who were matriculates with six months experience or who were Middle class pass with 10 years experience and were on its rolls as such up to 12.08.1985. The second circular dated 18.03.1988 directed the preparation of the seniority list for the 1100 daily wage Beldars;
- h) After the above circulars the petitioners in these proceedings stood regularized, by various orders, as Beldars. They were offered, (and they accepted) appointment to that post consequent to the order of regularization and preparation of seniority list.

Legality of the circular dated 16.3.1988

21. The submission of the petitioners that the circular dated 16.08.1988 is illegal and arbitrary has to be seen in the light of the above sequence of events. There is no doubt about the proposition that administrative circulars such as the one dated 16.03.1988 can supplement but never supplant the rules. The question arising for determination is whether in fact that circular does supplant or violate the rules. A reading of the circular which has been extracted in para 9 (supra) discloses that it is further to the decree and directions of the Civil Judge. The Civil Judge had required/decreed promotions to the cadre of SW/BHC, in relation to the vacancies that arose up to 12.08.1985, to be in conformity with the old regulations. The regulations spell out inter alia a 50% quota in favor of the feeder category, namely, Beldars. The eligibility, (after the amendment to those rules by Resolution No. 809) provided for promotions was as follows :-

""(ii) 50% by promotion from the categories of Anti Malaria/DDT Beldars and Jamadars with six months experience in the case of matriculates and 10 years

experience in the case of Middle pass"".

The change brought about under the 1985 rules was that so far as promotions were concerned, the quota stood reduced to 5% and as far as direct recruitment was concerned, the quota was increased from 50% to 95%. The relative eligibility conditions vis-a-vis direct recruits and promotees were spelt out in column 7 and 11 respectively. The 1985 rules laid down the following criteria for direct recruitment :-

""(i) Metric pass from a recognized University/Board/School or equivalent;

(ii) Sanitary Inspectors Diploma from a recognized Institution or equivalent"".

With regard to qualifications for promotion in 1985 rules prescribed the following eligibility criteria :-

""Promotions :- Malaria Jamadar with 3 years regular service in the grade who have passed Middle class from a recognised University/Board/School or equivalent"".

The text of the relevant portions of the 1973 rules and the 1985 rules should be dis-positive of the issue. The directions on the subject was to fill the vacancies which arose prior to 12.08.1985 in accordance with the pre-existing rules. Those rules merely prescribed for a six months experience in the feeder category of Beldars possessing the matriculation and 10 years experience in the case of those who were Middle school pass.

22. It has been held by decisions of the Supreme Court reported in Y.V. Rangaiah vs. J. Srinivasa Rao ²; G. Ganeshwar Rao Vs. State of Andhra Pradesh³ and State of Rajasthan Vs. R.Dayal⁴ that vacancies which occur prior to amendment of rules/introduction of new rules would be governed by the conditions spelt out in the old rules. The decree and directions of the Civil Judge were, Therefore, in conformity with the law declared by the Supreme Court. The MCD was bound to implement those directions which it accordingly did by notifying the eligibility criteria which existed before 12.08.1985. The eligibility criteria for promotion did not include the requirement of a Sanitary Inspectors' Certificate. The impugned circular of 16.03.1988 merely mirrored the conditions reflected in the 1973 regulations. Hence there is no force in the submission that the circular dated 16.03.1988 permitted consideration and promotion of ineligible candidates.

The Second Issue - Cut Off Date

23. The impugned circular dated 16.03.1988 has been assailed on the ground that it prescribes an irrational date, namely, 12.08.1985 as the cut off date for the purposes of consideration of Beldars for promotion. Counsel for the petitioner has submitted that all Beldars whether recruited before or after 12.08.1985 and whether regularized before or after that date form one homogeneous class and, Therefore, a proper application of the law in Nakara's decision would inevitably result in invalidation of that condition.

24. The facts of the present case disclose that Beldars were always a feeder channel for promotion to the cadre of SW/BHC. Their existence was recognized and sanctioned in the rules. However, a large number of persons were inducted on daily wage basis to this category. These daily wage Beldars approached this Court under Article 226. Some of the petitioners here were also parties to those proceedings. At that stage, they were admittedly not regular employees. However, they were other regular employees who had been agitating through a civil suit for enforcement of the 1973 rules as far as filling up of the promotional quota was concerned. The rights of the daily wage Beldars crystallized only after the directions of this Court (to prepare the common seniority list and regularize them) were issued. Accordingly, their rights as Beldars accrued after 1988 when they were offered individual letters of appointment as per the seniority list prepared under the directions of this Court. Hence the submission of the petitioners that all Beldars formed one composite or homogeneous class is unmerited. The petitioners and other Beldars unreservedly accepted appointments after the directions of this Court, their appointments in effect took place as regular Beldars after 1988. However, it appears that their inter-se seniority and length of service for various purposes has been reckoned on the basis of the list prepared and finalized on 17.02.1992. Therefore, the argument about Beldars recruited under the rules before 12.08.1985 and the petitioners regularized subsequently forming part of the same class has to be rejected.

25. As far as the second limb of the submission that the cut off date of 12.08.1985 having no nexus with the objectives sought to be achieved is concerned, it is to be noticed that the date has a two fold significance. First, the 1985 regulations were brought into force on that date; secondly the decree of the Civil Judge required that till 12.08.1985, promotions had to be effected as per the pre-existing rules. Such a stipulation of cut of date/point in time cannot be characterized as irrational or unreasonable. As noticed earlier, those who were recruited as Beldars under the rules and those like the petitioners regularized after 12.08.1985 have to be treated differently. The petitioners and regularized Beldars cannot claim any, much less vested right to be promoted before the directions of this Court and the consequent office order dated 18.03.1988. Hence the distinction made between those who were recruited/regularized at dates before 12.08.1985 on the one hand and those after that date is not irrational or unreasonable.

26. In a recent decision of the Supreme Court - Ramrao Vs. All India Backward Class Bank Employees Welfare Association⁵, the Court reviewed several decisions on the issue of prescription of a cut off date and held that:

""32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the bank to promote its employees seeks to achieve.

Such classification would neither fall within the category of creating a class within

a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut off date is fixed, a question may arise as to why a person would suffer only because he comes within a wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra virus Article 14 of the Constitution.""

27. In the light of the above and having regard to the fact that the petitioners rights crystallized after their regular appointments, pursuant to the directions of this Court in 1987-88, the challenge of the cut off date contained in the circular dated 16.03.1988 fails.

The ""pick and choose"" policy adopted while filling the promotional quota -

28. The petitioners" contention is that the MCD adopted a pick and choose policy while effecting promotions under the old regulations. According to them their just claims have been ignored and those of others and perhaps less merited persons have been considered; and they have been promoted.

29. The petitioners have not averred any particulars as to who have been promoted; the pleadings singularly lack in particulars about names, relative seniority positions, dates of appointments as Beldars, mode of recruitment/ whether such persons were regularized etc. In some of the petitions, promotion orders were annexed in interlocutory applications that were rejected during course of the proceedings. The matter was not carried further and no amendment to the pleadings on this aspect was sought or granted. Likewise none of the parties concerned who are alleged to have stolen a march over the petitioners have been impleaded in these proceedings.

30. The respondents have during the course of the proceedings produced the seniority list finalized in the year 1992. Their specific stand in this regard is that promotion to the post of SW/BHC under the 1973-74 regulations in respect of vacancies arising till 12.08.1985 have been according to the seniority list. In their reply to CM 1160/92, there is a specific averment that the promotions effected were till Serial No. 174 and that the petitioner in that proceedings was at Serial No. 281.

31. In the face of these factors, it is difficult if not impossible for the Court under Article 226 to delve into allegations of arbitrariness. It is a settled rule of law, specially in relation to disputes pertaining to wrongful promotion/seniority, that the petitioner has to implead all necessary parties. Besides the petitioner in such cases also has to disclose and impugn the wrongful conduct, to wit, the promotion orders. None of these courses have been resorted to in these proceedings. The final seniority list dated 17.02.1992 which has been referred to by the respondents in their pleadings and also produced during the course of the proceedings indicate that objective material in the form of a seniority list does

exist. The petitioners were supplied with the copy of that list. Presumably they were and are aware of this.

32. In the light of the above features, the challenge or the complaint of discrimination or arbitrariness/a pick and choose policy said to be adopted by the MCD while promoting Beldars has to fail. The petitioners were under a duty to plead all relevant particulars, place all concerned documents on record and impugn specific orders that affected them. They were also required to implead the promotees who are allegedly junior to them in the seniority list (if not all, at least some in a representative capacity) through appropriate proceedings. In the absence of all these, mere arguments in this regard cannot suffice. Accordingly, the plea of discrimination and wrongful action by the MCD in promoting juniors is rejected.

33. In the light of the above, it is held that

- a) The circular dated 16.03.1988 is valid. It is not contrary to the rules. It does not also offend Article 14 of the Constitution;
- b) The choice of date, namely, 12.08.1985 for the purpose of promoting Beldars under the 1973 regulations is not arbitrary or irrational;
- c) The plea of arbitrariness and ignoring the seniority of petitioners while making promotions to the post of SW/BHC is unmerited and is Therefore rejected.

34. In addition to the above in WP(C) No. 839/89 and 1058/89, the petitioners, namely, S/Shri A.K. Sharma and S.K. Bhardwaj have contended that they were selected and offered appointments in the post of SW/BHC as far back in 1979. In the case of A.K. Sharma, it has been further contended that MCD also issued an offer of appointment on 25.03.1981. Both the petitioners contend that they were made to work as Surveillance Workers. As far as pay scales are concerned, they were treated as daily wage Beldars. The arguments in these two cases is that in view of this position and having regard to the fact that direct recruitment to the post of SW/BHC was in a state of flux till the decree was passed by the Sub-Judge, the MCD was duty bound to treat them as having been appointed against the direct quota in the cadre of SW/BHC.

35. The counsel for the MCD submitted that although the letters dated 31.09.1979 and 25.03.1981 were issued by MCD, they do not spell out any indefeasible rights in favor of the petitioners and that in any case they were not acted upon since the petitioners were all along working as daily wage Beldars. The MCD has also relied upon the decision of a constitution bench of the Supreme Court in *Shankarsan Dash Vs. Union of India*⁶, that whenever candidates are selected pursuant to a recruitment process, they do not acquire any right to the post and that state agency is not under any obligation to fill up all or any of the vacancies. Pursuant to this, it was submitted that the letters relied upon by the petitioners were at best offers which were not acted upon by the MCD and, Therefore, those documents did not create any vested right.

36. The two documents and some certificates relied upon by the petitioners do indicate that in 1979-81, offers of appointment were made to the petitioners for the post of SW/BHC. However, there is nothing else to indicate that the petitioners ever held those posts. On the contrary, all the facts emerging from the record and the submissions of parties point at the petitioners having worked as daily wage Beldars. The petitioners or at least Mr. A.K. Sharma was even a party to the previous writ proceedings where regularization as Beldar was sought. These factors disclose that the MCD did not act upon the letters of appointment. At best such letters remained offers. Having worked as Beldars and even approached the Court in that capacity and later, having accepted the post of Beldar consequent to regularization, it is not open to the petitioners to contend (as has been done during the course of arguments as well as in the petition) that they were always working in the promotional post and are entitled to on appropriate declaration in that regard.

37. As far as the plea of counsel that the petitioners have to be considered against the quota available for direct recruitments under the 1978 regulations is concerned, the same has to be viewed in the light of the previous submissions. Admittedly while challenging the circular dated 16.03.1988, the petitioners have proceeded on the footing that they were Beldars. Such a contention is inconsistent with the plea that they can claim to be direct recruits SW/BHC. Hence that contention has to be rejected.

38. There is one more reason why this submission of the petitioners cannot be countenanced. The judgment and decree of Sub-Judge records that out of 400 vacancies in the post of SW/BHC, 200 were earmarked for direct recruitment had already been filled in 1978. In fact that action by MCD triggered unrest and the filing of the civil suit. Hence the petitioners' plea for consideration against the direct recruitment quota since all of them are qualified Sanitary Inspectors and were at some point of time offered appointment - albeit temporarily - as SW/BHC, requires to be rejected.

39. I would also add that for the entire duration between 1979-81 till 1989, the petitioners never appeared to have approached any forum or Court for an appropriate direction or declaration that they are SW/BHC or that they are entitled to be appointed as such pursuant to their offers of appointment. This inaction, to my mind, is fatal to their claim. The doctrine of laches would, Therefore, in any case come in the way of these petitioners.

40. In view of the foregoing discussion, these writ petitions fail and are accordingly dismissed without any orders as to costs. Rule is accordingly discharged. In these circumstances all the pending interlocutory applications have been rendered infructuous and are disposed of in the light of this common judgment.