

(2005) 10 DEL CK 0005

In the Delhi High Court

Case No : Writ Petition (C) No's. 232 and 5328 of 2000, 1112 of 2001, 5168 and 6075 of 2002 and 8572-96 and 20054 of 2005

Soban Singh and Others

APPELLANT

Vs

N.D.M.C. and Others
 Satya Prakash Gupta Vs Delhi
State Government. and Others
 Pradeep Kumar
Sharma Vs Lt. Governor and Another
 Sobh Nath and
Another Vs N.D.M.C.

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 37, 38, 39
New Delhi Municipal Council Act, 1994 — Section 33, 36, 42

Citation : (2005) 10 DEL CK 0005

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : G.D.Gupta, K.C. Dubey, O.P.Aggarwal, for W.P. C No. 232/2000, Chandrasekhar, for W.P. C No. 5280/2000, Naresh Kaushik, for W.P. C No. 5328/2000, B.B. Bhatia, for W.P. C No. 6331/2002 and M.N. Singh, for W.P. C Nos. 1104 and 1112/2001 and 20056/200, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—In these Writ Petitions a challenge has been laid to the Respondents' policy of offering and/or effecting regularization to Group "C" RMR employees restricted only to Group "D". Some employees had declined to accept this offer whereas others have laid siege to the impugned practice even though they had acceded to the offer of their regularization in the lower grade. The nub of the malaise is the administrative reluctance or aversion or plain lethargy in taking vigilant and timely steps to increase the number of sanctioned posts. This exercise does not require exceptional industry or ingenuity on the part of the decision taker. Instead of traversing this avenue, which will in large measure achieve the constitutional aspirations of the establishment of our country as a truly socialist state, government employees are made to languish and stagnate in

the same position for several years. Service jurisprudence has developed numerous legal nomenclature owing entirely to the failure of the Administration to take action as required by the circumstances. In the present case, apart from "Daily Wagers" one comes across epithets such "TMR" (Temporary Muster Roll), and "RMR" (Regular Muster Roll) employees, the former being Daily Wagers who have been given employment for a period in excess of 240 days in a year even in the absence of regular vacancies. TMR employees are metamorphosed into RMR employees on the sole criteria of their having put in six years service as TMR employees. There are two possible implications "(i) that there was an existing need for augmenting the workforce because of an increase in the gamut of work, which the administrators failed to address forthrightly by obtaining and ordaining an increase in the sanctioned strength; or (ii) that employment given by an officer was in flagrant violation of the Rules then in vogue.

2. Much too frequently, one has to grapple with terminology such as ad hoc, temporary, work-charged, officiating, and tenure/ appointments, and marvel at the fine and sometimes indistinguishable distinctions that administrators have sought to impart on them. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the conundrum to be unraveled was the concept of probationers and the boundaries of their dismissal, or removal or reduction in rank. Since then unheard of terminology has come to be used. It is tie that service jurisprudence should be simplified so that even a lay employee can easily predict and charter his future. No employee should get lost in the maze of terminology which even the majority of lawyers would be prudent to steer clear of.

3. The NDMC has taken up the issue of RMR workers in Group C and D on several earlier occasions. As per Resolution No.3 (IV) dated 14.2.1997 NDMC had decided that RMR employees with six years service as on 31.12.1996 in Group "D" Posts and RMR employees working in Group "C" posts would also be regularised only in Group "D" posts. In contrast to this decision Council resolved vide Resolution No.8 dated 18.3.1999 to regularise Group "C" RMR workers against Group "C" posts subject to the grant of one-time relaxation from the provisions of Section 42 of the NDMC, Act 1994. Twenty six employees benefited from this decision. However, some RMR employees who had worked against Group "C" posts but had been regularised in Group "D" posts had challenged this decision and, Therefore, the Council decided to revert to the decision dated 14.2.1997. Interim Orders have been passed staying the operation of NDMC Resolutions Nos. 3(21) dated 8.8.2002 and Office Order dated 9.8.2002. Earlier, as per NCT of Delhi letter dated 4.4.1997 the NDMC had been informed of the setting up of the Delhi Subordinate Services Selection Board (DSSSB) by the Government of NCT of Delhi, and that this Authority would recruit candidates fro Group "B" and "C" Posts.

4. The following eloquent extracts from the Judgment of a Bench comprising A.P. Misra and D.P. Mahapatra, JJ., *Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others*, , apposite to the controversy that has been created in by the

Respondents in these Petitions.

19. What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column No. 1 the Serial number, in column No. 2 the name of the post, in column No. 3 the pay scale, in column No. 4 the age limit and in column No. 5 qualification. Serial Number 10 deals with peon and Class IV servants, Serial Number 13 deals with operator-cum-mechanic, Serial Number 14 deals with chowkidar, Serial Number 25 deals with plumber and Serial Number 33 deals with carpenter. This shows that recruitment rules did have these posts in its ambit about which we are concerned, yet no posts were created. This proposed creation of post is churned out only after this long battle by the workmen as against the appellant. It was not expected from the institutions like the present appellant, especially when it is fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the State who is funding it, then why to do it only after court's intervention. It is true, creation of post does involve financial implication. Hence financial health of a particular institution plays important role to which courts also keep in mind. The court does exercise its restraint where facts are such where extent of creation of post creates financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily wage workers for long number of years without absorbing them or creating posts, which constitutes an unfair labour practice. If finances are short engagement of such daily wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent posts. If finances are not available, take such work which is within the financial means. Why take advantage out of it at the cost of workers.

20. One of the questions which is also up for our consideration is, apart from the fact who are to be regularised, what would be payable to these daily wage workers who have completed more than 10 years of continuous service. Submission for the respondents is, that such daily wage workers should be paid the same minimum scale of pay as admissible to the regularised incumbent based on the principle of "equal pay for equal work". Daily rated casual labour employed under P and T Department through *Bhartiya Dak Tar Mazdoor Manch v. Union of India* and *Ors.* (supra), was a case of daily rated casual labourers of the P and T Department doing work similar to that of the regular workers of the department. This Court held :

"... Even though the Directive Principle contained in Article 38 and 39(d) may not be enforceable as such by virtue of Article 37 but it may be relied upon by the

petitioners to show that in the instant case they have been subjected to hostile discrimination. The State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. Such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourers has agreed to work on such low wages....

2 State of Haryana and others Vs. Piara Singh and others etc. etc., This was a case of ad hoc/temporary government employees. This Court held, those eligible and qualified and continuing in service satisfactorily for a long period have right to be considered for regularisation. Long continuing in service gives rise to a presumption about the need for a regular post. In such cases government should consider feasibility of regularisation having regard to the particular circumstances with a positive approach and empathy for the concerned person.

28. We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1(a) need modification to this effect.

31. The decision to absorb some of the employees at one point of time or in a phased manner depends on facts and circumstances of each case. Where very large number of workers are required to be absorbed, this Court accepted the formula in the past to absorb such employees under a scheme in a phased manner. This is done to work it out within its financial means. Every liberty and entitlement is always subject to such financial limits. But in considering such absorption, the financial means have to be stretched to the maximum but should not be a defense with motive to disentitle the claim of the workmen. The grant of this phased absorption, thus, is in itself a tool to misuse for taking away any legitimate right of any worker. The court has to be cautious in exercising its discretion. On the one hand it has to keep the interest of the workers alive and on the other it has to see that the employer does not become spineless for the lack of funds eroding the very workers' interests.

5. Similar views had already been expressed with equal vehemence by E.S. Venkataramahiah and S. Ranganathan, JJ. in Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, in these words --

6. The allegation made in the petitions to the effect that the petitioners are being paid wages far less than the minimum pay payable under the pay scales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being

regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the Department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that "the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocation " Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starving wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable. The further classification of casual labourers into three categories namely (i) those who have not completed 720 days of service; (ii) those who have completed 720 days of service and not completed 1200 days of service; and (iii) those who have completed more than 1200 days of service for purpose of payment of different rates of wages is equally untenable. There is clearly no justification for doing so. Such a classification is violative of Articles 14 and 16 of the Constitution. It is also opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. We feel that there is substance in the contention of the petitioners.

6. These pronouncements are also to be found in *Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc.* etc., which was a Three Judges Bench presided over by the Chief Justice of India and the judgment had been authored by B.L. Hansaria, J. on behalf of Chief Justice Ahmadi and S.C. Sen, JJ. The Court spoke thus--

25. To bring home his submission regarding the unjust nature of the relief relating

to regularisation, Shri Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularisation was dealt in the aforesaid case was entirely different from that of the scheme in which the respondents " workmen were employed. Jawahar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, Therefore, without any income whatsoever. It is because of this that the Bench observed that the object of the scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.

26. Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants. According to us, the case is more akin to that of State of Haryana and others Vs. Piara Singh and others etc. etc., in which this Court favored the State Scheme for regularisation of casual labourers who continued for a fairly long spell " say two or three years. (paragraph 51). As in the cases at hand the concerned workmen had, by the time they approached the Industrial Courts worked for more less 5 years continuously, no case for interference with this part of the relief has been made out.

28. In so far as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighborhood of Rs.300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these applies should apply, proprio vigor, to all casual labourers of the Forests Department or any other Department of the Government. Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, was decided by a Bench consisting of Ranganath Misra, P.B. Sawant, and K. Ramaswamy, JJ. and their Lordships views are encapsulated in this paragraph:

"6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986, ever since they have been working and have gained sufficient experience in the

actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications".

It will be seen that different Benches of the Apex Court have articulated the same stand over a number of decades. Yet the same issue has repeatedly been raised by the Administration with a view to postpone the performance of its duty. Has the Apex Court made observations to the contrary? A careful study of the precedents apparently on the other side of the watershed will show that this is not so. In *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, the principal question was whether persons employed in Beas Project were Central Government employees, which was answered in the affirmative. The next concern was whether they could demand the issuance of a certificate that they were quasi-permanent employees in terms of the Central Civil Services (Temporary Service) Rules, 1965. It was only in this context that it had been opined that Government servants cannot claim entitlement to a declaration of quasi-permanent service. It is thus a misnomer that ration of this case strike a discordant note from others. In *State of Maharashtra Vs. Purshottam and Others*, the Court had to adjudicate the rights of work-charged employees and it was in that context that these oft misquoted observations were made-

"6. At the outset, it may be stated that a work-charged establishment means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to `works". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work. The work-charged establishment employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. The character and nature of their tenure has been fully discussed by this Court in the case of *Jaswant Singh v. Union of India*. In the service jurisprudence the expression `cadre" means the unit of strength of a service or a part of it as determined by the employer. And it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. This being the position, ordinarily the services rendered by an employee in a work-charged establishment is not to be taken into account for his seniority in the regular establishment particularly when the tenure in the work-charged establishment is of a precarious nature and it automatically ceases after that project is over. The normal rule of seniority is

the date of entry into the cadre or the position obtained in the examination when appointment is made by any competitive examination. Therefore, in the present case ordinarily seniority would have been determined on the basis of the date of absorption of the employee in the regular establishment, but the State Government itself has passed the resolution deciding a deemed date of absorption of the employees who were initially recruited in the charged establishment and later on absorbed in the regular establishment...."

7. For the proposition that services rendered in a work-charged establishment do not create a right to payment equivalent to regular employees, reference may be drawn to State of Haryana and Others Vs. Jasmer Singh and Others, State of Haryana Vs. Surinder Kumar and others, State of Rajasthan Vs. Kunji Raman, . This was also apply to persons employed on a contract in its strict sense. The Petitioners before this Court, however, are not work-charged employees. They have been working for the Respondents on a job identical to other persons who have been regularised. Similarly, where persons are employed in a Scheme which is of a transient and temporary nature, they do not enjoy a vested right to permanent absorption. However, there is no justification for denying other employees the just fruits of their employment, and if they have rendered services for many years continuously the effort should be to regularise them.

8. It has been contended by Learned Counsel for the Respondent that efforts have been made to regularise the services of the Petitioners from time to time. The Respondent's inability to do so has partially been predicated on the following provisions of the NDMC Act, 1994, which are reproduced for convenience of reference. Reliance on law at this stage is indeed ironical since the officers at the highest echelons of the NDMC had turned a blind eye to it at the time when the Petitioners had been recruited almost two decades ago.

Section 36

Power to make appointments- (1) Subject to the provisions of section 33, the power of appointing municipal officers and other municipal employees, whether temporary or permanent,-

(a) to category `A", category `B" and category `C" posts, shall vest in the Chairperson; and

(b) to category `D" posts shall vest in the Secretary.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments of municipal officers and other municipal employees.

Section 42

Recruitment to category B and category C posts- The direct recruitment to category B and category C posts may be made by the Government through such agencies as may be prescribed for it.

9. The argument of learned counsel for the Respondent is that consequent upon the establishment of the Delhi Subordinate Services Selection Board (DSSSB) the Respondents no longer possess the power to appoint the Petitioner to Category "C" posts, and hence the offer for regularisation only to Group "D" posts has been made. It has also been contended that several requests, representations and reminders have been addressed to the DSSSB, but they have failed to elicit any response. If the Petitioners expect to be regularised in Category "C" posts they must succeed in Examinations conducted by the DSSSB, but most of them do not possess the requisite qualifications and eligibility and a few have made a futile attempt in this direction. Furthermore, avowedly it was only in order to bring about uniformity in the policy of regularisation of RMR workers the decision evidenced by Resolution No.3 (XXI) dated 8.8.2002 for regularisation in Group "C" was withdrawn. Learned Counsel for the Respondent has also argued, on the strength of paragraph 5 of the Resolution dated 14.2.1997, that 1864 posts would need to be created "in group `D" and not in group `C" where posts are filled up on promotional basis."

10. In my opinion, Section 42 cannot be employed against the RMR workers who have become eligible for regularisation after having put in six years of service as on 31.12.1996. Section 42 is a bar against direct recruitment to category "C" posts. However, it would not have any role to play for regularisation of employees who are already on the rolls of the NDMC, and not on a contractual basis. After being in service for a decade it would be grossly unfair, and Therefore, illegal to turn a person out of his employment because of a laxity or error of the employer. Section 42 is indeed a salutary provision since its intention is to eradicate the possibility of a recurrence of the arbitrary and irregular recruitment or employment of workers that had become practice in the NDMC. This provision must have prospective operation. It should not be forgotten that this provision came into effect on 27.11.1997 by which time a decision had already been taken by the NDMC to regularise those RMR workers who had put in six years of service as on 31.12.1996. Furthermore, the Government of NCT of Delhi has not responded to the request of the NDMC to grant a one-time waiver to employees such as the Petitioners who were seeking regularisation. After the lapse of several years the permission should be deemed to have been granted. This observation, however, should not be interpreted to indicate that the RMR workers who have been regularised in Group "C" or Group "D" posts should now appear in an Examination to be conducted by the DSSSB. These workers constitute a class in themselves and do not fall within the sweep of Section 42 as they have already on the Rolls of the NDMC for several years. Learned counsel for the NDMC has belaboured the point that the Wage Bill has already doubled from Rs.109 crores in 1996-1997 to nearly Rs.210 crores in 1998-99. It is submitted that the Wage Bill of the NDMC is in excess of 1/3rd of its total expenditure and that regularisation would increase the wages by 10 to 15 per cent. It has already been discussed and then pronounced in the decisions discussed above that exploitation of labour is impermissible because of financial

constraints. As has been observed, citizens cannot be exploited on the grounds of paucity of funds. If the NDMC is overstaffed they initiate steps as per law in the direction of reduction of staff.

11. The earlier decision of the NDMC whereby employees working in Group "C" were regularised in Group "C" is the correct one. The demotion of these persons was illegal and they ought to have been regularised in the posts in which they had been working for several years. Therefore, RMR workers in Group "D" should be regularised in Group "D" but RMR Workers in Group "C" must be regularised in Group "C" itself. Where unemployment is rampant and endemic, workers can never be seen as in pari delicto with the Administrators and, Therefore, if they have consented for their regularisation in a lower post this would not constitute estoppel against them. Any persons placed in their predicament would acquiesce in what can only be seen as an illegal demotion, in order to ensure security of employment. It is indeed a sorry state of affairs where a person continuously working for an employer for 15 years should still have to beg for regularisation of his services. An employer, who insists on regularising such an employee on lower wages, in a lower scale, in a lower grade, cannot be seen as a model employer. Such an employer can only be seen as illegally and dishonestly exploiting the workers' haplessness. Certainly Courts of Law will not decline to come to their aid and give them succour.

WP(C) Nos.5168/2002 and 8572-96/2005

12. Admittedly, all the Petitioners were working in Group "C" posts like Mason, Fitter, Pump Driver, Welder, LMV Driver-cum Fitter, JTA and Dent Beater. Resolution No.3(21) dated 8.8.2002 and Office Order dated 9.8.2002 is quashed. A declaration is passed to the effect that the Petitioners are entitled to continue as regular Group "C" employees vide Resolution No. 8 dated 18.3.1999 with all consequential benefits.

WP(C) No.1112/2001

13. The Petitioner was initially appointed as Hydropneumatic Operator which is a Group "C" post on TMR basis on 21.8.1986. He would, Therefore, have become entitled to be regularised as a Hydropneumatic Operator on RMR basis. Having put in six years of service as on 31.12.1996 his regularisation in Group "D" was not legally correct. The Writ Petition is allowed and he is directed to be regularised in Group "C", that is, in the pay scale of Rs.3050-4590 with effect from 1.4.1999 with all consequential benefits. No orders as to costs.

WP(C) No.6331/2002

14. The Writ Petition is allowed and the regularisation of the Petitioner in Group "C" post vide Resolution No.3(21) dated 8.8.2002 is ordered to be enforced; and the Petitioner's reversion/regularisation to Group "D" is quashed. Petitioner is entitled to all consequential benefits.

WP(C) Nos.6075/2002 and 20054/2005

15. Admittedly, all the Petitioners were working in Group "C" posts as Mason. Resolution No.3(21) dated 8.8.2002 and Office Order dated 9.8.2002 is quashed. A declaration is passed to the effect that the Petitioners are entitled to continue as regular Group "C" employees vide Resolution No. 8 dated 18.3.1999 with all consequential benefits.

WP(C) Nos.1104/2001 and 20056/2005

16. Admittedly, all the Petitioners were earlier working in Group "C" posts as Pump Drivers. Now, they are working as Beldars. A declaration is passed to the effect that the Petitioners are entitled to continue as regular Group "C" employees vide Resolution No. 8 dated 18.3.1999 with all consequential benefits.

WP(C) No.5328/2000

17. Mr. Pradeep Kumar Sharma was working as a Pump Driver which is a Group "C" post and had completed six years of service as RMR but was regularised on the post of Beldar (Group D) with effect from 1.4.1997 on the basis of alleged consent for such regularisation. Writ Petition is allowed and it is ordered that he be regularised in Group "C" with effect from 1.4.1999 with all consequential benefits.

WP(C) No.5280/2000

18. The note prepared by the NDMC dated 12.11.1999 is self-explanatory, which reads as follows:

Shri Rais Ali was earlier working on regular muster roll post as Technical Supervisor. In NDMC there is no such post. Advise of the Director (Hort.) was sought. Director (Hort.) vide his note on page 2/n has stated that the post of Technical Supervisors equivalent to Section Officer (Hort.) NDMC and it is a direct post. Pay scale of Section Officer is 4500-7000. He has been regularised on the post of Section Officer. Pay scale of Section Officer (Hort.) seems to be very high. At present there are two posts of Jr. Technical Assistant in the pay scale of Rs.3050-4590 which is a departmental post. One post of Jr. Technical Assistant is also lying vacant. In view of the above the case is submitted for orders whether Rais Ali earlier appointed as Section Officer (Hort.) may be appointed as Jr. Technical Assistant in the pay scale of Rs.3050-4590 on the same terms and conditions please. 12.11.99 His downgrading is attributable only to the unsustainable view that his pay scale "seems to be very high". Accordingly, the Order dated 16.11.1999 in his regard is quashed and he is directed to be regularised to the post of Section Officer as per Resolution No.8 dated 18.3.1999 with all consequential benefits.

WP(C) No.232/2000

19. The Petitioner has worked only as a Mali which is a Group "D" post. Reliance has been placed on a Certificate issued by Shri D.N. Sharma, Director (Hort.), NDMC dated 16.8.1991 that he has worked as a Supervisor since 1986 and that

"he has been deputed on supervisory work". The stand of the NDMC is that the Petitioner has always worked in Group "D" post. He had made a representation that since he is a B.Sc. in Agriculture (Hons.), he fulfils the eligibility to the post of Section Officer (Hort culture), a post which Rais Ali was functioning in. However, that does not entitle him to be regularised in Group "C". It transpires that he had appeared in the Examination conducted by the DSSSB for the post of Section Officer (Horticulture) but he was out successful. Considering that he has been in the service of the NDMC for two decades, the Writ Petition is disposed of with a direction that relaxation in age be allowed to him should he consider appearing in the next Examination he shall be allowed a relaxation in age. His regularisation in Group "D" however, shall remain unaffected, with promotional avenues protected.