

Paras Nath And Anr. Mamman Singh And Ors vs Union Of India And Ors on 28 November, 1989

Equivalent citations: 1990 AIR 298, 1989 SCR SUPL. (2) 323, AIR 1990 SUPREME COURT 298, 1990 LAB IC 316, (1990) 1 CURLR 7, (1989) 4 JT 436 (SC), (1991) 15 ATC 835, (1990) 1 SERVLR 316, (1990) 60 FACLR 229, (1990) 1 SCJ 249, (1990) 1 SERVLJ 35, (1990) 2 LABLJ 452, 1990 SCC (SUPP) 152, 1990 SCC (L&S) 612

Author: Misra Rangnath

Bench: Misra Rangnath, P.B. Sawant, K. Ramaswamy

PETITIONER:

PARAS NATH AND ANR. MAMMAN SINGH AND ORS.

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 28/11/1989

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

SAWANT, P.B.

RAMASWAMY, K.

CITATION:

1990 AIR 298 1989 SCR Supl. (2) 323

1989 SCC Supl. (2) 513 JT 1989 (4) 436

1989 SCALE (2) 1164

ACT:

Delhi Milk Scheme: Dairy Mates--Junior plant operatives--semi skilled operatives--Grievance--Doing work of skilled workers--But classified as unskilled workers and paid salary--Validity of.

HEADNOTE:

The first petition is on behalf of one thousand Dairy Mates and the other on behalf of 280 workers as Junior Plant Operatives and semiskilled Operatives. The grievance of

Dairy Mates is that although they perform the duties of semi-skilled workers they have been wrongly classified as unskilled workers and paid salaries as such. Similarly the grievance of the Junior Plant Operatives and semi-skilled Operatives is that they are actually doing the work of skilled workers but are classified as unskilled workers and paid salary as such.

In view of the disputed questions relating to the nature and functions of the workmen involved, the Court referred the matter to the Central Govt. Industrial Tribunal-cum-Labour Court to report to the Court as to what would be appropriate pay scales admissible to the concerned workers. On the basis of additional material and evidence produced by the workers, the Tribunal made its report and recommended that taking into consideration all the facts and circumstances, the Mates and JPOs may be given the pay scale of Rs.800-1150, the semi-skilled operatives may be given the scale of Rs.825-1200 and the skilled operatives may be given the scale of Rs.950-1400. The Union of India criticised the pay scale recommended to the Mates contending that their work was of unskilled nature. Accepting the report of the Tribunal while allowing the Petitions in terms of the report, this Court,

HELD: There is no roster of duties and functions of the Mates in any Unit and all Mates have to do the work of the Units to which they are assigned on any particular day. The Mates have thus to be versatile with the work in all the Units, both unskilled and semi-skilled. This is certainly not the case with the Sweepers, Chowkidars and Malls who are categorised as unskilled workers. This being the case, there is no merit in the contention of the Union of India that the Mates should be

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treated on par with the unskilled workers. [328C-D]

JUDGMENT:

ORIGINAL JURISDICTION: WritPetitionNos. 251&558of 1987.

(Under Article 32 of the Constitution of India) R.K. Jain and R.P. Gupta for the Petitioners. Kapil Sibal, R.B. Misra, B.B. Sawhney, R.K. Mehta (N.P.) and Ms. A. Subhashini for-the Respondents. The Judgment of the Court was delivered by SAWANT, J. The petitioners in Writ Petition No. 25 1 of 1987 are Dairy Mates whereas, those in Writ Petition No. 558 of 1987 are Junior Plant Operatives and Semi-Skilled Operatives, all working with the Delhi Milk Scheme. The first petition is on behalf of about one thousand workers, whereas, the second petition is on behalf of about 280 of workers.

2. The grievance of the Dairy Mates is that although they perform the duties and functions of semi-skilled workers, they have been wrongly classified as un-skilled workers and paid salary as

such, as recommended by the 4th Pay Commission namely, Rs.750-940 instead of Rs.800-1150 which is the salary recommended to the semiskilled workers. The grievance of the Junior Plant Operatives and Semi-Skilled Operatives is that they are actually 'doing the work of skilled workers, but are classified similarly as unskilled workers and paid salary as such. Both, further, have a grievance that their counterparts in other departments, particularly in Railways, have been properly classified and are paid salary accordingly.

3. The petitions were resisted by the respondent Union of India by filing counter affidavits denying the contentions of the petitioners that their work was of a semi-skilled or skilled character as alleged.

4. In view of the disputed questions relating to the nature and functions of the workmen involved, this Court by its order of July 29, 1988 referred the matter to the Central Govt. Industrial Tribunal-cum Labour Court, New Delhi to report to the Court on what would be the appropriate pay-scales admissible to the concerned workers, after looking into the record and giving an opportunity to the parties to produce before it such further material as they may desire to do. Pursuant to the order, the Tribunal submitted its report dated October 28, 1988. It appears from the report that the Tribunal had given opportunities to both the parties to make additional submissions, if any, and to file further material which they wished to do. Pursuant to the opportunity given, the workers in both the petitions produced additional material and evidence. The respondent Union of India, however, did not produce any further material or evidence. On the basis of the material which was already on record, and the further material produced before it, the Tribunal made its report. The relevant portions of the report may be reproduced here- under:

3. "There are 4 categories of workmen in the DMS viz. Dairy Mates, (DM), Junior Plant Operatives (JPO), Semi Skilled Operatives (SSO) and Skilled Operatives (SO).
The deploy-

ment registers of the various units read with the evidence of Shri Lajpat Rai Saxena Dairy Supervisor, conclusively prove that the various categories of workmen are performing similar duties and their positions are interchangeable with the result that there is no clear demarcation as to what function is to be performed by which category of workmen. Shri Lajpat Rai Saxena has clearly stated that the nature of duties and the degree or skill of S.O., S.S.O., and J.P.Os and D.Ms is almost same and that sometimes the work done by S.S.Os is performed by S.O. and J.P.Os subject to the availability of the category of workmen. To a question by this Tribunal he replied that if an S.O. is available he will be posted as an S.O. only but when no S.O. is available, then S.S.O. is put in his place and sometimes J.P.Os and Dairy Mates may be put to work in his place. He further stated that generally there is a shortage of S.Os and then they have to put other categories of workmen in their places. The position is fully borne out by the various deployment registers

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4." The position of deployment of the various categories of workmen clearly goes to show that their duties are interchangeable without any consideration for their grades/designations. The

position obtaining on the ground clearly repels the contentions of the respondents contained in affidavit of Shri K.G. Krishnamurthy that the functions of the various categories of workmen are distinct and separate. The respondents have not been able to produce any document in support of their contention to show that the duties of the various categories of workmen as enumerated in the affidavit of Shri K.G. Krishnamurthy were even published or actually followed. On the other hand, Shri Lajpat Rai Saxena has stated that since the time he joined service in the year 1972 he had not come across any roster of duties for the different categories of workers such as S.O., SSO, JPOs and Mates and no such roster had been issued after 1972. He had heard that there was a roster of duties issued prior to his joining of service but he had not seen any such roster. It would thus appear that if there was any such roster prior to 1972 it got into disuse and was never enforced."

5. "The nature of functions performed by various workmen shows that they require a good degree of skill. In other words, the functions can be performed only by skilled and semi- skilled workers and not by unskilled workers. Shri Lajpat Rai Saxena has stated that there are 5 milk pasteurisers and 2 cream pasteurisers in the plant unit of Process Section. There are also two chillers in R.S.M. There are 13 machines in the product section. All these machines can be operated only by skilled workers. He further stated that the bottle filling plant is automatic and the entire working is also automatic. They have got a separate pest control section for cleaning and sweeping. Sweepers of Pest Control Section are not used for cleaning machines which is done only by the SO, SSOs, JPOs and Dairy Mates. This further goes to show that even the cleaning of machines requires skill and the job cannot be performed by unskilled workers. Even the Management of DMS recognises that the duties performed by the mates and junior plant operatives who have been clubbed with the unskilled category of peons, chowkidars etc., are much more onerous in nature and they deserve a better deal (see the letter dated 4-9-86 addressed by the Chairman D.M.S. to the Joint Secretary Ministry of Agriculture). The first petitioners have placed on record a photo copy of the identity card issued to the mates (page 110 Vol. 1) which shows that the D. Mates were being treated as Technical Personnel for the purpose of issue of identity cards. The job cards annexures 1 to 6 (Vol. II) further go to show that the mates have been performing skilled/semi-skilled duties such as repairing of Driver seats vulcanising of punctures, other repairs of vehicles and servicing. All these jobs could not have been done by unskilled workers. Under the circumstances, I have no hesitation in holding that the mates and junior plant operatives have 'been unfairly treated by the 4th Pay Commission by giving them lowest pay scale of unskilled category of workmen like peons, sweepers, chowkidars etc. This category of workmen definitely deserves to be given a higher grade than the lowest meant for unskilled category of workmen. While it may be conceded that due to the diffuse nature of duties, the Dairy Mates and Junior Plant Operatives of DMS cannot be compared with the Gangmates in the Railways, yet the case of the Dairy Mates and Junior Plant Operatives of the DMS has intrinsic merit. No doubt the workmen categorised as semi-skilled (SSOs) at present are carrying out the functions of Skilled Operatives (SOs) frequently, yet, so are the Mates and JPOs. However, all the workmen cannot be given the grade of SOs because the considerations of career planning and promotions etc. have to be kept in view. Already it is being represented that the various categories of workmen are stagnating in their respective grades for the last 20-25 years. The same complaint will arise afterwards if all the workmen are given the grades of SO at the same time. It also militates against the principles of sound administration because there will be double jumping of grades in some category of workmen. It will also not be desirable to create any fresh scales of pay as it would

run counter to the recommendations of the pay commission which has reduced the number of pay scales prevailing previously."

6. "Taking into consideration all the facts and circumstances, it is recommended that the Mates and JPOs may be given the pay scale of Rs.800-1150 and semi-skilled operatives may be given the scale of Rs.825-1200. The grades as provided by the 4th Pay Commission and those now recommended by this Tribunal will compare as under:

S1. No. Category of workmen Pay Scale Pay Scale recommended by recommended
4th Pay by this Commission Tribunal

1. Skilled Operatives (SO) 950-1150 950-1400

2. Semi-Skilled Operatives 800-1150 825-1200 (SSO)

3. Mates/JPOs 750-940 800-1150."

5. While the workmen accepted the report, arguments were advanced on behalf of the respondent mainly criticising the report with regard to the pay-scales recommended to the Mates deployed in Transport (Distribution Section). It was contended that the Mates working in the said section constituted 60% of the total number of Mates deployed in the different units of the Scheme, and their work merely consisted of loading and unloading of the crates. That work by no stretch of imagination could be described as other than unskilled. It was, therefore, wrong to give them a scale different from that admissible to the unskilled workers. This contention ignores the admitted fact that Mates from one Unit are transferable to another at any time, and when so transferred they do the work of the Units to which they are transferred without any additional remuneration. What is more as is stated in the report, there is no roster of duties and functions of the Mates in any Unit, and all Mates have to do the work of the Units to which they are assigned on any particular day. The mates have thus to be versatile with the work in all the Units, both unskilled and semi-skilled. This is certainly not the case with the Sweepers, Chowkidars and Malis who are categorised as unskilled workers. This being the case, we do not see any merit in the contention that the Mates should be treated on par with the unskilled workers.

6. There was no contention raised on the report with regard to the mates working in the other Units or with regard to the Junior Plant Operatives and Semi-Skilled Operatives.

7. In the circumstances, we accept the report and direct the respondent to pay to the workers the pay scales recommended in the report which are as follows:

A. Mates and Junior Plant Operatives -- Rs.800-1150 B. Semi-Skilled Operatives --
Rs.825-1200

8. The above pay scales should come into effect from 1st January, 1990.

9. It is made clear that none of the workers i.e. Mates, Junior Plant Operatives and Semi-Skilled Operatives will refuse to do any part of the work which is assigned to them at present merely because they are hereby given the above pay scales.

10. Writ Petitions are allowed accordingly. The parties to bear their own costs.

R.N.J.
allowed.

Petitions