

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on November 27, 2013

Judgment Delivered on December 02, 2013

+ **W.P.(C) 931/2011**

MCD & ANR.

..... Petitioners

Represented by: Mr.Gaurang Kanth, Advocate

versus

VIDHYANAND SHARMA AND ORS.

..... Respondents

Represented by: Mr.Raman Duggal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. Challenge is to the order dated October 08, 2009 disposing of TA No.1340/2009 with a direction to the petitioner's to consider amending the recruitment rules to the post of Technical Supervisor in light of the observations made in the order as also the order dated December 09, 2010 dismissing RA No.48/2010 filed by the petitioners seeking review of the order dated October 08, 2009.

2. The respondents who are 6 in number had initially filed a writ petition before this Court which was later transferred to the Tribunal praying for reliefs which inter-alia include to promote them to the post of Technical Supervisors along with other qualified/eligible candidates. It

was their case in the petition that they are working as Mali and having a qualification of B.Sc. (Agriculture)/B.Sc. (Botany/Biology) which is the basic requirement for the post of Technical Supervisor they were entitled to be promoted as a Technical Supervisor and therefrom to the post of Section Officer.

3. Prior to the year 2001 the hierarchical cadre in the Horticulture Section of the MCD was commencing at the lowest level with the post of Mali with minimum educational qualification prescribed : Matric. The next above post was that of a Chaudhary. 50% posts of Chaudhary had to be filled up by promotion from Malis and the remaining by direct recruitment. The next post above was that of a Section Officer and as per the recruitment rules 75% posts of Section Officer had to be filled by direct recruitment with minimum educational qualification B.Sc. in Agriculture, Botany or Biology. 25% posts had to be filled up by promotion from amongst Chaudharys but subject to the Chaudhary possessing B.Sc. Degree in Agriculture, Botany or Biology. In the year 2001 the Standing Committee of the MCD vide Resolution No.405 dated August 22, 2001, resolved to convert 30 posts of Malis as Technical Supervisors to meet the immediate requirement of supervisory staff. Later on vide Resolution No.491 dated November 05, 2001 the MCD framed recruitment regulations for the post of Technical Supervisors, which prescribed educational qualification as B.Sc. (Agriculture)/B.Sc. (Botany/Biology) from a recognized university, to be filled 100% by way of promotion. In other words, Malis having B.Sc. degree in Agriculture, Botany or Biology were eligible to be promoted as Technical Supervisor. The pay scale of Technical Supervisor was the same as Chaudhary.

4. On December 10, 2001, 24 Malis were promoted to the post of Technical Supervisors and later on 8 other Malis were promoted to the said post. Further 7 persons who came from DDA to MCD were also made Technical Supervisors. In all there were 39 Technical Supervisors in MCD.

5. Of the 39 Technical Supervisors, 7 persons were given the work of Section Officer, which was earlier a promotion post to the post of Chaudhary having 12 years of regular service in the grade.

6. A Resolution No.125 dated March 20, 2008 was passed by the MCD approving the merger of 39 posts of Technical Supervisors with the post of Chaudhary. The merger of the post of Technical Supervisor with Chaudhary resulted in the rules, for Technical Supervisor, ceasing to operate because the post of Technical Supervisor was merged in that of a Chaudhary. It is the case of the respondents that they on various occasions made representations to the authorities and officers of the MCD and requested them to consider their names for the post of Technical Supervisor. It was their case in their representations that they fulfil the eligibility conditions under the Recruitment Rules for the post of Technical Supervisor.

7. The petitioners MCD contested the petition by taking a stand that after the merger of Technical Supervisor with Chaudhary the post of Technical Supervisor does not exist, so the question of having basic qualification for being promoted as Technical Supervisor is of no relevance. The MCD has also taken a stand that Malis are eligible for the post of Chaudhary as per the Recruitment Rules. The Tribunal in the impugned order was inter-alia of the view that when a conscious decision was taken to create the post of Technical Supervisor with

formulation of Recruitment Rules the decision to merge the post of Technical Supervisor, which is a promotional post for Mali having qualification of B.Sc. degree in Agriculture, with Chaudhary has prejudiced the respondents inasmuch as because of non-availability of vacancies at the level of Chaudhary they are not being promoted. In sum and substance the Tribunal was of the view that the qualification possessed by the respondents has gone waste. The Tribunal was also of the view that the promotional avenues have been closed to the post of Technical Supervisors and promotions to the post of Chaudhary from Malis having B.Sc. degree in Agriculture are not being effected for want of vacancies/appropriate Recruitment Rules. The Tribunal observes that the merger of two posts has been effected without formulation of Recruitment Rules.

8. It was in the aforesaid background the Tribunal held that the respondents have a valid right to be considered for the post of Technical Supervisors as per old Recruitment Rules.

9. Mr.Gaurang Kanth, learned counsel appearing for the petitioners would urge that the Tribunal has erred in giving directions for consideration of the respondents for promotion to the post of Technical Supervisor, when no such post exists.

10. Mr.Raman Duggal, learned counsel appearing for the respondents on the other hand would support the judgment of the Tribunal and would urge that the petitioners having the qualification of B.Sc. degree in Agriculture are now forced to stagnate on the post of Mali inasmuch as pursuant to the merger most of the post of Chaudhary have been filled with persons having matriculation, and lack of vacancies are not permitting their promotion to the post of Chaudhary or for that matter

Section Officer which is a still higher post and where the essential qualification is of having degree in Agriculture or in Science with Botany from a recognized university.

11. He would also support the judgment of the Tribunal in the given facts as the merger of the post of Technical Supervisor with Chaudhary has not been effected in accordance with law.

12. Regretfully, the manner in which parties have pleaded their case, the real issue has not been brought out. The same has therefore eluded a focused attention of the Tribunal.

13. Whilst it is true that creation of posts and merger of posts is the exclusive domain of the executive, but it has to be kept in mind that when conscious decisions are taken to create posts, the merger thereof with other posts has to stand the scrutiny of reason.

14. As we have noted above, minimum educational qualification for Mali is Matric. 50% posts of Chaudharys are filled up by promotion from amongst Malis strictly on basis of seniority subject to suitability. The next promotional post is that of a Section Officer which requires a minimum educational qualification of B.Sc. in Agriculture, Horticulture or Botany. Thus, non-holders of graduate degree employed as Mali stagnate at the level of Chaudhary. This means that graduate Malis who are juniors stagnate due to the reason their seniors promoted as Chaudhary earned no further promotion and block the post of Chaudhary. This resulted in 25% posts of Section Officers reserved for promote quota lying vacant because Malis having Matric degree earned promotion as Chaudhary blocking those who had B.Sc. degree. This adversely affected maintenance of gardens and parks because of lack of supervisory staff. To overcome the problem MCD resolved to create a

post of Technical Supervisor as a promotional post, in addition to that of Chaudhary, for Malis who possessed B.Sc. degree. From this pool of Technical Supervisors promotions were made to the post of Section Officer. By merging the post of Technical Supervisor with that of Chaudhary, the MCD brought itself to square one.

15. Thus, not for the reasons given by the Tribunal but for the reason which compelled MCD to create the post of Technical Supervisor, the least that would be expected from the MCD is to reconsider restoration to the post of Technical Supervisor or to suitably amend the recruitment rule to the post of Section Officer making eligible Malis having B.Sc. degree to be promoted as Section Officer upon rendering such length of service as the MCD may deem it appropriate. Otherwise what would happen would be that based on seniority, subject to suitability, non-graduate Malis would earn promotion as Chaudhary and would block others because these persons cannot earn further promotion and would retire as Chaudhary, meaning thereby till they retire, Malis with graduate degree would not move up the ladder. More than that, MCD would once again face the same problem which it faced earlier i.e. lack of supervisory staff to the post of Section Officer.

16. We dispose of the writ petition requiring MCD to consider the matter in light of our observations made hereinabove.

17. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 02, 2013
Km/mm