



2026:DHC:5359-DB



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

+ W.P.(C) 2628/2017

SOUTH DELHI MUNICIPAL CORPORATIONPetitioner

Through: Mr Rakesh Mittal, Standing
Counsel for MCD with Mr. Ajay Harshana
and Ms. Yamini Mittal, Advocates

versus

VIRENDER KUMAR & ORSRespondents

Through: Mrs. Pratima K Gupta, Mr.
Abhisumat Gupta and Mr. Ashish Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **03.07.2026**

C. HARI SHANKAR, J.

1. The South Delhi Municipal Corporation¹ has approached this Court under Article 226 of the Constitution of India, assailing judgment dated 8 November 2016 passed by the Central Administrative Tribunal², in OA 100/2474/2012³.

2. The respondents were appointed as Senior Operator, Fitter and Welder, respectively, between 1969 and 1985 in the Engineering Department of the erstwhile SDMC. They were assigned duties in

¹ "SDMC" hereinafter

² "the Tribunal" hereinafter

³ Virender Kumar and Ors. v. North Delhi Municipal Corporation & Ors.



Hot Mix Plants. Their services were thereafter regularised. At that time, they were covered by the Employees Provident Fund⁴ Scheme. Consequent to orders passed by the Supreme Court in *M C Mehta v. Union of India*⁵, the functioning of Hot Mix Plants ceased. The Supreme Court, however, directed the SDMC not to discontinue the services of persons employed in the said Hot Mix Plants but to adjust them elsewhere. Pursuant to the said direction, the respondents were discharging their duties in various departments of the MCD.

3. The respondents represented to the MCD seeking shifting from the EPF Scheme to the General Provident Fund Scheme⁶, pointing out that similarly situated persons had been permitted to so shift. Their request was placed before the MCD in a meeting which convened on 29 September 2009. In the meeting, the following decision was taken:

“The demand was considered and it was decided that the employees who are willing to take the benefit GPF, they should give the consent in writing. The benefit which they are getting under the EPF Scheme, they are willing to leave the same. Such consent/forms be submitted with the Manager (HMP) within one week i.e. by 07.10.2009 thereafter the matter be sent for consideration on the departmental basis, this process will be completed within 15 days of the submission of form and same will be forwarded to the higher authorities.”

4. In view of the decision taken by the MCD, the respondents conveyed their consent for availing benefits under the GPF Scheme, also agreeing to pay back the amounts received by them under the EPF Scheme.

5. We may note that 30 other persons, who were similarly situated,

⁴ “EPF Scheme” hereinafter

⁵ (1999) 7 SCC 534

⁶ “GPF Scheme” hereinafter



were permitted to shift from the EPF to GPF Scheme.

6. On the ground that there was no provision permitting shifting from the EPF to the GPF Scheme, the respondents' request was rejected.

7. Aggrieved thereby, the respondents approached the Tribunal by way of OA 100/2474/2012.

8. Noticing that similarly situated persons had been extended the benefits of GPF Scheme subject to their returning the amounts earned by them under the EPF Scheme, the Tribunal, following the judgment of the Supreme Court in *Man Singh v. State of Haryana*⁷ and *Rajendra Yadav v. State of Madhya Pradesh*⁸, held that refusal of the same benefit to the respondents would infract Article 14 of the Constitution of India. Accordingly, the respondents' OA was allowed and the respondents were directed to be extended the benefit of the GPF Scheme to the respondents, subject to their paying back the amount earned by them under the EPF Scheme.

9. Aggrieved thereby, the SDMC has approached this Court.

10. We have heard Mr. Rakesh Mittal, learned Counsel for the SDMC and Ms. Pratima K Gupta, learned Counsel for the respondents.

⁷ (2008) 12 SCC 331

⁸ (2013) 3 SCC 73



11. Mr. Mittal submits that the decision to reject the respondents' request was founded on a valid consideration, which was that there is no provision by which an EPF beneficiary can be permitted to shift to the GPF Scheme.

12. Having heard learned Counsel for the parties and perused the judgment of the Tribunal, we are not inclined to interfere.

13. Had it been a case in which the Tribunal had granted relief to the respondents solely on the ground that others similarly situated were permitted to shift from the EPF to the GPF Scheme, the matter may have been more arguable, in view of the settled legal position that grant of an illegal benefit to one person cannot constitute a basis for another to seek the same illegal benefit, as no negative equality resides in Articles 14 and 16 of the Constitution of India.

14. This, however, is not such a case. The request of the respondents was put up before the MCD itself. In its meeting dated 29 September 2009, the MCD took a conscious decision that the respondents were entitled to shift to the GPF Scheme subject to their conveying willingness in that regard. The respondents, thereupon, conveyed their willingness to the MCD.

15. Mr. Mittal has not been able to draw our attention to any express proscription against allowing employees who were EPF beneficiaries to shift to GPF Scheme.

16. In the absence of any such proscription, and in view of the



conscious decision taken by the MCD in its meeting dated 29 September 2009, *and* in view of the fact that following the said decision, the respondents had conveyed their willingness to shift to the GPF Scheme, we are of the opinion that the Tribunal cannot be faulted in extending the said benefit to them.

17. We also find the reliance, by the Tribunal, on the judgment of the Supreme Court in *Man Singh* to be justified, as the Supreme Court has, in the said decision, clearly held that the State cannot discriminate between person and person while granting a benefit which is not prohibited by law.

18. Within the peripheries of the jurisdiction vested in us by Article 226 of the Constitution of India, we are of the opinion that no cause exists to interfere with the impugned judgment of the Tribunal.

19. The decision of the Tribunal is therefore affirmed. We hold the respondents to be entitled to shift to the GPF Scheme from the dates when they conveyed their consent pursuant to the meeting of the MCD held on 29 September 2009.

20. Needless to say, the entitlement of the respondents to the GPF Scheme would be subject to the respondents returning the amount earned by them under the EPF Scheme.

21. In order to facilitate matters, it would be open to the MCD to disburse the amount due to the respondents under the GPF Scheme after deducting, therefrom, the amounts earned by them under the EPF



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Scheme.

22. Let the residual payment be made to the respondents within a period of six weeks from today.

23. The writ petition is accordingly dismissed, with no order as to costs.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

JULY 3, 2026*/dsn*