

**\* HIGH COURT OF DELHI: NEW DELHI**  
**Order reserved on: September 23, 2009**  
**Order pronounced on: September 25, 2009**  
**+ W.P. (C) No. 11906 of 2009**  
**&**  
**C.M. No. 12039 of 2009**

Gauri Jha & Others ... Petitioners  
Through: Mr. Sanjay Ghose, Advocate.  
versus

Hardyal Municipal Public Library & Others ... Respondents  
Through: Mr. Venu Gopal, Sr. Advocate, with  
Mr. Sudhir Gupta & Mr. Siddharth  
Singh, Advocates.

**&**  
**W.P. (C) No. 11907 of 2009**  
**&**  
**C.M. No. 12040 of 2009**

Deepak Sharma & Others ... Petitioners  
Through: Mr. Sanjay Ghose, Advocate.  
versus

Hardyal Municipal Public Library & Another... Respondents  
Through: Mr. Venu Gopal, Sr. Advocate, with  
Mr. Sudhir Gupta & Mr. Siddharth  
Singh, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported

in the Digest?

**SUNIL GAUR, J.**

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1. The Order impugned in the above titled writ petitions is of 11<sup>th</sup> September, 2009, (Annexure P-11) vide which appointment of the employees made between 1<sup>st</sup> April, 2006 and 11<sup>th</sup> June, 2007, in respondent- Hardyal Municipal Public Library has been annulled from the inception of such appointments. Since the issue raised in the above titled two petitions is common, therefore, they have been heard together and are being disposed of by this common Order.

2. During the aforesaid period, petitioners were appointed to Class-III and Class- IV posts on daily basis by respondent No.1-Hardyal Municipal Public Library (hereinafter referred to as the 'respondent-Library'), which is said to be fully aided by respondent No.2- Municipal Corporation of Delhi (hereinafter referred to as the 'respondent-Corporation'). In the year 2006-2007, in pursuance to the Resolutions (Annexures- P-2 & P-3) by the respondent-Library, petitioners were appointed on daily basis and between December, 2006 and May, 2007, their services were regularized by the respondent- Library. However, on 20<sup>th</sup> November, 2007, Show Cause Notice (Annexure P-4) was issued to the

petitioners regarding annulment of their appointments. It is the case of the petitioners that against Show Cause Notice (Annexure P-4), they had approached this Court and vide Order of 2<sup>nd</sup> April, 2008, (Annexure P-5) their petitions were disposed of, while directing the respondent- Library to set up an impartial Enquiry Tribunal regarding the legality of appointment of the petitioners and other similarly placed employees. In terms of the Order (Annexure P-5), an Enquiry Tribunal was constituted by the respondent- Library and based upon the Report dated 18<sup>th</sup> June, 2009, of the Enquiry Tribunal (Annexure P-6), Order (Annexure P-7) annulling the appointments of the petitioners (Annexure P-7) was passed by the respondent- Library, which was subsequently withdrawn by the respondent- Library in the face of Order of 6<sup>th</sup> July, 2009 (Annexure P-8) as the copy of the Enquiry Report was not available to the petitioners and they were not given an opportunity to represent against it. By virtue of Order (Annexure P-8), petitioners had submitted Representation (Annexure P-10), which was considered by the Managing Committee of the respondent- Library and vide impugned Order (Annexure P-11), the Enquiry Report was accepted in *toto* and the appointment of the petitioners has been annulled from its inception.

3. Heard.

4. Counsel for the petitioner contends that the impugned Order is non-speaking one and the pleas taken in the Representation remain unanswered. It is pointed out that the respondent- Library does not have any Rules of recruitment and there is no prescription of any eligibility / qualification for any post in the respondent- Library. It has been vehemently contended that the manner of making appointments prior to 1<sup>st</sup> April, 2006, was in no way different than the manner in which appointments in question have been made. The Report of the Enquiry Tribunal is assailed on the ground that the Enquiry Officer has acted as an Investigator, Prosecutor and a Judge which is opposed to the principles of natural justice. It is stated that the Enquiry Officer did not record the deposition of the charged employees and has not obtained their signatures and he did not record the minutes of the so called incognito inspection. It is pointed out that the Enquiry Officer has failed to deal with the appointments individually to classify the same and determine the illegality in appointments. The grievance of the petitioner is that the three principles highlighted by the Apex Court in the case of *'Inderpreet Singh Kahlon and*

*Others vs. State of Punjab and Others'* **(2006) 11 SCC 356**

have not been adhered to by the Enquiry Officer. These three principles are as under:-

*"If the services of appointees who has put in a few years of service were terminated, compliance with three principles at the hands of the State was imperative viz: (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed went to the root of the matter, which vitiated the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner, (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt."*

5. Petitioners' counsel asserts that it is nobody's case that the petitioners had indulged in corrupt practices to obtain the appointments in question and the Enquiry Officer has illegally concluded that the selection process for the appointment in question was so tainted that the entire appointments made in pursuance thereto, are required to be annulled. Reliance has been placed upon the decision of the Apex Court in the case of *Inderpreet Singh Kahlon* (supra) to contend that annulment of the appointment of the

petitioners *en masse* is not only arbitrary but is unconstitutional as the Enquiry Officer ought to have made serious endeavor to segregate the tainted from the non-tainted employees and instead of doing so, resort to cancellation of all the appointments is unjust. In the last, the submission advanced on behalf of the petitioners is that they have not received any salary since 2007 though they have been performing their regular duties and attending their office daily and even subsistence allowance has not been paid to them till date, which is inhuman. Reliance has been placed upon the decision of the Apex Court in '*Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another*' **AIR 1999 SC 1416** to assert that the act of nonpayment of subsistence allowance is like slow poisoning of the employees, who would gradually starve themselves to death.

6. It is true that the impugned Order (Annexure P-11) simply records that the Representation (Annexure P-10) of the petitioners has been considered by the Managing Committee of the respondent- Library, and apparently is a non speaking Order. In normal course, the first reaction would be to call upon the respondents to pass a speaking Order on petitioners' Representation. But on second thought,

counsel for the petitioners was called upon to highlight as to on what grounds the Enquiry Report was assailed in the Representation, which required passing of a speaking Order. Counsel for the petitioners has drawn the attention of this Court to Paras-2.2 & 2.3 of Representation (Annexure P-10) in this regard. They read as under:-

“2.2            *The library does not have rules of recruitment. Therefore, from the very inception there has been no prescription of any eligibility / qualifications for any post (Para 15 Page 70 of the Enquiry Report)*

2.3            *While the enquiry has focused on appointments made between 01.04.2006 and 10.06.2007, there is no material on record to establish how and in what manner the method, manner, nature and procedure of appointments of pre 1<sup>st</sup> April, 2006, employees was in any way different from the method, manner, nature and procedure of the appointment of the charged employees.”*

7.     Without going into the merits of issue in question, a brief reference to the Enquiry Report (Annexure P-6) can be made. The factual position noticed in the Enquiry Report is as follows:-

“7.     *It is then submitted that between 1.4.2006 and 11.6.2007 Shri Ashok Jain the previous honorary Secretary of Library made appointments of 788 persons in all on a permanent, temporary and contractual were made between 1.4.2006 to 1.4.2007 as a result of which the total number of employees in all categories rose to 814.*

Out of the 703, 137 were appointed on regular basis, 557 as daily wage earners and 8 on part time basis. This number further rose to 899 employees in the short time between 1.4.2007 and 11.6.2007. It has however been submitted that the present Managing Committee has terminated the services of 151 daily wage earners/ adhoc employees. The figure submitted to the committee pertains to the remaining persons.

10. It is submitted that the then Secretary of the Library proceeded to **appoint 788 persons even though not even a single branch of the Library was opened pursuant to the resolution.** Nine branches had been opened after 1.4.2006 on the requisition of area councilors. No branches were opened as per the resolution passed by the Managing Committee. **Thus 799 appointments had been made for branches not existing then.**

12. **It is submitted on behalf of the Library that there is nothing on the record to show that any budget was prepared or financial sanction of the MCD was taken prior to making appointments. An assessment of the financial implications of appointments indicates that there would be recurring expenditure of Rupees of 6-7 crores per year. There is no financial sanction from the Finance Department of MCD for such expenditure. The allocation of funds for the expenditure of the Library is made by the MCD in the House of MCD. The grant in aid of the Library was Rupees 1.1 crores for the financial year 2004-05 and 2005-2006. For the year 2006-07 the grant in aid demanded was Rupees 2 crores and the sanction was again Rupees 1.1 crores. Thus no budgetary provision was made for the additional appointments. Consequently, in absence of the funds, salaries of the employees appointed during the financial year 2006-2007 could not be paid. It is submitted that for the financial year 2007-2008 the demand of Rupees 9 crores was made. The house committee of the MCD passed a budget estimated of Rupees 4.5 crores. The revised budget for the financial year was only Rupees 3 crores.**

*Subsequently, however, the grant in aid committee sanctioned only Rupees 2.25 crores. **In fact for the year 2007-2008 only Rupees 1.5 crores has been received in four installments of Rupees 37.50 lacs.***

8. To say the least, the aforesaid factual position is not controverted by the petitioners in the Representation (Annexure P-10). Therefore, the twin objections as contained in Paras – 2.2 & 2.3 in the Representation (Annexure P-10) have been rightly ignored by the Management Committee of the respondent- Library in the impugned Order (Annexure P-11).

9. It is unfair to label the Enquiry Officer as an Investigator, Prosecutor and a Judge because it was a fact finding enquiry and it is evident from the Enquiry Report (Annexure P-6) that the Enquiry Officer had taken note of the statements of various candidates/employees and the gist of their statements finds mention in Para-24 of the Enquiry Report (Annexure P-6). It stands disclosed in this paragraph (Para-24) that hearing was given to the candidates/employees who had appeared in response to the Notice served by the Enquiry Committee and they had informed that they had come to know about the vacancies in question through reliable source/ friends/ office staff. The gist of the

incognito visit by the Enquiry Officer to the various branches of the respondent- Library also finds mention in the Enquiry Report.

10. The plea of the petitioners that they had not indulged in any corrupt practice to obtain the appointments in question and of segregating the tainted appointments does not arise for the reason that the mass appointments made during the period in question are patently illegal and void as there was no budgetary provision or sanction for the same. Rather, the appointments in question have been made against the posts which were not there. It has been so concluded by the Enquiry Officer in the Report (Annexure P-6). It is pertinent to note that there is no worthwhile challenge in the Representation (Annexure P-10) to the fact that the posts against which appointments had been made, were not existing and there was no budgetary provision for these posts. It would not be out of place to take note of the finding of the Enquiry Officer in the Report (Annexure P-6) that extraneous considerations were there in the matter of making appointments in question.

11. In the light of the aforesaid, the three principles highlighted in the case of *Inderpreet Singh Kahlon* (supra)

have no application to the facts of the instant case. A perusal of the Representation (Annexure P-10) reveals that it refers to some decisions but it does not lay an effective challenge to the Enquiry report (Annexure P-6), which is quite comprehensive one. During the course of the arguments, counsel for the petitioners was called upon to show as to what prejudice the petitioners suffer on account of impugned Order (Annexure P-1) being non-speaking one. All that was stated on behalf of the petitioners was that twelve page Representation has been decided vide impugned Order (Annexure P-1) in one line. It is not the number of pages which counts, it is the substance which matters. Since petitioners' counsel could point out towards Paras- 2.2 & 2.3 only of the Representation (Annexure P-10) regarding challenge to the Enquiry Report ((Annexure P-6), which has been already dealt with as above, therefore, this Court finds that the petitioners do not suffer any prejudice on account of impugned Order being non-speaking one.

12. In the cases of illegal appointments, what the Apex Court has to say, needs to be noticed. In '*Krishan Yadav and Another vs. State of Haryana and Others*' **(1994) 4 SCC 165** the appointments made to the post of Taxation Inspectors by

Haryana Subordinate Selection Board was set aside on the basis of the CBI report and the pertinent observations made are as under:-

*“20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. **The plea was made that innocent candidates should not be penalized for the misdeeds of others. We are unable to accept this argument.** When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as ‘fraud unravels everything’. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors.*

*21. **The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the office.** Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But, here we show a streak of sympathy. For more than 4 years they were enjoying the benefit of ‘office’. The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay.”*

13. Apex Court in the case of ‘*Union of India and Others v. O. Chakradhar*’ **(2002) 3 SCC 146** had upheld Railway Board’s decision to cancel the selections for recruitment to the post of Junior Clerk-cum-Typist, as the decision of the Railway Board was based upon the CBI report. The pertinent

observations made can be referred to with advantage and they are as under:-

***“ The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishan Yadav applies to the facts of the present case. The Railway Board’s decision to cancel the selection cannot be faulted with.”***

14. In the light of the aforesaid legal position, the findings of the Enquiry Officer as contained in the Enquiry Report (Annexure P-6) deserves attention and they are as under:-

’39. *In view of the above observations and also the depositions that have been recorded and the observations that have been made with*

respect to the branches I answer the questions posted to me while making the reference of enquiry as follows:-

- A. To support the appointment of 799 employees between 1.4.2006 and 11.6.2007 the posts were not there.
- B. **There was no budgetary provision/ sanction and/ or adequate finance to support the appointments to the extent of appointment made.**
- C. There was no proper advertisement of post. The applications were not called from the Employment Exchange in accordance with law relating to appointments.
- D. The advertisements by Suchha on the notice Boards of the Library or its branches was not adequate and sufficient advertisements to comply with the requirement of law.
- E. The initial recruitment on daily wages and subsequent alleged regularization was against Article 14 and 16 of the Constitution of India. Such appointments were not in accordance with fair procedure and requirement of law.
- F. There was no proper and fair scrutiny of the applications before selections were made for appointments.
- G. **Extraneous considerations were there in the matter of making the appointments.**
- H. **The mass appointments in the Library between 1.4.2006 and 11.6.2007 are illegal and void in entirety.**
- I. **The mass appointments are liable to be annulled from their inception.**

40. Having answered the question as referred a question arises in the mind that the branches, which had opened during the period in question although funds were not there for mass appointments that have been made illegally and without jurisdiction, have functioned and a grant of Rupees thirty lacs had been provided by the MCD towards the opening of new branches and such branches are functioning under the name of the Library even today and the Library has taken the benefit of the services of the staff actually required for such branches in serving the public, should the Library not part with the

wages which it should have been paid had the appointments been made according to the constitution of the Library and as per requirement of the particular branch and qualified persons were appointed. **There is no doubt some person amongst those who have been illegally appointed do possess the qualifications required.** The principle of quantum merit certainly directs that the Library must part with such an amount of wages. **The Library should estimate and calculate the actual requirement of the staff in a particular branch and the salary ought to have been paid if the necessary and qualified staff had been there.** Those who have actually worked although my inspection incognito indicates that only few worked and most of them were actually not present must be compensated. **There is no doubt surplus staff on the roll was more than what the requirement was in fact. The Library should distribute equally to all such employees who according to the finding of an independent committee constituted from amongst the staff actually and sincerely attended.** If the wages so saved after deducting the wages paid to regular staff is less than a month's salary for such employees, the Library and the MCD should be benevolent to add extra amount to such sum so that sincere employee do get one month's salary for cessation of employment in addition to what is suggested further hereinafter.

41. Further while parting with this report I consider it appropriate to recommend although for the vacancies which are estimated for such branches which were opened during the period in question, the fresh appointments are to be made in accordance with Article 14 and 16 of the Constitution yet 20% and 25% of such vacancies may be reserved for such employees provided they possess the qualifications as are required for the staff or a Library of the Standard of Hardy Library or the qualifications as may be prescribed for the posts in the open recruitment. **Such an approach would be in accordance with the principle of fair play in action. The Library will lay down reasonable criteria so that merit and professionally qualified candidates who have acquired experience of the Library and/ or those who have acquired professional qualifications during the**

***intervening period get opportunity to work and experience acquired in the Library does not go waste at least of the candidates who have merit and the professional qualifications.”***

15. This Court is of the considered opinion that Sh. G.P. Thareja (Retd.) Additional District and Session Judge, Delhi, the learned Enquiry Officer has done a commendable job in exposing the concerted fraud which has been played by Mr. Ashok Jain, the then Secretary of the respondent-Library in illegally giving appointments to 788 persons against non-existing posts, during the period in question. This was so done, for extraneous considerations. Enquiry Report (Annexure P-6) commends itself to acceptance as there is no worthwhile challenge to it either in the Representation (Annexure P-10) or in the writ petition. The impugned Order (Annexure P-11) cannot be termed as arbitrary or irrational because it has accepted the Enquiry Report (Annexure P-6), which cannot be faulted with.

16. To conclude, what has weighed with this Court in upholding the impugned Order (Annexure P-11) is that it adopts the Enquiry Report (Annexure P-6) in *toto* and the Enquiry Report is self speaking one and does not violate any of the principles of natural justice. Large scale appointments in question have been made hastily against non-existent

posts and that too without any budgetary sanction. It is no wonder that the respondent- Library has no funds to pay the salary etc. to the illegally recruited 788 employees, which includes 96 petitioners of these two petitions. This vital aspect remains unchallenged by the petitioners in the Representation (Annexure P-10) as well in these petitions. Within a short period of few months, appointment of petitioners have been regularized without any justification, which speaks volumes of extraneous considerations in making of these appointments. Therefore, impugned action of the Management of the respondent-Library in annulling the appointment of petitioners is fully justified.

17. In Paras- 40 & 41 of the Report (Annexure P-6), remedial measures have been suggested, which the management of the respondent-Library is bound to undertake, preferably within a period of four months from today. Respondent-Corporation is directed to ensure its compliance. It goes without saying that respondents are required to submit 'Compliance Report' to this Court before this financial year comes to an end. Registry to place the Compliance Report for perusal of the Court.

18. The prayer of the petitioners for the arrears of salary or for grant of subsistence allowance cannot be accede to, for the reason that the appointments in question have been rightly annulled by the respondent-Library by impugned Order (Annexure P-11.) The impugned Order does not suffer from any material illegality or infirmity. Both these petitions are without any merit and are dismissed in *limine*. Pending applications are also disposed of as infructuous.

19. No costs.

**SUNIL GAUR, J.**

September 25, 2009  
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