

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

% Judgment delivered on 03.01.2012

+ **W.P.(C)1894/2011**

INDIAN COUNCIL OF MEDICAL
RESEARCH AND ANR.

..... Petitioners

versus

JYOTI AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ravi Sikri
For Respondent : None.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

BADAR DURREZ AHMED (ORAL)

1. This Writ Petition has been filed by the Indian Council of Medical Research inasmuch as they are aggrieved by the order dated 24.01.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the said Tribunal') in OA No.1629/2010. The petitioners have prayed for quashing of the impugned order.

2. By virtue of the impugned order dated 24.01.2011, the said Tribunal had directed as under:-

“15.In the light of the aforementioned discussion, we allow this
O.A. invalidate order dated 05/08.04.2010(Annexure-A) and

require the Competent Authority to grant approval for the third post of LDC aforementioned w.e.f. 23.01.2006. In the light thereof, the Applicant shall also be entitled to the fixture of her pay w.e.f. 06.09.2006. The actual disbursement of the monetary benefits must come about within one month from today.”

3. The said OA 1629/2010 was filed by the respondent Mrs Jyoti being aggrieved by the Memorandum dated 5/8.04.2010 whereby the Director, Institute of Pathology(Indian Council of Medical Research), Safdarjung Hospital Campus, New Delhi, disposed of the representation made by Mrs Jyoti in the following terms:-

“AND WHEREAS the undersigned had considered the aforesaid facts and after perusing the relevant record and after considering the same, it is held as under:-

1) OA No.351/2008 filed by Mrs. Jyoti was disposed by the Ld. Tribunal directing the Ministry of Health & FW either to accord approval for filling up the third post of LDC on the basis of the selection qualified by the applicant or in turn to restore her promotion order on 23.01.2006 and pay fixation on 06.09.2006 with all consequences within a period of two months from the date of receipt of the copy of this order.

2) The order of the Ld. Tribunal in OA No.351/2008 gives option to the Ministry either to accord approval for filling up the third post of LDC or restore the promotion of Mrs. Jyoti as ordered on 23.01.2006 and pay fixation on 06.09.2006 with all consequences.

3) It was decided by the Competent Authority that in Defence to the orders of the Ld. Tribunal, approval for filling the post of LDC be accorded and accordingly Mrs. Jyoti was appointed to the post of LDC vide Memorandum dated 03.03.2009 in the pay band of Rs.5200-20200 with grade pay of Rs.1900/-. In other words, the Competent Authority decided to follow the option No.1 given by the Ld. Tribunal

in its order while disposing of the OA 351/2008.

4) The order dated 10.09.2008 in OA 351/2008 has attained finality in as much as Mrs. Jyoti has not preferred any appeal before the higher forum; rather she has filed an MA No.446/2009 wherein the Ld. Tribunal has held that since compliance of one of the options given as per the directions in OA No.351/2008 has already been done, the option to restore the promotion of Mrs. Jyoti with effect from 06.09.2006 has become redundant. This order of the Ld. Tribunal in MA No.446/2009 clearly established that according of approval for filling up the third post of LDC was to be prospective from the date the same has been given to Mrs. Jyoti.

5) The issue having attained finality in terms of the order dated 10.09.2008 in OA 351/2008, Mrs. Jyoti who has in para 8(a) of the OA No.1967/2009 has prayed for giving consequential benefits such as arrears of pay in view of the memorandum dated 06.09.2006 and the pay be fixed at Rs.3275/- per month with allowances in the pay scale of Rs.3050-75-80-4590 with effect from 23.01.2006 is not tenable as she was appointed as LDC vide memorandum dated 03.03.2009 only.

The present order is a speaking order in terms of the Ld. Tribunal's order dated 26.11.2009.

Mrs. Jyoti may acknowledge receipt of the memorandum.

DIRECTOR

Mrs. Jyoti
LDC
Institute of Pathology
New Delhi.”

4. As noted in the above extract, the speaking order dated 5/8.04.2010 was passed pursuant to the Tribunal's order dated 26.11.2009 in OA No 1967/2009. The only controversy in the present writ petition is with regard to the fact that by

virtue of the impugned judgment, the respondent No.1 (Mrs. Jyoti) has been directed to be taken as an LDC and it was also held that she is entitled to fixation of pay with effect from 23.01.2006.

5. Mr Sikri, appearing on behalf of the petitioner, submitted that the respondent No.1, along with Mr Bijender and Ms Archana were selected as LDCs. While Mr Bijender and Ms Archana were direct appointees, the respondent No.1 was a promotee inasmuch as she was already working with the petitioner No.2 as a Library Assistant. Unfortunately, when the respondent No.1 was offered promotion with effect from 23.01.2006, there was no post of LDC in existence. It is as a result of this that she could not function as an LDC and it is only subsequently that sanction was granted by the appropriate authority on 02.03.2009 whereafter the respondent No.1 was offered the promotion and which she accepted on 03.03.2009 and has been working as an LDC since that date. The learned counsel for the petitioners submitted that even if it is assumed that the respondent No.1 ought to be given notional promotion from 23.01.2006, she cannot be entitled to any monetary benefit for the period prior to 03.03.2009 in her position as LDC inasmuch as she did not perform the duties of an LDC but continued to work as a Library Assistant. He relied upon the decision of the Supreme Court in the case of **Union of India v. B.M.Jha:(2007) 11 SCC 632**, wherein the Supreme Court observed as under:-

“5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom. However, this Court in State of Haryana v. O.P.Gupta and followed in A.K.Soumini v. State Bank of Travancore has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of “no work no pay”. The learned Division Bench in the impugned judgment has placed reliance on State of A.P. v. K.V.L.Narasimha Rao. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of “no work no pay” in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17-5-2000 passed by the Division Bench of the High Court as also the order dated 11-1-2000 passed by the Central Administrative Tribunal, Principal Bench.”

(underlining added)

6. On a query from us, Mr Sikri pointed out that in so far as, Mr Bijender and Ms Archana are concerned, they joined the duties as LDCs with effect from 28.01.2008 and 29.01.2008, respectively.

7. We have perused the order dated 10.09.2008 passed by the Tribunal in an earlier proceeding being OA No.351/2008 which was also instituted by the respondent No.1. The operative portion of the said order reads as under:-

“12. In the result, for the foregoing reasons, we direct Respondent No.1 to either accord approval for filling up the 3rd post of LDC on the

basis of selection qualified by the Applicant or in turn to restore her promotion ordered on 21.03.2006 and pay fixation on 06.09.2006 with all consequences within a period of two months from the date of the receipt of a copy of this order. No costs. O.A. stands disposed of.”

8. After having considered the arguments advanced by Mr Sikri and after having gone through the record of this case, we find that the Tribunal by virtue of the order dated 10.09.2008 had intended that the respondent No.1 should be given the post of LDC either by according approval for creation of the post of LDC or by restoring her promotion, with effect from 23.01.2006, along with consequential benefits. However, we also note that the actual sanction of the post came only on 02.03.2009 and that the promotion was offered to the respondent No.1 immediately thereupon, which she accepted on 03.03.2009 and has been working as an LDC since that date.

9. In view of the fact that vide order dated 10.09.2008, which has become final, the Tribunal had directed promotion of the respondent No.1 with effect from 23.01.2006, we feel that it would be appropriate in the light of the said circumstances of this case that the respondent No.1 be given notional promotion and notional fixation of pay with effect from 23.01.2006 in terms of the Memorandum dated 06.09.2006. However, since the respondent No.1 did not perform the duties of the post of an LDC prior to 03.03.2009, in view of the Supreme Court decision in the case of *Union of India versus B.M.Jha* (supra), she

would not be entitled to any arrears in respect of the period 23.01.2006 to 02.03.2009, on the principle of 'no work no pay'.

10. The writ petition is allowed partly as indicated above. No order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

JANUARY 03,2012
'sn'