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

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+ **W.P.(C) 10803/2018 and CM APPL. 42161/2018**

MS. RAJNI KUMAR AND ORS.

.....Petitioners

Through: Mr. Sarfaraz Khan, Mr. Mirza Amir Baig and Mr. Abdul Wahid, Advocates.

versus

HARDAYAL MUNICIPAL PUBLIC LIBRARY
AND ANR.

.....Respondents

Through: Mr. Tushar Sannu, Standing Counsel with Mr. Utkarsh Mishra, Advocate for Respondent No.1/HMPL.

Mr. Rakesh Mittal, Standing Counsel with Ms.Yamini Mittal and Ms. Gauri Kanodia, Advocates for Respondent No.2/MCD.

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+ **W.P.(C) 10887/2018 and CM APPL. 42478/2018**

SMT. ANITA GUPTA

.....Petitioner

Through: Mr. Sarfaraz Khan, Mr. Mirza Amir Baig and Mr. Abdul Wahid, Advocates.

versus

HARDAYAL MUNICIPAL PUBLIC LIBRARY
AND ANR.

.....Respondents

Through: Mr. Tushar Sannu, Standing Counsel with Mr. Utkarsh Mishra, Advocate for Respondent No.1/HMPL.

Mr. Rakesh Mittal, Standing Counsel with Ms.Yamini Mittal and Ms. Gauri Kanodia, Advocates for Respondent No.2/MCD.



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+ **W.P.(C) 1575/2019 and CM APPL. 7297/2019 and 18876/2022**

MS. PRIYA SANDHU AND ORS.Petitioners
Through: Mr. L.C. Rajput, Advocate.

versus

HARDAYAL MUNICIPAL PUBLIC LIBRARY
AND ANR.Respondents
Through: Mr. Tushar Sannu, Standing Counsel
with Mr. Utkarsh Mishra, Advocate for
Respondent No.1/HMPL.
Ms. Sriparna Chatterjee, Standing Counsel for
Respondent No.2/MCD.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
04.10.2024

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1. W.P.(C) 10803/2018 has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking the following reliefs:

“(i) Issue a writ of certiorari to quash/set aside the impugned order dated 28.08.2017 issued by Respondent No. 1.

(ii) Issue a writ of certiorari to quash/set aside the impugned order dated 23.08.2017 issued by Respondent No.2.

(iii) Issue a writ of certiorari to quash/set aside the impugned Audit Report dated 12.12.2014.”

2. W.P.(C) 10887/2018 has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(i) Issue a writ of certiorari to quash/set aside the impugned order dated 23.08.2017 issued by Respondent No.2.

(ii) Issue a writ of certiorari to quash/set aside the impugned Audit Report dated 12.12.2014 conducted by Respondent No.2.”



3. W.P.(C) 1575/2019 has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking the following reliefs:

“a) Quash/ set aside the impugned order No.258 dated 23.08-2017 passed by respondent No. 2 and conveyed vide impugned order No.HMPL/1430 to 1468/2017-18 passed by respondent No.1 Annexure p-5(Colly).

b) issue order/directions to the respondents restraining them from making recoveries from the petitioners pursuant to the order dated 23.08.2017 and 28.08.2017.

c) award cost of the petitioners and favour of the petitioners and against the respondents.”

4. Petitioners in these writ petitions are working on different posts such as Technical Assistants, Librarians etc. with Hardayal Municipal Public Library (‘HMPL’) and have preferred these writ petitions challenging impugned orders dated 23.08.2017 and 28.08.2017 affecting recoveries from the Petitioners. There is also a challenge to the audit report dated 12.12.2014 in two of the writ petitions.

5. Genesis of the impugned recoveries lies in the special audit of HMPL by the Internal Audit Department of North Delhi Municipal Corporation (‘NDMC’) for the period 01.04.2007 to 31.03.2014, wherein allegedly certain irregularities were found in matters relating to promotions and upgradations of employees, leading to excess payments to them. As per the audit report excess payments were made to the staff of HMPL on account of granting promotions and financial upgradations under ACP/MACP Schemes without following proper procedure for obtaining approvals while finalising Recruitment Rules (‘RRs’); constituting Screening Committees/DPCs in contravention of CCS Rules/DoPT Instructions etc.; and laying down parameters/criteria with regard to educational/ technical/requisite qualifications/experience/age/nature of work/duties and responsibilities as



also making frequent cadre changes granting higher pay scales at the time of each review.

6. Challenging the impugned orders and consequent recoveries, learned counsel for the Petitioners contends that HMPL is an independent and autonomous entity constituted as per its own laid down Constitution and regulated by its Managing Committee in accordance with the terms incorporated in the Constitution. NDMC, SDMC and EDMC only provide grant-in-aid to HMPL for meeting its financial requirements and neither of them are regulatory bodies for HMPL. It is argued that Petitioners belong to Class III and Class IV services and have been serving HMPL for over two decades and were granted promotions/upgradations only when they were eligible and the promotions etc. became due. Appointments and promotions as well as pay fixation of the Petitioners has been done by the Competent Authority of HMPL for which it does not require any approval from NDMC and therefore, NDMC has no power or jurisdiction to issue the impugned orders and effect recoveries towards salaries and emoluments paid. Moreover, RRs were drafted by the RRs Committee of HMPL in its meeting held on 23.01.2010 and the Committee was constituted by the Managing Committee of HMPL in its meeting held on 30.11.2009 and the qualifications, age limits, modes of appointments, pay scales are duly laid down in the RRs and the Schedule thereto and NDMC has no reason to take a view contrary to the Rules that pay fixations and/or promotions/upgradations were wrongly given.

7. It is further argued that the entire basis of the recoveries against the Petitioners is a special audit conducted by NDMC and the report rendered pursuant thereto. The facts and figures including the conclusions in the audit



report have been drawn without giving any opportunity to the Petitioners to explain their case. Significantly, only 22 employees have been subjected to recoveries and no action has been taken against majority of the employees. Further, it is not the case of NDMC that Petitioners were in any manner responsible for any misrepresentation or fraud in receiving the promotions/upgradations and consequent payments upon pay-fixation. No show cause notice was given prior to issuance of the impugned orders and effecting illegal recoveries. It is also urged that the audit report pertains to audit going back to Financial Year 2007-08 onwards, with no explanation to conduct an audit after inordinate delay, assuming that there was any power with NDMC to conduct an audit and secondly, the report is completely vague and generally refers to grant of promotions and upgradations to employees without following rules and regulations prescribed by DoPT and followed by MCD, without specifying which Rule/DoPT Instruction has been violated in respect of any promotion or upgradation. Basis this vague audit report and without even putting the Petitioners to notice, recovery is sought to be made in violation of the judgment of the Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, (2015) 4 SCC 334** and DoPT O.M. issued in furtherance thereto on 02.03.2016.

8. Learned Standing Counsels for Respondents *per contra*, submit jointly that HMPL was constituted in the year 1902 and was called Hardinge Municipal Library. Thereafter, an agreement was executed between the Library and Delhi Municipal Committee. After establishment of MCD, Constitution of the said Library was amended and Clause 2 thereof provided that henceforth MCD will be responsible and will from time to time give adequate grants to the Library for meeting its financial requirements. HMPL



is an autonomous body and has its own Managing Committee which has the power to make, rescind, alter or add to its own Rules and Regulations as it deems fit but for larger policy issues it has to follow the directions of MCD. Since grant-in-aid is provided by NDMC, it was imperative for HMPL to obtain approval from NDMC before finalising the RRs and/or carrying out promotions/upgradations in the higher pay scales *albeit* there is no doubt that the employees of HMPL have no relation with NDMC. It is also urged that the Managing Committee of HMPL is duty bound to follow all circulars and instructions issued by Government of India/MCD from time to time.

9. It is further argued that NDMC has every right to conduct an audit of the amounts spent by HMPL since grant-in-aid comes from NDMC and consequently to make recoveries, if any, irregularities are found in the manner the funds are utilised. Recovery process was initiated only after obtaining approval of the Mayor, who is ex-officio President of the Managing Committee of HMPL. It was found during the audit that promotion/upgradations were given to the Petitioners in violation of RRs of the posts in question and that they did not fulfil the requisite criteria mentioned in the Rules. Petitioners have no right to question the audit report or the consequent recoveries of the amounts paid to them in excess of their entitlements.

10. Respondents seek to justify the impugned recoveries on the basis of the audit report dated 12.12.2014 and submit that details of irregular expenditure made towards refreshment items in HMPL as well as medical allowances illegally paid to non-entitled staff and the higher pay scales granted on account of illegal promotions/upgradations have been brought



forth in the report. It is urged that it is also a part of the audit report that several appointments/promotions of the staff were made without conducting proper O&M study and without constituting DPCs etc. for the purpose. The RRs were not followed and even vacancy position was not ascertained and/or put to the Managing Committee by the Library staff. Several discrepancies were noticed in the personal files and service books of officials working in HMPL which are brought out in detail in the audit report. Therefore, it is not as if the impugned action of recovery is without any basis and there was enough material on record for initiating the action by HMPL to recover the excess payments.

11. Heard learned counsels for the parties and examined their rival submissions.

12. Challenge in the present writ petitions is laid to the impugned orders issued by HMPL seeking to recover excess payments allegedly made to the Petitioners on account of pay-fixations due to promotions and upgradations to higher grades and the basis of the impugned action is a special audit conducted by NDMC for the period 2007-08 to 2013-14 pursuant to which an audit report was rendered on 12.12.2014.

13. It is an admitted case of NDMC in its counter affidavit that HMPL is an autonomous body regulated by the Managing Committee and has its own Constitution laying down the terms of governance of the Library as also that Managing Committee has the power to make, rescind, alter or add to its Rules and Regulations as deemed fit, with full power to administer the day-to-day functions and affairs of HMPL. It is also a conceded case of NDMC that it has no relationship with the employees of HMPL and that there are separate rules of HMPL by which promotions/upgradations have to



be governed and NDMC only provides grant-in-aid to meet the financial requirements of HMPL.

14. The impugned action of recovery of alleged excess amounts paid to the Petitioners is premised on a special audit report dated 12.12.2014 rendered by NDMC. A perusal of the audit report shows that there is only a general reference that promotions and upgradations in higher pay scales have been given to employees without following rules and regulations prescribed by DoPT and followed by MCD. However, other than mentioning the names of the employees and the amounts paid to them, the report is conspicuously silent on the details of the promotions/upgradations given to the Petitioners and/or the concerned posts and significantly there is no mention of the DoPT Instruction or RRs allegedly violated and in what manner. It is vaguely brought forth that promotions were given without constituting the selection committees, but there are no further details. Even in the counter affidavit, there are vague allegations, taken verbatim from the audit report but there is not a whisper as to the posts on which the Petitioners were promoted or upgraded erroneously and in violation of which rule or procedure. Pertinently, the audit pertains to period commencing from the financial year 2007-08 but there is no explanation either in the report or in the counter affidavit as to why the special audit was conducted after so many years in 2014, seeking to re-open stale issues and recover payments made in excess of 05 years. Most importantly, NDMC has itself conceded that it is for the Managing Committee of HMPL to formulate its own Rules or Regulations to carry out promotions/upgradations and NDMC has no relationship with the employees of HMPL. The limited role that NDMC plays is to give grant-in-aid to HMPL and this, in my view, cannot give



power and jurisdiction to NDMC to regulate and/or question the promotions and/or financial upgradations given to the employees of HMPL. Insofar as the alleged excess payments are concerned, at the cost of repetition, NDMC has been unable to point out any illegality in promotions qua the Petitioners and it is also not the case of NDMC/HMPL that Petitioners had made any misrepresentations or committed any fraud leading to the promotions or financial upgradations in question and this is not even the finding in the audit report.

15. Learned counsel for the Petitioners has rightly relied on the judgment of the Supreme Court in *Rafiq Masih (supra)* to claim that the recoveries against the Petitioners are illegal and impugned action deserves to be quashed. In the said case, the Supreme Court observed that the orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees can be interfered with in cases where such recovery would result in a hardship of a nature which would far outweigh the equitable balance of employer's right to recover. In other words, interference would be called for only in such cases where it would be iniquitous to recover the payment made. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other which is a welfare State, the issue will be resolved in consonance with the concept of justice assured to the citizens of India even in the Constitution of India. The Supreme Court observed that if the effect of recovery from the concerned employee would be more unfair, wrongful, improper or more unwarranted, than the corresponding right of the employer to recover, then it would be iniquitous and arbitrary to effect recovery. Having so observed, the Supreme Court illustratively summarised few situations where recoveries



would be impermissible in law *inter alia* recovery from employees belonging to Class III and Class IV service (Group 'C' and Group 'D' employees) and where excess payment has been made for a period in excess of 5 years as also in other cases where Court arrives at the conclusion that recovery, if made from the employee, would be iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover and in my view, cases of the Petitioners fall in each of the three categories, where the Supreme Court has held that recoveries would be impermissible in law. It is pertinent to mention that pursuant to the said judgment, DoPT issued an O.M. dated 02.03.2016 and advised the Ministries/Departments to deal with issues of wrongful/excess payments to Government servants in accordance with the judgment of the Supreme Court and highlighted the illustrative cases summarised by the Supreme Court where recovery was impermissible in law.

16. There is no doubt that most recoveries are for payments in excess of 05 years and also that the Petitioners are Class III and Class IV service employees. It is not the case of the Respondents that Petitioners misrepresented or played fraud and contributed to the alleged excess payments. In fact, seen broadly and holistically, the audit report seems to suggest that irregularities were committed in HMPL by granting promotions without approval of RRs and/or following the DoPT Instructions, which as noted above, are only vague allegations and without furnishing any details of what the illegalities were. Be that as it may, Petitioners cannot be held responsible for alleged violations in the concerned authority not following the correct rules or procedure, assuming there are any violations. In my view, it would be wholly iniquitous to permit HMPL/NDMC to make



recoveries pursuant to the impugned orders. The impugned orders are in the teeth of the judgment of the Supreme Court and deserve to be quashed. In so far as promotions or upgradations granted to the Petitioners are concerned, since HMPL has neither averred nor established any illegality in them, no interference is warranted.

17. In view of the aforesaid, these writ petitions are allowed quashing impugned orders dated 23.08.2017 and 28.08.2017. HMPL is restrained from making any recoveries from the Petitioners pursuant to the said orders or from withdrawing the promotions or the financial upgradations given. By interim order dated 09.10.2018 in W.P.(C) 10803/2018, interim order dated 10.10.2018 in W.P.(C) 10887/2018 and interim order dated 15.02.2019 in W.P.(C) 1575/2019, operation of the impugned order dated 23.08.2017 was stayed by the Court. The interim orders are hereby made absolute.

18. Writ petitions are disposed of in the aforesaid terms. Pending applications also stand disposed of.

JYOTI SINGH, J

OCTOBER 04, 2024

B.S. Rohella/shivam