

23.04.2025.
Item No. 3.
Court No. 13
sp/pk

W.P.C.T. No. 282 of 2024

The Director General, National Library & Anr.

Versus

Smt. Sunita Arora & Ors.

Mr. Uday Chakraborty,
Mr. Tirthapati Acharyya

...For the petitioners.

Mr. Sourav Mitra

...For the respondents/petitioners.

1. The writ petition, although filed by the Director General, National Library, was mentioned by the respondents on the grounds that despite the impugned order, a sum of Rs. 18,87,361/- has not been released by the writ petitioners. The said sum was deducted from the terminal benefits of the respondent employee. The respondent complains that she is in dire need of financial help in view of her medical condition.

2. The brief facts relevant to the case are that the respondent Sunita Arora is a Diploma holder in Library Sciences. She was appointed in the year 1984 to the post of Junior Technical Assistant which was redesignated as a Library Information Assistant (LIA) in 1996.

3. In terms of the OM of Ministry of Finance, dated 21st February, 2002 the post and scale of LIA (general language) (5000-8000) was upgraded and

merged with the post of Sr. LIA (5500-9000) w.e.f 01st January, 1996 only for those LIAs who possessed a Bachelors degree in Library Science. Those who did not possess the graduate degree were to remain in the pay scale of (5000-8000).

4. The respondent knowing fully well that she was not entitled to the said scale, obtained and appropriated the said benefit of higher scale in the post of Sr. LIA. She drew a huge benefit of arrears w.e.f 1st January, 1996.

5. The respondent actually obtained the graduate degree in Library Science in September, 2009.

6. She had given an undertaking to the appellants on 22nd September, 2008 that she would refund any excess amounts paid to her by the employer, due to wrong fixation of pay and salary. The undertaking is as follows:-

Undertaking: I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Date: 22.09.2008
Sd/

Station : Kolkata

Sunita Arora
LIA”

7. The respondent knew that she was not entitled to the post of LIA. Despite whereof, on 21st August, 2008, the petitioner obtained the second upgraded higher pay of scale w.e.f. 16th August, 2008. The

respondent was promoted to the post of Assistant Library Information Officer on ad hoc basis from 11th April, 2011 and was granted the third upgradation under the modified MACP scheme. Sometime in the year 2008 itself she was allowed the first tranche of ACP.

8. On 17th June, 2016, an audit query was raised questioning the appellant as to how the respondent with a Diploma in Library Sciences could enjoy the upgraded pay scale and financial benefits in the post of Sr. LIA from 2008 payable only to persons with Bachelor Degree in Library Sciences. Based on the above, the appellant wrote to the respondent on 18th January, 2017 of the illegality in her receiving the benefits of a higher pay scale with arrears. The petitioner replied to the same vide letter dated 27th January, 2017.

9. At the instance of the respondent, the appellants requested the Director of India Audit and Accounts Department to reconsider the case of the applicant and drop the audit query against the respondent. It is, therefore, clear and explicit that the respondent employee, at all material point of times since 2017 if not much before, knew that she was not entitled to the post of LIA or the upgraded scales in such posts.

10. The very fact that the appellant, made a request to the Audit Department to drop the query

against the respondent employee, suggests the influence that the respondent has built over the appellant. Admittedly, therefore, the respondent knew fully well that she was not entitled to the post of LIA and the revised pay scales in the post of Sr. LIA and the three tranches of MACP were wrongfully availed by her.

11. The respondent on the day of superannuation, i.e., 30th November, 2017, was formally notified that a sum of Rs. 18,87,361/- would be recovered from her terminal benefits by the writ petitioner/employer.

12. The respondent challenged the same before the Central Administrative Tribunal wherein the impugned order, restraining the respondent from effecting recovery and/or directing refund of Rs. 18,87,361/- was made by the Tribunal.

13. This Court has very carefully considered the decisions of the Supreme Court and this Court relied upon by the Tribunal in support of its direction that the appellant could not effect recovery of Rs. 18 lakhs and odd from her terminal benefits.

14. The Tribunal relied upon the case of the ***Rajkumar Jana Vs. The State of West Bengal*** reported in ***2018 (3) CLJ (Cal) 58 (MAT 398 of 2018)***, ***Shiba Rani Maity Vs. The State of West Bengal (WP 29979 (W) of 2016)*** as also the decision of the Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** reported in ***(2014) 8***

SCC 883. The Tribunal also relied upon the decision of the Supreme Court in the case of **Shyam Babu Verma Vs. Union of India** reported in **(1994) 3 SCC 521** **Syed Abdul Quadir Vs. State of Bihar** reported in **(2009) 3 SCC 475**, **Chandi Prasad Unniyal Vs. State of Uttarakhand** reported in **(2012) 8 SCC 417**.

15. Applying the aforesaid decisions, the Tribunal was of the view that since the respondent was not responsible for the excess payment nor obtained the same by fraud and/or misrepresentation, the recovery could not be made by the writ petitioner/employer. The Tribunal was of the view that the benefit obtained by the respondent/employee was due to a miscalculation by the appellants and not on the ground of any overt act on the part of the respondent.

16. This Court, however, notes that the Tribunal has failed to appreciate the scope of the decision of the Supreme Court in the case of **High Court of Punjab and Haryana Vs. Jagdev Singh** reported in **(2016) 14 SCC 267**.

17. In the **Jagdev Singh** (supra) decision, the Supreme Court distinguished and clarified that the dicta in the case of **Rafiq Masih (White Washer)** (supra) is not a principal of universal application. The Supreme Court permitted recovery of excess made to an employee despite there being no fraud or misrepresentation on its part in obtaining such

benefit. What has weighed with the SC is that the employee therein had provided a specific undertaking before the employer of refunding any excess amount that would be received by him due to an incorrect calculation of any service benefit or entitlement.

18. In the instant case, the respondent gave an undertaking before the appellant authorities in the year 2008 itself at the time of receiving revised pay scale together with arrears in the post of LIA upon its redesignation. The petitioner's pay ought to have been fixed at Rs. 5000 to 8000 as opposed to Rs. 5500 to 9000.

19. One must bear in mind that the exception carved out by the Supreme Court in the decisions referred to hereinabove as also the case of **Jagdev Singh** (supra). In most of the cases before the Supreme Court, the employees concerned were below Group-B.

20. Indeed in the case of **Shiba Rani Maity (supra)** which distinguished the application of the **Jagdev Singh (supra)** case, the employee was the Assistant Teacher. In the instant case, however, this Court notes that the writ petitioner was a graduate both in general stream and graduate in education.

21. It is expected that a person with her educational qualification ought to have known that she was not entitled to any of the upgraded scales in the post of Sr. LIA redesignated or otherwise without a

graduate degree in Library Sciences. The Court's mind is not free from doubt that the petitioner obtained the illegal benefit knowing fully well that she was not entitled to the same. The petitioner was notified of the illegality on 17th June, 2016, well before a year of her superannuation in November, 2017. She replied to the formal notice served on her by the appellant. The decision in ***Shiba Rani Maity (supra)*** cannot be applied with the facts of the case.

22. The writ petitioners' entitlements to three tranches of NACP have also been obtained before and/or contrary to the Rules prescribed for the former SEP and the substituted MACP.

23. For the reasons stated herein above, the decision of the Supreme Court in ***Jogeswar Sahoo (supra)***, ***Shiba Rani Maity (supra)***, ***Rajkumar Jana (supra)***, ***Shyam Babu Verma (supra)***, ***Syed Abdul Kader (supra)*** and ***Chandra Prasad (supra)*** cannot be applied in favour of the writ petitioners.

24. The impugned order of the Tribunal dated 17th October, 2023 shall stand set aside. The recovery made by the respondents of a sum of Rs.18,87,361/- is upheld.

25. Accordingly, WPCT 282 of 2024 is allowed and disposed of.

26. There shall be no order as to costs.

27. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)