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

\+ W.P.(C) 5581/2018

ASHOK KUMAR CHOUDHAURY AND ANR. .....Petitioners

Through: Ms. Sumita Hazarika and Mr. Prabhakar, Advocates.

versus

UNION OF INDIA AND ANR. .....Respondents

Through: Ms. Pratima N. Lakra, CGSC with Mr. Shailendra Kumar Mishra and Ms. Upanita, Advocates for R-1. Mr. Ashish K. Dixit, Mr. Gautam Yadav and Mr. Umar Hashmi, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **27.03.2026**

1. The Petitioners, who are working as Senior Library and Information Assistants[1] in Sahitya Akademi, assail the office order dated 30th January, 2018, the consequential office memoranda dated 13th February, 2018 and 19th February, 2018, the further office order dated 15th March, 2018, and the speaking order dated 15th May, 2018 by which their representations came to be rejected. By these measures, the Respondents withdrew, with retrospective effect from 23rd August, 2005, the benefit earlier extended to the Petitioners by treating their first financial upgradation under the ACP scheme as falling in the scale of Assistant Librarian, and correspondingly

[1] "SLIA"

pushed them down to a lower grade pay structure.

2. The broad historical sequence of event is not in dispute. The Petitioners entered service in 1990 as Technical Assistants. In 2002, on completion of twelve years of service, they were granted the first ACP in the scale of INR 6500-10500, there being, at that stage, no promotional avenue. Their post was later redesignated as SLIA with effect from 29th July, 2003. Thereafter, in 2005, the Recruitment Rules were revised and SLIA was made the feeder post for Assistant Librarian in the scale of INR 8000-13500. On that basis, and on the Petitioners' representation, the Akademi in 2008 revised the first ACP to INR 8000-13500 with effect from 23rd August, 2005. The Petitioners were later given the second MACP in the higher structure which, by the time of the present controversy, had carried them to Grade Pay INR 5400.

3. In January 2018, the Akademi reversed course. Acting on observations attributed to the AB Cell of the Ministry of Culture, and in the backdrop of implementation of the 7th Central Pay Commission, it withdrew the benefit of the revised first ACP in INR 8000-13500 and restored the Petitioners to INR 6500-10500 from 23rd August, 2005 and, from 1st January, 2006, to PB-II with Grade Pay INR 4600. Aggrieved thereby, the Petitioners submitted representations to the Respondents. The Petitioners had also approached this Court by way of ***W.P.(C) No. 3283/2018**,* which was disposed of with liberty to the Petitioners to make representations, to be decided by the Respondents by way of a speaking order. Pursuant thereto, the Petitioners' representations came to be considered and were ultimately rejected by the speaking order dated 15th May, 2018.

Contentions

4. The Petitioners' case, put succinctly, is that the Respondents cannot reopen in 2018 a benefit which had been consciously revised and implemented in 2008 on the basis of the prevailing Recruitment Rules. Once the 2005 Recruitment Rules made SLIA the feeder post for Assistant Librarian, the next higher grade in the hierarchy for purposes of ACP was necessarily INR 8000-13500. It is on that footing that the Expert Committee and the Akademi revised the first ACP with effect from 23rd August, 2005. The later rollback is arbitrary, unsupported by any proper notice, contrary to the earlier orders of this Court which had already noted absence of justification and want of prior notice, and impermissibly attempts to unsettle an entitlement long after it had been acted upon.

5. The Petitioners further submit that the impugned action proceeds on an erroneous premise that the earlier grant was a mistake. The revision of the first ACP in 2008 was a considered decision taken by a duly constituted Expert Committee in the light of the amended Recruitment Rules and the Petitioners' eligibility. No misrepresentation or suppression is attributed to the Petitioners, and the benefit in question was granted by the employer itself. In such circumstances, the Respondents cannot seek to retrospectively re-fix the Petitioners' pay to their detriment by characterising the earlier decision as erroneous.

6. The Petitioners further rely upon the Service Bye-laws of Sahitya Akademi to contend that the Executive Board is vested with substantial authority in matters relating to pay and service conditions, subject only to the limitation that employees are not placed in a position more favourable than comparable Central Government employees. The 2008 decision was taken within the framework of these Bye-laws and cannot be lightly

disregarded on the basis of subsequent administrative observations. Further, no specific audit objection was ever raised in respect of the Petitioners, despite periodic audits over the years, and the reliance now placed on audit observations is misconceived.

7. It is also urged that even if the structure of the cadre or the mode of recruitment to the post of Assistant Librarian was altered at a later stage, such change cannot operate retrospectively so as to divest them of benefits already earned. The impugned action is thus both legally unsustainable and inequitable, resulting in serious financial prejudice.

8. The Respondents, on the other hand, contend that the grant of the higher pay-scale to the Petitioners was itself contrary to the governing norms. Sahitya Akademi, though an autonomous body, is bound by its Service Bye-laws, which stipulate that the scales of pay are to be as prescribed by the Government from time to time, that pay fixation and increments are to be governed by the same rules as applicable to Central Government employees, and that no employee can be granted terms more favourable than those applicable to a Central Government employee of a similar category. The benefit of the higher scale of INR 8000-13500 was extended without the concurrence of the Ministry of Finance/Administrative Ministry and was, therefore, irregular. Reliance is placed on audit observations of the Comptroller and Auditor General for the year 2009-10 and the findings of the Autonomous Bodies Cell of the Ministry of Culture dated 26th July, 2016, which indicated that such benefit was not applicable to employees of autonomous bodies and required corrective action.

9. The revision of the Petitioners' first ACP to the scale of INR 8000-13500 was erroneous on a proper application of the ACP Scheme. The

Petitioners became entitled to the first ACP in 2002, at which point no promotional hierarchy existed beyond the post of SLIA, and the appropriate scale was INR 6500-10500. The subsequent amendment of the Recruitment Rules in 2005 could not operate retrospectively so as to enhance a financial upgradation already earned. In this regard, reliance is placed on the DoPT clarification dated 18th July, 2001, to contend that the benefit under the ACP Scheme is to be determined with reference to the cadre structure existing on the date of eligibility for financial upgradation.

10. The post of Assistant Librarian was not a promotional post for the Petitioners but was, in substance, a direct recruitment post, and that in any event the Executive Board subsequently resolved that Group 'A' posts be filled by direct recruitment. The grant of the higher scale and the consequential benefits under the ACP/MACP Schemes were, therefore, erroneous and liable to be corrected. The impugned action was undertaken in compliance with the directions of the Ministry of Culture, particularly in the context of implementation of the 7th Central Pay Commission, which required identification and rectification of erroneous pay fixation, ACP and MACP cases. The Respondents maintain that the impugned re-fixation constitutes a correction of an earlier mistake and that, in the absence of such correction, the Petitioners would continue to draw excess benefits at the cost of the public exchequer.

11. Further, since the impugned action constitutes a rectification of an earlier erroneous pay fixation and not the withdrawal of any vested or validly granted benefit, no prior show cause notice was required to be issued. In any event, the Petitioners' representations were duly considered

and rejected by a speaking order dated 15th May, 2018, passed in compliance with the directions of this Court in ***W.P.(C) No. 3283/2018***.

Analysis

12. The principal issue that arises is whether the Respondents were justified in law in reducing the Petitioners' pay scale and grade pay by restoring the first ACP to INR 6500-10500 and correspondingly recasting the subsequent pay structure. This question does not turn on a broad debate on autonomy or control of the Ministry, but must be examined in the context of the governing service framework, namely the Bye-laws, the ACP scheme, the Recruitment Rules in force at the relevant time, and the chronology in which the Petitioners claimed entitlements arose and were subsequently revised.

13. The Petitioners place their case on two connected propositions. First, that, after the Recruitment Rules were revised in 2005, SLIA became the feeder post for Assistant Librarian in the scale of INR 8000-13500. The second is that, once that change was made, the ACP Committee and the Expert Committee were right in revising the Petitioners' first ACP from INR 6500-10500 to INR 8000-13500 with effect from 23rd August, 2005, because financial upgradation under the ACP scheme is to be granted in the next higher grade in the existing hierarchy. The record does show that such a revision was in fact made in 2008 and that it was linked to the 2005 change in the Recruitment Rules.

14. That submission, at first blush, appears to carry some weight. It also explains why the Petitioners were subsequently placed in a higher pay structure and granted further financial progression. However, the matter cannot be resolved merely on that basis. The difficulty lies in reconciling

this position with the structure of the ACP scheme and the point of time at which the first ACP accrued.

15. The first ACP admittedly accrued in 2002, upon completion of 12 years of service, at a stage when no promotional hierarchy existed. The grant of financial upgradation in the scale of INR 6500-10500 was thus consistent with the scheme, which contemplates placement in the next available higher scale in the absence of a promotional avenue. The subsequent exercise in 2008 did not grant a fresh upgradation, but sought to revise the scale attached to the first ACP on the basis of the 2005 amendment to the Recruitment Rules, by which SLIA was made the feeder post for Assistant Librarian. However, in the absence of any higher post in 2002, there was no error in the original grant. The later introduction of a promotional hierarchy cannot, by itself, justify reopening and revising a financial upgradation already earned.

16. This difficulty is borne out by the material on record. The note forming the basis of the 2008 revision proceeds on the representation of the employees and records as follows:

> *"The following library staff have represented that the ACP sanctioned to them in the scale of Rs. 6500–10500 may be graded in the scale of Rs. 8000–13500:*
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> *1. Sri S. Padmanabhan*
> *2. Smt. Sunita Jain*
> *3. Sri A. Choudhury*
> *4. Sri Biswajit Sinha*
>
> *These employees of Library are entitled to ACP to the grade of which they form the feeder cadre. These Senior Library and Information Assistants are therefore eligible to the scale of Asstt. Library and Information Officer of Rs. 8000–13500 being in the feeder cadre of that post from the date the post of Sr. Lib. & Info. Asstt. has been inducted in the feeder cadre of Asstt. Library and Information Officer."*

The reasoning proceeds on the premise that, once SLIA became the feeder cadre for Assistant Librarian, the higher scale ought to follow. Crucially, however, it does not address that no such hierarchy existed when the first ACP accrued in 2002. The Petitioners themselves framed their request as a revision of the earlier ACP. In the absence of any demonstrable error in the original fixation, the 2008 exercise is seen as an attempt to rework an already granted financial upgradation on the basis of a subsequent change in the cadre structure.

17. That chronology matters because the DoPT clarification dated 18th July, 2001, which both sides rely upon, points in a particular direction. It states that the benefit of the ACP scheme is to be allowed as per the hierarchy existing on the date when the employee becomes eligible for financial upgradation. It also proceeds on the footing that cadres and hierarchies are liable to change over time, and that an ACP once earned is not ordinarily to be reopened every time the cadre structure is later revised. That clarification gives substantial support to the Respondents' case. If the Petitioners became entitled to the first ACP in 2002, then the later 2005 change in the Recruitment Rules could not, retrospectively enhance an entitlement that had already crystallised.

18. The Petitioners seek to answer this by saying that the 2008 revision merely corrected the earlier anomaly and brought the ACP benefit in line with the prevailing hierarchy once SLIA became the feeder post for Assistant Librarian. That submission does explain why the Akademi acted as it did in 2008. It also explains why the Petitioners maintain that the revision was not a gratuitous favour, but a reasoned decision taken within the service framework. However, the answer remains incomplete. It does not squarely

overcome the Respondents' central objection that the relevant date for the first ACP was 2002 and not 2005 or 2008. Indeed, the Petitioners' own case proceeds on the basis that the first ACP had already been granted in 2002 in the scale of INR 6500-10500 because, at that stage, no promotional avenue existed from SLIA. Once that is accepted, the real question becomes whether the later change in hierarchy could lawfully alter that first upgradation. On the plain terms of the DoPT clarification, that is difficult to sustain.

19. The Petitioners rely on the Sahitya Akademi Service Bye-laws to contend that the Executive Board had authority over service conditions and pay. While it cannot be said that the Akademi acts merely at the instance of the Ministry, the Bye-laws themselves indicate that pay scales are to be aligned with Government prescriptions and that employees cannot be placed in a more favourable position than their Central Government counterparts. In that light, the Respondents' contention that the higher scale of INR 8000-13500 was extended without requisite concurrence and contrary to governing norms, as reflected in the audit observations and the AB Cell review, cannot be disregarded.

20. The absence of any contemporaneous audit objection does require some qualification. The material relied upon by the Respondents appears to show a general audit objection to the grant of the higher scale to employees of autonomous bodies, not a finding directed specifically to the Petitioners' own cases. That may justify a broader administrative review. It does not, however, dispense with the need to test the Petitioners' position against the governing rules. The absence of an earlier objection, therefore, does not by itself create a vested right, though it remains relevant while considering

delay, the manner of reopening, and the financial consequences of doing so.

21. The Respondents' reliance on the 2009 Executive Board decision, by which Group 'A' posts were again to be filled through direct recruitment, strengthens their case to a limited extent, though not for the whole distance they seek to travel. That later decision may explain why the Respondents maintain that Assistant Librarian again became a direct recruitment post. It also reinforces their submission that the Petitioners could not insist upon a continuing promotional hierarchy in their favour. Even so, the real strength of the Respondents' case does not lie in the 2009 decision alone. It lies in the anterior and more basic point that the first ACP had already accrued in 2002 and as per DoPT clarification, it could not thereafter be enhanced merely because the hierarchy of posts was later altered.

22. For these reasons, the Court is not persuaded that the Petitioners have made out a strong substantive case to insist that the revised first ACP in INR 8000-13500, and the higher grade pay structure built upon it, must continue as a matter of right. On the contrary, the Respondents' objection founded on the Government-linked service framework, the ACP clarification dated 18th July, 2001, and the date on which the first financial upgradation originally became due carries force. To that extent, the challenge to the reduction of pay scale and grade pay on the merits must fail.

23. The remaining question is narrower. Even if the Respondents were right on the underlying entitlement, could they lawfully undo the Petitioners' existing pay position in the manner they did? In the opinion of the Court, they could not. The order dated 30th January, 2018 merely announces withdrawal of the earlier benefit by referring to observations of the AB Cell and the Ministry's insistence on rectification. The memoranda dated 19th

February, 2018 add nothing of substance. They state the result, but not the reasoning. For an action that reopened a pay position standing in the petitioners' favour for years and purported to operate retrospectively from 23rd August, 2005, that was not enough.

24. This was not a clerical correction. It was an adverse decision with clear civil consequences. In such a situation, the authority was required to disclose the basis, hear the affected employee, and then decide. That did not happen here. The later speaking order dated 15th May, 2018 cannot fully cure that defect, because it came only after the rollback had already been ordered and after this Court had intervened in the first round.

25. The question of recovery must also be considered on equitable principles. This is not a case of fraud or misrepresentation by the Petitioners; the higher fixation was granted by the employer itself and remained in operation for a substantial period. The impugned recovery, sought to be effected in 2018 in respect of benefits extended with effect from 2005, is thus after more than a decade. In ***State of Punjab & Ors. v. Rafiq Masih***,[2] the Supreme Court has held that recovery after a prolonged lapse of time, particularly beyond five years, would be inequitable and impermissible. Tested on that principle, the proposed recovery in the present case, after such an extended interval, would operate harshly and cannot be sustained. While the Respondents may, if otherwise permissible, correct the position prospectively, recovery of amounts already paid is liable to be set aside.

Relief and operative directions

26. The writ petition is partly allowed. The impugned orders are sustained only on the substantive question of entitlement, namely, that the Petitioners

cannot claim continuance of the higher ACP-based pay structure as a matter of right. They are set-aside to the extent they reopen the past and impose retrospective financial consequences upon the Petitioners.

27. The Respondents shall be at liberty to re-fix the Petitioners' pay on the corrected basis, but such re-fixation shall be only notional for the past period and only for the purpose of determining the Petitioners' present and future pay position and consequential service benefits.

28. No recovery, adjustment, or coercive deduction shall be made in respect of any amount already paid, drawn, or received by the Petitioners on the basis of the earlier pay fixation. Any amount already recovered or withheld pursuant to the impugned action shall be restored to the Petitioners within eight weeks.

29. The Petitioners' future pay, increments, and consequential financial entitlements, including 7th CPC benefits, shall be regulated on the basis of the corrected pay so re-fixed. The Respondents shall complete the above exercise within twelve weeks and release any consequential amount found payable within four weeks thereafter.

30. The writ petition and pending applications stand disposed of in the above terms.

SANJEEV NARULA, J

MARCH 27, 2026/*nk*

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[2] (2014) 8 SCC 883.