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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 8 April 2026**Pronounced on: 01 July 2026*

+ W.P.(C) 2330/2014, CM APPLs. 18537/2018 & 51222/2022

NATIONAL INSTITUTE OF PUBLIC
CO-OPERATION & CHILD
DEVELOPMENT AND ANR

.....Petitioners

Through: Dr. Monika Arora, CGSC with
Mr. Subhradeep Saha, Ms. Anamika Thakur
and Mr. Abhinav Verma, Advs.

versus

TEJINDER KAUR

.....Respondent

Through: Respondent in person.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

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JUDGMENT**01.07.2026****C. HARI SHANKAR, J.****A. Facts, and the *lis***

1. This is a truly peculiar case. The Central Administrative Tribunal¹ has directed the respondent to be paid the pay and emoluments of a post on which she was never appointed, and on which she did not work even for a single day.

¹ "the Tribunal" hereinafter



2. The respondent was appointed as Research Assistant² in the National Institute of Public Cooperation & Child Development³. While she was so working, the respondent was directly recruited as Joint Director⁴, following which she worked as JD and drew the pay of JD. Though she was never appointed as Deputy Director⁵, the Tribunal has, in the judgment under challenge, directed the respondent to be paid, for her entire tenure as RA till she was appointed as JD, the pay of DD.

3. In so directing, the Tribunal has held that the NIPCCD extracted, from the respondent, during her tenure as RA, “supervisory work equivalent to that of DD”, without a single shred of material to justify the finding.

4. The impugned order is, therefore, clearly, totally unsustainable on facts and in law.

5. We may advert to the facts, now, in somewhat greater detail.

6. *Vide* Memorandum dated 13/17 April 1989 issued by the NIPCCD, the respondent was offered the post of RA. She accepted the appointment vide letter dated 21 April 1989, which read thus:

“The Director
NIPCCD
New Delhi

² “RA” hereinafter

³ “NIPCCD” hereinafter

⁴ “JD” hereinafter

⁵ “DD” hereinafter



Respected Madam,

I hereby convey my acceptance *for the post of Research Assistant* as per the terms and conditions mentioned in your memorandum no. NI/III/50/88/Per./1327 dated 17.4.89.

As I understand informally, my posting has been earmarked for Training Division. Even the vacancies in the C.D. Division do not suit my field of specialisation and the nature of work I am presently doing in C.D. Division. It is my humble request that my case may be favourably considered in the light of the above facts and the offer may please be kept open until any such opportunity is available in the fields of Health or Nutrition.

Thanking you,

Yours faithfully,
Sd/-
(Tejinder Kaur)
Research Assistant (H)
21.4.89”

7. Vide the following Office Order 221/90 dated 31 August 1990, the respondent, whose tenure in the Project to which she was appointed had expired, was relieved:

“No.NI/IX/4/88-Pers.

31 August, 1990.

OFFICE ORDER No.221/90

Consequent upon expiry of the present tenure of Ms. Tajinder Kaur, *Adhoc Research Assistant* under the Project entitled "Assessment of Female Health Workers knowledge in ICDS and Non-ICDS Projects she is hereby relieved of her duties in the Institute w.e.f. 31.8.90 (AN)

Sd/-
(P.K. BARUA)
Administrative Officer”

8. The respondent was again appointed as temporary RA with effect from 26 September 1990 *vide* the following Office Order 247/90 issued by the NIPCCD:



“No. NI/III/22/90-Pers.

1/10/1990

OFFICE ORDER No. 247/90

Kum. Tejinder Kaur is hereby appointed as *temporary Research Assistant* w.e.f. 26/9/90 at Rs. 1640 in the pay scale of Rs. 1640-60-2600-EB-75-2900 in the Institute. Her appointment will be governed by the terms and conditions as contained in this office Memorandum No. NI/III/50/88-Pers. dated 17/4/89. Her appointment in the Institute is provisional subject to the production of medical fitness certificate from Dr. Ram Manohar Lohia Hospital, New Delhi, within fifteen days from the date of receipt of this order posting orders with follow.

Letter addressed to Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi is attached herewith. A set of attestation forms are also sent herewith which should be completed and returned to the undersigned within a week.

This issues with the approval of the Competent Authority.

Sd/-
(P.K. BARUA)
Administrative Officer”

9. By the following Office Order dated 8 October 1990, the respondent was posted to the Women Development Division⁶ of the NIPCCD:

“NI/III/22/90-Pers.

Dt. 8.10.90

OFFICE ORDER NO. 253/90

Ms. Tejinder Kaur, *Research Assistant* is hereby posted to Women Development Division with immediate effect.

Sd/-
(P.K. Barua)
Administrative Officer”

⁶ “WDD” hereinafter



10. By the following communication dated 25 November 1991 issued by the Department of Women and Child Development⁷, Ministry of Human Resource Development, the services of the respondent were placed at the disposal of the Women's Bureau of the DWCD:

“Govt. of India
Ministry of Human Resource Development
Department of Women & Child Development
Shastri Bhawan

New Delhi, dated: 26.11.91

In connection with work relating to monitoring of STEP Programme the services of Ms. Tejinder Kaur, *Research Assistant* of Women's Division of NIPCCD are placed at the disposal of Women's Bureau of the Department of Women & Child Development w.e.f. 1.11.91 till further, orders.

She will continue to draw her salary and allowances from NEPCCD as earlier.

Sd/-
(S.R. Pandey)
Under Secretary to the Govt. of India”

11. The respondent was further transferred and posted from the WDD to the Resource Centre for Child⁸ and, once again reposted to the WDD by the following Office Orders dated 30 September/7 October 1998 and 8 February 2011 issued by the NIPCCD:

Office Order No. 166/98 dated 30 September/7 October 1998

“No. N1/21/17/94-Pers/

Dated: 30.9.98
07/10

⁷ “DWCD” hereinafter

⁸ “RCC” hereinafter



OFFICE ORDER No. 166/98

Kum. Tejinder Kaur, *Research Assistant* is hereby transferred and posted from Women's Development Division to Evaluation Division with Monitoring immediate effect vice Smt. Shanta Gopalakrishnan, Research Assistant who has been transferred and posted from RCC to RCC in the and Child Development Division.

2. This authority issues with approval of the competent authority.

Sd/-
(P.K. Baura)
Deputy Director (Admn.)”

Office Order 172/2011 dated 8 February 2011

“No. NI/III/22/90-Pers.

Dated: 08.02.2011

OFFICE ORDER No.172/2011

Dr. (Ms.) Tejinder Kaur, *Research Assistant* is posted from DCWC Unit to WD Division with immediate effect till further orders. She is advised to report to Joint Director (WD) immediately.

2. This issues with the approval of the competent authority.

Sd/-
(S.K. Vashist)
Asstt. Admn. Officer (Pers.)”

12. Following the recommendations of a Departmental Promotion Committee convened on 25 November 2010, the respondent was promoted as Assistant Director⁹ by Office Order dated 4 March 2011, from which the following paragraph is relevant:

“No.NI/XI/33/2006-Pers.

Dated: 04.03.2011

OFFICE ORDER No.179/2011

⁹ "AD" hereinafter



Consequent upon acceptance of the recommendations of the Departmental Promotion Committee for Group 'A' post made in its meeting held on 25.11.2010 by Secretary (MWCD)-cum-First Vice-Chairman of Executive Council of the Institute, Dr. (Ms.) Tejinder Kaur, *Research Assistant* is promoted to the post of Assistant Director on ad-hoc basis until further orders and posted in the Women's Development Division at NIPCCD Headquarters, New Delhi on provisional basis, till such time Dr. (Smt.) Sandhya Gupta, Assistant Director joins after availing leave, in PB-3 Rs.15600-39100 + Grade Pay Rs.5400/- with effect from the date she assumes charge of her new post.”

13. At this stage, the respondent instituted CWP 4563/1993 before this Court, submitting that, though she was appointed as RA, she had been discharging the duties of DD. The respondent, therefore, prayed that she be considered for appointment/promotion as DD and also be disbursed the salary payable to a DD even during the period she was working as RA.

14. During the pendency of the writ petition, the NIPCCD issued an advertisement dated 7 May 1994, proposing direct recruitment to various posts, including the post of DD. On 26 August 1994, the NIPCCD made a statement, before this Court, that the respondent had become eligible for being considered for direct recruitment as DD. Accordingly, by order dated 26 August 1994, this Court held prayer (a) in the writ petition to have been satisfied, and directed that the writ petition would continue only vis-à-vis prayer (b) therein. The order dated 26 August 1994 read thus:

“C.W.4563/93

Counsel for the respondents states that the petitioner is now eligible to apply and being considered for direct recruitment. In view of the fact that the petitioner is now eligible for being appointed, the petitioner's application for direct recruitment should



be entertained and her candidature be considered with other candidates. This satisfies prayer (a) in the writ petition.

The present writ petition hereafter will be i.e., entitlement, if confined only to prayer (b) any, of the petitioner to equal pay for equal work for the work done in connection with Danish International Development Agency Project.

Rule.

C.M. 8548/93

In view of the orders passed today, the application is infructuous. Dismissed as such.”

15. Alleging that she had not been considered for the post of DD despite the order dated 26 August 1994, the respondent instituted CCP 316/1995 before this Court, for initiation of contempt proceedings against the petitioner. The said Contempt Petition was dismissed by this Court on 16 February 2010.

16. The respondent proceeded to challenge the order dated 16 February 2010 before the Supreme Court by way of SLP (C) 16697/2010 which, consequent to grant of leave, was renumbered Civil Appeal 10358/2014. In the said SLP, the Director of the NIPCCD filed an affidavit, stating that the respondent had been interviewed against one of the vacancies of DD on 15 February 1996, 19 November 1996 and 4 March 1999.

17. While the SLP was pending, the respondent moved an application for permission to amend the prayer clause in CWP 4563/1993. *Vide* order dated 14 March 2001, a learned Single Judge dismissed the amendment application, against which the respondent



preferred LPA 255/2001, which was allowed by a Division Bench of this Court on 24 September 2001. However, thereafter, the respondent, on 22 July 2004, withdrew CM 2837/2001 as being defective. A learned Single Judge allowed the application to be withdrawn with liberty to the respondent file a fresh amendment application.

18. The respondent, therefore, moved CM 9011/2004, once again seeking to amend CWP 4563/1993.

19. While the said application was pending, the proceedings were transferred to the Tribunal by order dated 12 January 2009 of this Court, and registered as TA 319/2009.

20. The Tribunal, by order dated 27 August 2010, allowed the amended writ petition filed by the respondent to be taken on record. Admittedly, by the amendment, the respondent modified the prayer in the writ petition and sought regularisation on the post of DD with consequential benefits, including designation and pay scale of the post of DD with effect from 26 September 1990.

21. By the impugned judgment dated 9 January 2014, the Tribunal has allowed TA 319/2009. Aggrieved thereby, the Union of India¹⁰ has approached this Court by means of the present writ petition.

¹⁰ "UOI" hereinafter



22. In view of the pendency of the present writ petition, the Supreme Court, by order dated 11 November 2014, disposed of Civil Appeal 10358/2014 in the following terms:

“6. In a fact situation of this nature, we are of the considered opinion that if we direct the present a respondent-institution to pay sum of Rs.20,00,000/- (Rupees twenty lakhs only) during the pendency of the Writ Petition, it can satisfy the interest of the appellant.

7. In view of the above, without going into the other details of the appeal filed by the appellant, we dispose of the appeal as under: The Director, NIPCCD is directed to a pay a sum of Rs.20,00,000/- (Rupees twenty lakhs only) to the appellant herein within 15 days' time from today and the said amount will be subject to the result of the Writ Petition. If, for any reason, the respondent do not comply with our order, the appellant is at liberty to make an appropriate application before us.

8. With these observations, the appeal is disposed of. No costs.”

B. The Impugned Judgment

23. Paras 12, 14 and 15 of the impugned judgment contain its reasoning:

“12. We have carefully gone through the facts and judgments placed before us by both sides and heard the matter at length. It appears clearly that the applicant is an outstanding worker and highly qualified. This encouraged the respondents to take work directly from her by the Joint Directors and Directors and initially the Deputy Secretary. In the year 1994, the respondents advertised to fill up four posts of Deputy Director in which they did not consider her application. She had to run to the Court to get the department acknowledge that she was eligible and that she should be interviewed and considered but nothing happened. To frustrate the process, as has been observed both by the Hon'ble High Court and the Hon'ble Supreme Court, an interview was held for a post which was not in her line and declared her Ineligible and that the



applicant had to enforce the order of the Hon'ble High Court through the Contempt Petition. Her successive CRs indicate that she has never reported to a Deputy Director but at least to a Joint Director or Deputy Secretary. In fact, we have pointed out earlier that on two or three successive occasions, the Joint Directors and Director have observed that she has Independently handled the work, confirming her assertion that she was doing the job of Deputy Director. This is also substantiated by the fact that she did not get her CRS written by any Deputy Director and the observation in the official noting that the job requires higher skill of a senior person. The objection to this evidence by the respondents is misplaced because this is definitely material fact to show that her job was Indeed of supervisory nature. In fact, as stated by the applicant, this substantiated by the fact that while she was considered for the post of Joint Director, the respondents did treat her period in the organization as that of a Supervisor.

14. We are convinced that the department has indeed extracted supervisory work from the applicant equivalent to that of Deputy Director and, therefore, she deserves to be benefited under the principle of "equal pay for equal work". The argument of the respondents that there are several other Research Assistants who have been doing such type of work is of no consequence as we don't have the facts of those cases before us whereas the applicant's case is crystal clear. In fact, had the department honourably considered her application for the post of Deputy Director when it was advertised and implemented the High Court's order with all due honesty, perhaps all this litigation could have been avoided. We also find it strange that the respondents found the applicant fit to hold the post of Joint Director but did not find her suitable for the post of Deputy Director.

15. We, therefore, conclude that the OA has merit and it is thus allowed. The respondents are directed to issue necessary orders to give the applicant pay and all other consequential benefits including honorarium (Rs.21000/-) attached to the post of Deputy Director from 26.09.1990, within a period of two months from the receipt of a certified copy of this order. No costs."

C. Rival Contentions



24. The petitioners have advanced the preliminary objection that the Tribunal has ruled on the basis of the amended prayers in the writ petition without the application for amendment having been allowed in the first instance. We, however, do not intend to enter into this aspect as, to our mind, the impugned judgment of the Tribunal is fundamentally flawed. Moreover, ordinarily, an application to amend the prayers in a writ petition has to be allowed, as it is the prerogative of a writ petitioner to decide as to the relief that he seeks. The rigours of Order VI Rule 17 of the CPC do not *mutatis mutandis* apply to writ petitions.

25. On merits, the writ petition asserts that the reasons adduced therein do not justify a direction to pay, to the respondent, the pay of DD, during the period she worked as RA.

26. We are constrained to observe that the writ petition has been most unsatisfactorily drafted, with no ground worth the name. However, we have heard oral arguments of Ms. Monika Arora, learned CGSC for the petitioners and the respondent, who appears in person. Written submissions have also been tendered by both sides.

27. Ms. Arora seeks to point out that the respondent had joined the services of the NIPCCD as RA on 26 September 1990 and that there is no order either posting her as DD or even requiring her to discharge the duties of DD. She submits that the RA, as well as the AD, worked under the supervision of the DD. The respondent had been promoted as AD on *ad hoc* basis with effect from 7 March 2011 *vide* Office Order dated 4 March 2011, which she accepted without demur. The



post of DD, she appoints out, is even above the post of AD. The respondent, she submits, seeks the pay of DD with effect from the date when she was appointed as RA, which is *ex facie* unacceptable.

28. The pay of the respondent as AD had in fact been fixed in terms of FR 22(I)(a)(1)¹¹. There was no basis on which the respondent could be granted the pay of DD. Ms. Arora submits that the respondent has not discharged a single day's duty as DD. Moreover, submits, Ms. Arora, the pay of RA is a Group D post, whereas the post of DD is a Group A post.

¹¹ **22 (I)** The initial pay of a Government servant who is appointed to a post on a time scale of pay is regulated as follows:

(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale shall be fixed by giving one increment in the level from which the Government servant is promoted and he or she shall be placed at a cell equal to the figure so arrived at in the level of the post to which promoted or appointed and if no such cell is available in the level to which promoted or appointed, he shall be placed at the next higher cell in that level.

Save in cases of appointment on deputation to an ex cadre post or to a post on ad hoc basis or on direct recruitment basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the next higher cell in the level of the post to which he or she is promoted on regular basis and subsequently, on the date of accrual of next increment in the level of the post from which Government Servant is promoted, his pay shall be re-fixed and two increments (one accrued on account of annual Increment and the second accrued on account of promotion) shall be granted in the level from which the Government Servant is promoted and he or she shall be placed at a cell equal to the figure so arrived, in the level of the post to which he or she is promoted; and if no such cell is available in the level to which he or she is promoted, he or she shall be placed at the next higher cell in that level.

In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible from the date of initial appointment or promotion to be exercised within one month from the date of such regular appointment.

In cases where an officer has retired as ad hoc before being regularised to that post and later on has been assessed during the process of regularisation and found fit by the competent authority along with his or her juniors, who are still in service and are eligible to avail of the option facility from a date on which the retired employee was still in service, the same option facility shall also be extended to the retired employee, to be exercised within three months from the date when his or her junior became eligible to avail of option facility and in cases where such retired employee was himself the junior most, he or she may exercise the option facility within three months from the date when his or her immediate senior became eligible to avail of option facility:

Provided that where a Government servant is immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the level of the lower post, his initial pay in the level of the higher post shall be fixed at the cell equal to the figure so arrived at in the level of the post to which promoted or appointed by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the level of the lower post and if no such cell is available in the level to which he is promoted or appointed, he shall be placed at the next higher cell in that level.



29. Ms. Arora further disputes the finding of the Tribunal that the petitioners' ACRs were never forwarded to the DD. In fact, submits Ms. Arora, for 15 years, the respondent's ACRs were written by the DD.

30. Ms. Arora, therefore, submits that there is no basis for the directions issued by the Tribunal.

31. Responding to Ms. Arora, the respondent, who appears in person, relies on the following official noting dated 20 November 1991:

“1. It seems RA(TK) has enough time at her disposal to keep submitting notes seeking to malign individuals, without taking any action on work assigned to her, that she was requested to submit last on 11.10.91 on note. Since RA(TK) is invariably not to be found in her seat over the past 4 months, and has been coming and going out of the Division, presumably work in the Department related to STEP, since 26.10.91 hence her contention that she received the said note on 31.10.91 is irrelevant, especially since she has taken no action on the same.

2. The kit material identified by undersigned and Consultant (G) was handed over to Mr. Goyal of PSIPA on 28.10.91 itself. RA (TK)s comments about Consultant (G)s involvement at para (2) are highly objectionable and rude. As JS(P) is aware, it was at her behest and instructions that Ms. Geeta Unnikrishnan was involved in the Sensitization programme at Punjab and its technical/substantive sessions. Consultant(G) has been involved in the programme from preparatory stages itself, including discussions regarding programme schedule, resource persons, kit material etc. I see no reason in comments of RA(TK) in para 6, since it is not at her discretion or on her decision that individuals are involved in programmes. RA(TK) had infact tried to hamper work on the programme thorough her insolent and obstructive behaviour and rude remarks. to undersigned and others, including the Steno/Typists and peons and withholding of papers and the publication on 'Gender Roles' (which has not been handed over to



date); Consultant (C) has been associated in the preparatory work and in the conduct of the programme in Chandigarh and has contributed significantly to it's the successful execution. I have no reason or inclination. to malign anyones reputation or career. It appears that RA(TK) has tried to distract from own lapses of deliberately withholding and obstructing work for the programme and insolent behaviour by making such uncalled for remarks about Consultant(G) and undersigned in her note.

3. It is not understood why RA(TK) should choose to procure reading materials for the Chandigarh programme only on 17.10.91, the last working day before the UP Sensitization Programme when she had been asked to do this as early as 8-10-91 and again on 10.10.91 apart from impeding the undersigned work on other assignments.

4. It may be noted that at no time was RA(TK) the Programme Associate for the Sensitization Program in Chandigarh. As research assistant she was required to assist in the programme. While she was involved in preliminary discussions with Mr. Goyal of PSIPA and has prepared the draft for the programme design, she has in fact hindered work for the programme by refusing to p/u the draft programme schedule and kit material thereafter, despite my having clearly discussed sessionwise details of kit and sources for procurement materials. Hence, the hard and sincere labour' referred to may have been in the preliminary stages, but in fact it was the lack of cooperation from RA(TK) which necessiated the undersigned completing the tasks of preparing final programme schedule, sending letters to resource persons and compiling kit materials myself in consultation with Consultant (G).

5. It was in any case not considered necessary for any person to assist in the programme at Chandigarh since all logistic arrangements and financial disbursements were the responsibility of PSIPA. This was discussed with and approved by DIS(WD) as authorised by JS(P). RA(TK), by not completing work assigned to her or submitting the same had infact disassociated herself from the programme. She is in no way equipped or in a position to comment on association of any other person or faculty in the programme in view of her own unwillingness to do as directed to assist in the programme.

6. As regards para 7. of her note by withholding required material and refusing to p/u the programme schedule and kit material RA(TK) had infact hindered the preparatory work of the programme. It became impossible for undersigned to assign her any work on this or any programme in which she had been



assisting the undersigned due to the above reason and her misbehaviour on 17.10.91.

7. I have already requested that RA(TK) be removed from my charge in view of her insolent and objectionable behaviour, JS(P) may take whatever action that she considers fit to deal with the matter, and in the interest of discipline in the Women's Development Division.
For consideration pl.

(Soma K Parthasarathy)
D.D.(Trg.)”

32. She also seeks to point out that some of her ACRs were written by the Deputy Secretary, and not by the DD. She places reliance on the judgment of a learned Single Judge of the High Court of Bombay in ***Dr. Sakhaullah v. Visvesveraya Regional College of Engineering***¹².

33. The respondent further relies on the following office noting dated 31 March 1993, assigning duties to various officers:

“NIPCCD
(M.D. DIVISION)

NI/WD/II-/92-93

31.3.93

Consequent, on the departure of Ms. Geeta Unnikrishnan from the Division w.e.f. 1.4.93 the following activities under the DANIDA Package will be handled by the faculty member mentioned hereunder:-

Gender Concerns

- a) National Level Sensitisation Programme
Ms. Ila Verma Consultant
Dr. Alka Arya, Research Assistant
- b) Regional Level Sensitisation Programme for the North East, West Bengal and Bihar:

¹² 1999 LAB I.C. 991



Ms. Ila Verma, Consultant
Ms. Putul Bose, Research Assistant

- c) Organisation and Programmes
Ms. Tejinder Kaur, Research Assistant
- d) Preparation of Resource Book on Institutions conducting Gender relating Training at the National and the Regional Level:
Ms. Ila Verma Consultant
Ms. Daljeet Kaur, Research Investigator

Banking

- a) Training of Trainers (Bank Trainers):
Mr. B.R. Siwal, Research Assistant
- b) Media Campaign and Information Dissemination on Credit for Women Entrepreneurs
Mr. O. R. Singh, Research Assistant
Mr. M.S. Yadav, Research Assistant

Ms. Geeta Unniskrishnan may please hand over the concerned file to these faculty members and explain the follow up action that is required on each of these activities.
For future guidance the undersigned may be contacted, if required.

(T.KAUR)
PROJECT DIRECTOR
31-3-93”

34. The respondent has further drawn our attention to the job descriptions of RA and DD, as officially issued by the NIPCCD:

“JOB DESCRIPTION OF RESEARCH ASSISTANTS

The Research Assistants will be attached to one of the Units in the Institute and will undertake assignments entrusted to him/her by the Unit Head.

I. TRAINING

- (i) Will assist in planning, conducting and any other work in connection with the training courses/workshops/seminars.
- (ii) Will deliver talks in training courses and act as resource person in the group discussions, reporting in various seminars/workshops



- (iii) Will participate and contribute in training courses/workshops/seminars organised by other organisation.
- (iv) Will assist in developing training material, teaching aids, manuals, guide books, bibliography etc.

II. RESEARCH

- (i) Will, assist in formulation of Research/survey projects, collection of data and analysis, preparation of draft chapters of report and any other work pertaining to research/survey.
- (ii) Will assist in writing research based papers and other materials.

III. EXTENSION/DEMONSTRATION SERVICES

Will assist in the running of demonstrations/extension services within and outside the Institute's campus.

IV. CONSULTANCY

Will assist in the consultancy services provided by the respective Unit

V. MISCELLANEOUS.

- (i) Will assist in the proper maintenance of records and files.
- (ii) Will undertake any other work assigned from time to time.”

“JOB DESCRIPTION OF SPECIALISTS

The specialists shall be as the Head of his/her unit and be responsible for all the assignments given to his/her unit.

I. TRAINING

- (i) Will be responsible for planning, organising and directing training/orientation courses, workshops and seminars assigned to his/her unit.
- (ii) Will plan and direct field work placement.
- (iii) Will deliver talks/arrange demonstration in the field of his/her specialisation in training courses and write papers for and act as Rapporteur in various seminars/workshops etc.
- (iv) Will participate and contribute in training courses/workshops/seminars organised by other agencies
- (v) Will develop training material, teaching aids, manuals, guide books etc.



- (vi) Will be responsible for necessary follow up action.

II. RESEARCH

- (i) Will be responsible in all matters concerning research projects directly undertaken by him/her.
- (ii) Will be responsible for all supervision of research projects undertaken by his/her unit members.
- (iii) Will associate with inner-disciplinary research projects in relation to his/her field of specialisation.
- (iv) Will monitor documentation of research projects conducted in his/her field of specialization.
- (v) Will contribute research based papers and other materials in his/her area of specialisation.
- (vi) Will be responsible for necessary follow up action.

III. EXTENSION DEMONSTRATION SERVICES

Will plan, organize/direct such demonstration services within and outside the Institute's campus so as to generate field knowledge and have relevance for Institute's training and research programmes

IV. CONSULTANCY:

- (i) Will provide technical advice/comments/suggestion on all matters relating to his/her field of specialisation.
- (ii) Will provide consultancy services in his/her field of specialisation to governmental and voluntary organizations.

V. ADMINISTRATION

- (i) Will be responsible for proper maintenance of registers, records and files pertaining to his/her unit.
- (ii) Will be responsible for maintaining discipline within his/her unit and facilitate efficient functioning of unit.\
- (iii) Will discharge such administrative functions and responsibilities as are assigned.

VI. MISCELLANEOUS:

- (i) To help promote development of library in his/her area of specialization.
- (ii) Will undertake any other work assigned from time to time."

35. Though the second document shown to us by the respondent refers to the "job description of specialists", the respondent submits



that specialists were redesignated as DD, for which purpose she relies on para 6 of the report of the “Committee on Re-organization of the NIPCCD”, submitted in February 1988, which reads thus :

“6. The Committee recommends that designation of the senior level staff at the headquarters and at the regional offices be changed as shown below:-

<u>Present designation</u>	<u>Proposed designation</u>
1. Deputy Director	Joint Director
2. Specialist	Deputy Director
3. Research Associate	Assistant Director”

36. The respondent seeks to compare the job profile of RA and DD vis-à-vis her job profile, as contained in her resume for the period 1 October 1991 to 31 March 1992, which reads thus:

“Brief Resume of the work of Tejinder Kaur, Research Assistant, for the period 1.10.91 to 31.3.92.

Research and Monitoring:

1. Scrutiny of about 200 old project proposals pending with desk ‘Step’, for assessing their viability and suit-ability for financial assistance under STEP Programme.
2. Monitoring of action projects being implemented under the STEP Programme of Deptt. Women & Development-including both physical and financial targets achieved. Putting up Quarterly Progress Reports for perusal of Senior Officers of the Deptt. organizing quarterly Review Meetings for STEP Projects.
3. Coordination of activities related to Bench mark survey of the ongoing and the newly sanctioned STEP Projects.

Training:

4. Involved in incorporation of gender concerns in training programmes conducted for STEP Projects, with a special focus on strengthening of the "Women in Development" (WID) component. Assessment of capability of the implementing agencies to



implement the WID component and the need for Gender specific training programmes in STEP Projects. Modification of Feedback-schedule for training programmes.

5. Training Programme for Sensitisation of officers of Punjab State to Gender FERRE Issues.

- a) Finalisation of Programme schedule and background material for the programme (10.10.92) with DD (Trg)
- b) Submission of draft Programme Schedule (14.10.92)
- c) Submission of copies of documents to be included in the kit for the programme (24.10.91) as identified with DD (Trg) on 10.10.92

Documentation:

6. Assisted JD(M) in drafting the write-up for women's Bureau's portion of the Annual Report for 1991-92.

7. Preparation of briefs, notes and reference papers for use by senior officers of the Deptt, during meetings and tours, on employment sectors being covered under STEP.

8. Preparation of proposal for revision of financial sanction for printing the STEP Dairying Training Manual for Women in Hindi and English.

9. STER Project Sanctioning Committee Meeting and disbursement of grants urgent STEPH

- a, appraisal of 6 of the 9 project proposals considered by the Committee & obtaining comments of Govt. Deptts, concerned.
- b, drafting the minutes of the STEP Project Sanctioning Committee Meeting held on 3.3.92 and dissemination of of the Minutes.
- c, reworking of the components including budgetary details for releases of grants and finalisation of the outlay of the newly sanctioned projects. Drafting of sanction letters,

The entire allocation under STEP Program, during 1991-92, of Rs. 8.50 crores, was disbursed as grant-in-aid."

37. Without prejudice to her contentions, the respondent submits that, in any case, it would not be permissible for the petitioners to recover any payment of the post of DD, made to her at this stage, in



view of the following Office Memorandum dated 2 March 2016 issued by the Department of Personnel and Training¹³ which, in turn, relied on the judgment of the Supreme Court in ***State of Punjab v. Rafiq Masih***¹⁴:

“F.No.18/03/2015-Estt. (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 2nd March, 2016

OFFICE MEMORANDUM

Sub: Recovery of wrongful/excess payments made to Government servants.

The undersigned is directed to refer to this Department's OM No.18/26/2011-Estt (Pay-1) dated 6th February, 2014 wherein certain instructions have been issued to deal with the issue of recovery of wrongful/excess payments made to Government servants in view of the law declared by Courts, particularly, in the case of Chandi Prasad Uniyal And Ors. vs. State of Uttarakhand And Ors., 2012 AIR SCW 4742, (2012) 8 SCC 417. Para 3(iv) of the OM inter-alia provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of ***State of Punjab & Ors vs Rafiq Masih (White Washer)*** etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation /fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 ibid has, inter-alia, observed as under:

¹³ “DOPT” hereinafter

¹⁴ AIR 2015 SC 696



"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the 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. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

3 The issue that was required to be adjudicated by the Hon'ble Supreme Court was whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2&3 of the judgment are essentially indispensable.



4 The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the 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.

5 The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

6 In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.

7 Hindi version will follow.

(A.K. Jain)

Deputy Secretary to the Government of India”



38. The respondent has further submitted that, given the work that she was discharging, the Tribunal was perfectly justified in applying the principle of equal pay for equal work, and directing that she be paid the pay and emoluments payable to a DD during the time she was working as RA. She has also relied on the following order dated 30 July 2013 passed by the Supreme Court in SLP (C) 16697/2010:

“After Mrs. Tejinder Kaur, petitioner in person, made her submissions, Shri Siddharth Luthra, learned Additional Solicitor General gave out that if she makes representation even at the stage, he will ensure that her case is fairly considered for the post of Deputy Director as in 1995.

Mrs. Tejinder Kaur agreed to the suggestion of the learned Additional Solicitor General and gave out that she will hand over copy of the representation to the learned Additional Solicitor General today itself by the evening.

Put up on 21.08.2013.”

39. Finally, the respondent has placed reliance on the judgment of the Supreme Court in ***Ramakant Shripad Sinai Advalpalkar v. Union of India***¹⁵.

40. In rejoinder, Ms. Arora merely submits, *apropos* the ACRs of the respondent, that they were written by the Deputy Secretary only for one year after 1991 and were otherwise written by the DD, as the Reporting Officer.

D. Analysis

¹⁵ 1991 Supp (2) SCC 733



41. It is hardly necessary for us to enter into the respective submissions of both sides to decide the writ petition.

42. A person is only entitled to the pay of the post to which she, or he, is appointed. There is no principle of service law which entitles a person, who is substantively appointed to a particular post in a particular pay scale, to the pay scale of a higher post. The only situations in which the law entitles a person substantively appointed to a post in a particular pay scale to a higher pay, are those envisaged by FR 49, which only apply where a person is *formally appointed to hold charge* of the duties of a higher post. No order, formally appointing the respondent to hold charge, or even discharge, the duties of DD, has ever been issued.

43. The learned Tribunal has proceeded on a principle unknown to service jurisprudence, that a person substantively appointed to a post in a particular pay scale can be granted the pay scale of a higher post, because she, or he, was discharging the duties of the said post. There is no such principle known to law.

44. Even on facts, there is nothing to indicate that the respondent was discharging the duties of DD, during her tenure as RA. Rather, we have taken the pains of reproducing various Office Orders issued with respect to the respondent, during the period when she was working as RA, *all of which refer to her as RA*. Even the Office Order dated 4 March 2011, which promotes her as AD, refers to her as RA. The ACRs on which the respondent relies, also referred to her as RA.



45. The respondent accepted her promotion as AD in full knowledge of the fact that she was being promoted from the post of RA to the post of AD. She never chose to challenge the said order at that point of time on the ground that she was in fact discharging the duties of DD and therefore, could not have been promoted as AD.

46. It is not necessary for us to enter on the aspect of the officer who wrote the respondent's ACRs, though the record seems to indicate that, for a large portion, they were written by the DD. In any event, the entitlement of the respondent to the pay of the post of DD cannot be decided on the basis of the reporting officer who wrote her ACRs.

47. The learned Tribunal has also sought to justify the direction to grant, to the respondent, of the pay of DD, by applying the principle of "equal pay for equal work". In this context, the only observation by the Tribunal is that the petitioner made her work in a supervisory capacity. There is nothing to indicate that the respondent worked in a supervisory capacity or, at least, that she had discharged the duties, which, as per the job profile of various posts in the NIPCCD, were to be discharged by a DD.

48. The respondent sought to draw our attention to the job profiles of RA and DD *vis-à-vis* her job profile as contained in her resumé. She also drew attention to certain file notings. We have reproduced all these documents earlier in the judgment. Without burdening this judgment by a copious reference thereto, suffice it to state that the



résumé of the respondent, when seen, does not tally with the job profile of DD in the office of the NIPCCD. Neither is there any material on record to indicate that the respondent was discharging all the duties of DD, as envisaged in the job profile of DD, in the organizational structure of the NIPCCD.

49. We may also note, in passing, that, even if a person holding a particular post is made, by her or his employer, to do the work of a higher post, that by itself does not *ipso facto* entitle the person to the pay of the higher post, in the absence of any formal order. The circumstances in which higher emoluments can be granted are outlined in FR 49 and, outside those, there is no right to any pay higher than that which relates to the post which is substantively held.

50. In so far as the principle of equal pay for equal work is concerned, the view of the Tribunal is contrary to a line of authorities by the Supreme Court. The Supreme Court has, in various decisions, laid down the factors which have to be borne in mind while granting parity of pay on the ground of equal pay for equal work. The Tribunal, with respect, appears to have proceeded on the basis of a fundamental misconception of the principle. The principle of equal pay for equal work applies where the pay of *a particular post* is directed to be equated to the pay of another post, on the ground that *the two posts*, when compared, satisfy all the ingredients which justify equation of their pay scales.

51. The principle of equal pay for equal work cannot be pressed into service to direct the person, who is substantively appointed to a



particular post, in a particular pay scale, to be granted the scale of a higher post. The very application of the principle of the “equal pay for equal work” is, therefore, fundamentally flawed.

52. Besides, pay scales of posts are fixed, in the government, as per *Delhi Veterinary Association v. Union of India*¹⁶, on a variety of considerations, including “the degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved” apart from “the method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside”.

53. There is no material on record to indicate satisfaction of the afore-noted criteria, as laid down by the Supreme Court in *Delhi Veterinary Association*, on the basis of which the petitioner could be entitled to the pay of DD.

54. In any case, it was never the respondent’s case, before the Tribunal, that the scales of pay of DD and RA should be equalized. The principle of “equal pay for equal work” has, therefore, no application at all.

¹⁶ (1984) 3 SCC 1



55. If the principle of equal pay for equal work were to apply in a case such as the present, it would result in equation of the pay scale of RA and DD, which is obviously absurd.

56. The very invocation of the equal pay for equal work doctrine was, therefore, unjustified.

57. The respondent relies on **Ramakant Shripad Sinai Advalpalkar**. The decision, if anything, defeats her case. In para 5 of the report, the Supreme Court has held thus:

“5. The arrangements contemplated by this order plainly do not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. *In such a case he does not get the salary of the higher post; but gets only what in service parlance is called a “charge allowance”*. Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.”

Thus, *even in a case where a person, substantively holding a lower post, is formally asked to discharge the duties of a higher post*, the Supreme Court has clarified that she, or he, would not *ipso facto* be entitled to the pay of the higher post. The only entitlement would be to a charge allowance. In the present case, there is no order even asking the respondent to discharge the duties of the post of DD, at any point of time.



58. We are, therefore, completely convinced that the respondent was not entitled to be treated as a DD or to be entitled to the pay scale and other emoluments available to a DD at any point in her service career as, she was never promoted as DD, and did not work as DD even for a single day.

59. The respondent has also sought to invoke the principle in **Rafiq Masih** along with the DOPT OM dated 2 March 2016 *supra* to contend that no recoveries can be made from her.

60. The said principle can have no applicability in the present case in view of the order dated 11 November 2014 passed by the Supreme Court which, even while directing *ad hoc* payment of ₹ 20 lakhs to be paid to the respondent, has made the payment subject to the outcome of the present writ petition. Once the Supreme Court has so ordered, there can be no question of the respondent holding on to the said amount even after we have found no merit in the writ petition.

61. However, we permit the respondent to repay the amount of ₹ 20 lakhs, as paid to her pursuant to the order dated 11 November 2014 of the Supreme Court in ten bi-monthly instalments commencing 31 July 2026, i.e., at the rate of ₹ 2 lakhs every two months.

E. Conclusion

62. We, therefore, find that the impugned judgment of the Tribunal is completely unsustainable on facts as well as on law. It is, accordingly, quashed and set aside.



63. The writ petition stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 01, 2026*/yg/aky*