

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No.21680 of 2014

Sri Santi Sudha Charit(since deceased) repled. by Arati Charit
....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

Mr. Manoranjan Jana, Adv.
Mr. Sakti Sadhan Samanta, Adv.

..... for the Petitioner

Mr. Jahar Lal De, Adv.
Ms. Tapati Samanta, Adv.

..... for the State Respondents

Heard On : 15.09.2022

Judgment on : 23.09.2022

Rabindranath Samanta, J:-

1. The petitioner Santi Sudha Charit, since deceased, preferred the instant writ petition seeking, amongst others, the following reliefs:

“a) To pass an order directing and/or in the nature of Mandamus, commanding the respondents, more particularly the Director of Library Services, Government of West Bengal, Respondent no.2 to

revise the pensionary benefit on the basis of petitioner's approval letter vide Memo dated 121/(3)/97/DL(H)/76 dated 3rd March, 1977 and post facto approval vide office Memo No. 43/1(3) D.L.O.(H) dated 1st February, 2006, i.e. approval of the appointment of your petitioner as Librarian of Anandam Sub Divisional Library with effect from 20.10.1970;

- b) To pass an order, direction and/or writ in the nature of Mandamus, commanding the respondents more particularly the Director of Library Services, Government of West Bengal to show cause as to why in the facts and circumstances, the petitioner will not get the revised pensionary benefit as per approval letter and as per post facto approval, service book and leave salary statement by counting continuous uninterrupted service of the petitioner from 20.10.1970 to 31.01.2006 i.e. the date of retirement;
- c) To issue an order and/or direction and/or writ in the nature of Mandamus directing the respondents to show cause as to why the impugned Memo No. 870(A) dated 11.06.2014 being
6c/Lib-22/2014

Annexure "P-12" herein will not be set aside and/or quashed for the interest of justice.

- d) To pass an order and/or direction and/or writ in the nature of Prohibition prohibiting the respondents more particularly respondent No.2, Director of Library Services, Government of West Bengal, Salt Lake City, Kolkata from giving any effect or further effect to the impugned decision vide Memo No. 870(A) dated
6c/Lib-22/2014
11.06.2014. Annexure "P-12" herein;

- e) Issue a direction and/or writ in the nature of Certiorari calling upon the respondent to transmit and produce the connected documents, lying with them before this Hon'ble Court and on perusal conscionable justice may be administered by setting aside the impugned Memo No. 870(A) dated 11.06.2014 being
6c/Lib-22/2014

Annexure "P-12" and issuing the revised pensionary benefit from the date of initial approval and post facto approval with effect from 20.10.1970 to date of retirement 31.01.2006;

2. During the pendency of the writ petition the petitioner died on 26th May, 2018 and in his place his widow Arati Charit was substituted.
3. Shorn of details, the facts which led the filing of the writ petition may be stated as under:

The petitioner was appointed as a Librarian in Uluberia Anandam Central Library on 20th October, 1970 vide letter of appointment dated 16.10.1970 issued by the District Social Education Officer, Howrah, the respondent No.4 herein. Since the date of appointment he was working satisfactorily and without any interruption. He retired from service on 31st January, 2006 on superannuation.

4. By virtue of G.O No. 459-EDN(SE) dated 28.06.1979 and G.O No. 37 EDN(SE) dated 21.1.1980, Anandam Central Library was converted to Sub-Divisional Library. After such conversion the concerned authorities requested the petitioner to appear before the selection committee for interview for the same post and his name was recommended for the post. Be it noted that for the purpose of appointment of Librarian of Anandam Sub-Divisional Library no advertisement was published in any newspaper nor the petitioner ever applied in response to any advertisement. After getting appointment

- letter by post he noticed that it was spelt in the appointment letter that his appointment would be treated as fresh and not transferable. The petitioner raised objection by a written representation stating therein as to why his appointment be treated as fresh appointment and why his previous fifteen years of service would not be counted for this promotional post. By representation dated 12.10.1984 he informed the Administrator, Anandam Sub-Divisional Library, Uluberia that on conversion of Amta Public Library to Sub-Divisional Library the previous acting Librarian got all the benefits from the date of joining of his past service as permanent employee. But, why the same benefit would not be extended to him as a Librarian of Anandam Sub-Divisional Library. While the Librarian of Amta Sub-Divisional Library has got pensionary benefits from the date of his joining in service as Librarian, the petitioner has been deprived of getting his legitimate entitlements though he served as Librarian continuously since the year 1970.
5. After the petitioner retired from service on 31st January, 2006 the concerned authority vide Memo dated 1st February, 2006 informed him that his appointment as Librarian since 20.10.1970 was approved post facto. The petitioner submits that his leave salary was counted as 240 days since his joining in service in 1970 and all the entries in his service book have been made counting his service from the date of his initial appointment i.e. from 20.10.1970 to 31st January, 2006. The concerned authority never sent any approval letter to him in respect of the service from 1984 till his retirement.
 6. The petitioner made several representations on several occasions to the concerned authorities praying for continuation of his past service from the date of joining on 20.10.1970 till 29.09.1984. The representation which the petitioner made to the District Library Officer was forwarded by him to the Director of Library Services on 27.06.2005. His prayer for counting his past service from 20th

- October, 1970 to 29.09.1984 is still pending before the authorities concerned. Without taking proper steps for regularisation of his past service from 20th October, 1970 to 29.09.1984 the authority concerned requested the petitioner vide Memo dated 3rd February, 2009 to submit his pension paper on the basis of his regular service with effect from 30.09.1984. The petitioner submits that such act on the part of the authority concerned is illegal and malafide. Ultimately, the concerned authority issued P.P.O three years after his retirement.
7. Being aggrieved by the arbitrary and whimsical acts on the part of the respondent authorities, especially the Director of Library Services, the petitioner moved a motion being W.P. No. 13128(W) of 2013 before this Court and the motion was disposed of on 22.04.2014 by a learned Single Bench directing the authorities concerned to consider the claim of the petitioner in the light of the approval confirmation and all other necessary documents within six weeks from date by a reasoned order. However, the Director of Library Services by order dated 11.06.2014 rejected the representation of the petitioner on the ground that the appointment of the petitioner as Librarian should be treated afresh and not transferable from 30.09.1984 and no question of counting his past service arose.
 8. Feeling dissatisfied with the order of rejection of the Director of Library Services, the petitioner preferred the writ petition on hand seeking the reliefs as indicated above.
 9. In their affidavit-in-opposition the respondent Nos. 1, 2 and 3 state that the petitioner was appointed as a Librarian of Anandam Central Library, a rural library, on 20th October, 1970. The library was converted to Sub-Divisional Library in the year 1980. The nature and character of the post of Librarian of a Rural Library and that of a librarian of a Sub-Divisional Library is different. As per the Recruitment Rules of 1981 published vide Memo dated 11th February, 1981 the requisite qualification for recruitment to the post of

Librarian of a Rural Library was School Final and certificate in Library Science while the requisite qualification for recruitment to the post of Librarian of Sub-Divisional Library was Graduate and Bachelor degree of Library and Information Science. After Anandam Rural Library was converted to Sub-Divisional Library, a fresh recruitment was made seeking names from employment exchange. A number of candidates including the petitioner were called at interview and at the selection process the Appointment Sub-Committee by a resolution dated 31st August, 1984 recommended the name of the petitioner for appointment as the Librarian of the Library. Accordingly, the District Social Education Officer, vide Memo dated 25th September, 1984 issued fresh appointment to the petitioner. The appointment issued to the petitioner indicates that the appointment was fresh one and it was not transferable. Since the appointment of the petitioner as Librarian of the Anandam Rural Library and his appointment as Librarian of Anandam Sub-Divisional Library are distinct in nature, the past service of the petitioner from 20th October, 1970 to 29.09.1984 could not be counted as continuous service for the purpose of extending pensionary benefits to him. As to the upgradation of Amta Rural Library to Amta Sub-Divisional Library, the librarian Anil Kumar Deyasi was permitted to act as the Librarian of the Sub-Divisional Library on 20th December, 1978 on the condition that he would have to obtain the requisite qualification of Diploma in Library Science or the degree of Bachelor of Library and Information Science within the stipulated period of two years and Sri Anil Kumar Deyasi obtained the Bachelor degree of Library and Information Science in the year 1979. Since the nature of appointment and condition of service of Sri Deyasi are quite distinct from the appointment and nature of service of the petitioner, the benefit as extended to Sri Deyasi would not be extended to the petitioner. On such grounds and denying and

disputing the averments as made in the writ petition the answering respondents seek dismissal of the writ petition.

10. In her affidavit-in-reply the substituted petitioner Arati Charit states that after the demise of her husband she is now entitled to get all the pensionary benefits which were admissible to her husband treating the service of her husband as continuous from 20.10.1970 till 31st January, 2006.
11. From the documents annexed to the writ petition as well as to the affidavit-in-opposition the following undisputed facts emerge.
12. By virtue of appointment letter dated 16.10.1970 issued by the District Social Education Officer, Howrah the petitioner was appointed as Librarian of Anandam Central Library on 20.10.1970. Admittedly, this service as Librarian continued up to 29th September, 1984 and on 30th September, 1984 he was appointed as Librarian of the upgraded Anandam Sub-Divisional Library, Uluberia, Howrah. After Anandam Central Library was converted to Anandam Sub-Divisional Library, a selection test was conducted seeking the names of eligible candidates from the employment exchange to select the librarian of the library. Ultimately, the name of the petitioner was recommended for appointment as the Librarian of the upgraded library and he was accordingly appointed as the Librarian on 30.09.1984.
13. The bone of contention substantially hovers round the letter of appointment dated 25.09.1984 issued by the District Social Education Officer, Howrah whereby the appointment of the petitioner as Librarian was treated as fresh and not transferable. After noticing that his past service since 20th October, 1970 was not counted vide the fresh appointment, the petitioner by a letter dated 12th October, 1984 made prayer before the Administrator, Anandam Sub-Divisional Library that all his service benefits be extended to him counting his past service rendered by him as a permanent employee of the same

post. As it appears, the petitioner Santi Sudha Charit by making a representation dated 27.06.2005 to the Director of Library Services, West Bengal through the District Library Officer, Howrah requested him to pass necessary order so that the past service rendered by him from 20.10.1970 to 29.09.1984 as Librarian of Anandam Central Library is counted as a continuous service of his present post. Nothing has been submitted on behalf of the state respondents to show what action was taken by the Director of Library Services over the representation made by the petitioner. On the other hand, it is not in dispute that the District Library Officer and the Secretary, Local Library Authority, Howrah by a Memo dated 1st February, 2006 post facto approved the appointment of the petitioner Shanti Sudha Charit as the Librarian of the upgraded Anandam Sub-Divisional Library with effect from his initial appointment on 20.10.1970. It appears from this Memo that the District Library Officer communicated this order of post facto approval of appointment of the petitioner to the Director of Library Services, West Bengal as well as to the Secretary, Anandam Sub-Divisional Library. But no objection was ever made to this post facto approval of appointment on the part of the Director of Library Services. Such being the factual aspects, the representation dated 27.06.2005 made by the petitioner to the Director of Library Services and the post facto approval of his appointment with effect from 20.10.1970 conjointly show that the Director of Library Services, West Bengal by acquiescence has impliedly approved the post facto approval of appointment with effect from 20.10.1970.

14. A Memo dated 20.12.1978 issued by the Director of Public Instruction, West Bengal and which is annexed to the writ petition shows that after Amta Rural Library was upgraded to Amta Sub-Divisional Library, the librarian Anil Kumar Deyasi was allowed to act as Librarian of Amta Sub-Divisional Library in the scale of pay of Rs. 237-404 with effect from the date of his joining the post, but, to draw

the initial pay of the scale i.e 237 per month plus usual allowance as admissible until he acquires Diploma of Library or Bachelor degree of Library Science which was the requisite qualification for the post. This Memo indicates that the incumbent did not possess the degree of Library Science while acting as Librarian of Amta Rural Library but, he was allowed to act as Librarian of the upgraded Amta Sub-Divisional Library until he acquired the bachelor degree of Library Science. It is the contention of the writ petitioner that such act on the part of the authority concerned is discriminatory since he had been denied of such benefit as extended to the Librarian of Amta Rural Library.

15. A learned Single Bench by order dated 22.04.2014 disposed of an another writ petition being W.P 13128(W) of 2013 brought by the petitioner by passing the following direction:

“Considering the materials available on record it appears that the concerned Director should consider and decide the case of the petitioner within six weeks from the date of the communication of this order upon giving to the petitioner or his authorised representative an opportunity of hearing and allowing him to produce relevant documents, circulars in support of his claim. The concerned Director is further directed to pass a reasoned order and to communicate the same by two weeks from the date of passing such reasoned order.”

16. The Director of Library Services by an order dated 11.06.2014 rejected the prayer of the petitioner with the following observation:

“And therefore after considering the submissions made by the petitioner and after going through all relevant papers and documents in this regard it is get to understand that obtaining No Objection Certificate from the employer is a vital criteria before applying in a new post through proper channel and which is Sri Charit did not.

Moreover, in the appointment letter of Sri Charit issued by the then District Social Education Officer, Howrah it is clearly mentioned that the appointment of Librarian should be treated as afresh and not transferable. So the question of counting past service does not arise. Hence, after considering all the relevant papers and documents available with this directorate and after hearing all concerned the prayer of Sri Shanti Sudha Charit is hereby considered and rejected.”

17. The petitioner in this writ petition assails the aforesaid order of the Director of Library Services on the ground that he rejected the prayer of the petitioner mechanically without applying his mind.
18. As the initial appointment of Sri Charit shows, the appointment letter was issued by the District social Education Officer, Howrah. While he was appointed as the Librarian of the upgraded Anandam Sub-Divisional Library vide appointment letter dated 25.09.1984 the appointment letter was also issued by the District Social Education Officer, Howrah. This implies that the appointing authority issued a No Objection to the subsequent appointment of the petitioner as the Librarian of the upgraded Library. I feel that the Director of Library Services did not consider this aspect of the matter. It is surprising to note that though the petitioner by letter dated 27.06.2005 requested the Director of Library Services to count his past service as a continuing service, he while disposed of the prayer/claim of the petitioner did not make any mention of such representation. The impugned order is silent about the legal implication of the post facto approval of the past service of the petitioner from 20.10.1970 to 29.09.1984 as continuous service, though a copy of the order of post facto approval was communicated to the Director of Library Services.
19. The copies of the service book annexed to the writ petition reveal that beginning from his initial appointment on 20.10.1970 till his retirement on 31.01.2006, all the entries related to the service of the writ petitioner were entered in the same service book.

20. From the facts as discussed above and the service book it is quite evident that the authorities concerned considered the service of the writ petitioner, since deceased, as continuous service as a Librarian from 20.10.1970 till 31.01.2006. While the Librarian of Amta Rural Library was given the service benefits of the upgraded Amta Sub-Divisional Library as stated above, denial of such benefits to the petitioner is discriminatory.
21. Admittedly, while the petitioner was appointed as the Librarian of the upgraded Anandam Sub-Divisional Library he then acquired the requisite qualification. Since the authorities concerned have impliedly accepted the service of the writ petitioner as continuous from 20.10.1970 to 29.09.1984 the appointment of him as the Librarian of the upgraded Sub-Divisional Library shall be treated to be a promotional post coming out from the feeder post. The Director of Library Services, unfortunately, did not consider all such aspects applying his mind while disposed of the prayer of the petitioner.
22. No statutory document or any Government order has been produced on behalf of the State respondents to show that the District Library Officer is not empowered to issue the order of post facto approval as to the past service of the writ petitioner.
23. While all the concerned authorities by their acts and acquiescence have impliedly accepted the service of the petitioner from 20.10.1970 till 31.01.2006 as continuous service maintaining one service book for him, this Writ Court being a Court of equity may grant appropriate relief to the petitioner, since deceased and his widow what it feels just.
24. In view of the above, I think that the impugned order as passed by the Director of Library Services is vitiated with errors and illegalities and the order is liable to be set aside.
25. In the result, the writ petition succeeds and accordingly the writ petition is allowed on contest.

26. The order dated 11.06.2014 passed by the Director of Library Services & Ex-Officio Special Secretary, West Bengal is hereby set aside. The concerned respondents are directed to release all the pensionary benefits which were admissible to the writ petitioner Santi Sudha Charit, since deceased counting his service as continuous service from the date of his appointment on 20.10.1970 till his date of retirement on superannuation on 31.01.2006 to his widow Arati Charit within forty five days from date. The concerned respondents are further directed to issue revised P.P.O to the substituted petitioner Arati Charit if she is a family pensioner within forty five days from date.
27. With the aforesaid direction the writ petition and the connected application, if any, stand disposed of.
28. No order as to costs.
29. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)