

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 2023 of 2022
Shamik Burman Roy
Vs
The State of West Bengal & Ors.

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Mr. Sabyasachi Chatterjee, Adv.
Mr. Sandipan Das, Adv.
Mr. Badrul Karim, Adv.
Ms. Indrani Roy, Adv.

..... for the Petitioner

Mr. Supriyo Chattopadhyay, Adv.
Ms. Tapati Samanta, Adv.

..... for the State

Heard On : 12.05.2023

Judgment on : 14.06.2023

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against a Memo No. 07/DLO/N24 Pgs dated 05.01.2022 and another Memo No. 31/DLO/N24 Pgs dated 13.01.2022 issued by the District Library Officer, North 24 Parganas directing recovery of Rs. 4,22,980/- as overdrawn from the petitioner.
2. Background facts which led to the filling of the writ petition may be summarised as under:

The petitioner joined the library service as a librarian of Rural Library on 16.05.1985. He discharged his duties as Librarian in Rural Libraries namely Rabindra Smriti Samiti Pathagar, Bolpur Sadharon Pathagar (Town Library) and Nazrul Sukanta Pathagar, Birbhum. His employment was certified by

the District Library Officer, Birbhum & Member Secretary of local library authority, Birbhum. He served the rural libraries up to 3rd August, 2000. After he succeeded in the recruitment process for direct appointment to the post of librarian of District Library, he was appointed as Librarian in the District Library, Murshidabad on 04.08.2000 in the scale of pay of Rs. 4650-10175. As per the appointment letter dated 27.04.2000 issued by the Secretary, local library authority, Murshidabad the service of the petitioner is guided by the Service Rules for Employee in the Government Sponsored / Public (other than Government) Libraries/ aided Libraries in West Bengal, 1985. Since the petitioner joined the post of Librarian of District Library through the recruitment process for direct recruitment, his appointment should be treated as fresh appointment and not as a promotional appointment. Because of his appointment as a Librarian of the District Library, the petitioner is entitled to get the benefits of protection and fixation of pay in terms of Memo No. 1269-Edn (MEE)/5P-6/97 dated 22nd August, 2000. After joining his new assignment the petitioner applied for protection and fixation of pay under the aforesaid Memo dated 22nd August, 2000. The prayer made by him was allowed and his pay was fixed at Rs. 4800 in the scale of pay of Rs. 4650-10175. The petitioner submits that in terms of the Memorandum dated 22nd August, 2000 and paragraph 7 of G.O No. 492(6)-Edn (B)/ F1-39/81 dated 26th October, 1981 his pay was to be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay accrued. In terms of the appointment letter the service of the petitioner is not to be treated as Government employee.

In the year 2013 he was transferred to District of North 24 Parganas as a Librarian of Ramkrishna Mission Boys' Home District Library, Rahara. Since then he has been discharging his duties as a Librarian of the District Library.

By a Memo dated 13.09.2000 the District Library Officer, North 24 Parganas asked the petitioner to attend a hearing in his office on erroneous

fixation of his pay. He appeared before him and he submitted his explanation in writing. But, shockingly, the District Library Officer by issuing a Memo dated 5th January, 2022 observed therein that his basic pay was erroneously fixed at Rs. 4800 as on 4th August, 2000 instead of his basic pay of Rs. 4650 in the scale of pay of Rs. 4650-10175 and directed that an amount of Rs. 4,22,980/- overdrawn by him would be deducted. By this Memo the petitioner was asked to inform him the mode of recovery of such overdrawn salary. Aggrieved by this Memo dated 05.01.2022 the petitioner through an Email dated 7th January, 2022 requested the District Library Officer to inform him the Government order upon which his basic pay was recast. In response thereto the District Library Officer vide Memo dated 13.01.2022 informed him that his basic pay was recast in terms of WBSR, Part I, Rule 42(1)(I) and his basic pay was of Rs. 60900/- in December, 2021. The petitioner submits that his pay was rightly fixed at Rs. 4800/- in the aforesaid scale of pay by the District Library Officer in terms of the aforesaid Memorandum dated 22nd August, 2000 and the Government order dated 26th October, 1981. The impugned Memorandum dated 05.01.2022 and the Memorandum dated 13.01.2022 are vitiated with illegalities as these Memoranda are not founded by any reason and relevant Government Memorandum/Order.

Under the aforesaid circumstances, the petitioner seeks direction that the Memo No. 07/DLO/N24Pgs dated 05.01.2022 and the Memo No. 31/DLO/N24Pgs dated 13.01.2022 be set aside.

3. The respondent No.4, the District Library Officer, North 24 Parganas in his affidavit in opposition admits that initially the petitioner was appointed as a Rural Librarian in the year 1985 in the District of Birbhum and he worked in different libraries in the District up to 3rd August, 2000 in the scale of pay of Rs. 3350-6325. His last basic pay as on 31st July, 2000 was of Rs. 4600. Thereafter, he participated in a fresh recruitment process and was selected as a Librarian of the District Library, Murshidabad. He joined as Librarian in the District Library, Murshidabad on 4th August, 2000 in the scale of pay of

Rs. 4650-10175/- after tendering resignation from his previous service. By Memo dated 9th August, 2021 the District Library Officer, North 24 Parganas informed the Director of Library Services that the basic pay of the petitioner in the higher scale of pay was fixed erroneously and as such he requested him to take necessary steps. In reply thereto the Director of Library Services directed the District Library Officer to take necessary steps observing the existing Government Rules in that regard. By a Memo dated 13th September, 2021 the District Library Officer informed the petitioner that his pay was erroneously fixed at Rs. 4800 as on 4th August, 2000 instead of basic pay of Rs. 4650 and his pay needed to be recast. By a Memo dated 5th January, 2022 the pay of the petitioner was recast and his pay was fixed at Rs. 4650/-. By this Memo it was directed that the petitioner had overdrawn an amount of Rs.4,22,980/- and the amount would be recovered. This answering respondent submits that the petitioner was entitled to draw his salary as per Rule 42(1)(I) of the West Bengal Service Rule, Part 1. In this connection this respondent states that one Debasis Mishra, Librarian, Edward VII Memorial Additional District Library was wrongly granted pay at Rs. 5100 in the scale of pay of Rs. 4650-10175. But his pay was re-fixed in terms of Rule 42(1)(I)/42(1)(II) of the West Bengal Service Rules, Part 1. The petitioner will retire from service on superannuation on 30th September, 2025 and as such he was informed long before his retirement that an amount of Rs. 4,22,980/- was overdrawn by him. On such grounds and denying and disputing the averments as made in the writ application this answering respondent submits that the writ application is liable to be dismissed.

4. However, the petitioner in his affidavit-in-reply denies and disputes the averments as made in the affidavit-in-opposition.

Admittedly, the petitioner Shamik Burman Roy entered into Library Service on 16.05.1985 as a Librarian of Rabindra Smriti Samiti Pathagar, Birbhum. Thereafter, he served as a Librarian in Bolpur Sadharan Pathagar from 01.08.1986 to 01.08.1993 and as a Librarian in Nazrul Sukanta

Pathagar from 2nd August, 1993 to 3rd August, 2000. Undisputedly, the petitioner being successful in the recruitment process of direct recruitment was appointed as a Librarian of the District Library, Murshidabad on 4th August, 2000. Before he joined the District Library, Murshidabad, his last basic pay was of Rs. 4600 as on 3rd August, 2000 in the scale of pay of Rs. 3350-6385/-. On his appointment as a Librarian in the District Library, he was placed in the scale of pay of Rs. 4650-150-5100-175-6125-200-7925-10175/- under the scale No. 11 of R.O.P.A, 1998. On the prayer made by the petitioner seeking pay protection under the relevant Government Memorandum/ order, his basic pay in the aforesaid higher scale of pay was fixed at Rs. 4800/-. On such fixation of basic pay at Rs. 4800 in the scale as above, the petitioner got all the financial benefits of service till the impugned Memoranda dated 05.01.2022 and 13.01.2022 were issued by the District Library Officer, North 24 Parganas.

Now, the point which falls for consideration is whether the basic pay fixed at Rs. 4800 in the aforesaid higher scale of pay is erroneous and the Memoranda dated 05.01.2022 and 13.01.2022 by which an amount of Rs.4,22,980/- was directed to be deducted as overdrawn from the salary of the petitioner are lawful?.

5. Learned Counsel appearing for the petitioner submits that since his client joined as a Librarian of the District Library, Murshidabad succeeding in recruitment process of direct recruitment and the post to which he joined carried higher responsibilities, his pay was rightly fixed at Rs.4800/- by adding one increment in terms of the Memorandum dated 22.08.2000 and paragraph 7 of G.O dated 26th October, 1981. Learned counsel argues that the impugned Memos dated 05.01.2022 and 13.01.2022 issued by the District Library Officer, North 24 Parganas are illegal since both the two memos are not founded either by any reason or by any legal authority. In such context, learned counsel submits that both the two memos should be quashed.

6. Learned counsel appearing for the State submits that the appointment of the petitioner as a Librarian in District Library on his success in the recruitment process of direct recruitment is not a promotional post, but it is a fresh appointment. Learned counsel submits that in case of fresh appointment an appointee should be placed at the basic pay of Rs.4650 only without giving any increment in the scale of Rs. 4650-10175. According to learned counsel the District Library Officer, North 24 Parganas rightly re-fixed the basic pay of the petitioner at Rs. 4650 and directed the recovery of the amount as above. Citing a decision in the case of **Chandi Prasad Uniyal and Others Vs- State of Uttarakhand and Others** reported in **(2012) 8 SCC 417** learned counsel submits that while excess payment was made to the petitioner erroneously out of public money which is described as “Tax Payers’ Money” should be recovered from him.
7. As it is evident from the appointment letter dated 27.07.2000 issued by the District Library Officer, Murshidabad and Secretary, Local Library Authority, Murshidabad, the petitioner’s service will be guided by Service Rules for Employee in the Government Sponsored/ Public (other than Government) Libraries /Aided Libraries in West Bengal, 1985. There is no dispute that the service of the petitioner is guided by of the aforesaid Service Rules of 1985. The Service Rules for the Employees in Government Sponsored Public (other than Government) Libraries/ Aided Libraries in West Bengal, 1985 defines Library as a District Library, Town Library, Area Library, Rural Library, Primary Unit Library and other aided library attached to voluntary or recognised by the Government or Local Library Authority, but excluding Government Libraries. This demonstrates that all the Librarians either of Rural Library or the District Library are governed by the aforesaid Rules of 1985. Rule 17 speaks that service book of an employee containing the records of his service shall be maintained by the appointing authority or by the authority/Officer authorized by the appointing authority as such.
8. It is the contention of the respondent No. 4 that the petitioner joined the District Library, Murshidabad after tendering resignation. But, a memo

dated 13.09.2020 issued by the District Library Officer, North 24 Parganas (Annexure P9) shows that before he joined the District Library, Murshidabad on 4th August, 2000 he was released from Nazrul Sukanta Pathagar on 3rd August, 2000. Since no iota of document has been placed by the answering respondent to show that the petitioner resigned from his previous post, the term “released” used by the District Library Officer, North 24 Parganas denotes that the service of the petitioner from Rural Library to District Library was in continuity. Since the service conditions of all librarians either of Rural Libraries or of District Libraries are governed by the Rules of 1985, this inference stands buttressed that on release of the petitioner from the erstwhile library enabling him to join the higher post denotes that his service continued without any break.

After being released as a Librarian from Nazrul Sukanta Pathagar, Birbhum on 03.08.2000 the petitioner with continuity of the service joined as the librarian of District Library on 4th August, 2000. Admittedly, while the petitioner was appointed as a Librarian of District Library, he was placed in the pay scale of Rs. 4650-10175 and his basic pay was fixed at Rs. 4800. As it appears, his basic pay was fixed by adding Rs. 150/- with the initial pay of Rs. 4650/- in the aforesaid pay scale of Rs. 4650-10175/-.

It is contended by the state respondents that since the petitioner was appointed as Librarian in the District Library afresh through the process of direct recruitment, his basic pay should be fixed at Rs. 4650/- and no increment should be added to it.

Now, this Bench is to decide whether the basic pay of the petitioner fixed at Rs. 4800 is justified or not.

9. Paragraph 7 of the Memorandum No. 492(6)-Edn(B)/F1-39/81 dated 26.10.1981 relating to fixation of pay of the teaching and non-teaching employees of the Educational Institutions in the revised scales of pay says that notwithstanding anything contained elsewhere, where a non-government employee holding a post in a substantive, officiating or

temporary capacity is promoted or appointed in a substantive, officiating or temporary capacity to another post carrying duties and responsibilities of greater importance than these attached to the post held by him/her, the initial of pay of such non-government employees in the scale of pay of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his/her pay in respect of the lower post by one increment at the stage at which such pay has accrued. On the other hand, Memorandum No. 1269-Edn(MEE)/5P-6/97 dated 22nd August, 2000 issued by the Mass Education Extension Department, Government of West Bengal on protection and fixation of pay of staff of a Government Aided/Sponsored Library on appointment in another such category of library through proper channel provides in the same language that notwithstanding anything contained elsewhere, where non-government employee holding a post in a substantive, officiating or temporary capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him/her, the initial of pay of such non-government employees in the scale of pay of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his/her pay in respect of the lower post by one increment at the stage at which such pay has accrued.

10. It is needless to say while a librarian working in a rural library is appointed as a Librarian in District Library being successful in the recruitment process of direct recruitment and placed in higher scale of pay, the post he holds in higher scale of pay carries duties and responsibilities of greater importance than the duties and responsibilities attached to the post held by him as a librarian of a Rural Library. The Memorandum dated 22nd August, 2000 occupies the field on protection and fixation of pay of a staff of a Government aided/sponsored library on appointment in another such category of library through proper channel. If the relevant provisions of the aforesaid rules and the factum of releasing the petitioner from his previous service as a Librarian of rural library enabling him to join as a Librarian of District Library if taken into consideration, this obviously indicates that the petitioner participated in

the recruitment process for direct recruitment and joined the post of Librarian of District Library through proper channel. While there is express provision in the Memorandum dated 22.08.2000 relating to protection and fixation of pay of the staff of a Government aided/sponsored library, the fixation of the pay of the petitioner should be in terms of this memorandum and not by the relevant provision of West Bengal Service Rule, Part 1. If there is no such provision either in the aforesaid rules of 1985 or in the Memorandum dated 22nd August, 2000 and the rules speak of taking aid of WBSR Part 1 in the absence of such provision either in the rules or in the Memorandum, in that event the relevant provisions of West Bengal Service Rule, Part 1 will be pressed into service for fixation of pay. On careful perusal of the Rules of 1985 and the Memorandum dated 22nd August, 2000 this Bench does not find any such provision in any of the two.

11. The aforesaid Memorandum dated 22nd August, 2000 coupled with the Government order dated 26.10.1981 clearly speak in an unambiguous term that while an employee is promoted or appointed to an another post carrying duties and responsibilities of greater importance, the initial pay of such employee shall be fixed at the stage next above the pay notionally arrived at by increasing his/her pay by one increment at the stage at which such pay has accrued.

After being appointed to higher post in the scale of pay of Rs. 4650-150-5100-175-6125-200-7925-10175/-, the initial basic pay of the petitioner was fixed at Rs. 4800/- by adding initial increment of Rs. 150 to the basic pay of Rs. 4650/-. Such fixation of basic pay by the District Library Officer, Murshidabad, in my view, is in accordance with law. The impugned Memo dated 05.01.2022 by which the basic pay of the petitioner was reduced to Rs.4650 by the District Library Officer, North 24 Parganas is not founded by any reason and such memo was issued by him without considering the Memorandum dated 22nd August, 2000 issued by the Mass Education Extension Department, Government of West Bengal which occupies the field on pay protection and pay fixation. That being so, the memo dated

05.01.2022 by which it was directed that an amount of Rs. 4,22,980/- would be deducted from the petitioner's salary as overdrawn reducing his basic pay as Rs. 4650 is vitiated with illegality. Similarly, the Memo dated 13.01.2022 in the similar direction is also vitiated with illegality.

Therefore, the point as posed in answered in the negative.

12. Consequently the Memo.s dated 05.01.2022 and 13.01.2022 issued by the District Library Officer, North 24 Parganas are liable to be set aside.

Since the petitioner has not drawn any salary as overdrawn pursuant to the fixation of his basic pay by the District Library Officer, Murshidabad, the decision in **Chandi Prasad Uniyal and Others** (supra) as cited by learned counsel for the State is not applicable to the facts on hand.

13. In the result, the writ petition merits success and accordingly the writ petition is allowed on contest.

Memo No. 623/DLO/N24Pgs dated 13.09.2020 and Memo No. 31/DLO/N24Pgs dated 13.01.2022 issued by the District Library Officer, North 24 Parganas are hereby set aside.

14. The respondents are directed to refund the amount, if any deducted from the salary of the petitioner meanwhile, to the petitioner within six weeks from the communication of this judgment and order.
15. Parties may act on the Server Copy of this judgement and order duly downloaded from the Official Website of this Court.
16. Urgent certified/Photostat copy of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)