

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

PRESENT:

**THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WPA No. 3152 of 2022  
Sumita Banerjee  
-versus-  
The State of West Bengal & Ors.**

Mr. Farooque Ali, Adv.  
Mr. Rishav Kumar Thakur, Adv.  
Sk. Shahrukh Raja, Adv.  
Mr. Afsar Ali, Adv.  
Mr. Faizan Md. Zaffar, Adv.  
Md. Arham Reza, Adv.

..... for the Petitioner

Mr. Bhaskar Prasad Vaisya, Adv.  
Mr. Arindam Chattopadhyay, Adv.  
Ms. Lipika Chatterjee, Adv.

..... for the State

**Heard On : 09.02.2023**

**Judgment on : 24.03.2023**

**Rabindranath Samanta, J:-**

This writ petition has been preferred by the petitioner challenging the order dated November 29, 2021 of the respondent No.2, the Director, Mass Education extension directorate, Government of West Bengal by which her representation seeking higher scale of pay as a Lady Accountant-cum-Typist of Calcutta Blind School was rejected.

The facts which led to the filing of the writ petition may be summarised as under:-

The petitioner Sumita Banerjee was appointed to the post of Lady Accountant-cum-Typist of Calcutta Blind School, Respondent No. 4 herein.

Upto 13<sup>th</sup> December, 1983 the school was recognized upto class-VIII standard and thereafter the school was upgraded to the Secondary school leaving Examination level on 30<sup>th</sup> December, 1983. Subsequently, the school was upgraded and granted recognition from the Higher Secondary Council by letter dated 4<sup>th</sup> January, 2007. Initially the petitioner was appointed provisionally as the Lady Accountant-cum-Typist in the said School on 14<sup>th</sup> May, 1998. After completing the probation period successfully her appointment was approved by the Directorate of Mass Education Extension, Government of West Bengal vide Memo dated 7<sup>th</sup> August, 2000.

At the time of appointment the petitioner had graduation in B.SC (Two Year Pass) from the University of Calcutta. Besides, she improved her qualification by obtaining Diploma for Primary School Teachers of the Visually Handicapped in the year 1995. Thereafter, she applied to the Rehabilitation Council of India and wherefrom she received a Registration Certificate certifying her as a 'Special Educator (Visually Handicapped)'. After she joined the said post the petitioner attended and undertook a refresher course for Orientation & Mobility Instructors working in the schools for visually handicapped children, conducted by the National Institute for the Visually Handicapped, Kolkata from July 28<sup>th</sup>, 2003 and to 1<sup>st</sup> August, 2003 and received a certificate of training.

At the time of her appointment the petitioner was granted the scale of pay of Rs.1040-1920/- which is granted to an incumbent holding the post of Junior Clerk in other sponsored institutions.

After a lapse of considerable time from the date of approval of her appointment the petitioner came to learn that in other similarly sponsored institutions the incumbents holding the similar post as held by the petitioner draw higher scale of pay Rs. 4000-8850/-.

In the Mass Education Extension Directorate there are several sponsored schools like Calcutta Blind School, Calcutta Deaf and Dumb School, Helen Keller Muk-o-Badhir Vidyalaya, Sramik Vidyapith and Banipur State Welfare Home etc. In both Sramik Vidyapith and Banipur State Welfare Home the incumbents holding the post of Head Clerk/Senior Clerk get the scale of pay Rs. 4000-8850/- corresponding the old scale of pay of Rs. 1250-2160/-. The petitioner also came to learn that the scale of pay for Head Clerk-cum-Accountant for the Government School of Blind at Coochbehar as well as of Raigunge Deaf & Dumb School under the social welfare department was at Rs. 380-910/- which was revised to the corresponding scale Rs.1260-2610/-.

The petitioner has also come to learn that the Directorate of Mass Education Extension through several correspondences requested/recommended to the Department of Mass Education Extension, Government of West Bengal to grant the scale of Rs. 4000-8850/- to the incumbents holding the post of Head Clerk cum Accountant or Lady

Accountant-cum-Typist, but no step was taken by the concerned authority in this regard.

The petitioner states that one Samir Roy who was the Head Clerk-cum-Cashier of Helen Keller Muk-o-Badhir Vidyalaya moved a writ petition before this court praying for scale of Rs. 4000-8850/- and the writ petition was allowed by this court, but no appeal was preferred against the solemn order by the concerned authority. Similarly one Tapas Banerjee, the Head Clerk-cum-Cashier of Calcutta Deaf and Dumb School moved a writ petition seeking the scale of pay Rs. 4000-8850/- as was granted to Samir Roy. The writ petition was disposed of by this court directions the respondent authority to decide the representation of him by a reasoned order. In compliance of this order the Respondent No. 2 by reasoned order dated 8<sup>th</sup> June, 2016 allowed the higher scale of pay of Rs. 1260-2610/- (unrevised) and passed an order dated 13<sup>th</sup> January, 2017 releasing the fund for higher scale of pay of Rs. 1260-2610/- correspondence to revised scale of Rs. 4000-8850/- as per the ROPA 1998.

Under the aforesaid circumstances the petitioner by making a representation dated 7<sup>th</sup> May, 2019 requested the Director of Mass Education Extension, West Bengal through the school authority to grant higher scale of pay of Rs. 1260-2610/-(unrevised) to her. Since the authority concerned did not pay any heed to the representation made by the petitioner, the petitioner preferred a writ petition being W.P. No. 15438 (W) of 2019. By order dated November 29, 2021, a learned Single Judge disposed of the writ petition directing the Respondent No. 2 to dispose of the

representation of her by a reasoned order within a time line. The Respondent No. 2 by the impugned order rejected her representation. In such premise, the petitioner prays for quashing of the impugned order November 29, 2021 and direction upon the concerned respondents to grant higher scale of pay of Rs. 1260-2610/- (unrevised) from the date of her joining and the revised scale of pay Rs. 4000-8850/-under the ROPA 1998.

The respondent Nos. 2 and 3 namely the Director, Mass Education Extension Directorate and the District Mass Education Extension Officer, Kolkata in their affidavit-in-opposition reiterate the stand as taken by the Respondent No. 2 in the impugned order dated 29<sup>th</sup> November, 2021. They state that Sramik Vidyapith and Banipur State Welfare Home are directly run by the State Government and these institutions are not sponsored school. The school of the petitioner is run by the Governing Body of the school. The salary of the staff members of the sponsored schools are sanctioned to the Governing body by the Managing Committee/Government as grant. The school for the Blind at Coochbehar and Raigunge Deaf & Dumb School are under administrative control of the government. They state that the case of Samir Roy who was the Head Clerk-cum-Cashier in the Helen Keller Muk O Badhir Vidyalaya was forwarded to the Finance Department, Government of West Bengal. The Finance Department noted that to avoid contempt of court, it had no other alternative but to comply with the latest order of the Hon'ble High Court and it would not be cited as a precedent in future. The answering respondents state that since the case of Samir Roy cannot be termed as the precedent, the benefit extended to Samir

Roy cannot be extended to the petitioner. On such grounds and denying the averments/allegations as made in the writ petition the answering respondents submit that the writ petitioner is liable to be dismissed.

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

Admittedly, the petitioner was appointed as a Lady-Accountant-cum-Typist in Calcutta Blind School, a sponsored institute on 14<sup>th</sup> May, 1998 being successful in the selection process conducted by the concerned authority following the Recruitment Rules as then were prevalent. At the time of recruitment the petitioner possessed the graduation degree in B.SC (Two Year Pass) from the University of Calcutta. Besides, at that time, she also possessed Diploma for Primary School Teachers of the Visually Handicapped issued by the by the National Institute for the Visually Handicapped. She was appointed at the scale of pay Rs.1040-1920/- with other allowances as admissible. A few years after she served as Lady Account-cum-Typist the petitioner came to learn that the incumbent holding the post of Head Clerk as also Upper Division Clerk at Banipur State Welfare Home was allowed the pay scale of Rs. 4000-8850/- corresponding to the un-revised scale of Rs.1260-2610/-. Similarly, the incumbents holding the post of Head Clerk-cum-Accountant in the Government School of Blind at Coochbehar as well as of Raigunge Deaf & Dumb School under the social welfare department were allowed the unrevised scale of Rs. 1260-2610/- corresponding to the scale of pay of Rs. 4000-8850/- as per the ROPA 1998. The petitioner's further contention is that one Samir Roy who held the post

of Head Clerk-cum-Cashier in the Helen Keller Muk-O-Badhir Vidyalaya and Tapas Banerjee, Head Clerk-cum-Cashier in Calcutta Deaf and Dumb School who approached this court by filing writ petitions were allowed the scale of pay of Rs. 4000-8850/- as per the ROPA 1998 commensurate with the pay scale admissible to the incumbent holding such post in the aforesaid Government Institutions. Based on the relief granted to Samir Roy and Tapas Banerjee, the petitioner seeks higher scale of pay as has been allowed to those incumbents.

Undisputedly, and as it is reflected in the impugned order dated 29<sup>th</sup> November, 2021, the employees holding the post of Head Clerk at Banipur State Welfare Home and the post of Head Clerk-cum-Accountant in the Government Institutions namely Government School of Blind at Coochbehar and of Raigunge Deaf & Dumb School are enjoying the pay scale of Rs. 4000-8850/-.

Learned counsel appearing for the petitioner vehemently submits that since the petitioner is holding the responsible post as Lady Accountant-cum-Typist which is corresponding to the post of Head Clerk-cum-Cashier in Helen Keller Muk-o-Badhir Vidyalaya and of Calcutta Deaf & Dumb School she is entitled to get the higher scale of pay of Rs. 4000-8850/- as per ROPA 1998 as admissible to Samir Roy and Tapas Banerjee.

Learned counsel appearing for respondents Nos. 2 and 3 submits that in order to get the benefit of equal pay as admissible to other posts as claimed by her the petitioner will have to produce sufficient materials to show that there is similarity/ identity between the post held by the

petitioner and the post held by the incumbents of the aforesaid educational institutions. Learned counsel submits that the petitioner has failed to produce sufficient materials to establish her claim to get the similar scale of pay as admissible to the incumbents of the aforesaid Educational Institutions. In support of his contention learned counsel has cited a decision in the case of Punjab State Electricity Board –versus- Thana Singh & Ors rendered by the Hon'ble Apex Court on 8<sup>th</sup> January, 2019 in Civil Appeal No. 193 of 2019 arising out of SLP (C) No. 10896 of 2011.

In such context it would be apposite to refer some documents of the office of the Directorate of Mass Education Extension, Government of West Bengal which are annexed to the writ application and marked as Annexures P-5 to P-8. As it is evident, the office note dated 23.07.2001 made by the Directorate of Mass Education Extension, Government of West Bengal reads as under:

“Department of Mass Education Extension is requested to refer to the subject. In the Sponsored Handicapped Institutions few points with nomenclature of Head Clerk-cum-Cashier, Head Clerk-cum-Accountant have been sanctioned by Govt. incumbents holding posts are now enjoying the pay scale of Rs. 3350-6325/- prescribed for L.D. Clerk under Ropa-98. Representation from many schools for sanction of higher pay scale of Rs. 4000-8850/- prescribed for U.D. Clerk are being received.

It may be stated that incumbents holding the aforesaid posts are to undertake the following works:-

Preparation of Bills (Salary Bill, contingencies Bill preparation of Budget Accounts, passing of Bills from respective Treasuries. Disbursement of salaries to the staff including payment of contingencies to different parties, maintenance of Cash and other different works related to Cash.

In addition the incumbents are to supervise various works relating to proper administration of the Institution.

It is apparent that the incumbents holding the posts are to shoulder multifarious jobs for proper functioning of Institutions and those jobs/works are more responsible/greater than that of the works/jobs of a Jr. Clerk.

In the above perspective it is proposed and recommended for sanction of higher pay scale of Rs. 4000-8850/-Prescribed for U.D. Clerk pay scale under ROPA -98 for the aforesaid post.

Early order is requested.”

Later on, the Directorate of Mass Education Extension vide office note dated 13.04.2004 made the similar recommendation that the incumbents holding the post of Head Clerk-Cum-Cashier-Cum Typist, Head Clerk-Cum-Accountant-Cum-Typist be allowed the pay scale of Rs. 4000-8850/-as admissible to Upper Division Clerk. I find that the Directorate of Mass Education Extension vide Memo dated 06.09.2005 (Annexure P/7) communicated this recommendation to the Mass Education Extension Department, Government of West Bengal, seeking sanction of higher scale of pay of Rs. 4000-8850/- for the incumbents holding the aforesaid post.

Similar was the recommendation by the Directorate of Mass Education Extension as reflected in the office note dated 21.5.2007 (Annexure-P/8).

The aforesaid recommendations and the correspondences made by the Directorate of Mass Education Extension to the Mass Education Extension Department, Government of West Bengal evince that the Directorate of Mass Education Extension, Government of West Bengal considering the nature of work and the responsibility of the incumbents holding the aforesaid posts advocated that the aforesaid posts namely Head Clerk-Cum-Cashier-Cum-Typist, Head Clerk-Cum-Accountant-Cum-Typist, Clerk and Cashier-Cum-Typist of the recognised Handicapped Institutions should be placed at the pay scale of Rs. 4000-8850/-.

All the aforesaid documents relied upon by the petitioner unequivocally reveal that the petitioner has been able to establish that the post held by her has the similarity or identity with the post as above of the Educational Institutions run by the Government as well as the post of Head Clerk-Cum-Cashier of the sponsored schools namely Helen Keller Muk-o-Badhir Vidyalaya and Calcutta Deaf and Dumb School.

In compliance of the order dated 16.10.2015 passed by this court in W.P. 30346 (W) of 2008 (Sri Samir Roy vs. the State of West Bengal & ors), the Director, Mass Education Extension Directorate, Government of West Bengal granted scale of pay of Rs. 4000-8850/- as per the ROPA 1998 to Samir Roy, Head Clerk-Cum-Cashier of Helen Keller Muk-o-Badhir Vidyalaya. Later on in compliance with the order dated 28.04.2016 passed by this court in W.P. 5808 (W) of 2016 (Tapas Banerjee -versus- State of West

Bengal & Ors.), the Directorate of Mass Education Extension, Government of West Bengal granted pay scale of Rs. 4000-8850/- to Tapas Banerjee, Head Clerk-cum-Cashier of Calcutta Deaf and Dumb School. As reflected in the recommendations made by the Directorate of Mass Education Extension, Government of West Bengal the post of Lady Accountant-cum-Typist stands in the same category as that of Head Clerk-cum-Cashier of the sponsored Educational Institutions like Helen Keller Muk-o-Badur Vidyalaya and Calcutta Deaf and Dumb School.

In the impugned order dated 29<sup>th</sup> November, 2021 the O.S.D. & E.O., Directorate of Mass Education Extension, has by the impugned order has denied the pay scale of Rs. 4000-8850/- to the petitioner assigning reason therein that Sramik Vidyapith and Banipur State Welfare Home where the incumbents were enjoying the pay scale of Rs. 4000-8850/are run by the Government and those are not sponsored institutes and that higher scale of pay was granted to Samir Roy to avoid contempt of court as opined by the Finance Department.

Since the incumbents namely Samir Roy, Head Clerk-cum-Cashier of Helen Keller Muk-o-Badur Vidyalaya and Tapas Banerjee, Head Clerk-cum-Cashier of Calcutta Deaf and Dumb School have been granted the aforesaid pay scale non granting of such scale of pay to the petitioner holding the similar post is discriminatory. If the golden doctrine of equality is taken into consideration the pay scale enjoyed by the incumbents holding the similar post as that of the petitioner in Government run Educational Institutions

and the sponsored educational institutions cannot be denied to the petitioner.

As observed by the Directorate of Mass Education Extension in a series of recommendation the post like Accountant-cum-Typist has to discharge multifarious duties like bills preparation of budget accounts, disbursement of salaries to the staff including payment of contingencies to different parties, maintenance of Cash and other different works related to Cash etc.

Viewed from the aforesaid factual aspects, I find that the petitioner fulfils all the requirements as directed by the Hon'ble Apex Court in the decision in Punjab State Electricity Board (supra) to get higher scale of pay.

The petitioner has sought for direction upon the respondent authorities to grant scale of pay of Rs. 1260-2610/- (Unrevised) with effect from the date of her joining the school and re-fix the scale at Rs. 4000-8850/- under the ROPA, 1998. Besides, she seeks direction upon them to pay the arrear salary and other consequential benefits to her after re-fixation of the appropriate scale of pay.

As the Lady Account-cum-Typist the petitioner since her appointment on 14.05.1998 is entitled to get pay as per the pay scale of Rs. 1260-2610/- (Unrevised) instead of the scale pay of Rs. 1040-1920/-. After the ROPA, 1998 came into force she is entitled to get her pay re-fixed at the scale of pay of Rs. 4000-8850/-. As to recovery of arrear pay the Hon'ble Apex Court in the decision in the case of Union of India and Ors. –versus- Tarsem Singh reported in (2008) 8 Supreme Court Cases 648 has held at paragraph 7 that

insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

As it is evident, the petitioner approached this court seeking relief by filing a writ petition being WPA 15438 of 2019 which filed on 06.08.2019. Therefore, the petitioner is entitled to get arrear pay commensurate with her pay on re-fixation of pay with effect from 06.08.2016.

In view of the above, the impugned order as passed by the respondent No.2 is vitiated with illegality and the order is liable to be set aside.

Consequently, the writ petition succeeds and the writ petition may be disposed of by passing the following order.

The respondents are directed to re-fix the scale of pay of the petitioner at Rs. 1260-2610/- (Unrevised) with effect from the date of her joining the Calcutta Blind School on 14.05.1998 and further re-fix her scale of pay at Rs. 4000-8850/- under ROPA, 1998 within six weeks from date.

After the re-fixation of the scales of pay as indicated above, the respondents shall release/disburse the arrear pay to her commensurate with her pay on re-fixation of the scales of pay as directed above with effect from 06.08.2016 also within six weeks from the period as stipulated above.

With the aforesaid directions the writ petition stands disposed of.

No order as to cost.

Parties may act on server copy of this judgement and order duly downloaded from the official website of this court.

Urgent Photostat/Website copy of this judgement and order, if applied for, be given to the parties upon compliance with all requisite formalities.

***(Rabindranath Samanta, J.)***