

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

<u>WPA 15608 of 2022</u>	
<u>Rekha Dutta</u>	...Petitioner
<u>Vs</u>	
<u>The State of West Bengal and Others</u>	... Respondents

Mr. Amales Ray, Adv.
Ms. Mousumi Bhowal, Adv.

..... for the Petitioner

Mr. Tapan Kumar Mukherjee, Sr.Adv.
Ms. Tuli Sinha, Adv.

..... for the State

Heard On : 20.12.2022

Judgment on : 19.01.2023

Rabindranath Samanta, J:-

1. The petitioner by preferring this writ petition challenges the legality of Memorandum dated 28.07.2020, 20.07.2021 and 30.12.2021 issued by the respondent No.5, the Assistant Director, Pension, Provident Fund & Group Insurance, Memorandum dated 07.04.2022 and 22.06.2022 issued by the respondent No.3, the District Library Officer, Hooghly and the letter dated 11.05.2022 issued by the respondent No.2, the Director of Library Services, Government of West Bengal and prays for direction upon the respondents to release and disburse her retiral benefits.
2. The facts which led to the filing of the writ petition may be adumbrated as under:

The petitioner was appointed as a Librarian of Rural Library namely Radha Raman Sammelan Samity Pathghar, Hooghly on 12.10.1984. Subsequently, she improved her qualification by obtaining bachelor degree of Library and Information Science with effect from 01.08.1993. According to Memorandum dated 07.03.1990 issued by the Education Department, Government of West Bengal, teachers and librarians of Secondary Schools who have improved their qualification in the subject relevant to their appointment shall get higher scale of pay appropriate their qualification with effect from 1st January, 1986 or the date of improving qualification whichever is later. Since the petitioner and other librarians who improved their education were not granted higher scale by the authority concerned, Shibnath Koley and 51 others including the petitioner moved a writ petition being WP No. 8030(W) of 1990 before this Court seeking benefit of higher scale of pay i.e. Rs.1390-2970 in terms of Para 16(3) of the Memorandum no. 33 – Edn (B) dated 07.03.1990 (R.O.P.A. 1990). The writ petition filed by them was dismissed by a Single Bench on 25.09.2000. Aggrieved by the order of dismissal the petitioner and some other librarians of rural libraries who improved their qualification preferred an appeal being F.M.A 119 of 2002. The other librarians also preferred several appeals arising out of the order of dismissal dated 25.09.2000. The Hon'ble Division Bench by a common judgment and order dated 08.06.2007 allowed the appeals preferred by the petitioner and others. The Hon'ble Division Bench directed the respondents to release and pay the appellants/ writ petitioners salary at the revised scale of pay of Rs. 1390-2970 in terms of the Memorandum dated 07.03.1990 issued by the Secretary, Education Department, Government of West Bengal with arrears with effect from the date as indicated in the Memorandum without any further delay, but positively within a period of three weeks from the date of communication of the order.

3. Feeling dissatisfied with the judgment and the order of the Hon'ble Division Bench, the State Government preferred Special Leave Petitions numbered as Civil Appeal Nos. 6967-6970 of 2009 before the Hon'ble Supreme Court. By a common judgment and order dated 06.03.2014 the Hon'ble Supreme Court dismissed the Special Leave Petitions. In compliance with the judgment and the order of the Hon'ble Supreme Court the District Library Officer, Hooghly re-fixed the scale of pay of the petitioner with effect from 01.08.1993 when the petitioner improved her qualification vide order dated 8/10.04.2015. The order passed by the District Library Officer had concurrence with the Finance Department, Government of West Bengal.
4. Initially, the petitioner was placed in the scale of Rs.1040-25-1215-30-1485-35-1590-40-1670-50-1920. In such scale, her basic pay was at Rs.1245 on 01.08.1993. She was placed then in the higher scale of Rs. 1390-45-1615-55-2055-65-2445-75-2610 with effect from 01.08.1993 i.e. the date of improving her qualification.
5. The benefit of annual/yearly increment was given to the petitioner on 01.10.1992 in the scale of Rs.1040-1920. Accordingly, her next annual/yearly increment was due on 01.10.1993. Since she was placed in the higher scale of pay of Rs.1390-2410, the annual/yearly increment was given to her on 01.10.1993 in the higher scale of pay and thus her pay was re-fixed at Rs.1435.
6. The petitioner retired from service on superannuation on 31.03.2020. On her retirement, the District Library Officer, Hooghly forwarded her pension papers to the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal for payment and disbursement of her retiral benefits. But, the Assistant Director, Pension, Provident Fund and Group Insurance, the respondent No.5 herein, vide Memo dated 28.07.2020 raised objection with regard to sanction of retiral benefits in favour of the petitioner on the reason that the petitioner took next increment on 01.10.1993 on the higher

scale fixed in her favour on 01.08.1993 without completing one year cycle which was required as per the existing rules and she would not be entitled to ten years' Career Advancement Scheme benefit.

7. The District Library Officer by a letter dated 23.02.2021 met the objections raised by the Assistant Director. The Assistant Director was satisfied with the clarification made by the District Library Officer as to extending ten years benefit under the Career Advancement Scheme in favour of the petitioner. But, vide Memo.s dated 20.07.2021 and 30.12.2021 the Assistant Director stuck to his point that the petitioner was not entitled to get next increment on higher scale on 01.10.1993 without completing one year cycle. It was observed by him that in the case of the petitioner existing pay was lower than the minimum of the higher scale and as such the pay should have been fixed at the minimum of the higher scale. The date of the next increment would be changed and would be effective after 12 months of qualifying service from the date of acquiring higher scale of pay. Accordingly, he instructed the District Library Officer to comply accordingly.
8. Being aggrieved by the aforesaid Memo.s of the Assistant Director, the petitioner through her learned Advocate by a letter dated 29.03.2022 demanded justice from the authorities concerned. Meanwhile by Memo.s dated 07.04.2022 and 22.06.2022 the District Library Officer, Hooghly asked the petitioner to deposit Rs.1,88,137/- through T.R. Challan under proper head of account immediately so that he could transmit her pension papers to the authority concerned. It is shocking to note that the petitioner's learned Advocate received a letter dated 11.05.2022 from the Director of Library Services wherein it was stated that the petitioner was not entitled to get benefits of higher scale as per the existing Government Rules.
9. Challenging the Memo.s as above of the concerned authorities, the petitioner prays for quashing of the aforesaid Memo.s/letter of the

respondent authorities and direction upon them to release and disburse her retiral benefits.

10. This Court by an Order dated 4th August, 2022 directed the State respondents to file a report in the form of affidavit for adjudication of the writ application. Accordingly, the respondent No.3, the District Library Officer, Hooghly filed a report in the form of affidavit on 5th September, 2022. In his report, the respondent No. 3 submits that the petitioner took her higher scale of pay being Scale No. 10 from Scale No. 6 with effect from 01.08.1993 by virtue of the order passed by the Hon'ble Supreme Court. She took normal increment on 01.08.1994 on completion of one year cycle as per the existing rules and this matter is not related to any court proceeding. Since the petitioner had over drawn an amount of Rs. 1,88,137/- this answering respondent, in compliance with the observation of the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, vide letter dated 07.04.2022 directed the petitioner to deposit the overdrawn amount through T.R. Challan under proper head of account. But, the petitioner chose not to deposit such amount. However, this answering respondent by issuing a reminder letter dated 22.06.2022 requested her to deposit the amount, but to no effect. The petitioner improved her qualification by obtaining Bachelor degree of Library and Information Science on 01.08.1993. In the decision in the case of **Pradip Kumar Karak and Others -Vs- The State of West Bengal and others** reported in **2018(4) CHN (CAL) 131** the Division Bench of this High Court has held that those librarians who acquired higher qualification before the cutoff date of 21.07.1990, are entitled to claim higher pay at par with the librarians who were before the Hon'ble Supreme Court. This respondent submits that in view of the judgment of the Hon'ble Division Bench in the case of **Pradip Kumar Karak and Others** (supra) the petitioner has to refund the money which she was not entitled to receive. This respondent submits that the

petitioner is not entitled to get any relief. In her exception to the report the petitioner sticking to her earlier stand as stated in the writ application and raising a contention that the judgment rendered in **Pradip Karak** case is not applicable to her in view of the judgment of the Hon'ble Supreme Court in **Shibnath Koley's** case, the petitioner submits that she is entitled to get the reliefs as sought for.

11. Admittedly, the petitioner was appointed as a Librarian of Radha Raman Sammelan Samity Pathghar, Hooghly, on 12.10.1984 and while she was working there as a Librarian she improved her qualification by obtaining bachelor degree of Library and Information Science with effect from 01.08.1993. After improving her qualification she approached the authority concerned for awarding higher scale to her. However, the appeal made by her to the authority concerned resulted in futility.
12. Aggrieved by the inaction on the part of the authority concerned **Shibnath Koley** and others including the petitioner moved a writ application being W.P. 8030 (W) of 1999 before this Court seeking benefit of higher scale of pay i.e. Rs.1390-2970 in terms of Para 16(3) of the Memorandum No. 33- EDN (B) dated 07.03.1990 (R.O.P.A 1990). The writ petition filed by them was dismissed. Challenging the order of dismissal of the learned Single Bench, the writ petitioners preferred four Mandamus Appeals being FMA 119 of 2002, FMA 120 of 2002, FMA 121 of 2002 and FMA 122 of 2002. All the mandamus appeals were heard together by a Hon'ble Division Bench and the Hon'ble Division Bench by judgment and order dated 08.06.2007 allowed the Mandamus Appeals and directed the State respondents to release and pay to the appellants/ writ petitioners salary at the revised scale of pay of Rs.1390-2970 in terms of the Memorandum being No. 33-Edn (B) dated 07.03.1990 issued by the Secretary, Education Department, Government of West Bengal with arrears and with effect from the date as indicated in the Memorandum dated

- 07.03.1990. The State of West Bengal, assailing the judgment and the order of the Hon'ble Division Bench, preferred Special Leave Petitions registered as Civil Appeal Nos. 6967-6970 of 2009. The Special Leave Petitions preferred by the State were dismissed upholding the judgment and order of the Hon'ble Division Bench.
13. Undisputedly, in compliance with the order dated 06.03.2014 passed by the Hon'ble Supreme Court of India in respect of Civil Appeal Nos. 6967-6970 of 2009 and the judgment and the order of the Hon'ble Division Bench passed in the aforesaid appeals, the District Library Officer vide Memo dated 8/10.04.2015 re-fixed the pay of the petitioner at Rs. 1390 in the scale of pay of 1390-2970 with effect from 01.08.1993. In terms of this order her pay as on 01.10.1993 was fixed at Rs. 1435. Thereafter, her pay was fixed at Rs. 1480 as on 01.10.1994. However, by the same order her pay as on 12.10.1994 was re-fixed at Rs.1525 after granting benefits to her under ten years Career Advancement Scheme considering her date of joining on 12.10.1984. Accordingly, her pay was fixed on yearly increment on 01.10.1995, 01.10.1996 and so on.
14. Since the time of awarding the financial benefits to the petitioner as above, there was no difficulty on her part to get the benefits as awarded to her in terms of a Memorandum dated 8/10.04.2015.
15. The trouble broke out after the petitioner retired from service on superannuation on 31.03.2020 and after her pension papers were despatched to the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal. While processing the pension papers of the petitioner, the Assistant Director, Pension, Provident Fund and Group Insurance by his first Memorandum dated 28.07.2020 noted objection that since the petitioner improved her qualification with effect from 01.08.1993 under R.O.P.A, 1990 she was awarded next increment wrongly with effect from 01.10.1993 without completing one years' cycle in terms of the existing rules. He

also noted therein that the petitioner was not entitled to ten years' benefit under the Career Advancement Scheme. After the District Library Officer by a report dated 23.02.2020 met the objection as put forward by the Assistant Director, the Assistant Director vide his second Memo dated 20.07.2021 noted satisfaction as to granting ten years benefit to the petitioner under the Career Advancement Scheme. But, he stuck to his objection that she was awarded next increment wrongly with effect from 01.10.1993 without completing one year cycle in terms of the existing rules. By this Memo he asked the District Library Officer to take steps so that the amount as overdrawn by the petitioner could be refunded under proper head through T.R.Challan. Again, the Assistant Director vide Memo dated 30.12.2021 returned the service book and all pension related papers of the petitioner to the District Library Officer asking him to comply with the observation made by him earlier. In compliance thereof the District Library Officer vide letters dated 07.04.2022 and 22.06.2022 asked the petitioner to deposit the amount as overdrawn by her through T.R. Challan. However, the petitioner declined to deposit the amount.

16. The bone of contention hovers round the granting of increment on the pay of Rs.1390 of the petitioner as re-fixed on 01.08.1993 with effect from 01.10.1993. It is the objection on the part of the Director of Library Services that increment of the re-fixed pay of Rs.1390 could not be granted to the petitioner on 01.10.1993 without completing one year service from the date of re-fixing her pay on 01.08.1993.
17. The next objection raised by the Director of Pension in response to the letter dated 29.03.2022 of the learned Advocate of the petitioner that the petitioner is not entitled to get the benefit of higher scale as per the existing Government Rules.
18. Learned Counsel appearing for the petitioner submits that the concerned authority has misinterpreted the terms "Annual/yearly

increment” and the “grant of the benefit of higher scale of pay”. Learned Counsel submits that both the two are not synonymous and in effect they stand on different footing. Learned Counsel argues that while the pay of the petitioner was re-fixed in compliance with the order of the Hon’ble Apex Court, such re-fixation of pay of the petitioner on her improving qualification cannot be questioned by any authority. According to learned counsel the higher pay was re-fixed in favour of the petitioner with effect from 01.08.1993 and the next increment on her pay was due on 01.10.1993 and accordingly the District Library Officer rightly awarded the increment in her favour. Pointing out Fundamental Rules 23, 22(a) (II) and 26 (b) (I) which are pari materia with the rules 42, 44 and 48 of West Bengal Service Rules learned counsel by citing a decision in the case of ***Union of India and Another -Vs- Shyama Pada Sidhanta and Others*** reported in ***1991 Supp (1) Supreme Court cases 542*** argues that an employee need not wait for twelve months from the fixation of his/her pay in the new scale for earning in the revised scale.

19. Per Contra, learned counsel appearing for the State respondents by citing a decision in the case of ***Pradip Kumar Karak and others- Vs- The State of West Bengal and others*** reported in ***2018 (4) CHN (CAL) 131*** submits that the Hon’ble Division Bench of this Court in the aforesaid decision has held that those librarians who improved their qualification before the cutoff date of 21.07.1990 are entitled to get the higher scale of pay of Rs.1390-2970 and since the petitioner improved her qualification after the cutoff date i.e on 01.08.1993, she is not entitled to get the higher scale of pay. Reiterating the observation of the Assistant Director, learned counsel submits that the increment cannot be granted to the petitioner on her re-fixed higher pay without completing one year’s of service from the date on which her scale was re-fixed.

20. The Hon'ble Division Bench by the judgment and order dated 08.06.2007 passed in the Mandamus Appeals being FMA 119 to 122 of 2022 preferred by Shibnath Koley and others including the petitioner by disposing of the appeals directed the respondent authorities to release and pay to the appellants/writ petitioners salary at the revised scale of pay of Rs. 1390-2970 in terms of the Memorandum being No. 33-Edn (B) dated 07.03.1990 issued by the Secretary, Education Department, Government of West Bengal. Assailing this judgment the State carried the matter to the Hon'ble Supreme Court by preferring Special Leave Petitions registered as Civil Appeal Nos. 6967-6970 of 2009. By order dated 06.03.2014 the Hon'ble Apex Court dismissed the Special Leave Petitions and upheld the judgment and order passed by the Hon'ble Division Bench. In compliance with the direction of the Hon'ble Apex Court the District Library Officer re-fixed the scale of the petitioner as indicated above. The order of the Hon'ble Apex Court which finally decided the matter between Shibanth Koley and others including the petitioner and the State of West Bengal the decision of the Hon'ble Apex Court is binding on all the parties as well as on this bench.
21. True, in the judgment in the case of ***Pradip Kumar Karak and Others- Vs- the State of West Bengal and Others*** reported in ***2018 (4) CHN (CAL) 131***, an another Hon'ble Division Bench of this Court has held that those librarians who improved their qualification before the cutoff date of 21.07.1990 are entitled to claim the higher scale of pay of Rs.1390-2970. But, the judgment does not speak about the finality of the lis between the petitioners Shibnath Koley and Others and the State of West Bengal before the Hon'ble Apex Court in the Special Leave Petitions preferred by the State of West Bengal. Since the judgment in ***Pradip Kumar Karak and Others*** (supra) is not in relation to the case of the petitioner, the right accrued in favour of the

petitioner by virtue of the order passed by the Hon'ble Apex Court cannot be taken away in any manner.

22. The only dispute raised by the State is with regard to awarding the increment in favour of the petitioner on 01.10.1993 on the pay of Rs. 1390 as re-fixed on 01.08.1993.
23. On comparison of the Central Fundamental Rules 22,23 and 26 with the Rules 42, 44 and 48 of the West Bengal Service Rules it is manifestly evident that both the two rules are identical with each other.
24. In the decision in the case of ***Union of India and another*** (supra) the Hon'ble Apex Court at paragraph 6 has ruled as under:

“The respondents are not covered under Rule 15(a) which is a common case of parties. Their service therefore, shall count for increments in the time-scale applicable to the post on which they hold a lien. That means in the post carrying lower pay scale. The combined effect of F.Rr. 23, 22(a) (ii) and 26 (b) (i) seems to be that the respondents need not wait for twelve months from the date of fixation of their pay in the new scale for earning increment in the revised scale. They are entitled to get the first increment in the new scale as on the due date in the old scale. The office memorandum dated January 9,1984 appears to be contrary to the statutory rules and therefore, cannot be given effect to. The view taken by the Tribunal is justified and we see no merit in this petition. It is accordingly rejected, with no order as to costs.”

25. From the aforesaid decision of the Hon'ble Apex Court it is found that while an employee's pay has been fixed in the new scale on a particular date, he or she will not have to wait for twelve months for increment from the date of the fixation of his/her pay.

26. What I perceive, according to her entitlement, the pay of the petitioner was fixed at Rs.1390 on 01.08.1993 when she improved her qualification. But, ordinarily, she is entitled to get increment on 1st October every year. Accordingly, the increment as awarded to her on 01.10.1993 on the pay of Rs.1390 as fixed on 01.08.1993 is warranted by law in terms of the decision in the case of **Union and Indian and Another** (supra).
27. The authority woke up from deep slumber on 28.07.2020 while processing the pension papers of the petitioner and questioned the awarding of the increment on the re-fixed pay of her and granting benefits to her under the ten years' Career Advancement Scheme during the period from 01.08.1993 to 01.10.1993.
28. The Hon'ble Apex Court in a often quoted decision in the case of **State of Punjab and Others -Vs- Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334** at paragraph 18 has postulated as under:

“18. 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. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise 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.”

29. The pay and the incremental benefit were awarded to the petitioner in compliance with the order of the Hon'ble Supreme Court. Even if disbursement of such pay and increment was made in favour of the petitioner wrongly, in that event too, in view of the decision in **Rafiq Masih (White Washer)** (supra), the authority concerned cannot pass any order or direction for recovery of the amount as overdrawn from the petitioner who retired from service. Therefore, the Memo.s of the Assistant Director and the District Library Officer as well as the letter of the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal are not only vitiated with illegalities, but those being contemptuous in nature are in gross violation of the order of the Hon'ble Apex Court.

30. Accordingly, all the aforesaid Memos and the letter are liable to be quashed.

31. Apart from seeking direction upon the respondents to release and pay her retiral benefits, the petitioner has sought for interest on the amount due to its delayed payment. Pensionary benefits are the property

of a pensioner and it is not a bounty of his/her employer. Had the petitioner received the amount of pensionary benefits in time, the amount would carry interest. Owing to laches on the part of the respondent authorities there has been inordinate delay in releasing the retiral benefits in favour of the petitioner. On such score, the petitioner is entitled to get interest because of the delay in releasing the pensionary benefits.

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

33. The Memos dated 28.07.2020, 20.07.2021 and 30.12.2021 issued by the respondent No. 5, the Assistant Director, Pension, Provident Fund and Group Insurance, Government of West Bengal, the letter dated 11.05.2022 issued by the Director of Library Services to the learned Advocate of the petitioner as well as the letters dated 07.04.2022 and 22.06.2022 issued by the District Library Officer to the petitioner are hereby quashed.

34. The concerned respondent authorities are directed to release and pay all the retiral benefits of the petitioner to her commensurate with her pay as fixed by the District Library Officer vide his Memo dated 8/10.04.2015 with interest @ of 8% per annum on the amount of retiral benefits from 01.04.2020 till the final payment is made within six weeks from date.

35. With the aforesaid direction, the writ petition stands disposed of. Connected application, if any, also stands disposed of.

36. No order as to costs.

37. Urgent Photostat/ certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)