

g.b.  
155

12.09.  
2023  
Ct. No.25

**WPA 19649 of 2022**

**Rupak Dey  
Vs  
The State of West Bengal & Ors.**

**Mr. Saibal Acharya  
Mr. Ambu Bindu Chakraborty  
Ms. Mrinmoyee Roy Chowdhury  
.....For the Petitioner  
Mr. Pinaki Dhole  
Mr. Avishek Prasad  
.....For the State**

The petitioner was engaged on temporarily on contractual basis for a period of one year by a letter of appointment dated August 5, 2015. The petitioner applied for such engagement pursuant to recruitment a notice dated July 2, 2014 issued by the District Project Office (DPO), SSM, Dakshin Dinajpur. The petitioner was selected for the post of **“Accountant”** under the Sarva Shiksha Mission (SSM), Dakshin Dinajpur.

Under Clause 3 of the said Recruitment Notification, the applicant was required to be a resident of the district for applying for a post at *“District Level Vacancy”*.

The applicants applying for the post at Sub-district level vacancies were required to be residents of the Block concerned.

The engagement of the petitioner was

extended from time to time. By a notification dated February 20, 2019 the District Project Officer (DPO), SSM approved the service of the petitioner as an **“Accountant”** at the “District Office” under the DPO, SSM, Dakshin Dinajpur till the age of 60 years.

By a Memo dated June 9, 2022 the District Education Officer, SSM directed the petitioner to be deployed at Kumarganj Block and directed him to perform the duties of a Block Accountant.

One Santanu Roy, Block Accountant, Kumarganj Block is required to perform the work of the petitioner at the District Office, SSM, until further orders in place and stead of the petitioner (District Accountant). The said Santanu Roy was directed to take over the charge with immediate effect. Such Memo dated June 9, 2022 is impugned in the present writ petition.

By another order dated June 9, 2022 the petitioner was posted at Kumarganj and was required to perform his duties at Kumarganj Sadar, Kumarganj North, Hilli, Tapan East and Tapan Sadar.

Mr. Acharya, learned counsel appearing on behalf of the petitioner submits that the petitioner was illegally being deputed to the post of a **Block** Level Accountant despite his initial appointment as a **District** Level Accountant. Furthermore, there was no administrative exigency for such allocation of

duties/transfer.

Mr. Dhole, learned counsel appearing on behalf of the State respondents submits that the allocation of duties was temporary in nature. The petitioner was not transferred to the post of **Block** Level Accountant. The benefits and emoluments enjoyed by the petitioner remained unchanged despite such reallocation.

The petitioner was absent from his duty from August 9, 2022 till March 6, 2023. The petitioner resumed his duties from March 6, 2023. The State authorities did not pay the petitioner's remuneration from March 6, 2023 till May 2023 on account of unauthorised leave. The petitioner was paid a sum of Rs. 12,628/- from mid-May, 2023 after deduction of 14 days' remuneration. From the month of June, 2023 the petitioner was paid his entire admissible remuneration of Rs. 23,070/-.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the petitioner applied for the post of an **"Accountant"** (Upper Division Assistant) at the District Level pursuant to the Recruitment Notice dated July 2, 2014. The said Recruitment Notice clearly indicated whether the vacancy arose at the **District Level** or the Block Level. The petitioner being a resident of the district of Dakshin Dinajpur

applied for the post of UDA at the **District Level**.

The same was a contractual engagement and there was no provision of transfer in the said Notification. Thereafter, the petitioner was engaged temporarily on contractual basis on August 5, 2018 to the post “*Accountant*”. Such engagement is to be read in the context of the vacancy advertised. It cannot be now urged on behalf the State respondents that the petitioner’s engagement to the post of “***Accountant***” could have been either at the **District** Level or at the **Block** Level. Furthermore, the petitioner’s engagement was extended upto the age of 60 years as an “*Accountant*” at the District office under the DPO.

This Court finds it perplexing that despite such engagement at the **District** Office upto the age of 60 years under the DPO, the District Education Officer Vide Impugned Memo dated June 9, 2022 sought to deploy the petitioner to perform the duties of a **Block** Level Accountant.

Relying on the decision of the Supreme Court reported in (1997) 8 SCC 372 (**State of Punjab and Others Vs. Inder Singh and Others**), this Court is of the view that without the consent of the petitioner he could not have been deputed to perform the duties of a **Block** Level Accountant.

Furthermore, the reason for allocation of such

duties temporarily has also not been explained by the State authorities. Why the said Santanu Roy who was a **Block** Level Accountant was required to perform the duties of the petitioner at the **District** Level neither appears from the impugned office Memo dated June 9, 2022 nor from the Report filed by the District Education Officer.

This Court is of the view that even if there was a purported exigency, the petitioner could not have been *deputed* to the post of **Block** Level Accountant when he was initially engaged as a **District** Level Accountant and his service was approved till the age of 60 years as a **District** Level Accountant, without his consent.

Accordingly, this Court finds perversity and arbitrariness in the decision making process culminating in the Memo dated June 9, 2022 and said Memo no. 79/1(6)/SSM, 2022 is accordingly set aside and/or is quashed.

The petitioner shall be allowed to perform his duties as a **District** Level Accountant at the District Office, SSM under the DPO, Dakshin Dinajpur with immediate effect.

Accordingly, **WPA 19649 of 2022 is disposed of.**

All parties shall act on the server copy of this order duly downloaded from the official **website** of

this Court.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**(Lapita Banerji, J.)**