

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 22091 of 2022

Suprabhat Thakur

Vs

The State of West Bengal & Ors.

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Mr. Arjun Roy Mukherjee, Adv.

Ms. Saheli Mukherjee, Adv.

Ms. Jayjeev Medhi, Adv.

..... for the Petitioner

Mr. Santanu Kumar Mitra, Adv.

Mr. Subhabrata Das, Adv.

..... for the State

Heard On : 24.02.2023

Judgment on : 13.04.2023

Rabindranath Samanta, J:-

Challenge in this writ petition is against the order dated 28.03.2022 passed by the Director of Library Services rejecting the representation of the petitioner seeking higher scale of pay commensurate with his higher qualification.

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

The petitioner was appointed as a Librarian in Pratul Biswas Smriti Pathagar, a rural library, on 2nd December, 1981. In September, 1992 he was transferred to Ramesh Library which was an upgraded Town Library and the post was re-designated as Library Assistant. Thereafter, he was promoted to the post of librarian of the

Library vide order dated 8th December, 2015. He retired from service on superannuation on 31st July, 2019.

The petitioner enhanced his academic qualification by obtaining degree in Bachelor of Library and Information Science in 1986. In terms of Paragraph 16 (3) of a Memorandum bearing No. 33-EDN(B) dated 7th March, 1990 issued by the Government of West Bengal, teachers and librarians of secondary schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or group relevant to the teaching/appointment shall get higher scale of pay appropriate to their qualification whichever is later. It was categorically mentioned in the Memorandum that the aforesaid principle shall apply mutatis mutandis to the teachers/librarians of other institutions /organizations as mentioned in Annexure-1 including Rural Library.

The petitioner by filing a writ petition being W.P No. 1966(W) of 2020 sought for revised scale of pay in terms of the Memorandum dated 7th March, 1990 with interest and consequential benefits in connection thereto. By order dated 2nd February, 2022 a learned Single Bench disposed of the writ petition directing the Director of Library Services to consider the representation of the petitioner and to dispose of the same by a reasoned order giving opportunity of hearing to all parties including the petitioner within a stipulated time. By order dated 28th March, 2022 the Director of Library Services, after hearing the parties, rejected the representation of the petitioner placing reliance on Memorandum No. 401-Edn(B) dated 10th September, 1991 and a Memorandum bearing No. 372-Edn (B) dated 31.07.1981 issued by the Education Department, Government of West Bengal. The Director, Library Services rejected the representation of the petitioner on the reasons that he was a Librarian of a Rural Library and he did not acquire higher qualification at the time of his recruitment. The petitioner submits that since he acquired higher qualification prior to 21st July, 1990 and since the Memo dated 31st July, 1981 got superseded after the Memo dated 7th March, 1990 came into force, the aforesaid two Memorandums as referred to by the Director of Library Services have no manner of application to the claim of the petitioner. Under such circumstances, the petitioner prays for quashing of the impugned order dated 28.03.2022 and direction upon the respondents to release

higher scale of pay to him on his acquiring higher qualification in terms of the Memo dated 07.03.1990.

The respondent No.4, the District Library Officer in his affidavit-in-opposition states that the Director of Library Services rightly rejected the representation of the petitioner by referring to Memorandum no. 372-Edn(B) dated 31.07.1981 and Memorandum no. 401-Edn(B) dated 10.09.1991. This answering respondent submits that as per the Memorandum No. 372-Edn(B) dated 31.07.1981 an incumbent is allowed to get the scale of pay on the basis of qualification prescribed for recruitment to the post. Since the petitioner at the time of recruitment did not possess the higher qualification, he is not entitled to get the benefit of higher scale of pay. In terms of Memorandum dated 10.09.1991 the petitioner being a Librarian of a Rural Library is not entitled to get higher scale of pay in terms of the Memorandum dated 7th March, 1990. This respondent further states that the representation dated 01.07.2019 made by the petitioner to the Director of Library Services was annexed to the writ petition being W.P No. 12779(W) of 2019 preferred by the petitioner, but the writ petition was dismissed by a learned Single Bench with a liberty to file a fresh writ application. Consequently, the application dated 1st July, 2019 filed by the petitioner has lost its merit due to dismissal of the aforesaid writ petition filed by him earlier. On such grounds and denying and disputing the averments as made in the writ petition this answering respondent submits that the writ petition is liable to be dismissed.

Admittedly, the petitioner was initially appointed as a Librarian in Pratul Biswas Smriti Pathagar, a rural library, on 2nd December, 1981. Thereafter, he was transferred to Ramesh Library which was an upgraded town library and his post was re-designated as Library Assistant. Undisputedly, the petitioner was promoted to the post of Librarian of the said Library by an order dated 8th December, 2015.

As I find, the petitioner retired from service on superannuation on 31.07.2019. It is evident from Annexure P-2 that the petitioner before his retirement on superannuation improved his qualification by obtaining degree in Bachelor of Library and Information Science in the year 1986. Before his retirement the petitioner made a representation dated 01.07.2019 to the Director of Library Services seeking higher scale of pay on acquiring higher qualification. Since the authority concerned failed to dispose of the representation made by him, the petitioner filed a writ petition being

W.P No. 12779(W) of 2019. However, as it appears from the affidavit-in-opposition, this writ petition was dismissed as withdrawn with liberty to file afresh. Thereafter, the petitioner by filing the second writ petition being W.P.A 1966 of 2020 prayed for direction upon the respondent authorities to grant higher scale of pay to him commensurate with his higher qualification. However, by order dated 2nd February, 2022 the second writ petition filed by the petitioner was disposed of directing the Director of Library Services to consider and dispose of the representation of the petitioner by a reasoned order. In compliance of the order the Director of Library Services by the impugned order dated 28.03.2022 rejected the representation of the petitioner, inter alia, on the following reasons:

“ The petitioner has sought benefit of higher scale of pay under career advancement scheme under clause 16 of Memorandum No. 33 –Edn(B) dated 07.03.1990. In clause 16(3) of the said memorandum the following has been mentioned: “All teachers and Librarians of Secondary Schools who have improved/will improve their qualification or who were appointed with higher qualification in the subject or group relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the 1st January, 1986 or the date of improving qualifications whichever is later. This principle shall apply mutatis mutandis to the teachers/librarians of other institutions/organizations as mentioned in Annexure-1”. Further as per Memorandum No. 230 –Edn(B) dated 21.07.1990, orders regarding para 16(3) of Memorandum No. 33 –Edn(B) dated 07.03.1990 relating to teachers and librarians of other institutions/organizations as mentioned in Annexure-1 wherever necessary, shall be issued separately. In this regard Memorandum No. 401-Edn(B) dated 10.09.1991 was issued and the paragraph 16(3) of Memorandum No. 33-Edn(B) dated 07.03.1990 was amended and the said para was substituted by “All teachers and librarians of secondary schools who will improve their qualifications in subject relevant to their teaching/appointment shall get higher scale of pay appropriate to their qualifications with effect from the date of improving qualifications.” So, as per memorandum No. 401-Edn(B) dated 10.09.1991, the librarian of a rural library is not entitled to the benefit of scale as prayed for by the petitioner.

Further as per Memorandum No. 372-Edn(B) dated 31.07.1981, scales as recommended may be allowed to the incumbent on the basis of qualifications prescribed for recruitment to the post and not on the basis of qualification possessed by the incumbent. From this point of view also the petitioner is not entitled for scale benefit due to his possession of Bachelor Degree in Library & Information Science.

Petition dt. 01.07.2019 was linked to pension and pension papers have been sent to DPPG after checking the petition. Thus the petition has been processed in the light of existing G.Os. As the petitioner was not eligible for benefit of scale, the pension papers were sent accordingly after proper checking of the petition dt. 01.07.2019. Thus action has been taken on the basis of the petition dated 01.07.2019.

The petition dt. 01.07.2019 was duly considered. After in-depth analysis it has been found that the petitioner is not entitled to get the benefit of higher scale.

Thus the case is disposed of and this order be communicated to all the concerned.

***Director of Library Services
West Bengal”***

Clause 16(3) of the Memorandum No. 33-Edn(B) dated 7th March, 1990 reads as under:-

“All teachers and Librarians of secondary schools who have improved/will improve their qualification or who were appointed with higher qualification in the subjects or groups relevant to their teaching/appointment shall get, higher scale of pay appropriate to their qualifications with effect from 1st January, 1986 or the date of improving qualification whichever is later.

This principle shall apply mutatis mutandis to the teachers/librarians of other institutions /organizations as mentioned in Annexure-I”

Mr. Arjun Roy Mukherjee, learned counsel appearing for the petitioner submits that since his client improved qualification by acquiring degree in Bachelor of Library and Information Science in the year 1986, the petitioner is entitled to get higher scale of pay commensurate with his higher qualification. Learned Counsel points out that after the ROPA 1990 came into force and after the Memorandum dated 07.03.1990 was notified, the previous Memorandum dated 31.07.1981 as referred to in the impugned order has now lost its relevance and the Hon'ble Apex Court has dealt with this issue in the order dated 6th March, 2014 rendered in Civil Appeal Nos. 6967-6970 of 2009 (***State of West Bengal and Others -Vs- Sibnath Koley and Others***). Learned Counsel argues that this Court 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*** has held at paragraph 139 that those librarians who have acquired higher qualifications before the cut-off date of July 21, 1990 are entitled to claim that they be treated at par with the librarians (***Sibnath Koley and Others***) who were before the Hon'ble Apex Court. In such context, learned counsel submits that the petitioner is entitled to get higher scale of pay on improving his higher qualification.

Mr. Santanu Kumar Mitra, learned counsel appearing for the State respondents submits that by virtue of the Memorandum dated 7th March, 1990 a librarian even of a rural library who improved his qualification was entitled to get higher scale of pay. But, the relevant provision of the Memorandum dated 7th March, 1990 was amended by the Memorandum dated 10th September, 1991 and by this Memorandum only the librarian of a Secondary school is entitled to get higher scale of pay appropriate to his or her qualification with effect from the date of improving qualification. According to Mr. Mitra the rural library which was initially under the purview of the previous Memorandum dated 07.03.1990 has now been ousted by dint of the Memorandum dated 10.09.1991. Learned Counsel emphasises that by Memorandum dated 31.07.1981 an incumbent is entitled to get the scale of pay on the basis of the qualification prescribed for recruitment to the post. On such score, learned counsel submits that the order as impugned passed by the Director of Library Services, is quite justified and this order does not invite any interference by this Court.

After the Memorandum dated 07.03.1990 came into force, the Education Department, Government of West Bengal by issuing a Memorandum dated 21.07.1990

amended sub-para 3 of para 16 of the Memorandum dated 07.03.1990 to this effect that the principle of Para 16(3) which was applicable to a Librarian of a Rural Library was substituted to this extent that orders in this behalf relating to teachers/librarians of other institutions/organizations as mentioned in Annexure-I wherever necessary shall be issued separately. By a subsequent amendment dated 10th September, 1991 para 16(3) of the Memorandum dated 07.03.1990 was modified to this extent that teachers and librarians of secondary schools who will improve their qualifications in the subjects relevant to the teaching/appointment shall get higher scale of pay appropriate their qualifications with effect from the date of improving qualification. Based on such memorandum dated 10.09.1991 and the previous memorandum dated 31.07.1981 the state respondents contend that the petitioner is not entitled to get higher scale of pay being a librarian of a rural library.

In a decision in the case of **Sibnath Koley and others** Vs. The State of West Bengal and Ors. reported in **AIR 2007 CAL 223** a Division Bench of this court has held that the librarians of rural library who improved qualification were entitled to get higher scale commensurate with their higher qualification. This judgment was carried to the Hon'ble Apex Court by the State of West Bengal in Civil Appeal Nos. 6967-6970 of 2009 and by order dated 06.03.2014 the Civil Appeals preferred by the State of West Bengal have been dismissed by the Hon'ble Apex Court. Reading of the order passed by the Hon'ble Apex Court shows that argument was advanced on behalf of the state by referring to Memorandum dated 31.07.1981 that the librarians were entitled to get the pay scales which were prescribed at the time of recruitment. The Hon'ble Apex Court at paragraph 6 of the order has opined that once the revision of pay on the basis of better qualification was granted in March 1990, the Government could not have looked back and said in July 1994 that the Memorandum of 31st July, 1981 will continue to govern these rural librarians.

As pointed out by Mr. Arjun Roy Mukherjee, learned counsel, from the memorandum of the civil appeals, the State of West Bengal raised an issue that in view of Memorandum dated 21.07.1990 librarians of rural library were not entitled to get higher scale of pay on improving their qualification. But, what I find, while the matter was finally disposed of the State did not raise this issue before the Hon'ble

Apex Court. If we speak in legal parlance, the defence now taken by the State is barred by constructive res judicata.

However, the Division Bench in **Pradip Karak** (supra) has held at paragraph 139 that those librarians who have acquired higher qualifications before the cut off date of July 21, 1990 are entitled to claim that they be treated at par with the librarians (**Sibnath Koley and oOthers**) who were before the Hon'ble Supreme Court as respondents in Civil Appeal Nos. 6967-6970 of 2009.

Viewed from all aspects, the petitioner who improved qualification by obtaining degree in Library and Information Science in 1986 is entitled to get higher scale of pay.

In view of the above, the impugned order dated 28.03.2022 passed by the Director of Library Services is vitiated with illegalities and this order is liable to be quashed.

Though the petitioner is entitled to get higher scale of pay since his acquiring higher qualification in 1986, the concerned state authority denied the benefit of higher scale to him. Such wrong committed by the state authority being a continuing wrong, the writ petition is tenable even if there is delay in seeking the remedy. However, as held by the Hon'ble Apex Court in the decision in the case of Union of India and Ors. Vs. Tarsem Singh reported in (2008) 8 Supreme Court Cases 648, consequential relief of recovery of arrear of pay shall be restricted to a period of three years prior to the date of filing of the writ petition. The writ petition being WPA 1966 of 2020 preferred by the petitioner was filed on 28.01.2020. Accordingly, though the petitioner is entitled to get his pay scale re-fixed on acquiring higher qualification, but he is entitled to get arrear pay with effect from 28.01.2017.

In view of the above, the writ petition succeeds and the writ petition may be disposed of by passing the following order.

The impugned order dated 28.03.2022 passed by the Director of the Library Services, West Bengal is hereby quashed.

The concerned respondents are directed to re-fix the scale of pay of the petitioner from the date of his improving qualification within four weeks from date.

The concerned respondents are further directed to disburse the arrear pay to the petitioner on the basis of re-fixation of his higher pay from 28.01.2017 with 8% interest there on till the final payment is made within six weeks from the date of re-fixation of his higher pay.

The concerned respondents shall issue revised Pension Payment Order in favour of the petitioner on the basis of his re-fixed higher pay within six weeks from date.

With the aforesaid directions the writ petition stands disposed of.

No order as to costs.

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

Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)