

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

<u>WPA No. 30481 of 2017</u>	
<u>Baidya Nath Dutta</u>	...Petitioner
<u>Vs</u>	
<u>The State of West Bengal and Others</u>	... Respondents

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Mr. Biswaroop Biswas, Adv.
Mr. Sayantan Hazra, Adv.
Mr. Gora Chand Santra, Adv.

..... for the Petitioner

Ms. Chaitali Bhattacharya, Adv.
Mr. Kartik Chandra Kapas, Adv.

..... for the State

Heard On : 09.02.2023

Judgment on : 09.03.2023

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against the order dated 09.06.2017 of the District Inspector of Schools (Secondary Education), Burdwan rejecting the prayer of the petitioner for higher scale of pay commensurate with his higher qualification.
2. The facts which led to the filing of the writ petition may be adumbrated as under:

The petitioner having requisite qualification of B.A with certificate in Library Science was appointed as a Librarian of Banpas Sikshaniketan, Purba Bardhaman on 1st March, 1994. His appointment was duly approved by the District Inspector of Schools (SE), Purba Bardhaman.

3. Since his appointment the petitioner discharged his duties as a Librarian with utmost sincerity and devotion without any adverse remarks from any quarter. After his appointment as a Librarian, the petitioner, with a prior permission of the Managing Committee of the school obtained his Master's degree in history from the University of Burdwan in the year 1996.
4. In the year 2006 the petitioner applied before the Managing Committee of the school seeking permission to improve his qualification by obtaining bachelor degree in Library and Information Science from Netaji Subhas Open University after performing his duties as a Librarian. The Managing Committee of the school in its meeting dated 3rd April, 2006 unanimously resolved that the petitioner might be permitted to enhance his qualification by obtaining bachelor degree in Library and Information Science. In such context it is pertinent to note that the District Inspector of Schools (SE), Purba Bardhaman vide a Memo dated 14.09.2000 granted permission to the petitioner to appear at the bachelor in library and information science examination. But, due to some family problems the petitioner could not appear at the aforesaid examination before 2007. However, the Head Master of the school by a letter dated 12th April, 2006 requested the District Inspector of Schools (SE), Purba Bardhaman to grant permission to the petitioner to appear at the Bachelor in Library and Information Science examination through correspondence course from Netaji Subhas Open University. Though the Head Master of the school by the letter dated 12th April, 2006 requested the District Inspector of Schools (SE) to grant permission to the petitioner, the District Inspector of Schools took no step in that regard.
5. The petitioner, in terms of the prior permission, enrolled his name with Netaji Subash Open University to pursue bachelor in Library and Information Science course through correspondence course to enhance his educational qualification. Ultimately, the petitioner appeared at the examination and obtained the bachelor degree in Library and Information Science in the year 2008. After enhancing his qualification he made application to the District Inspector of Schools (SE), Purba Bardhaman

through the Secretary of the school on 7th July, 2009 seeking grant of higher scale of pay commensurate with his qualification i.e. M.A, BILS in terms of the then government circulars.

6. The Managing Committee of the school also by adopting a resolution on 11th July, 2009 recommended the higher scale of pay for the petitioner to the District Inspector of Schools (SE). The Secretary by a letter dated 16th September, 2010 forwarded the application of the petitioner seeking higher scale of pay to the District Inspector of Schools (SE). In response thereto, the District Inspector of Schools (SE) by a Memo dated 30th November, 2010 requested the Secretary of the school to submit necessary documents towards granting higher scale of pay. The Secretary, accordingly, furnished all the necessary documents to the District Inspector of Schools (SE). Since no action was taken on the part of the District Inspector of Schools (SE) the petitioner by filing a writ petition being WP No. 30571(W) of 2016 in this Court sought for appropriate relief. By an order dated 5th January, 2017 a learned Single Bench disposed of the writ petition directing the District Inspector of Schools(SE), Purba Bardhamman to consider and dispose of the representation of the petitioner seeking higher scale of pay by a reasoned order. Ultimately, the District Inspector of Schools (SE) vide the impugned order dated 09.06.2017 rejected the prayer of the petitioner.
7. The petitioner submits that since he obtained M.A in history and Bachelor in Library and Information Science taking permission of the authority concerned, he is entitled to get higher scale of pay. Under such circumstances, the petitioner prays for quashing of the impugned order dated 09.06.2017 made by the District Inspector of Schools(SE) and direction upon the concerned respondent authorities to grant higher scale of pay commensurate with his higher qualification.
8. The respondent No.3, the District Inspector of Schools (SE), Purba Barddhaman in his report in the form of affidavit states that the petitioner joined the post of Librarian at Banpas Shikshaniketan on 01.03.1994 with the qualification of graduate with certificate in Library Science and accordingly his pay was fixed in the scale No. 15 i.e. Rs.1040-1920 under

the West Bengal Services (Revision of Pay and Allowance) Rules, 1990 (in short ROPA 1990). The Master's Degree in history obtained by the petitioner in the year 1996 was not in relevant subject and as such in terms of the provision of Clause 16(3) of R.O.P.A memorandum issued on 7th March, 1990 and in terms of West Bengal Services (Revision of Pay and Allowance) Rules, 1998 (in short ROPA 1998) he was not entitled to any higher scale of pay for the post graduate degree. However, he did not obtain prior permission from the competent state authority. Since the petitioner exercised his option to come under ROPA 1998 in the scale of Rs.3350-6325 with effect from 01.01.1996 corresponding to scale No. 15 he received salary accordingly. He also exercised option to come under West Bengal Services (Revision of Pay and Allowance) Rules, 2009 (in short ROPA 2009) in the same scale of pay of Rs.5,400-25,200 with Grade Pay 2,600 with effect from 01.01.2006 corresponding to Scale no. 15 and he received salary accordingly.

9. In 2000 the petitioner applied for permission for acquiring higher qualification and the permission was given to him by the concerned District Inspector of Schools (SE), but he failed to acquire higher qualification within a reasonable time. As such, the permission as accorded would not be considered for an indefinite period. In 2007 the school authority again sent proposal for improving the qualification of the petitioner to the Office of the District Inspector of Schools (SE) for prior permission. But, the District Inspector of School did not entertain the proposal and kept silent. The School Education Department issued a clarification on Memorandum No. 39-Edn (HS) dated 12.03.1996 towards sanction of Post Graduate Scale of Pay to the Librarians vide Memo No. 9-SE (HS)/3S-23/92 dated 10.02.2005 in which direction was made for not allowing post graduate scale of pay to the librarians until further order. By an another notification No. S/120 dated 30.05.2005 issued by the West Bengal Board of Secondary Education it was directed that every teacher or non-teaching staff should submit an application for appearing at any examination to the appointing authority and seek prior approval of the concerned District Inspector of Schools (SE), if there was any financial involvement. The petitioner improved his

qualification as Bachelor in Library and Information Science from Netaji Subhas Open University in the year 2008 without prior permission of the District Inspector of Schools. In such context it is pertinent to state that the provision of granting higher scale for acquiring higher qualification which was provided in Clause 16(3) of ROPA, 1990 and Clause 12(3) of ROPA 1998 was omitted from ROPA 2009 with effect from 01.01.2006 and West Bengal Services (Revision of Pay and Allowance) Rules, 2019 (in short ROPA 2019) with effect from 01.01.2020. Since clause 15 of ROPA 2009 and clause 15 of ROPA 2019 have overriding effect on the previous ROPA or other rules and orders, acquiring graduate qualification in Library Science in 2008 by the petitioner without permission will not extend any benefit to him to get higher scale of pay. On such grounds, the respondent No.3 submits that the writ petition is liable to be dismissed.

10. In his exception to the report filed by the respondent No.3 the petitioner denies the averments as made in the report and reiterates his stand as taken in the writ application.
11. Admittedly, the petitioner was appointed as a Librarian of a school namely Banpas Shikshaniketan on 01.03.1994 and while he was appointed he then possessed the qualification of B.A with certificate in Librarianship. His pay was fixed in the scale No. 15 i.e Rs.1040-1920 under the ROPA, 1990. As it appears from a mark-sheet of M.A final examination, the petitioner passed M.A final examination, 1995 in history from the University of Burdwan.
12. It is stated by the petitioner that in order to obtain degree of Bachelor in Library and Information Science he sought for permission from the District Inspector of Schools (SE), Purba Bardhaman through the School authority. By a Memo dated 14th September, 2000 permission was accorded to him to appear at the B.Lib examination, however, due to some family problems he could not appear at the examination before 2007. The respondent No. 3, the District Inspector of Schools (SE), Purba Badhaman in its report in the form of affidavit admits that permission was granted to the petitioner in the year 2000 to appear at the B.Lib examination. Be that as it may the fact remains that the petitioner could not appear at the aforesaid B.Lib examination.

However, in the year 2006 he again sought for permission to appear at the examination to be conducted by Netaji Subhas Open University. The Managing Committee recommended that the petitioner be permitted to appear at the examination. By a letter dated 12th April, 2006, the Head Master of the school requested the District Inspector of Schools (SE) for granting necessary permission to the petitioner so that he could undergo the Bachelor in Library and Information Science course through correspondence course from Netaji Subhas Open University. Ultimately, the petitioner obtained the degree of Bachelor in Library and Information Science in the year 2008. The last date of examination of BLIS course was 29th December, 2007.

13. After enhancing his qualification by obtaining the degree of Bachelor in Library and Information Science the petitioner by a representation dated 7th July, 2009 sought for higher scale commensurate with his qualification M.A, BLIS. Since the District Inspector of Schools took no action on the representation of him, the petitioner filed a writ petition being WP No. 30571(W) of 2016. By an order dated 5th January, 2017 a learned Single Bench disposed of the writ petition with the following observations:

“ Accordingly, without entering into the merit of the case; this writ petition is disposed of with a direction to the respondent No.3, to consider and decide such representation in accordance with law after affording a reasonable opportunity of hearing to the petitioner after taking into consideration the R.O.P.A Rules. The authority will pass a reasoned order and the same be communicated to the petitioner forthwith thereafter. It is expected that the respondent No.3 completes the entire exercise within three months from the date of communication of this order.”

14. A copy of the impugned order dated 09.06.2017 annexed to the writ application shows that the representation of the petitioner was disallowed by the District Inspector of Schools.
15. Since the instant writ petition has been brought challenging the impugned order dated 09.06.2017 passed by the District Inspector of Schools (SE),

Burdwan it will be apposite to reproduce the relevant portion of the impugned order which is as under:

“The petitioner was appointed to the post of Librarian with effect from 01/03/1994 with qualification certificate course in Library Science and accordingly approval was accorded by the District Inspector of Schools (Secondary Education), Burdwan vide No. 1182 dated 30/05/95 and thereafter vide No. 547/1 dated 25/04/2000 after retention of the post of Librarian.

His pay was fixed in the scale No. 15 i.e. Rs. 1040-1920/- under ROPA’90 and received salary accordingly.

He exercised his option to come under ROPA,98 and accordingly his pay was fixed in the scale of pay of Rs. 3350-6325/- under ROPA,98 corresponding to scale no. 15 and received his salary accordingly. Under ROPA,09 his pay was rightly fixed in PB Rs. 5400-25200/-with Grade Pay Rs. 2600/- which is corresponding to scale no. 15 under ROPA,98. He improved his qualification as Bachelor in Library Science from Netaji Subhas University in the year 2008 without prior permission of District Inspector of Schools (Secondary Education), Burdwan in violation of G.O. No. 1595-SE(S) dated 26/12/2005 read with G.O. No. 593-SE(B) dated 27.11.2007.

Moreover, the West Bengal School (Control of Expenditure) Act, 2005 as published vide Notification No. 205 3-L dated 19/08/2005, it is clearly mentioned in clause 14(1) that every teacher of a school shall, if appointed in the post of under graduate teacher category, be entitled to draw pay the scale of pay in which he is appointed and shall not be entitled to claim any additional increment or higher scale of pay of acquiring qualification other than the qualification specified for such post.

There is no provision under ROPA, 2009 for according approval of higher scale of pay to a Librarian for subsequent improvement of qualification.

Thus, in the light of aforesaid observation and after perusing the records, it is concluded that the prayer of the petitioner for fixation of his pay with Grade Pay Rs.4300/- under ROPA, 09 could not be accorded in terms of ROPA Rules. Thus the matter is disposed of and all concerned be informed accordingly.”

16. Challenge in the writ petition is against the observation by the District Inspector of Schools that the petitioner improved his qualification as Bachelor in Library Science from Netaji Subhas University in the year 2008 without prior permission of District Inspector of Schools (SE), Burdwan. As stated above, the petitioner admittedly obtained permission from the District Inspector of Schools (SE), Purba Bardhaman to appear at the examination of Bachelor in Library and Information Science from Netaji Subhas Open University. It is not in dispute that in terms of the permission accorded to him in the year 2000 the petitioner enrolled himself with the Netaji Subhas Open University to pursue the study of Bachelor in Library and Information Science. It is stated by the petitioner that due to some family problems he could not appear at the examination before 2007.
17. As it is evident from the relevant documents on record, the Head Master of the school acting on the recommendation of the Managing Committee of the school sought for permission for the petitioner from the District Inspector of Schools (SE) so that the petitioner could appear at the Bachelor in Library and Information Science examination. As I find, the respondent No. 3, the District Inspector of Schools (SE) sat tight and maintained silence over the official communication made to him by the school authority.
18. Mr. Biswaroop Biswas, learned counsel appearing for the petitioner submits that the petitioner in terms of the permission granted to him in the year 2000 enrolled himself with the Netaji Subhas Open University to undertake the studies of bachelor in library and information science and obtained the degree accordingly. Learned Counsel submits that the permission as granted to the petitioner in the year 2000 has not yet been cancelled or withdrawn by the concerned authority. However, the petitioner, as a precautionary measure, sought permission again to obtain the degree in the year 2006 to

the concerned authority. But the concerned District Inspector of Schools kept silence over the prayer made by the petitioner and such acquiescence on the part of the school authority will be deemed that permission as sought for was granted to the petitioner to obtain the degree. In support of his contention learned counsel has cited a decision in the case of **Akhtar Hossain Chowdhury-Vs-The State of West Bengal** reported in **2012(2) CHN (CAL) 632**. Learned counsel submits that the proposition as propounded in this decision has been followed in the case of **Subhankar Thakur-Vs-The State of West Bengal and Others** in WP No. 25092(W) of 2018 decided on 30.01.2019, in the case of **Sudipa Ghosh -Vs- The State of West Bengal and Others** in WPA No. 3086 of 2019 decided on 21.01.2021 and in the case of **Alok Kumar Das -Vs- The State of West Bengal and Others** in WP No. 2694(W) of 2016 decided on 25.03.2019. According to learned counsel the petitioner is entitled to get higher scale of pay commensurate with his higher qualification in terms of Notification No. 33 Edn(B) dated March 7, 1990 by which ROPA, 1990 was notified and in terms of the notification No. 25-SE(B) dated February 12,1999 by which ROPA 1998 was notified. Learned counsel further submits that the petitioner is also entitled to higher scale of pay as per ROPA 2009.

19. Per contra Ms. Chaitali Bhattacharya, learned counsel appearing for the state respondents submits that since no official permission was granted to the petitioner for the second time, the degree of Bachelor in Library and Information Science obtained by the petitioner in the year 2008 cannot be taken into consideration to grant higher scale of pay to him. Learned Counsel submits that since Master's degree in history obtained by the petitioner is not related to his appointment no benefit of higher scale will be extended to him. In such context learned counsel by referring to the Government order dated 7th March, 1990 and the Government Order dated 12th February, 1999 point out that the relevant provisions therein clearly indicate that higher qualification relevant to the appointment shall be taken into consideration to grant higher scale of pay commensurate with higher qualification of the concerned employee.

20. While the petitioner was appointed as a Librarian on 01.03.1994, he then possessed the qualification of B.A with a certificate in Library Science/Librarianship. Since he joined in 1994, he was governed under ROPA 1990 notified vide Memo No. 33 Edn dated 7th March, 1990. According to this notification, three separate scales were prescribed for Librarian which are as under:
- i) Master's Degree holder with recognised Diploma in Library Science Rs 1420-3130
 - ii) Graduate with recognised Diploma in Library Science Rs 1390-2970
 - iii) Matriculate with recognised certificate in Librarianship Rs 1040-1920
21. Since the petitioner at the time of his appointment had the degree of B.A with a certificate in Library Science/Librarianship, his pay was rightly fixed at the scale of Rs. 1040-1920. Undisputedly, the petitioner obtained Master's Degree in history from the University of Burdwan in 1996 being successful in M.A final examination, 1995 in history taking permission of the Managing Committee of the School and his study leave was sanctioned by the West Bengal Board of Secondary Education. The notification No. 33-Edn(B) dated 7th March, 1990 under the heading Career Advancement Scheme and related issues, inter alia, enjoins that 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 their qualifications with effect from 1st January, 1986 or the date of improving qualification whichever is later.
22. As stated above, since the petitioner obtained Master's Degree in history not related to his appointment, he is not entitled to get higher scale of pay commensurate with the qualification enhanced by him in different stream.
23. However, as I find, it is the case of the petitioner that on acquiring higher qualification he is entitled to get higher scale of pay.

24. Admittedly, the District Inspector of Schools (SE), Purba Bardhaman permitted the petitioner to appear at the examination of Bachelor in Library and Information Science in 2000, but the petitioner could not avail of such opportunity because of his family problems. No iota of document is forthcoming from the state respondents to show that the permission granted to the petitioner in 2000 has either been cancelled or withdrawn. However, though the permission as accorded to him in 2000 persisted, the petitioner as a precautionary measure made a further prayer to obtain permission from the District Inspector of Schools (SE), Purba Bardhaman. As indicated above, the Head Master of the School acting on the recommendation of the Managing Committee of the school by a letter dated 12th April, 2006 requested the District Inspector of Schools (SE) to accord permission to the petitioner to undergo Bachelor in Library and Information Science course. The bone of contention hovers round the silence maintained by the respondent No.3, the District Inspector of Schools (SE), Purba Bardhaman. Meanwhile, pending such prayer of the petitioner, the petitioner appeared at the examination of Bachelor in Library and Information Science in 2007 and obtained the degree in 2008. Thereafter, by the representation dated 7th July, 2009, he made appeal to the District Inspector of Schools (SE), Purba Bardhaman to grant higher scale to him commensurate with his qualification of M.A, BLIS.
25. As observed hereinbefore, the petitioner got the permission to appear at the Bachelor in Library and Information Science in 2000 and accordingly he registered his name with Netaji Subhas Open University to undertake the course. However, ultimately, pending his further prayer to obtain permission he appeared at the aforesaid examination in 2007 and obtained the degree of Bachelor in Library and Information Science in 2008. In the decision in the case of **Akhtar Hossain Chowdhury-Vs-The State of West Bengal** reported in **2012(2) CHN (CAL) 632** a Division Bench of this Court has held that if a prayer made by a teacher before the concerned District Inspector of Schools was pending since long seeking permission to appear at the concerned examination to enhance his/her higher qualification and the District Inspector of Schools kept the prayer pending since long it would be

deemed that the prayer made by the concerned teacher was allowed by the concerned authority. I find that this proposition has been followed in the case of ***Subhankar Thakur-Vs-The State of West Bengal and Others*** in WP No. 25092(W) of 2018 decided on 30.01.2019, in the case of ***Sudipa Ghosh -Vs- The State of West Bengal and Others*** in WPA No. 3086 of 2019 decided on 21.01.2021 and in the case of ***Alok Kumar Das -Vs- The State of West Bengal and Others*** in WP No. 2694(W) of 2016 decided on 25.03.2019. In the light of the legal proposition as propounded in the decisions (supra), I have no hesitation in mind to hold that maintaining long silence/acquiescence by the District Inspector of Schools over the prayer of the petitioner seeking permission to appear at the aforesaid examination and non-production of any order of rejection of such prayer shall be deemed that the prayer made by the petitioner seeking the permission has also been allowed for the second time. In view of this and in view of the permission already accorded to the petitioner in 2000, I hold that the petitioner obtained the degree of Bachelor in Library and Information Science taking due permission from the District Inspector of Schools (SE), Purba Bardhaman.

26. The District Inspector of Schools by the impugned order dated 9th June, 2017 considered the representation dated 07.07.2009 of the petitioner in compliance with the order dated 05.01.2017 passed by learned Single Bench in WP 30571(W) of 2016, but the representation was rejected by him with the findings as quoted hereinbefore. One of the reasons by which the representation was rejected was that the petitioner improved his qualification as Bachelor in Library Science from Netaji Subhas Open University in the year 2008 without prior permission of him. As observed above, since the petitioner obtained the degree taking due permission from the District Inspector of Schools, the reason as assigned by the respondent No.3 is not acceptable. The second reason by which the representation was rejected is to this effect that in terms of clause 14(1) of the notification No. 2053-L dated 19.08.2005 by which the West Bengal School (Control of Expenditure) Act, 2005 was published the petitioner is not entitled to get higher scale of pay. The notification dated 19.08.2005 as referred by the

District Inspector of Schools is applicable to a teacher and not to a librarian. Therefore, the second reason as assigned by the respondent No.3 is also not acceptable. Therefore, as it stands, the petitioner enhanced his qualification as Bachelor in Library and Information Science in 2008 taking due permission from the District Inspector of Schools (SE), Purba Bardhaman.

27. As excerpted above, in terms of Memorandum No. 25 –SE(B)/IIM-102/98 dated 12.12.1999 all 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 appointment shall get higher scale of pay appropriate their qualifications with effect from 1st January, 1986 or the date of improving the qualification whichever is later. Subsequent Memorandum No. 25-SE(B)/IIM-102/98 dated 12.02.1999 also speaks of getting higher pay by a Librarian on his improving higher qualification related to his appointment. Therefore, on improving qualification as Bachelor in Library and Information Science, the petitioner is entitled to get higher scale of pay commensurate with his qualification. As recorded above, the petitioner was granted the scale of pay rightly in terms of the ROPA 1990 on the basis of his qualification as B.A with recognised certificate in librarianship.
28. Memorandum dated 25-SE(B)/IIM-102/98 dated 12.12.1999 by which ROPA, 1998 was notified prescribes the scales of a librarian in the following manner:
- i) Master's Degree holder with recognised Diploma in Library Science Rs.4650-10175
 - ii) Graduate with recognised Diploma in Library Science Rs. 4500-9700
 - iii) Matriculate with recognised certificate in Librarianship Rs.3350-6325
29. Since the petitioner's Master's Degree in history acquired subsequently is not related to his appointment, he is entitled to Scale No.14 i.e. Rs. 4500-9700 under the ROPA 1998 having qualification as a Graduate with recognised Diploma in Library Science/Librarianship.

30. In the decision in the case of **Smt. Manjulika Goswami-Vs-The State of West Bengal and Others** in FMA 805 of 2017 with COT 24 of 2020 rendered by a Division Bench of this Court on 22.04.2022 (of whom Rabindranath Samanta, J. was a member), it has been held that the scale of pay which was allowed to a Librarian in commensurate with his/her higher qualification under previous ROPA Rules will also be allowed to him/her as per the relevant provision of subsequent ROPA 2009. Therefore, the similar scale No.14 which the petitioner is entitled as per ROPA 1998 shall also be allowed to him corresponding to the revised scale of pay as per ROPA 2009.
31. In view of the above, the writ petition may be disposed of by passing the following order:
32. The impugned order dated 09.06.2017 made by the District Inspector of Schools(SE), Purba Bardhaman is hereby set aside.
33. The state respondents are directed to re-fix the petitioner's scale of pay at Rs.4500-9700 i.e. the scale no. 14 under the ROPA 1998 from the date of improving his qualification and further re-fix this scale of pay corresponding to the revised scale of pay as per the ROPA 2009 within six weeks from date. After re-fixation of the scale of pay of the petitioner as per the ROPA 1998 and ROPA 2009 within the stipulated period, the state respondents shall disburse the arrear pay of the petitioner within six weeks thereafter.
34. With the aforesaid directions the writ petition and connected application, if any stand disposed of.
35. No order as to costs.
36. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this High Court.
37. Urgent certified website/Photostat copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)