

**WPA 24076 of 2014
(Assigned)**

**Subodh Chandra Sarkar
versus
The State of West Bengal & Ors.**

Ms. Subhanwita Ghosh

Mr. Kumar Yashovardhan Shaw

...For the petitioner

Mr. Sirsanya Bandopadhyay

Ms. Tapati Samanta

...For the State

1. This matter had been adjourned from time to time so as to enable the learned advocate appearing for the respondents to ascertain the exact date on which the petitioner had acquired the higher qualification in the form of Degree of Bachelor in Library and Information Science.

2. Mr. Bandopadhyay, learned Junior Standing Counsel appearing for the State submits that this matter pertains to a claim for extending benefits of higher scale of pay for acquiring higher qualification, i.e., Bachelor Degree in Library and Information Science in terms of paragraph 16(3) of the Memorandum no. 33-Edn(B) (hereinafter referred to as the "said memo") dated 7th March 1990.

3. It may be noted that the Hon'ble Division Bench in the case of **Pradip Kumar Karak & Ors. v. The State of West Bengal & Ors.** reported in **2018 (4) CHN (Cal) 131**, had decided the above issue and had concluded that the librarians who had acquired higher qualification after July 1990 have no legal right to move the writ Court for enforcement of the terms of the unamended paragraph 16(3) of the said memo dated 7th March 1990. However, it was made clear that

the librarians who have acquired higher qualification before the cut off date of 21st July 1990 are entitled to claim that they be treated at par with the librarians **(Shibnath Koley & Ors.)** who were before the Hon'ble Supreme Court as respondents in Civil Appeal nos. 6967-6970 of 2009.

4. Admittedly, in this case, from the certificate issued by the Berhampur University it would transpire that the petitioner had acquired a degree of Bachelor of Library and Information Science held in the month of July 1990 in First Class. Despite issuing a series of communication as would corroborate from the affidavit filed on behalf of the respondent no. 3, the said respondent could not identify the exact date of the petitioner acquiring the higher qualification.

5. Though, Mr. Bandopadhyay submits that since it is noted in the certificate that the petitioner had succeeded in the examination held in the month of July 1990, it must be presumed that the acquisition to higher qualification was after the cut off date. However, there being no basis for the same, this Court is unable to accept such contention of the respondents.

6. The judgment relied on by Mr. Bandopadhyay in the case of **Rakesh Kumar Sharma versus State (NCT of Delhi) and others** reported in **(2013) 11 SCC 58** also does not further the respondents' case. As

would appear from the above judgment, one of the issues that fell for consideration was whether the acquisition for higher qualification relates back to the date of examination. In the instant case, no such issue has been raised especially having regard to the fact that the parties could not enlighten this Court as to the exact date when the results had been published and the only document that is available on record is the certificate which notes that the petitioner has been awarded a degree of Bachelor of Library and Information Science held in the month of July 1990.

7. Since no date has been identified, I would rather tend to give the benefit of doubt to the petitioner, especially since and this matter is the only matter which remains pending and the aforesaid writ petition must be brought to its logical conclusion. Having regard thereto, though there is no exact date available excepting the month and year being July 1990, I hold that the petitioner, having acquired higher qualification in July 1990, is entitled to be treated at par with the other librarians (***Shibnath Koley & Ors.***) who were before the Hon'ble Supreme Court as respondents in Civil Appeal nos. 6967-6970 of 2009. The aforesaid order has been passed in the peculiar facts noted hereinabove.

8. With the above observations and directions, the writ petition is disposed of.

9. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)