

(2022) 04 CAL CK 0081

In the Calcutta High Court

Case No : F.M.A No. 805 Of 2017, IA No: CAN 1 Of 2014, CAN 3 Of 2019, 4, 5 Of 2020 (Old CAN 11898 Of 2014, 356 Of 2019, 176, 177 Of 2020), COT No. 24 Of 2020

Manjulika Goswami

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2022) 04 CAL CK 0081

Hon'ble Judges : Harish Tandon, J; Rabindranath Samanta, J

Bench : Division Bench

Advocate : Ashok Kumar Ganguly, Tapan Kumar Mukherjee, Tapati Samanta

Final Decision : Disposed Of

Judgement

Rabindranath Samanta, J

1. This appeal portrays the struggle of a woman-Librarian for more than a decade to establish her entitlements to higher pay commensurate with her higher qualification. Being unsuccessful in the previous three rounds of litigation, the appellant Smt. Manjulika Goswami has preferred the instant appeal as a fourth round of litigation challenging the order dated 06.12.2013 passed by a learned Single Bench in W.P 34066 (W) of 2013.

2. The background facts which led the filing of the writ petition may be adumbrated as under:

The appellant passed M.A in History in the year 1979 and Bachelor of Library Science in the year 1984 from the University of Calcutta. After obtaining the degree of Bachelor of Library Science she registered her name with the employment exchange in the year 1987. For appointment to the post of Librarian of Sarat Chandra Girls' High School (H.S), at 43 A, Ram Kamal Street, Kolkata-700023, the school authority sought names of candidates from the employment

exchange by sending a requisition. In response to the requisition, the employment exchange sponsored the names of the eligible candidates including the name of the appellant for the aforesaid post. The interview was held at the said school on 11.05.1987 and the appellant by virtue of a call letter appeared at the interview. Thereafter, the selection committee prepared a panel of three candidates wherein the appellant was empanelled as the second candidate. The panel so prepared was approved by the respondent no. 3, the District Inspector of Schools (SE).

3. Since the first empanelled candidate namely Krishna Sadhukhan did not join, the appellant as a second empanelled candidate was offered appointment and she joined the post of Librarian of the school on 01.09.1988. The appointment of the appellant was approved by the respondent no. 3 vide Memo dated 27.02.1990. While the appellant joined her services on 01.09.1988 her pay was fixed at Rs.560 in the scale of pay of Rs. 440-1170 (Master Degree Holder) in terms of Memo No. 372-EDN (B) dated 31.07.1981. After the West Bengal Services (Revision of Pay & Allowance) Rules, 1990 (in short ROPA Rules, 1990) and the West Bengal Services (Revision of Pay & Allowance) Rules, 1998 (in short ROPA Rules, 1998) came into force the pay of the appellant was fixed as per the revised scale of pay commensurate with her post graduate qualification.

4. The appellant had been enjoying the scale of pay as per her master degree qualification since the day of her joining and this scale of pay was revised as per the aforesaid ROPA Rules.

5. After the West Bengal Services (Revision of Pay & Allowance) Rules, 2009 (in short ROPA Rules, 2009) came into force the appellant opted option as per the Rules and her pay was re-fixed in the post graduate pay of scale as she drew earlier.

6. But, as a bolt from the blue, the appellant for the first time came to learn by a letter dated 01.08.2009 of the Head Mistress of the school that the option papers submitted by her under the ROPA Rules, 1998 and ROPA Rules, 2009 were not approved by the District Inspector of Schools (SE). Being aggrieved by such non-approval of the option papers the appellant through her learned advocate vide a letter dated 20.08.2009 made a demand of justice to the District Inspector of Schools (SE), the respondent no.3. Getting no reply to the letter demanding justice, the appellant filed a writ petition being W.P 20574(W) of 2009 and by the order dated 11.02.2010 the writ petition was disposed of by a learned Single Bench directing the respondent no.3 to give reply to the said demand of justice with cogent reasons. By order dated 12.05.2010 the respondent no. 3 rejected the letter demanding justice on the ground that the appellant was not entitled to post graduate scale of pay as per Government Orders dated 07.03.1990, 12.02.1999 and 10.09.1991. By the order the school authority was requested to re-fix her pay scale since appointment i.e. 01.09.1988 as Librarian in the scale as specified in the Rules.

7. Challenging the order dated 12.05.2010 the appellant filed an another writ petition being W.P 13703(W) of 2010 and the writ petition was disposed of by a learned Single Bench vide order dated 10.05.2013. By the order dated 10.05.2013 the order dated 12.05.2010 made by the respondent no. 3 was set aside and the respondent no. 3 was directed to consider the appellant's claim in the light of the order dated 15.07.1988 as well as the Government Order No. 372-EDN(B) dated 31.07.1981 and the Government Order No. 72-EDN(HS) dated 09.08.1983 within eight weeks from the date of communication of the order. Again, the respondent no. 3 by order dated 30.09.2013 rejected the claim of the appellant on the ground that she did not possess the post graduate degree in Library Science and accordingly directed the appellant to refund the excess amount drawn by her which was not admissible to her. It was also directed therein that the institution in which the appellant was working would be responsible for recovery of the amount received by her in excess of her salary/pension.

8. Aggrieved by the order dated 30.09.2013 passed by the respondent no. 3 the appellant as a third round of litigation filed the writ petition being No. WP 34066(W) of 2013. By the order dated 06.12.2013 a learned Single Bench disposed of the writ petition by setting aside the Order dated 30.09.2013. By this Order the respondent no. 3 was directed to give higher scale of pay to the appellant on the basis of her master degree qualification and financial benefit to her on and from January, 2013. Besides, the respondent no.3 was directed to give notional benefit to her from the date of improving her qualification for the purpose of calculating the retiral dues at the time of retirement. Aggrieved by the operative part of the Order by which the appellant was given the financial benefits with effect from January, 2013 the appellant has preferred the instant appeal.

9. The respondents by filing a cross-objection being No. C.O.T 24 of 20 challenge the impugned order dated 06.12.2013 on the grounds that the Order dated 30.09.2013 passed by the District Inspector of Schools was a reasoned order and the learned Single Judge ought not to have set aside the order. The respondents contend that the appellant is not entitled to higher scale of pay as she does not possess the master degree qualification in Library Science.

10. The points which now fall for our consideration are as follows:

- i) Is the appellant entitled to higher pay of a Librarian having possessed the degree of M.A in History and Bachelor of Library Science at the time of her appointment as Librarian ?
- ii) Is the order dated 30.09.2013 passed by the District Inspector of Schools (SE) sustainable in law ?

11. Admittedly, the appellant possessed M.A in History and Bachelor of Library Science while she was appointed as the Librarian of the aforesaid school. Undisputedly, for the purpose of appointment of the Librarian of the school the

school authority sought names of the candidates from the concerned employment exchange by sending a requisition and in reply thereto the employment exchange sponsored the names of the eligible candidates. Thereafter, the interview was held at the school on 11.05.1987 and the appellant participated in the interview. After the interview the selection committee prepared a panel of three candidates namely i) Krishna Sadhukhan, M.A, B.Lib, ii) Manjulika Goswami, M.A, B.Lib, and Parmita Bhattacharyay, M.Sc, B.Lib. As the first empanelled candidate namely Krishna Sadhukhan did not join, the appellant was offered the appointment and she joined the school on 01.09.1988.

12. What it appears from the documents on record, the panel prepared by the selection committee of the school was approved by the District Inspector of Schools (SE), Calcutta on 15.07.1988. The panel approved by the District Inspector of Schools shows that in the column of qualification the appellant's qualification has been spelt as M.A, B.Lib. It is the claim of the appellant that since her appointment she was drawing higher pay commensurate with her post graduate qualification and her initial pay was fixed at Rs. 560 in the scale of pay of Rs. 440-1170 (Master Degree holder).

13. Learned Counsel appearing for the appellant by drawing our attention to a Government Order No. 72 EDN (HS) dated 09.08.1983 submits that as per this Government Order a candidate having M.A/M.Sc/M.Com degree with diploma in Library Science from a Government recognized university was entitled to get higher pay commensurate with his/her post graduate qualification. In terms of this Government Order the appellant was rightly bestowed with the higher pay since the very day of her appointment and even the authority allowed her to draw higher pay commensurate with post graduate degree in terms of the West Bengal Services (Revision of Pay & Allowance) Rules, 1990. Learned Counsel submits that the appellant by submitting option under the ROPA Rules, 1998 was getting higher pay as admissible to a candidate having post graduate degree. Learned Counsel points out that non-approval of the option submitted by the appellant in terms of the ROPA Rules, 1998 after a long period since the option was exercised by her smacks of malafides on the part of the respondent no. 3. Learned counsel argues that returning the options exercised by her as per the ROPA Rules, 1998 and ROPA Rules, 2009 by the authority concerned is vitiated with illegalities and arbitrariness. Learned Counsel emphasizes that the valuable right accrued to the appellant could not be taken away by the authority concerned in arbitrary manner without giving opportunity of being heard to her. On this score, learned counsel submits that the order dated 30.09.2013 passed by the respondent no. 3 and the portion of the impugned order of the learned Single Bench permitting the appellant to get monetary benefits with effect from January, 2013 are liable to be set aside.

14. Learned Counsel appearing from the respondents in support of the cross-objection submits that as per the West Bengal Services (Revision of Pay & Allowance) Rules, 2009 a Librarian who holds Master's Degree in Library Science

from a recognized university is only entitled to higher revised pay. The appellant who possess degree of M.A (History) and Bachelor in Library Science is not entitled to the revised pay which is admissible to a Librarian having master degree in Library Science. In such context, learned counsel for the State respondents submits that the Order dated 30.09.2013 passed by the respondent no. 3 is quite justified and the portion of the impugned order by which the Order of the respondent no. 3 has been quashed is liable to be set aside.

15. While the appellant was appointed as the Librarian of the school the Government Order which was then in vogue is the Order No. 72 EDN(HS) dated 09.08.1983. The Government Order dated 09.08.1983 reads as under :-

" Sub: Appointment of Librarian in the State Govt. Sponsored or Aided Secondary Schools upto Class XII standard.

In partial modification of Govt. Order No. 17. EDN (HS) dated 18.03.1982, the under-signed is directed to say that the Governor is pleased to prescribe the following three types of qualifications for recruitment to the posts of Librarians, in future, in the institutions mentioned above:

1. M.A/M.Sc./M.Com. with Degree or Diploma in Library Science from a Govt. recognized University.

2. B.A./B.Sc./B.Com. with Degree or Diploma in Library Science from a Govt. recognized University.

3. Matriculation or equivalent with certificate in Librarianship awarded by any of the following three institutions:

I) Bengal Library Association

II) Ramkrishna Mission Boys' Home, Rahara

III) Janata College, Kalimpong.

The incumbents of the posts of Librarian will draw pay according to their qualifications, as approved in terms of Govt. Order No. 372-EDN(B) dated 31.07.1981.

Necessary instructions may please be issued to all concerned".

16. As per Memo no. 372-EDN(B) dated 31.07.1981 issued by the Education Department, Budget Branch, Government of West Bengal, the revised scale of pay of a Librarian holding Master's Degree with Diploma in Library Science was Rs.440-1170 with higher initial pay at Rs.560. The appellant who fulfilled all the required qualifications was enjoying the higher scale of pay commensurate with her higher qualification. It is not in dispute that she was enjoying the higher scale of pay exercising options under the ROPA Rules, 1990 and ROPA Rules, 1998. But, after she exercised the option under the ROPA Rules, 2009, the appellant came to learn from the Head Mistress of her school through the District Inspector of Schools (SE), the respondent no. 3 herein, that her option exercised

under the ROPA Rules, 1998 was not approved by the respondent no. 3 and accordingly both the options furnished by her as per the ROPA Rules, 1998 and ROPA Rules, 2009 were returned to the school authority.

17. The drawal of higher pay commensurate with her higher qualification did not get impeded while she exercised option under the ROPA Rules, 1990. Long after she exercised option under the ROPA Rules, 1998 and after the option under the ROPA Rules, 2009 was exercised by her, the authority concerned returned her both the two options and directed the school authority to recover the amount which she drew in excess of her pay.

18. Even after the order dated 10.05.2013 was passed in W.P 13705(W) of 2010 wherein the authority concerned was directed to consider the claim of the appellant in the light of the order dated 15.07.1988 and the Government's Order dated 31.07.1981 and 09.08.1983 the respondent no. 3 remained defiant in not obeying the Court's Order.

19. After going through the ROPA Rules, 1990, ROPA Rules, 1998 and ROPA Rules, 2009 it appears to us that only in the West Bengal Services (Revision of Pay & Allowance) Rules, 2009 the scale of a Librarian having Master's Degree in Library Science has been re-fixed as under:

Existing Pay Scale/ Special Pay/Allowance etc.

Revised Pay Structure

Pay Band

Grade Pay

4650-10175

7100-37600

Rs.4100

20. Now, the question is whether by insertion of such a clause in the ROPA Rules, 2009 pertaining to revised pay structure of a Librarian having Master's Degree is applicable to the appellant. A careful reading of the ROPA Rules, 2009 does not show that the Rules speak of the Librarians who were appointed and enjoying higher scale of pay commensurate with their higher qualification before these Rules came into force. In the absence of any express provision in the Rules it will be construed that the Rules are applicable to those appointees who were appointed after the Rules came into force.

21. As indicated above, the appellant was enjoying the higher scale of pay commensurate with her higher qualification since the very beginning of her appointment in terms of Government Order No. 372-EDN(B) 31.07.1981. As the panel prepared by the selection committee and approved by the District Inspector of Schools (SE) shows, the educational qualification of the appellant has been noted therein as M.A, B.Lib. The indefeasible right of the appellant on

enjoyment of higher scale of pay in consonance with her post graduate qualification to sustain her livelihood with dignity has fructified as the fundamental right as enshrined in Article 21 of the Constitution and this right cannot be taken away abruptly except according to the procedure established by law. In the absence of any express provision in any procedural law having statutory force in this regard the State authority cannot take away such indefeasible right of the appellant. This implies that the indefeasible right accrued to her will continue till she gets all her monetary benefits. As of right the higher scale of pay admissible to a Librarian having Master's Degree in Library Science as per the ROPA Rules, 2009 will be admissible to the appellant. That being so, the respondent no. 3 ought to have accepted and approved the options exercised by the appellant in terms of the ROPA Rules, 1998 and ROPA Rules, 2009.

22. It is evident from the Order dated 30.09.2013 that the District Inspector of Schools directed the school authority to recover the amount of money which was paid to the appellant in excess of the pay admissible to her.

23. From a document annexed to the paperbook it appears that the date of birth of the appellant is 18.10.1958. That being so, she has retired from service on superannuation on 31.10.2018.

24. In the decision in the case of State of Punjab and Others –Vs– Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334 the Hon'ble Apex Court at paragraph 18 has held 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service)

ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

iii) Recovery from the 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."

25. As held above, the higher scale of pay was admissible to the appellant in terms of the aforesaid ROPA Rules. In view of this and in the decision of the Hon'ble Apex Court supra, the respondent authorities cannot deduct any amount of money either from the salary of the appellant or from her retiral benefits.

26. Accordingly, point no.1 is answered in the affirmative and point no. 2 is answered in the negative.

27. In the result, the writ petition being No. 34066(W) of 2013 should be allowed in terms of the prayers as made therein and the cross-objection filed by the respondents should be rejected.

28. Consequently, the portion of the impugned order dated 06.12.2013 by which the appellant has been given monetary benefits with effect from January, 2013 is liable to be set aside and the same is set aside accordingly. The portion of the impugned order by which the order dated 30.09.2013 of the respondent no.3 has been set aside is affirmed.

29. In view of the above, the writ petition being No. WP 34066(W) of 2013 stands allowed and the cross-objection filed by the respondents stands rejected.

30. The respondent no.3 is directed to give approval of the option papers submitted by the appellant at the material time in terms of the ROPA Rules, 1998 and the ROPA Rules, 2009. The concerned respondents are directed to grant higher scale of pay to the appellant as admissible to a Librarian holding Master's Degree in Library Science as per the relevant ROPA Rules. The respondents are further directed to grant pensionary benefits and other retiral benefits to the appellant in terms of the revised pay in accordance with the ROPA Rules, 1998 and ROPA Rules, 2009. Payment of Pension Order (PPO), if issued, in favour of the appellant shall be revised in accordance with the revised pay of the appellant.

31. The respondents are directed to comply all the aforesaid directions within two months from date.

32. Thus, the appeal and the cross-objection stand disposed of.

33. All the connected applications also stand disposed of.

34. No order as to costs.

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