

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. – OA 619 OF 2019

GOPINATH BANERJEE & ORS. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.

and

Date of
order

For the Applicants : Mr. S. Chatterjee,
Advocates

16 For the Respondent No.2 and 4 : Mr. Gautam Pathak Banerjee,
Advocate

24.01.2024

For the Respondent Nos. 1 and 3 : Ms. Ruma Sarkar,
Mr. Saurav Deb Ray,
Ms. Anjana Bhattacharjee,
Mr. Raja Bag,
Departmental representatives

The matter is taken up by the single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned order of the District Magistrate dated 23.12.2016. The impugned order in effect re-fixed the wage of the applicants at Rs.6,600/- per month without any allowances as per G.O. No.2966-F (P) dated 22.04.2010, G.O. No.11794-F (P) dated 22.12.2010 and G.O. No.9008-F (P) dated 16.09.2011. Earlier they were getting a wage of Rs.8,500/- per month as per G.O. No.4011-F (P) dated 20.05.2013. In the impugned order, the District Magistrate & Collector, Birbhum states that as casual workers each one of them has overdrawn an amount of Rs.2,54,244/- in excess of their entitlement from the period from 01.05.2010 to 29.02.2016. So the overdrawn amount by this order is to be recovered in 24 equal instalments from the wages payable to these applicants.

Submission of Mr. Mondal is that by G.O. No.3727-F dated 20.05.2009 the wages of the applicant as casual worker was fixed in the Pay Band of Rs.4900 - 16,200/- (PB-1).

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Submission is that without a notice and without giving any opportunity of hearing and without cancelling the earlier the G.O. No.3727-F dated 20.05.2009, the respondent No.4, the District Magistrate & Collector, Birbhum passed the impugned order dated 23.12.2016 directing them to deduct and recover the excess amount from each of the applicant. Such direction was not only arbitrary, but also violative of Article 14 of the Constitution.

Moreover, it is submitted that in another similar application, being O.A. 280 of 2017 : Biswanath Singh & 3 Ors. Versus The State of West Bengal & Ors., the Tribunal had passed an order on 21st December, 2017 by directing the respondent No.4, the District Magistrate & Collector, Birbhum that the recovered amount so deducted be refunded to them. So, in view of the above, the learned counsel for the applicants submits that similar order may be given to the respondents to comply. Mr. Mondal submits despite furnishing several representations praying for cancellation of the order directing the overdrawn amount, the respondent failed to respond and consider the representations.

Mr. Mondal files copies of the following judgements in support of the prayers of the applicants in this application:

Civil Appeal No.11527 of 2014 : State of Punjab and Others etc. versus Rafiq Masih (White Washer) etc., Sujan Kumar Ghosh versus The State of West Bengal & Ors., Thomas Daniel versus State of Kerala & Ors., and Jyotsna Rani Das versus The State of West Bengal & Ors.

Mr. Gautam Pathak Banerjee, appearing for the respondent No. 2 and 4 responds that the order of recovery was based on a notification of the Finance Department which was issued during the year, 2010 and 2011. Therefore, the G.O. No.3727-F dated 20.05.2009 is not relevant in this case.

Referring to a notification passed by the Finance Department in 1964, Mr. Banerjee also submits that the decision of the respondent was correct and to rectify such mistake, this decision was taken to deduct the said excess amount. Regarding the Tribunal's order in O.A. 280 of 2017, submission is that applicants in this application are not similarly circumstanced since the applicants in that O.A. were

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regular Group 'D' employees, whereas the applicants in this application are casual/Daily rated / contractual employees. Therefore, the law cannot be the same for those regular employees and for casual or contractual employees. Further submission is that the application has not stated any ground for being aggrieved with the decision of the respondent. Finally, this application, filed in the year 2019 challenging the impugned order passed in the year 2016, is not admissible due to limitation.

Ms. Ruma Sarkar, the Departmental Representative submits that in another application, O.A. 921 of 2016, pending before this Tribunal, the same set of applicants have prayed for absorption in Group 'D' on regular basis. Therefore, the prayer in this application cannot be adjudicated without hearing the other application for absorption.

Ms. Sarkar submits that as per third paragraph of memo No.9008-F(P) dated 16.9.2011, all other earlier orders have been superseded. Therefore, the service conditions and other emoluments and all other details of the casual/Daily rated / contractual employees will be determined as guided by the said memo.

Since this matter involves various points of law and several judgements of the Hon'ble Apex Court are to be interpreted judiciously, it would be proper if it is heard by a Bench comprising two Members (one Judicial and one Administrative).

Let the matter be placed before a Bench comprising two members (Judicial and Administrative) under the heading "Hearing" on 11.09.2024.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)