

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag,
Chairman In-charge.

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member.

J U D G M E N T

-of-

**Case No. : O.A. 1455 of 2014 : ABDUL MANNAN RAHAMAN &
84 ORS.**

..... Applicants.

-Versus-

The State of West Bengal & Others.

..... Respondents.

For the Applicant :-

Shri Dilip Kumar Chatterjee,
Shri Manojit Pal,
Shri Dipesh Banerjee,
Learned Advocates.

Learned Advocates.

For the State Respondents :-

Shri Apurba Lal Basu,
Learned Advocate.

Judgment delivered on : 05th April, 2018.

**The Judgment was delivered by Dr. Subesh Kumar Das,
Administrative Member.**

JUDGEMENT

The applicants in this original application OA 1455 of 2014 are the Livestock Development Assistants (LDAs) belonging to the Group C category of employees under the state government, who were appointed in different districts of West Bengal on or about 09.12.2013. The grievance of the applicants is that during the period of probation, they are not getting the normal Pay and Allowances of the posts to which they have been appointed, which is in the Pay Band Rs. 5,400 -25,200/- (entry point minimum pay of Rs. 6400/-) with grade pay of Rs. 2,600/- along with all other allowances such as Dearness Allowance and House Rent Allowances etc., and that their pay and allowances during the probation period should not be fixed in terms of the West Bengal Services (Appointment, Probation, and Absorption of Group C Employees) Rules, 2013 published under notification No. 1832-F(P) dated 01.03.1013.

2. The applicants applied for the post of Livestock Development Assistant (LDAs) pursuant to an advertisement issued by the West Bengal Staff Selection Commission for selection of candidates for appointment in the post of Livestock Development Assistants in the different districts of West Bengal (advertisement No. 01 WBSSC/2012). The last date for submission of application was 17.10.2012. The examination was held on 09.12.2012 and the short listed candidates were asked to appear for verification of the testimonials and their writing ability and cycling test on 7th and 8th February, 2013. Finally, the appointment letters were issued to the applicants by the Director of Animal Husbandry and Veterinary Services, West Bengal on and about 9th December 2013. The applicants' letters of appointment indicate that they will draw pay at the entry point in the Pay Band Rs. 5400 – 25200/- (Entry point minimum pay of Rs. 6400/-) with Grade Pay Rs. 2,600/- in PB-2, plus Medical Allowances, if any, during their probation period in terms of Para 2 & Para 8 of G.O. No. 1832-F(P) dated 01.03.2013 of Finance Department, Audit Branch. By this notification No. 1832-F(P) dated 01.03.2013, the state government framed the West Bengal Services (Appointment, Probation, and Absorption of Group C Employees) Rules, 2013 in partial modification of Notification No. 6060-F dated 25.06.1979 [hereinafter referred to as the APA Rules, 2013]. As the applicants were appointed after 01.03.2013, they were appointed under the

APA Rules, 2013 and as a result they are not getting Dearness Allowance, House Rent Allowance, etc. because Rule 8 of the APA Rules, 2013 permit drawal of only entry point pay i.e. Basic Pay plus Grade Pay of the concerned Group C posts with annual increment at the rate of 3% of pay and Medical Allowance during the period of probation. This non-payment of Dearness Allowance and House Rent Allowance during the probation period is the main grievance of the applicants.

3. In terms of the APA Rules, 2013, the period of probation of new Group C category of employees have been made three years with effect 01.03.2013 in place of one year in the Notification No. 6060-F dated 1979. However, the APA Rules, 2013 have been amended in 2016 and the period of probation has been reduced to two years instead of three years. Accordingly all the applicants have already completed their period of probation. The period of probation has thus lost its attraction as an independent grievance of the applicants.

4. The State Respondents have contested this Application by filing Reply and the Applicants have also filed Rejoinder thereon.

5. We have heard at great length Mr. Uttam Kumar Majumdar, Ld. Counsel appearing for the Applicants along with Mr. Dilip Kumar Chatterjee, Mr. Manojit Pal and Mr. Dipesh Banerjee. We have also heard Mr. Apurba Lal Basu, Ld. Counsel appearing for the State Respondents.

6. Mr. Majumdar has strongly opposed the denial of allowances such as Dearness Allowance, House Rent Allowance etc. to the Applicants on the ground that the APA Rules, 2013 should not be applicable in case of the applicants. The advertisement inviting applications was issued in September 2012 and at the time of submitting application and participating in the selection process, the applicants were under the impression that after appointment, if given on their selection, they would get their pay in particular scale of pay in Pay Band including all allowances as per the Rules published under Notification No. 6060-F dated 25.06.1979. Mr Majumder argued that the selection of applicants for appointment in the posts of LDAs were completed before coming into force of the APA Rules, 2013 and that the Notification dated 25.06.1979 was in force during the entire process of selection for appointments to the present posts and the Respondents cannot deny to grant those allowances to the applicants in the present case. Mr Majumder has further submitted that the Applicants of the present case are similarly

situated as that of the applicants of “Sanjay Sadhukhan & others –vs-State of West Bengal & Others” (OA No. 92 of 2015 disposed of on 29.02.2016). According to Mr. Majumdar, in both the cases the selections of candidates for appointment were done before coming into force of the APA Rules, 2013 and in both the appointments were given after coming into force of the said Rules of 2013. In “Sanjay Sadhukhan’s” case, the Tribunal after hearing the parties ordered that the petitioners be allowed to draw full pay and all other allowances such as Dearness Allowance and House Rent Allowance. The State Government thereafter filed a Writ Application before the Hon’ble High Court at Calcutta (WPST No. 132 of 2016) against the judgment passed by the Tribunal, but the Hon’ble Division Bench was pleased to dismiss the said Writ Application. The State Government authorities in compliance of the order of the Hon’ble Division Bench have granted Dearness Allowance and House Rent Allowance to the applicants of “Sanjay Sadhukhan and others”(supra). Reference was made by Mr Majumdar about the decision of the Hon’ble Supreme Court of India in “ B L Gupta & Anr. V – MCD ” reported in (1998) 9 SCC 223, wherein it was held that the vacancies which have occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended new Rules. Accordingly, he submitted that in the instant case the appointment and payment of pay and allowances should be under the old Notification No. 6060-F dated 25.06.1979 and not under the APA Rules, 2013 notified on 01.03.2013 and thereby the petitioners cannot be denied payment of Dearness Allowance and House Rent Allowance during the probation period.

7. Mr Apurba Lal Basu, has submitted that the petitioners applied for the post of Livestock Development Assistants under the administrative control of the Animal Resources Development Department, recruitment of which was conducted by the West Bengal Staff Selection Commission vide advertisement No. 01WBSSC/2012 through an open competitive examination. In the said advertisement except for the scale of pay, no allowance like HRA or DA was mentioned. So, the Applicants can only claim what is allowed as per the rules on the date of appointment. Mr Basu has further submitted that the instant petitioners joined their respective posts in the month of December 2013 on different dates. These dates of appointment were well after publication of APA Rules, 2013 notified on 01.03.2013. So, before their joining, they were well aware of the fact that no DA & HRA would be provided to them during their probation period. The same

fact was also mentioned clearly in their respective appointment letters. In view of publication of APA Rules, 2013 on 01.03.2013, all the applicants including the petitioners, who joined on or after the date of coming into force of the said APA Rules, 2013 will be governed by the said Rules and will be treated similarly. In terms of APA Rules, 2013, those who would join in Group C posts would only get Basic Pay and Medical Allowance for the first three years (now modified to two years only), while on probation. After confirmation, they would start getting Dearness Allowance and House Rent Allowance. As these petitioners joined their services after 01.03.2013, they would be governed by APA Rules, 2013. Accordingly, the petitioners cannot be granted Dearness Allowance and House Rent Allowance from their date of joining.

8. We have considered the submissions of both the parties. We now examine whether the case of the present applicants is similar to those of the applicants in “Sanjay Sadhukhan’s case”(supra).The similarities between the case of the applicants with that of the applicants of “Sanjay Sadhukhan” are that the process of selection in both the cases started before coming into force of APA Rules, 2013 and in both the cases the appointments were given after publication of notification containing the APA Rule, 2013. However, there are some differences between the two cases as discussed below. In case of the applicants in “Sanjay Sadhukhan’s case”, the selection process started and completed in 2007 and the candidates were selected for appointment in the year 2007. Subsequently, the State Government cancelled the selection by a notification dated 18.01.2008. Thereafter prolonged legal battle ensued. After prolonged legal battle which went up to the Hon’ble Supreme Court, the applicants were appointed to the post of LDC in September/October, 2014. As the applicants were appointed after 01.03.2013, they were denied payment of D.A. and H.R.A. as per Rule 8 of the APA Rules, 2013. Thus, in “Sanjay Sadhukhan’s case” although the selection process was completed in 2007, the applicants could not join till September, October, 2014 because of an action of the State Government, which was held to be arbitrary and invalid by the Tribunal as well as by the Hon’ble High Court at Calcutta. Had the applicants in “Sanjay Sadhukhan’s case” been appointed without arbitrary intervention of the State Government, the applicants would have been appointed long before coming into force of the APA Rule, 2013.

9. In the instant case the advertisement inviting application was issued in September, 2012. The examination was held on 09.12.2012 and short listed candidates were asked to appear for verification of the testimonials and their writing ability and cycling test on 07th and 08th February, 2013. It appears from the appointment letter that the names were recommended by the Staff Selection Commission on 11th March, 2013 and the ARD Department gave approval of the list vide their No. 625-AR & AH/3A-09/05 (Part -3) dated 21.03.2013. So the recommendation of the names of the candidates and acceptance of the recommendation by the department were done after coming into force of the APA Rules, 2013 on 01.03.2013. Finally, after observing the necessary formalities, the appointment letters were issued by the Director of Animal Husbandry and Veterinary Services, West Bengal on 09.12.2013. In the instant case, there was no delay on the part of the state in giving appointment of the candidates after recommendation of their names by the Staff Selection Commission as in case of “Sanjay Sadhukhan and others”, where the delay in giving appointment took place due to arbitrary action on the part of the state which was found invalid by the Hon’ble High Court. On harmonious interpretation of the provisions of the APA Rules, 2013, it appears that the said Rules can be applied to those Group ‘C’ employees of the State Government who were selected by the Staff Selection Commission or Public Service Commission as laid down in Rule 7 of the said rules. In “Sanjay Sadhukhan’s case” the selection was done by Directorate of Agriculture and not by the staff Selection Commission or Public Service Commission. The facts of the present case are, thus, clearly distinguishable from the facts of “Sanjay Sadhukhan’s case”. So the ratio of the case of “Sanjay Sadhukhan & others” can not apply in the facts of the present case.

10. In “B L Gupta & Anr. V – MCD” (Supra) the Hon’ble Supreme Court has held that the vacancies which have occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. The issue before the Hon’ble Supreme Court of India was the procedure to be followed for appointment in the post of the Assistant Accountants in Delhi Electric Supply Undertakings by way of promotion. For the post of Assistant Accountant there were two feeder posts, one was Senior Clerk with three years of experience and the other was Junior Clerk with eight years of experience. The Rules of 1978 required that the selection of candidates for appointment in the posts of Assistant Accountants would be through examination of the eligible

Junior Clerks and Senior Clerks. In 1995 the Corporation amended the Rules to the effect that 80% of the posts of Assistants Accountants were to be filled up by promotion on the basis of seniority and 20% by examination. The Hon'ble Supreme Court of India held that the vacancies which had arisen prior to 1995 amendment of the Rules could only be filled up as per the old Rules of 1978. In the reported case the existing right of an employee to be considered for promotion in the vacancies arising before amendment of the Rules was curtailed by amendment of the Rules, which affected the vacancies arising before amendment came into force and thereby the Hon'ble Supreme Court held that the amended Rules can apply on vacancies which arose after amendment of the Rules. In the instant case the APA Rules, 2013 came into force before completion of the Selection process in which the applicants participated knowing fully well that they will get only basic pay on the basis of the advertisement No. 01/WBSSC/2012. While the present case deals with application of Rules notified before completion of selection process for non-payment of allowances to new employees during probation period, the facts of the reported case deal with curtailment of existing right of consideration for promotion of some existing employees by amended provisions of the Rules, and thereby facts of the reported case differ from the facts of the present case.

11. The facts of "BL Gupta and Another V. MCD" (supra) relate to the process of appointment on promotion of the existing employees in an organisation, whereas in the present case the dispute is connected with non-payment of DA and HRA to the newly appointed employees during their period of probation. In "BL Gupta" the existing right of an employee to be considered for promotion in the vacancies available before amendment of the rules was curtailed and thereby the employees were prejudiced for not being considered for promotion in the existing vacancies on the basis of the rules which were in force when the vacancies occurred. In that context, the Hon'ble Supreme Court held that the amended rules can apply on vacancies which arose after amendment of the rules. In the present case, the APA Rules, 2013 came into force before completion of the selection process in which the applicants participated knowing fully well that they will get pay on the basis of the Advertisement No. 01/WBSSC/2012. The present case relates to dispute about applicability of APA Rules, 2013 notified for non-payment of DA and HRA during the period of probation. The right of an employee to get the pay and allowances arise only when he is appointed as an employee in a post. We have already

observed that APA Rules, 2013 came into force before recommendation of the names of the applicants by West Bengal Staff Selection Commission for giving appointment and thereby the right of the applicants to get pay and allowances did not accrue when APA Rules, 2013 came into force, whereas in “BL Gupta” the existing right of a section of employees to be considered for promotion in the existing vacancies was curtailed by amendment of the rules. So, the facts of the present case are clearly distinguishable from the facts of “BL Gupta and Another V. MCD” (supra). Accordingly, the ratio of “BL Gupta” cannot have any bearing on the facts of the present case.

12. In view of our above findings, we can safely hold that APA Rules, 2013 will be applicable in the case of the applicants who not only got appointment after coming into force of APA Rules, 2013, but the said rules came into force before recommendation of the names of the applicants by West Bengal Staff Selection Commission for appointment to the post of Livestock Development Assistant.

13. The APA Rules, 2013 have not been challenged as ultra vires Articles 14 and 16 of the Constitution of India by the applicants. The applicants have been deprived of DA and HRA during the period of probation on the basis of Rule 2 and Rule 8 of APA Rules, 2013. Since the said APA Rules, 2013 have not been challenged as arbitrary and violative of Articles 14 and 16 of the Constitution of India, we are not in a position to decide the validity of the provisions of APA Rules, 2013 on the touchstone of the provisions of the Constitution of India. Thus, the issue with regard to legality and validity of the provisions of APA Rules, 2013 whereby the applicants and other Group C employee of the State of West Bengal have been deprived of DA and HRA during the period of probation is left open.

14. Since the applicants have not challenged the legality and validity of APA Rules, 2013 and since the said Rules came into force before recommendation of the names of the applicants by West Bengal Staff Selection Commission for giving appointment, the applicants will be governed by the provisions of APA Rules, 2013. So, the applicants are not entitled to get any relief in the present application. The original application is, thus, dismissed.

15. Urgent Xerox certified copy of the judgement be supplied to the parties on

priority basis on compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
CHAIRMAN IN-CHARGE.