

**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 :-**

**The Hon'ble Smt. Urmita Datta (Sen)  
Member (J)**

**-AND-**

**The Hon'ble Dr. A. K. Chanda  
Member ( A )**

**J U D G M E N T**

**-of-**

**Case No. 663 of 2015**

**Somnath Banerjee & 3 others .....Applicants.**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : - Mr. Manujendra Narayan Roy,  
Ld. Adv.**

**For the State Respondents:-Mr. Shiladitya Bhattacharjee,  
Ms. Ruma Sarkar,  
(Departmental Representatives),  
Land & Land Reforms Department.**

**Judgment delivered on : 3<sup>rd</sup> April, 2018**

**The Judgment of the Tribunal was delivered by :-  
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

## Judgement

1. The instant application has been filed praying for following relief(s):

- “ a) Hon’ble Tribunal may be pleased to call for the details of the case subject including other details as put above, and as also to produce relevant papers lying before the concerned authority, before this Hon’ble Tribunal.
- b) Hon’ble Tribunal may further be pleased to issue direction to the Respondents to amend the apparent anomalies in respect of the questioned Appointment Letter for being erroneously issued as per Notification no. 1832-F(P) dated 01/03/2013 of Finance Department (Audit Branch) West Bengal instead of Notification no. 8351-ISU dated Kolkata 12/12/2001 being appropriately and exactly accorded with the solemn order of the Hon’ble West Bengal Administrative Tribunal on 27/02/2013 in O.A. No. 1643/2009.
- c) Hon’ble Tribunal may be pleased to issue direction upon the Respondents authorities to activate the appointment to the applicants in accordance with Notification no. 8351-ISU dated Kolkata 12/12/2001 on consideration of the fact that in course of the final hearing as held on 27/02/2013 in application no. 1643 of 2009 to the effect official papers as stands on 01/01/2013 supplied by D.L. & L.R.O.

Bankura submits that from the papers it is available that petitioner Somnath Banerjee and Pijush Pal belonging to General category and Chanchal Kumar Mondal belonging to SC category and Deshbandhu Laha belonging to OBC category can be accommodated on the ground of non-acceptance of job by some of the candidate and also by happening of subsequent event.

- d) Hon'ble Tribunal may further be pleased to direction upon Respondent authorities to make payment of salary to them as per the salary format adopted to the candidates in whose parallel sequence the other candidates were given appointment in accordance with the said Notification vide 8351-ISU dated Kolkata 12/12/2001 on consideration of the fact that the accommodation to the present applicant were admittedly accepted and recognized by the Respondents some of the candidate and also by happening of subsequent event.
- e) Hon'ble Tribunal may further be pleased to direct the Respondents to give retrospective effect in respect of salary and financial-seniority due to the applicants with effect from date of joining in service being 4<sup>th</sup> / 5<sup>th</sup> March 2014 as well as with notional-seniority in service-book from 08/09/2008 being the date of the appointment of the earlier candidates sailing the same boat with the present applicants.

f) Hon'ble Tribunal may be pleased to pass any other order / orders and to give relief / reliefs as the Hon'ble Tribunal may think deem fit and proper for the interest of justice.”

2. (i) As per the applicant, one Notification was issued vide Memo dated 12/12/2001 (Annexure P/1), whereby requisition was made for recruitment of Lower Division Clerk in Integrated set up for 1077 vacancies with regard to the aforesaid vacancies for Bankura District, as per the communication dated 06/02/2002 made by the Director of Land Records & Surveys and Joint Land Reforms Commissioner, West Bengal.

(ii) The names of the applicants were sponsored by the concerned Employment Exchange of Bankura for filling of the said posts and on the basis of the aforesaid communication, the District land & Land Reforms Officer, Bankura called upon the applicants for written examination on 03/06/2007. After completion of written test, the successful candidates were short listed under different phases in respect of which respondent nos. 2 & 3 for the first phase short listed 67 candidates for type test and though the present applicants were also short listed but they were not called for type test in the first phase of 67 candidates. Out of those aforesaid 67 candidates appeared in the first phase type test, 4 candidates remained absent and only 44 candidates became successful. Therefore, appointment letters were issued to 44 successful candidates only.

(iii) Thereafter, in the second phase, short listed 23 candidates including the applicants were called for type test through Memo dated 07/02/2008. The said 23 candidates including the applicants appear in the said test on 05/04/2008. However, it is noted that

that out of 23 fresh short listed candidates, the name of the earlier 19 candidates, who were disqualified in the earlier type test, were also called. Thereafter, out of 23 fresh candidates including the applicant and 12 out of earlier unsuccessful 19 candidates, were shown as qualified. However, the respondents' authority issued appointment letter to the 12 earlier unsuccessful candidates and 10 out of 18 fresh listed qualified candidates.

(iv) Being aggrieved with, the applicant for such illegal action preferred O.A. No. – 1643/2009, which was disposed of vide order dated 27/02/2013 with a direction to the concerned authority to issue appointment letter to the applicants on completion of necessary formalities (Annexure P/4).

(v) Since even after lapse of three months period as stipulated by the Tribunal no appointment letter was issued, the applicants preferred one CCP No. – 173/2013. After receiving the said Contempt Petition, the respondents' authority issued appointment letter to the applicants. However, the said appoint letter was not issued in accordance with the Notification dated 12/12/2001. The respondents, instead of issuing appointment letter in terms of Memo dated 12/12/2001, have issued appointment letter as per terms and conditions of the Notification No. 1832-F(P) dated 01/03/2013 issued by the Finance Department (Audit Branch), West Bengal.

(vi) Since the applicants were not in a bargaining position, they joined their respective posts. However, subsequently first month salary of applicant nos. 2 & 4 was paid as per the Notification dated 12/12/2001. But unfortunately, the salary of applicant nos. 1 & 3 was paid in terms of Notification dated 01/03/2013, against which the applicant nos. 1 & 3 made objection. However, the

respondents subsequently vide order dated 16/04/2014 (Annexure P/10) declared the first month salary of the applicant Nos. 2 & 4 as over payment. Being aggrieved with the applicants made demand justice on 08/11/2014 (Annexure P/12). Since no action was taken by their respondents, they have filed the instant O.A.

(vii) During the course of the hearing, the counsel for the applicant has submitted that the issue involved in this case is squarely covered by the judgement dated 29/02/2016 passed in O.A. No. – 92/2015, which was followed by another analogues matters vide judgement dated 24.06.2016 passed in O.A. No. 1152/2014, O.A. No. 1153/2014, O.A. No. 1154/2014 & O.A. No. 1155/2014. Therefore, the applicants have prayed for extension of benefit of the aforesaid judgements.

(viii) The departmental representative Mr. S. Bhattacharjee appearing for the State Respondents has submitted that they would not file any reply as the department has already accepted the aforesaid judgements and as prayed for disposal of the instant O.A. in the light of above judgements.

3. Heard the parties and perused the available records as well as judgement. It is noted that the main contention of the applicant is that as the selection process of the applicants along with the other candidates were initiated under Memo dated 12/12/2001 and after protracted legal battle, they were appointed and allowed to join vide order dated 25/02/2014, therefore the subsequent Memo of Finance Department dated 01/03/2013 could not be applicable in their case as it would amounts to arbitrary and discriminatory in nature between the same persons, who were appointed in pursuance to Memo dated 12/12/2001.

From the perusal of the order dated 29/02/2016 passed in O.A. No. 92/2005, it is observed that the same issue and analogy was considered by this Tribunal specially taking into account the Rule 4, 7, 8 of West Bengal Services (Appointment, Probation and Absorption to Group C Employees) Rules, 2013. After considering the said Rules, this Tribunal has observed that an employee who has not been selected in terms of Rule 7 of West Bengal Services (Appointment, Probation and Absorption to Group C Employees) Rules, 2013 and also not appointed in terms of Rule 4 of the said Rules, shall not be covered by the Notification dated 01/03/2013 and obviously the pay of these employees cannot be fixed in terms of Rule 8 of the West Bengal Services (Appointment, Probation and Absorption to Group C Employees) Rules, 2013, which was followed by this Tribunal in their subsequent order dated 24/06/2016 passed in O.A. No. 1152/2014, O.A. No. 1153/2014, O.A. No. 1154/2014 & O.A. No. 1155/2014.

In the instant case also, we have to see whether issue involved is squarely covered by the afore-mentioned judgement or not. In the instant case, it is an admitted fact that the selection process of the applicants was initiated in response to the Memo dated 12/12/2001 along with other successful candidates, who were already appointed prior to 01/03/2013. However, the applicants got their appointment after prolonged legal battle in the year 2014. In the mean time, the Notification dated 01/03/2013 has come into force. As the applicants in the instant case were not selected in terms of Rule 7 of the aforesaid West Bengal Services (Appointment, Probation and Absorption to Group C Employees) Rules, 2013, obviously they could not be appointed in terms of Rule 4 of the said Rules, and therefore they are not covered by the

said Notification dated 01/03/2013 as well as their pay cannot be fixed under Rule 8 of the Notification dated 01/03/2013.

Therefore, in our view, the case of the applicants are fully covered by the order dated 24/06/2016, which has also been admitted and accepted by the respondents authority at the time of hearing. Thus, the respondents are directed to treat the appointment of the applicants in terms of Notification dated 12/12/2001 instead of Notification dated 01/03/2013 and to fix their salary as per Rules prevailed in the year 2001. Such action as per our direction should be taken within a period of six weeks from the date of receipt of this order.

Accordingly, the O.A. is disposed of with the above observations and directions with no order as to costs.

**DR. A.K. CHANDA**  
MEMBER (A)

**URMITA DATTA (SEN)**  
MEMBER (J)