

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – MA-63 of 2020 [OA 864 OF 2016]

Amit Kumar Mukhopadhyay & Others Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
02 <hr/> 09.09.2020	<p><i>For the Applicant : Mr. B. Bhushan, Learned Advocate.</i></p> <p><i>For the State Respondents : None.</i></p> <p><i>The applicants have prayed for an interim order restraining the respondents from giving effect or further effect of the letter dated March 8, 2017 issued by the respondent No. 1 and order dated July 22, 2020 issued by the respondent No. 3, by which the applicants were treated as Assistant Child Development Project Officers (in short, ACDPOs) working in ICDS Project and transferred to join as ACDPOs in another place, though they were previously officiating the post of Child Development Project Officers (CDPOs) and drawing salary of the officiating post.</i></p> <p><i>None appears on behalf of the respondents in spite of service of notice.</i></p> <p><i>It is contended on behalf of the applicants that they were appointed as ACDPOs but directed to take over additional charge of CDPOs in ICDS Project long back. The ACDPOs discharging the duty of CDPOs moved original application before this Tribunal for payment of salary of the post of CDPOs. They were not successful in pursuing their remedy before the Tribunal and as such they initially went to the Hon'ble High Court and</i></p>	

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ultimately went to the Hon'ble Supreme Court. On March 13, 2013, the Hon'ble Supreme Court disposed of the Civil Appeal No. 2251 of 2013 [Arindam Chattopadhyay v. State of West Bengal reported in (2013) 4 SCC 152] by giving direction to the State respondents to make payment of pay and allowances of the CDPOs to the ACDPOs who were discharging the duty of higher post of CDPOs on officiating basis for prolonged period of almost 14 years. With the above backdrop of the case, Mr. B. Bhushan, Learned Counsel for the applicant contends that the applicants have the right to retain the post of CDPOs and enjoy the pay and allowances of the post of CDPOs. Mr. Bhushan further contends that the State Government cannot revert the applicants working in the post of CDPOs on officiating basis to the post of ACDPOs held by them in substantive capacity, as they have been discharging the duty of CDPOs for prolonged period of time. The applicants have been reverted from the post of CDPOs to the post of ACDPOs by the impugned letter and the impugned order and as such they have prayed for an interim order restraining the respondents from giving effect to the impugned letter and the impugned order which are under challenge in the present miscellaneous application.

On perusal of the impugned letter dated March 8, 2017 issued by the respondent No. 1, Principal Secretary to the Government of West Bench, Department of Child

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Development, Women Development and Social Welfare, Government of West Bengal, we find that 85 ACDPOs who were acting as CDPOs without being appointed in West Bengal Junior Social Welfare Service were granted salary of the CDPOs in compliance with the direction given by the Hon'ble Supreme Court and as such the salary drawn by the ACDPOs for discharging their duties as CDPOs has been treated as officiating pay without having any effect on their substantive post. The said impugned letter dated March 8, 2017 further points out that the ACDPOs who discharged the duty of Acting CDPOs will be treated as Group B Officers in the substantive post and their confidential reports will be initiated by SDO as the reporting officer, reviewed and countersigned by the DM and accepted by the Director of ICDS Project as final authority for acceptance of confidential reports. Subsequently, the impugned order dated July 22, 2020 issued by the respondent No. 3 indicates that 83 ACDPOs discharging the duty of CDPOs were transferred to join in separate place as ACDPOs, after handing over charge of CDPO of ICDS Project and their officiating post and substantive post will be the same in the new place of posting.

The question for consideration of the Tribunal is whether the applicants working as ACDPOs and discharging the higher responsibility of CDPOs on officiating basis/adhoc basis for prolonged period of time

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have acquired any right to retain the adhoc/officiating post of CDPOs and thereby transfer of these officers in new place of posting in the substantive post of ACDPOs will amount to reversion by way of punishment warranting interference of the Tribunal. This issue needs to be considered by us in the light of the judgment of the Hon'ble Supreme Court in "Arindam Chattopadhyay v. State of West Bengal" reported in (2013) 4 SCC 152, wherein the ACDPOs discharging the duties and responsibilities of CDPOs on officiating/adhoc basis for prolonged period of 14 years were given pay and allowances of the post of CDPOs by the Hon'ble Supreme Court. It is relevant to quote paragraphs 13, 14 and 15 of the judgment of "Arindam Chattopadhyay" (supra), which are as follows :

"13. Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked

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as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with the Rules. The convening of the Promotion Committee or taking other steps for filing up the post of CDPO by promotion is not in the control of the appellants. Therefore, they cannot be penalised for the Government's failure to undertake the exercise of making regular promotions.

14. In the result, the appeal is allowed. The impugned order as also the one passed by the Tribunal are set aside and the respondents are directed to pay salary and allowances to the

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appellants in the pay scale of the post of CDPO with effect from the date they took charge of those posts. This exercise must be completed within 8 weeks from today. The arrears shall be paid to the appellants within a period of 9 months.

15. Since regular promotions to the post of CDPO have not been made for more than one decade, we direct the respondents to do the needful within a period of six months from today.”

The Hon’ble Supreme Court while granting salary of the post of CDPOs to the officers holding substantive post of ACDPOs and discharging duty of CDPOs on officiating/adhoc basis has not observed that the ACDPOs have the right to retain the officiating post of CDPOs to which they were not promoted by following the provisions of recruitment rules. On the contrary, what transpires from paragraph 15 of the judgment quoted above is that the Hon’ble Supreme Court directed the state respondents to take steps for filling up the post of CDPOs by way of regular promotion within specific period of time. The Hon’ble Supreme Court has not observed anywhere in the judgment cited above that the ACDPOs discharging the duty of CDPOs on officiating/adhoc basis for prolonged period of time cannot be reverted to their substantive post of CDPOs, though the Hon’ble Supreme Court gave direction to the

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state respondents to give salary of the post of CDPOs to the ACDPOs who were discharging the duties of CDPOs for prolonged period of time.

The applicants holding the post of CDPOs on officiating/adhoc basis for prolonged period of time cannot acquire any right to retain the higher adhoc/officiating post when they were not promoted to the said higher post by following the recruitment rules. The reversion of an officer from the higher adhoc/officiating post to the substantive post held by him does not amount to punishment. The reversion of the ACDPOs from adhoc/officiating higher post of CDPOs by way of transfer to the substantive post of ACDPOs and prescribing condition of service including writing of confidential report of the substantive post of ACDPOs cannot be in violation of the rules by which the applicants are governed. Accordingly, we do not find any merit in the submission made by Learned Counsel for the applicants with regard to the impugned letter and the impugned order under challenge in the present Miscellaneous Application.

In view of our above findings, we cannot persuade ourselves to restrain the state respondents from giving any effect or further effect to the impugned letter dated March 8, 2017 issued by the respondent no. 1 and impugned order dated July 22, 2020 issued by the

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<p><i>Rajib</i></p>	<p><i>respondent no. 3.</i></p> <p><i>As a result, the Miscellaneous Application is dismissed.</i></p> <p><i>The urgent xerox certified copy of the order be supplied to both parties, on priority basis, if applied for, on fulfilment of all necessary formalities.</i></p> <p>(S.K.DAS) Member (A)</p> <p>(R.K.BAG) Member (J)</p>	
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