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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
<p>03 22.12.11</p>	<p>OA 1221/2010. Basanti Sen -Vs- State of W.B. & Ors.</p> <p><u>OA 903/2011</u></p> <p>For the Applicant : Ms. P.Chatterjee, Ld. Adv.</p> <p>For the Respondent : Mrs. S.Agarwal, Ld. Adv.</p> <p><u>With</u></p> <p><u>OA 491/2009.</u></p> <p>For the Petitioner : Ms. P.Chatterjee, Ld. Adv.</p> <p>For the State Respondent : Mr. A.K.Sen Gupta, Departmental Representative.</p> <p><u>With</u></p> <p><u>OA 1275/2009.</u></p> <p>For the Petitioner : Mr. G.P.Banerjee, Ld. Adv.</p> <p>For the State Respondent : Mr. A.K.Sen Gupta, Departmental Representative.</p> <p><u>With</u></p> <p><u>OA 1276/2009.</u></p> <p>For the Petitioner : Mr. G.P.Banerjee, Ld. Adv.</p> <p>For the State Respondent : Mr. A.K.Sen Gupta, Departmental Representative.</p> <p>.....(2).</p>	

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(Applicant)
Vs.

OA 1221/2010.

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(Respondents)

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	<p style="text-align: center;">(2).</p> <p style="text-align: center;"><u>With</u> <u>OA 1277/2009.</u></p> <p>For the Petitioner : Mr. G.P.Banerjee, Ld. Adv.</p> <p>For the State Respondent : Mr. A.K.Sen Gupta, Departmental Representative.</p> <p style="text-align: center;"><u>With</u> <u>OA 172/2010.</u></p> <p>For the Petitioner : Mr. G.P.Banerjee, Ld. Adv.</p> <p>For the State Respondent : Mr. A.K.Sen Gupta, Departmental Representative.</p> <p style="text-align: center;"><u>With</u> <u>OA 1221/2010.</u></p> <p>For the Petitioner : None.</p> <p>For the State Respondent : Mrs. P.Saha, Ld. Adv.</p> <p style="text-align: center;"><u>With</u> <u>OA 599/2011.</u></p> <p>For the Applicant : Mr. M.N.Roy, Mr. G.Halder, Ld. Adv.</p> <p>For the State Respondent : Mr. S.K.Mondal, Ld. Adv.</p> <p style="text-align: right;">.....(3).</p>	

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	<p>(3).</p> <p>Mr. G.P.Banerjee has filed separate rejoinder in OA 1275/2009, OA 1276/2009, OA 1277/2009 and also in OA 172/2010. Let them be kept on record.</p> <p>All the above mentioned applications eight in number have been taken up together for hearing and order with consent of Ld. Advocate of respective parties and also with consent of Departmental Representative, since an identical question of law is involved in all these applications.</p> <p>The undisputed fact is that the applicants of all the applications have been engaged as Part Time Casual Sweeper-cum-Water Career in different establishments of the State Governments and they have been paid a fixed sum, although the sum is not uniform in case of all the applicants.</p> <p>All the applicants approached the authority for enhancement of their remuneration following the Circular of 28th July, 1999 and Circular dated 20.5.2009 with arrear payment.</p> <p>.....(4).</p>	

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	<p>(4).</p> <p>As the different authorities under whom the applicants have been working did not consider such prayer for enhancement of remuneration and also claim of arrear payment, the applicants have approached this Tribunal.</p> <p>It appears from the averments of all the applications that the applicants also rely on a judgement of this Tribunal, where this Tribunal held that following the circular of 1999, the remuneration would be Rs. 700/- and following the Circular of 2009, the remuneration would be Rs. 2000/.</p> <p>It appears that in the case of Abdul Wahab Mondal (OA 599/2011), the authority was directed to consider the grievance of the petitioner in the matter of enhancement of remuneration and that authority held that the petitioner can not get enhanced remuneration as he does not belong to Group D category, although engaged on casual basis.</p> <p>Mr. G.P.Banerjee, Ms. P.Chatterjee and Mr. M.N.Roy , representing different applicants submit that when this Tribunal had the occasion to examine the issue</p> <p>.....(5).</p>	

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	<p>(5).</p> <p>and held that following the circular of 1999 , the remuneration should be Rs. 700/- per month and after 2009, it would be Rs. 2000/- per month and when no appeal was preferred against that decision of the Tribunal, now, the authorities can not take a different stand and that judgement of the Tribunal should be the only guiding factor in considering the claim of the petitioner and all the parties should be accordingly directed to pay arrear remuneration w.e.f. 1999 and there after w.e.f. 2009 as per the relevant Circular of 1999 and 2009.</p> <p>Mr. A.K.Sen Gupta, Departmental Representative, Mrs. P.Saha, the Ld. Advocate and Mr. S.K.Mondal, Ld. Advocate representing the authorities in connection with these applications have taken a different view. All of them submit that in the Circular of 1999 and also in the Circular of 2009 , there was no clear stipulation indicating that fixed amount of Rs. 700/ is payable following the Circulars of 1999 or fixed amount of Rs. 2000/- is payable following the circular of 2009. These Ld. Advocates along with the Departmental</p> <p>.....(6).</p>	

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	<p>(6).</p> <p>Representative contend that from a clear reading of both the Circular of 1999 and 2009, it would appear that the Finance Department fixed a ceiling giving flexibility to different local authority to fix the exact amount according to the hour of engagement and quantum of work assigned to each of the employee paid out of contingency fund.</p> <p>As there is divergent view regarding the judgement delivered by this Tribunal, it was decided with consent of the parties that the matter should be referred to a larger Bench and this is the occasion for constitution of this Special Bench, which is now taking up the matter for final consideration.</p> <p>On hearing the Ld. Advocate of respective parties, we notice that the Government was well aware of the decision of this Tribunal and Govt. was well aware of the fact that being encouraged by the decision of this Tribunal already indicated, there was a confusion regarding proper interpretation of the Circular of 2009 and accordingly, to remove all doubts and disputes regarding interpretation of the Circular of 2009, rejoinder was issued</p> <p>.....(7).</p>	

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	<p>(7).</p> <p>by the Finance Department by its Memo No. 8662-F dated 07th September, 2009 clarifying that the payment to be made as per Circular dated 28th May, 2009 shall depend on certain contingencies and these contingencies have been explained in that Finance Memo of 07th September, 2009 and the main spirit of that rejoinder has been to fix the amount according to the duty performed by the individual in any establishment under the State Government.</p> <p>From the Circular of 07th September, 2009, it is found that person doing duties less than one hour per day shall not be paid less than Rs. 500/- per month, for doing duties for more than one hour but less than two hours per day payment would be more than 500/ but not more than Rs. 1000/- , for doing duties more than two hours but less than three hours per day payment would be more than Rs.1000/- but not more than Rs.1500/- per month and finally, for doing duties more than three hours per day, the payment would be more than Rs.1500/- but not more than Rs.2000/- per month.</p> <p>It is accepted position of law that if there is no</p> <p>.....(8).</p>	

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	<p>(8).</p> <p>clear guideline regarding any circular of the State Government, it is always open to the legal forum for giving proper interpretation to that Circular leaving no grey area for creating further confusion and we hold that in absence of any subsequent clarification as has been done by the memo of 07th September, 2009, this Tribunal interpreted the parent circular dated 20th May, 2009 and the Circular of 1999 and interpreted for payment of the ceiling amount of Rs.2000/- and Rs.700/- respectively. But, now with the clarification coming from the Finance Department, which is the appropriate authority for making such clarification, we hold that the earlier judgement of the Tribunal should be interpreted in the light of the memorandum of 07th September, 2009 only.</p> <p>Accordingly, after hearing the respective Ld. Advocates and also the departmental representative and having regard to the Finance Memo dated 07th September, 2009, we dispose of all these eight applications by directing the respective authority to interpret the circular of 1999 and 2009 in the light of Finance Memorandum of</p> <p>.....(9).</p>	

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	<p>(9).</p> <p>07th September, 2009 and to give appropriate remuneration w.e.f. 1999 proportionately without violating the spirit of Finance Memorandum dated 07th September, 2009.</p> <p>Mr. Banerjee submits that there is a separate circular issued from the Land and Land Reforms Department indicating the different offices and there after fixing the remuneration of Part time employees paid out of Contingencies Fund and there should be a direction regarding that Circular, so that there may not be any scope of further confusion as regards the employees attached to Land and Land Reforms Department.</p> <p>On hearing the Ld. Advocates of all the respective parties , we observe that any circular issued by any authority with the concurrence of Finance shall not over ride the clarification of Finance clarification given in Memorandum dated 07th September, 2009 and every authority having any special circular with concurrence of the Finance must try to reconcile their own circular with that of Finance Memo dated 07th September, 2009.</p> <p>We also direct all the authorities to pay arrear</p> <p>.....(10).</p>	

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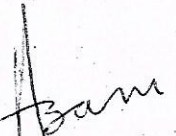
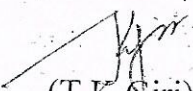

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Skg.	<p>(10).</p> <p>remuneration , if any , in the light of our present observation starting from 1999 and such arrear remuneration must be paid within a period of four months from communication of this order.</p> <p>All the applications stand disposed of.</p> <p>Plain copy to all the sides.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (A.K.Basu) Chairman. </div> <div style="text-align: center;">  (T.K.Giri). Member(J). </div> <div style="text-align: center;">  (A.K.Patnaik) Member(A) </div> </div>	

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