

**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,
Judicial Member

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member

J U D G M E N T

-of-

Case No. : O.A. 535 of 2016 : Prasun Mondal & 6 Ors.
O.A. 536 of 2016 : Ashish Biswas & 22 Ors.
O.A. 537 of 2016 : Jayanta Chatterjee & 15 Ors.
O.A. 538 of 2016 : Tuhin Kanti Mukherjee & 25 Ors.
O.A. 539 of 2016 : Palash Some & 07 Ors.
O.A. 540 of 2016 : Dola Bag & 06 Ors.
O.A. 542 of 2016 : Chandan Kumar Ghosh & 14 Ors.
O.A. 543 of 2016 : Deb Prasad Mondal & 22 Ors.
O.A. 544 of 2016 : Bhaswar Pal & 28 Ors.
O.A. 545 of 2016 : Kamal Kumar Saha & 11 Ors.
O.A. 546 of 2016 : Anindya Maiti & 08 Ors.

..... Applicants.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicants:-
(In all the cases)

Mr. S. Mukhopadhyay,
Learned Advocate.

For the State Respondents:-

Mr. S. Ghosh, (In OA-535/2016, OA-536/2016, OA-537/2016)
Mr. B.P. Roy, (In OA-535/2016)
Mr. A.L. Basu, (In OA-539/2016, OA-OA-540/2016, OA-542/2016)
Mr. S. Bhattacharyya, (In OA-539/2016, OA-OA-540/2016, OA-542/2016)
Mr. R.A. Chowdhury (In OA-543/2016)
Mrs. S. Agarwal (In OA-544/2016, OA-545/2016, OA-546/2016)
Learned Advocates.

For the State Respondents:-

None (In OA-538/2016)

Judgment delivered on: February 7, 2020.

JUDGMENT

OA-535 of 2016, OA-536 of 2016, OA-537 of 2016, OA-538 of 2016, OA-539 of 2016, OA-540 of 2016, OA-542 of 2016, OA-543 of 2016, OA-544 of 2016, OA-545 of 2016 and OA-546 of 2016 were taken up for hearing analogously with the consent of Learned Counsel

representing all the parties. Since the facts and circumstances and the reliefs claimed in all the original applications are similar and since all the original applications have been taken up for hearing analogously, we are inclined to dispose of all these original applications by this composite judgment.

2. The applicants in these original applications are the Krishi Projukti Sahayaks (KPSs) belonging to the Group C category of employees under the state government, who were appointed in different districts of West Bengal on or about December 14, 2015. 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/- (at entry point minimum pay of Rs.9,600/-) with grade pay of Rs. 2,900/- along with allowances such as Dearness Allowance and House Rent Allowances etc. and that their pay and allowances during the probation period should not have been 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.

3. The applicants applied for the post of Krishi Projukti Sahayaks (KPSs) pursuant to an advertisement issued by the Public Service Commission, West Bengal for selection of candidates for appointment in the post of Krishi Projukti Sahayaks in the different districts of West Bengal (advertisement No. 13/2010). The last date for submission of application was November 23, 2010. The examination was held on 6th, 7th and 8th July, 2012 and the results were finalised and the applicants were asked vide letter dated March 13, 2015 to attend pre-service training from April 20, 2015. Finally, the appointment letters were issued to the applicants by the Director of Agriculture, West Bengal vide Memo. No. 1536 (345) dated December 14, 2015. The applicants' letters of appointment indicate that they will draw pay at the entry point in the Pay Band Rs. 5400 – 25200/- (Entry point gross emoluments Rs.9,600/-) with Grade Pay Rs. 2,900/- in PB-2, and Allowances admissible in terms of Para 8 of G.O. No. 1832-F(P) dated March 1, .2013 of Finance Department, Audit Branch. By this notification No. 1832-F(P) dated March 1, 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]. The applicants 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.

4. In terms of the APA Rules, 2013, the period of probation of new Group C category of employees has been made three years with effect March 1, .2013 in place of one year in the Notification No. 6060-F dated 1979.

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

6. We have heard at great length Mr. S. Mukhopadhyay, Ld. Counsel appearing for the Applicants. We have also heard Mr. S. Ghosh, Mr. B.P. Roy, Mr. A.L. Basu, Mr. S. Bhattacharyya, Mr. R.A. Chowdhury and Mrs. S. Agarwal, Ld. Counsel appearing for the State Respondents.

7. Mr. Mukhopadhyay has strongly opposed the denial of allowances such as Dearness Allowance, House Rent Allowance 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 November 2010. At the time of submitting applications 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 the particular scale of pay in the Pay Band including all allowances as per the Rules prevailing at the time of advertisement. Mr Mukhopadhyay has argued that the selection process for appointment in the posts of KPS was initiated before coming into force of the APA Rules, 2013 and that the Notification dated June 25, 1979 was in force during the entire process of selection for appointment to the present posts and the respondents cannot deny to grant those allowances to the applicants in the present case. Mr Mukhopadhyay has further submitted that the applicants of the present case are similarly situated as that of the petitioners of "Sanjay

Sadhukhan & others –vs-State of West Bengal & Others” (OA No. 92 of 2015 disposed of on 29.02.2016). According to Mr. Mukhopadhyay, in both the cases the selections of candidates for appointment were initiated before coming into force of the APA Rules, 2013 and in both the cases 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 applicants 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 in compliance of the order of the Hon’ble Division Bench have granted Dearness Allowance and House Rent Allowance to the petitioners of “Sanjay Sadhukhan and others” (supra). Mr Mukhopadhyay also submitted that the APA Rules 2013 can be applied only to those Group-C employees of the State Government who were selected by the Staff Selection Commission, West Bengal and the Public Service Commission, West Bengal (Clerkship Examination Only) as laid down in Rule 7 of the said Rules. In the instant case the applicants were selected for appointment by the Public Service Commission, West Bengal (in short, PSC,WB), but not through Clerkship Examination conducted by the PSC,WB. 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 March 1,.2013 and thereby the applicants cannot be denied payment of Dearness Allowance and House Rent Allowance during the probation period.

8. Mr Apurba Lal Basu, has submitted that the applicants applied for the post of Krishi Prajukti Sahayaks under the administrative control of the Agriculture Department. The selection process for recruitment was conducted by the PSC,WB through an open competitive examination. The advertisement for inviting applications has mentioned that pay will be in PB-2, Rs.5,400-25,200/- plus Grade Pay of Rs.2,900/- with gross emoluments at the entry level Rs.9,600/- beside DA, MA and HRA admissible as per rules. So, the applicants can only claim what is allowed as per the rules in force on the date of appointment. Mr. Basu has further submitted that the applicants joined their respective posts on different dates after issue of appointment letters dated December 14, 2015. The 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 March 1, .2013, all the applicants 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, while on probation. After confirmation, they would start getting Dearness Allowance and House Rent Allowance. As the petitioners joined their services after March 1, 2013, they would be governed by APA Rules, 2013. Accordingly, the applicants cannot be granted Dearness Allowance and House Rent Allowance from their date of joining.

9. We have considered the submissions of both the parties. We now examine whether the facts of the present case are similar to those of the petitioners in "Sanjay Sadhukhan's case"(supra). The similarities between the case of the applicants and that of the petitioners 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 Rules, 2013. However, there are some differences in said cases as discussed below. In case of "Sanjay Sadhukhan's", the selection process was started and completed in 2007 and the candidates were selected for appointment in the year 2007. Subsequently, the State Government cancelled the selection by issuing notification dated January 18, 2008 without giving appointment to the selected candidates. 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 March 1, 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 arbitrary action of the State Government, which was held to be illegal and invalid by the Tribunal as well as by the Hon'ble High Court at Calcutta. Had the petitioners in "Sanjay Sadhukhan's case" been appointed

without arbitrary intervention of the State Government, the petitioners would have been appointed long before coming into force of the APA Rules, 2013.

10. In the instant case the advertisement inviting application was issued in November, 2010. The examination was held on 6th, 7th and 8th July, 2012. The recommendation of the PSC, WB on the basis of written examination was published on February 28, 2014 that is after coming into force of the APA Rules, 2013. The short listed candidates were asked to undergo pre-service training of six months on April 21, 2015 and appointment to the posts of KPSs was offered only to those who completed the training successfully. The Director of Agriculture issued appointment letters on December 14, 2015. So the selections were made and appointments were given after coming into force of the APA Rules, 2013 on March 1, 2013. The facts of the present case are, thus, clearly distinguishable from the facts of "Sanjay Sadhukhan" (supra) and as such the ratio of "Sanjay Sadhukhan" (supra) cannot be made applicable in the present case.

11. We now examine whether the claim of the applicant that APA Rules, 2013 will not be applicable in case of the applicants as the applicants were not selected on the basis of competitive examination for Clerkship Examination conducted by the PSC, WB or by the Staff Selection Commission, West Bengal (in short, SSC, WB) as laid down in Rule 7 of the APA Rules, 2013. The applicants were selected by the PSC, WB and the selection process started in 2010 on the basis of advertisement issued in November 2010. At that point of time, the SSC, WB was not in existence and all such examinations were conducted by the PSC, WB. After establishment of the SSC, WB the PSC, WB was allowed to conduct only Clerkship Examination in the Group-C category. On scrutiny of the relevant provisions of the Rules, we find that Rule 7 of APA Rules, 2013 provides how the selection will be made by the SSC, WB or the PSC, WB (Clerkship Examination only) in future. The relevant provision of the Rules which lays down application of the APA Rules, 2013 is Rule 2 which is reproduced below:

"2. Application – (1) These rules shall apply in case of appointment to any post or cadre or service or category belonging to Group C.

(2) These rules shall not apply to –

- (a) part-time workers, casual labourers, daily labourers, master roll workers and seasonal labourers;**
(b) such other categories of persons as may be specified from time to time by Government by notification in the Official Gazette;
(c) cases of appointment on promotion.”

The above provisions of the APA Rules, 2013 indicate that the said Rules shall apply in case of appointment to any post or cadre or service or category belonging to Group C excepting those excluded under Rule 2(2) of the said Rules. In view of such finding, the APA Rules, 2013 will be applicable in case of the applicants, even if the selection process was initiated before coming into force of the APA Rules, 2013. In view of our above findings, we can safely hold that APA Rules, 2013 will be applicable in the case of the applicants who got appointment after coming into force of APA Rules, 2013.

12. 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 employees of the State of West Bengal have been deprived of DA and HRA during the period of probation is left open.

13. 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 PSC, WB 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.

14. The urgent xerox certified copy of the judgment and order may be supplied to the parties on priority basis, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).