

**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 P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 578 of 2017

**State Agricultural Technologists' Service
Association (SATSA), W.B. & others..... Applicant**

-Versus-

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

**For the Applicant : - Mr. K. Bhattacharjee,
Mrs. S. Agarwal,
Advocates.**

**For the State Respondent:- Mr. D.N. Roy,
Mr. S. Ghosh,
Advocates.**

Judgment delivered on : 6th March, 2020

**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) Direction be passed by setting aside the Govt. Notification No. 6068 Estab(Dte)/AG/O/12A-15/2016, dated 31.03.2017 passed by the Secretary to the Govt. of West Bengal, Department of Agriculture being respondent No. 1 herein.

(b) Direction be passed on the respondents to fill up the post of Director of Agriculture and Ex-Officio Secretary, West Bengal until the Recruitment Rule is framed for filling up the said sanctioned post.

(c) Direction be given to the respondent authorities to fill up the vacancy in the post of Director of Agriculture and Ex-Officio Secretary, WB being an administrative post from the Administrative Wing of the West Bengal Agriculture Service (Admn) on adhoc basis till the Recruitment Rules against the said elevated sanctioned post is framed or published.”

2. The instant application has been filed by the State Agriculture Technologists' Service Association consisting of members who are holding the post in the Administrative Wing as well as in the Research Wing of West Bengal Agriculture Service such as Assistant Director of Agriculture, Deputy Director of Agriculture,

Joint Director of Agriculture, Additional Director of Agriculture and Project Coordinator, Ex-officio Additional Director of Agriculture etc.

The appointment in the post of Director of Agriculture is to be made from Administrative and Research Wing of Directorate of Agriculture. The members of the association are belonging to Administrative Wing and appointment to the post of Director of Agriculture has been done from the Research Wing taking into account the total seniority in service of the contesting employee in the Administrative Wing as well as Research Wing.

The West Bengal Agricultural Service (Administration) consists of following categories of posts:-

- (a) Assistant Director of Agriculture
- (b) Deputy Director of Agriculture
- (c) Joint Director of Agriculture
- (d) Ex cadre of Additional Director of Agriculture and Project Coordinator & Ex-officio Additional Director of Agriculture.

The lateral transfer / movement/ appointment to the post of DDA from Asstt DA, Joint DA from DDA and Addl DA from Joint DA under West Bengal Agricultural Service (Admn) in Directorate of Agriculture is being done by way of transfer on the basis of interse-seniority of a particular persons after entry as Assistant Director of Agriculture as per existing Recruitment Rule.

As far as promotion in Research Wing/Cadre from WBAS (Res) to WBAS (Res) Gr – I and WBAS(Res) Gr I to WBAS(Res) Gr II is concerned, the same is regulated by intra-discipline / subject wise panel of officers with respective Seniority list / Gradation list under respective discipline / channel. There are five independent disciplines in the said Research Wing and all the five of such disciplines are having independent gradation list

and their promotion is also regulated on the basis of seniority and maintaining 50 point Roster.

3. In the mean time, vide Memo No. 6075 - F dated 21.06.1990 (Annexure 'A/1'), the Finance Department had elevated the post of Director of Agriculture to the post of Director of Agriculture & Ex-officio Secretary, West Bengal. The said apex post was sanctioned and created in the pre-revised pay scale of 21, whereas previously the Director of Agriculture, West Bengal was in the scale of 20 at that material point of time. The previous post of Director of Agriculture stood abolished or become non-existent. The whole concept of elevation of post of Director to the rank of Ex-Officio Secretary was for improvement of the standard of Administration and also for the career prospect of officers of the Directorate of Agriculture. Subsequently, vide Memo No. 4661-PAR (IAS) dated 02.08.1991 (Annexure 'A/2'), the Governor had sanctioned creation of the post of the Director of Agriculture & Ex-officio Secretary by way of elevation of the post of Director of Agriculture with effect from the date of assumption of the charge to the elevated post by its incumbent. Therefore, as per the applicants, after abolition or creation of the post of Director of Agriculture, the post of Director of Agriculture & Ex-officio Secretary, Agriculture Department is a separate & distinct sanctioned post. The Director of Agriculture does not exist with effect from 02.08.1991 and the Director of Agriculture & Ex-officio Secretary post would be come in to force with effect from the date of assumption of the date of the charge of the elevated post. But no recruitment rule is framed regarding the appointment to the post of Director of Agriculture and Ex-officio Secretary after elevation of the post of Director of Agriculture since 1991.
4. However, to the utter surprise of the applicants, the Deptt. of Agriculture, Govt. of West Bengal had issued one Notification

dated 31.03.2017 (Annexure 'A/3') by appointing of Shri Sampad Ranjan Patra, Additional Director of Agriculture (Research), HQ i.e. respondent no. 3 as Director of Agriculture on regular basis with effect from 01.04.2017 (Annexure 'A/3'). As per the applicant, the said order is illegal as there is no post of Director of Agriculture after 1990, even no pay scale is prescribed for the post of Director of Agriculture. As the post is non-existent and Shri Sampad Ranjan Patra was enjoying the salary of the pay scale of Additional Director of Agriculture (Research), such appointment cannot be done as there is no Recruitment Rule in existence on that date. Therefore, the said impugned appointment is illegal and bad in law. However, subsequently the respondent no. 3 was allowed to draw pay in Pay Band No. 5 of Rs. 37400 – 60000/- with grade pay Rs. 10,000/- w.e.f. 01.04.2017 vide Notification dated 13.07.2017 (Annexure 'A' to the M.A. No. 98 of 2017). The said respondent no. 3 was again appointed as Director of Agriculture & Ex-officio Secretary w.e.f. 31.03.2017 vide Notification dated 09.08.2017. It is submitted by the applicant that although the respondent no. 3 was appointed as Director of Agriculture vide order dated 31.03.2017 however in the subsequent order dated 09.08.2017, he was appointed as Director of Agriculture & Ex-officio Secretary, wherein he was shown as promoted from the post of Additional Director of Agriculture (Research). Therefore, the respondents had themselves admitted that he was promoted from the post of Additional Director of Agriculture. However, he was granted the benefit with retrospective effect from 31.03.2017 as there was no such post in existence for Director of Agriculture as shown in the order dated 31.03.2017. Therefore, the respondent no. 3 cannot be treated as the cadre of Director of Agriculture & Ex-officio Secretary w.e.f. 31.03.2017. Being aggrieved with, the applicants

have challenged such appointment, which is illegal and bad in law.

5. The state respondents have filed their reply wherein they have stated that the Directorate of Agriculture is consisting of three wings rather than two wings as stated by the applicants. The three wings are as follows:

a) Administrative Wing (b) Research Wing (c) Evaluation Wing and for such three wings, three different cadres were established such as (i) West Bengal Agriculture Service (Administration), (ii) West Bengal Agricultural Service (Research) and (iii) West Bengal Agricultural Service (Evaluation) having separate and distinct recruitment rules. However, the Research Wing is consisting of four cadres viz. (i) West Bengal Agricultural Service (Research) (ii) West Bengal Higher Agricultural Service (Research) – Gr – II (iii) West Bengal Higher Agricultural Service (Research) – Gr – I (iv) Ex-cadre Additional Director of Agriculture (Research).

It has been submitted by the respondents that consultation of Public Service Commission is required in each and every step of movement from one cadre to another whereas no consultation of Public Service Commission is required for movement from lower post to higher post of West Bengal Agricultural Service (Administration cadre). It is further stated that in the Recruitment Rules of West Bengal Agricultural Service (Administration cadre) issued vide Notification No. 2224 dated 29.06.2009 read with Government Notification No. 406 dated 08.02.2010, the movement from Assistant Director of Agriculture to Deputy Director of Agriculture, from Deputy Director of Agriculture to Joint Director of Agriculture and from Joint Director of Agriculture to Additional Director of Agriculture by means of transfer with higher responsibility on the basis of interse seniority – not a mere transfer as claimed by the

applicants. However, no Departmental Promotion Committee or recommendation of Public Service Commission is required as per the said Rule for such movement. It is further stated that the feeder post in respect of post of nomenclature of Director of Agriculture & Ex-officio Secretary is the Additional Director of Agriculture comprising all the above wings. As per the respondents, there are five numbers of posts of Additional Director of Agriculture namely

- (i) Additional Director of Agriculture (Gen)
- (ii) Additional Director of Agriculture (Special)
- (iii) Additional Director of Agriculture (C.C.)
- (iv) Additional Director of Agriculture (NBR)
- (v) Project Co-coordinator and Ex-officio Additional Director of Agriculture, whereas there is one Additional Director of Agriculture (Research) in Research Wing. Thus, the scope of promotion to the post of Director of Agriculture & Ex-officio Secretary in ration of 5:1 between West Bengal Agricultural Service (Administration) and West Bengal Agricultural Service (Research). The post of WBHAS (Res) Gr – I, post of WBHAS (Res) Gr – II under Research Wing are Administrative as well as Technical in nature. Both the Wings are intermingled and for the overall performance of the Directorate both the wings contribute meaningfully and in a coordinated way. Therefore, the claim of the applicants is that they are basically performing an Administrative job is not right one.

As per the respondents, in the Administrative Wing, there is no promotion but transfer with higher responsibility without approval of D.P.C. and consultation of Public Service Commission. In contrast, Research Wing has promotion with consultation with Public Service Commission therefore, the respondent no. 3, who was working as Scientist-cum-administrator since 1997, thereafter, from 1997 to 2002 as Head

of Dry Land Research Station, from 2002 to 2014 as Project Officer and Ex-officio Joint Director of Agriculture (WMRS), Head of the Research Station. Then from 2014 to 2017 as Additional Director of Agriculture (Research) in Administrative post of Research Wing (Annexure 'X-2').

As per the respondents, the post of Director of Agriculture & Ex-officio Secretary requires both the knowledge of Administrative and Technical. Therefore, the said post is being filled up by the selection among all the Additional Director of Agriculture with recommendation of Public Service Commission. However, the Notification dated 02.08.1991 never declared the post as abolished. The existence of the said post and the corresponding Recruitment Rules are in vogue. The policy of elevation of the post of Director of Agriculture is a matter of carrier advancement process without changing the assignment i.e. duties and responsibility. It is further stated that the order of appointment of the respondent no. 3 has been issued by the Administrative Department of Agriculture after consultation with Public Service Commission vide No. III/103/PSC/1P-29/3/2017 with intimation to Finance Department, Department of PAR, which has been subsequently ratified by both the Department vide No. 1997-PAR (IAS)/5C-01/17 dated 09.08.2017.

Thus the said impugned orders have no exception and deviation from the appointment order of pervious research since creation of the post of Director of Agriculture & Ex-officio Secretary. It is further stated that as none of the petitioners are holding the feeder post i.e. Additional Director of Agriculture. Therefore, they do not have locus standi to file the instant application as Dr. Paritosh Bhattacharjee was also posted vide order dated 03.11.2014 in similar way.

The Pvt. Respondent no. 3 has filed his separate reply. However, he has mainly reiterated submissions made by the state

respondents in their reply. The Pvt. Respondent No. 3 has also enclosed copies of appointment of some of his predecessors.

6. The applicant has filed rejoinder to the reply filed by the respondents. It has been further submitted that respondent no. 3 i.e. Shri Sampad Ranjan Patra was appointed to the post of Director of Agriculture, which does not exist, since it had been elevated and created as the post of Director of Agriculture & Ex-Officio Secretary. So he cannot be granted benefit retrospectively. As far as the question of appointment to the post of Director of Agriculture and Ex-officio Secretary is concerned, the same cannot be absolute privilege for persons in Research Wing and in the absence of any recruitment rule, the said appointment was made from the Research Wing without considering the cases of the Additional Director of Agriculture of other wings. Therefore, the similarly situated persons from other wings were being deprived of being considered for the said post of Agriculture & Ex-officio Secretary. Thereafter, numbers of representation were submitted by the Association of Employees and Officers agitates their grievances against such non-formation of recruitment rule to the newly created post of Agriculture. Therefore, there is a scope of pick and choose method to put some favoured person in the post of Director of Agriculture & Ex-officio Secretary without following rule. Thus a wrong cannot be perpetuated by showing other instances of wrong doing. As per the applicant, the respondents never denied the fact that after elevation and creation of post of Director of Agriculture & Ex-officio Secretary, no recruitment rules have been framed.
7. Further during the course of the hearing, the counsel for the respondent has raised preliminary objection with regard to the locus standi of the applicants to file the instant application. In reply to that, the counsel for the applicant has submitted that apart from Association, who is the legal representatives of all the

officers, four types of post of the Administrative Wing, which have lateral transfer /movement to the post as the incumbent of the post of Assistant Director of Agriculture, Joint Director of Agriculture, Deputy Director of Agriculture and Additional DDA are on the basis of inter-se seniority thus their promotions have been effected by the illegal appointment to the post of Director of Agriculture & Ex-officio Secretary. The employees holding the post up to Additional Director of Agriculture are members of the petitioner's Association. Additional Director post holders are immediately effected persons in the matter of filling up of the post of Director of Agriculture or Director of Agriculture & Ex-officio Secretary and other posts in the Agricultural services are filled up by transfer on the basis of interse seniority and every officer in the different layers of posts in the Agriculture Service Directorate have scope of appointment by transfer to the post of Additional Director of Agriculture, which is a feeder post of Director of Agriculture or Director of Agriculture & Ex-officio Secretary. As no rule has been framed for filling up the said post and the appointment to the said post was made by pick and choose method, the said actions are directly infringed the right of the members of the association. Since the petitioner's association is a registered association having a status of legal personality, it can sue in its name.

8. We have heard the parties and perused the records. Before dealing with the merit of the case, let us understand basic facts related to the instant application. Admittedly, there are two Wings of Agriculture Department i.e. Administrative Wing and Research Wing and both the wings have different categories of post up to the post of Additional Director of Agriculture. As per erstwhile provision of Recruitment Rules, they were promoted to the post of Director of Agriculture. Career Advancement Scheme was introduced with effect from 01.04.1989. However, vide

Memorandum dated 21st June, 1990 (Annexure A/2), post of Director of Agriculture (pay scale 20) was elevated to the rank of Ex-officio Secretary in the revised pay scale of 21. In the said Memorandum para (xxii) stipulates inter alia:

“The posts in Scale Nos. 19 and 21 as mentioned in the Annexure as well as the posts indicated in para (xvii) foregoing will be created by the concerned Administrative Departments. For example in case of WBCS (Executive), the post will be created by the Home (PAR) Department.”

Subsequently, vide Memo dated 02.08.1991, Deputy Secretary to the Govt. of West Bengal communicated the following:

“I am directed by order of the Governor to state that the Governor is pleased to sanction the creation of a post of Director of Agriculture & Ex-officio Secretary, Agriculture Deptt. Govt. of West Bengal in the scale of pay of Rs. 5900 -200-6700/- introduced in WBS (ROPA) Rules, 1990 by way of elevation of the existing post of the Director of Agriculture with effect from the date of assumption of the charge of the elevated post by its incumbent and until further orders.”

9. Thereafter, vide Notification dated 29th June, 2009, different wings of the Administrative Wing of the West Bengal Agricultural Service, West Bengal, the Agricultural Service (Admn) was constituted by way of amalgamation of four types of Agriculture Service of Administrative Wing (Annexure A/1) consist of post of Assistant Director of Agriculture, Deputy Director of Agriculture, Joint Director of Agriculture, Additional Director of Agriculture and Project Co-ordinator & Ex-officio

Additional Director of Agriculture. Though the post of Assistant Director of Agriculture was stipulated to be filled up by selection (direct recruitment) through Public Service Commission. However, with regard to other three designated posts i.e. post of Deputy Director of Agriculture to the Additional Director of Agriculture, the method of posting / promotion was by transferred from the confirm officers from the respective feeder cadre. From the above, it is observed that the post of Director of Agriculture itself was elevated to the post of Director of Agriculture & Ex-officio Secretary on elevated scale of pay by creation of post of Director of Agriculture & Ex-officio Secretary. In view of the above, it is clear that in one hand, the post of erstwhile Director of Agriculture was elevated as per ROPA Rules 1990 and simultaneously a post of Director of Agriculture & Ex-officio Secretary was created by the approval of the Governor as well as Finance Department on and from 22.08.1991. Therefore, obviously the post of Director of Agriculture was not in existence on and from 1991 as the post of Director of Agriculture was itself elevated to the post of Director of Agriculture & Ex-officio Secretary. Thus it cannot be accepted that the post of Director of Agriculture still in exist. In view of the aforesaid observation, if one post has been elevated and subsequently the said post was converted and created to a new post with up-gradation of pay scale, the erstwhile post cannot legally exist.

Further on one hand, the respondents are claiming that the post of Director of Agriculture & Ex-officio is being filled up by selection amongst the Additional Director of Agriculture. However, surprisingly it is noted that the Respondent No. 3 i.e. the post of Director of Agriculture & Ex-officio Secretary was initially filled up by appointing the Respondent No. 3 from Additional Director of Agriculture (Research) to Director of

Agriculture, West Bengal on regular basis with effect from 01.04.2017 (Annexure A/3) vide Notification dated 31.03.2017 but subsequently within five months, the said person was again appointed to act as Director of Agriculture & Ex-officio Secretary from Additional Director of Agriculture (Research) HQ giving effect from the date of his appointment as Director of Agriculture dated 31.03.2017. From the perusal of the aforesaid two orders, it is observed that surprisingly the same person, who was actually posted as Additional Director of Agriculture (Research) once appointed to the post of Director of Agriculture vide Memo dated 31.03.2017 again vide order dated 09.08.2017, was again appointed as Director of Agriculture & Ex-officio Secretary from the post of Additional Director of Agriculture (Research). Respondent no. 3, who has been appointed as Director of Agriculture vide Memo. dated 31.03.2017 is as follows:

“The Governor has been pleased to appoint Shri Sampad Ranjan Patra, Additional Director of Agriculture (Research), HQ as Director of Agriculture, West Bengal on regular basis w.e.f. 01.04.2017. His pay and allowances shall be drawn as per extant rules.”

Respondent no. 3 has been again appointed from Additional Director of Agriculture as Director of Agriculture & Ex-officio Secretary vide Memo. dated 09.08.2017, which is as follows:

“The Governor is pleased to appoint Shir Sampad Ranjan patra, previously posted as Additional Director of Agriculture (Research), HQ to act as Director of Agriculture & Ex-officio Secretary, Agriculture Department, Govt. of West Bengal, with effect from 31/03/2017(AN), the date of assumption of charge of the elevated post.

**This order issues with concurrence of
Finance Department vide their U.O. No. Group
P2-2017-2018/0401, dated 26/07/2017.”**

However, with effect from 31.03.2017, he was also appointed as Director of Agriculture. In both the Notifications, the said applicant was appointed from the post of Additional Director of Agriculture (Research) to the post of Director of Agriculture on 31.03.2017 and the post of Director of Agriculture & Ex-officio Secretary on 09.08.1997. Further it has been observed that though as per the applicant, no recruitment rules had been framed after the elevation or creation of the post of Director of Agriculture & Ex-officio Secretary and as the post of Director of Agriculture has already been elevated and a new post called Director of Agriculture & Ex-officio Secretary has been created. Therefore, for the purpose of promotion / appointment to the post of the said Director of Agriculture & Ex-officio Secretary, one Recruitment Rule should be framed for the selection of the incumbent of the new post. However, as per the applicants, without framing any Recruitment Rules or for selection procedure, the respondents are appointing different incumbents from Research Wing only as would be evident from the different enclosures of the respondents for different persons to the post of Director of Agriculture & Ex-officio Secretary. However, though the respondents have only stated that the post of Director of Agriculture is in existence but they could not produce any Recruitment Rule for appointment to the post of Director of Agriculture & Ex-officio Secretary. Further if we have to accept the contention of the respondents that the post of Director of Agriculture is in existence then there must be some Recruitment Rules for the post of Director of Agriculture & Ex-officio Secretary which is a different post created by the Governor vide Notification dated 31.03.2017. In that case, there must be some

Recruitment Rule for some selection to the post of Director of Agriculture and Ex-officio Secretary. In alternative, the Respondent No. 3 could have been appointed directly from the post of Additional Director of Agriculture to the post of Director of Agriculture & Ex-officio Secretary with effect from 31.03.2018. However, with utter surprise, though the Respondent No. 3 has been appointed to the post of Director of Agriculture on 31.03.2017 but again he was appointed from the post of Additional Director of Agriculture (Research) to the post of Director of Agriculture & Ex-officio Secretary with effect from the date when he was initially appointed to the post of Director of Agriculture only. From the above, it is clear that the post of Director of Agriculture was elevated and subsequently by creation of a new post of Director of Agriculture & Ex-officio Secretary.

10. As the respondents has raised the preliminary objection of the maintainability of the application filed by the State of Agriculture Technologists Service Association, West Bengal Wing, both the employees of Administrative Wing as well as Research Wing of the members as well as the other three applicants are also members of the said association. Being aggrieved with, the non-creation and following the proper process of selection, therefore, it is clear how the incumbents from the Research Wing are only being selected and appointed on which criteria basis. Thus, the members of Administrative wings are being deprived for their legitimate claim in absence of any such Recruitment Rules or selection procedure for the said post and only one wing is getting repeated opportunity by pick and choose method without following any recruitment process for the said post. All the members of the Association are affected by such non-action or inaction on the part of the respondents by the way they are selecting the incumbent for the post of Director of Agriculture & Ex-officio Secretary without following any proper procedure.

Further, on one hand, the respondents are claiming that the post of Director of Agriculture & Ex-officio Secretary is being filled up by selection amongst all the Additional Directors of the Agriculture with recommendation of Public Service Commission, on the other hand, they are claiming that the post of Director of Agriculture is in existence which is also reflected in two contrary appointment orders of the respondent no. 3 dated 31.03.2017 & 09.08.2019.

- 11.**It is also observed that the respondents never claimed that the officers from Administrative Wing were also considered but was not found fit. It is further noted that from 2009 onwards initially appointment to the post of Assistant Director of Agriculture (Admn) has to be made in consultation with the Public Service Commission (direct recruitment) and subsequently they would be posted on different posts from Deputy Director to Additional Director of Agriculture by way of transfer i.e. any of the officers from the Assistant Director of Agriculture to the Additional Director of Agriculture may be appointed to the post of Director of Agriculture & Ex-officio Secretary.
- 12.**In view of the above, we are of the opinion that the respondents are making and also taking contrary stands for the purpose of appointment to the post of Director of Agriculture & Ex-officio Secretary without having and / or following any Recruitment Rules. In our considered opinion, the respondents are tried to cover up their latches as they are neither following any proper procedure or Recruitment Rule nor they can show that they have ever considered any officers of the feeder cadre of Administrative Wing for the post of Director of Agriculture & Ex-officio Secretary as all the earlier appointment are made from the Research Wing as per the enclosures of the respondents. Therefore, there is a clear discrimination between the two wings, while filling up the post of Director of Agriculture & Ex-officio

Secretary. Accordingly, we have no alternative but to interfere with the decision of the respondents and set aside the Notification No. 6068 dated 31.03.2017, whereby the respondents no. 3 was appointed to the post of Director of Agriculture & Ex-officio Secretary from the post of Additional Director of Agriculture and also direct the official respondents to modify the Notification dated 09.08.2017 accordingly. Further we are directing the respondent's authority to frame a proper Recruitment Rule for filling up the sanctioned post of Director of Agriculture & Ex-officio Secretary. In the interim, the respondents are also directed to consider the eligible officers of the Administrative Wing for the post of Director of Agriculture & Ex-officio Secretary as per existing procedure of selection and norms, if any, on ad hoc basis till the framing of the Recruitment Rule in subsequent vacancies. Accordingly, the O.A. is disposed of with the above observations and directions. The procedure should be completed within a period of four months from the date of receipt of the order.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)