

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

Case No –OA 409 OF 2018

SUCHITRA MITRA + 61 ORS. 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
<p style="text-align: center;">2</p> <hr/> <p>18.06.2018</p>	<p>For the Applicant : Mr. K. Basu Mr. U.N. Betal Mr. S. Sarkar Learned Advocate</p> <p>For the State Respondent: Mr. Sankha Ghosh Learned Advocate</p> <p>The applicants claim to have been working as Medical Technologists under Department of Health and Family Welfare, Government of West Bengal. These applicants joined in the service during the period from 1995 to 2003. They were appointed on the basis of educational qualifications prescribed under West Bengal Subordinate Health Services (Non-Medical Technical Personnel) Rules which came into force on July 22, 1960 (hereinafter referred to as “the Recruitment Rules of 1960”). The applicants have approached the Tribunal with prayer for direction upon the respondents to allow them to participate in the selection process for recruitment to the post of Medical Technologist of different categories, Grade III in response to advertisement No. R/MT/Phar/Physio./48/2/2018 issued by the respondent No. 4 by treating their educational qualifications as laid down in the Recruitment Rules of 1960.</p>	

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	<p>Mr. K. Basu, Learned Counsel appearing on behalf of the applicants contends that the applicants have fulfilled eligibility criteria for recruitment to the post of Medical Technologist, Grade III in terms of table annexed to the Recruitment Rules of 1960. He further contends that West Bengal Subordinate Health Services Rules of 2009 came into force on August 6, 2009 in addition to and not in derogation of the provisions of Recruitment Rules of 1960. He argues that subsequent Recruitment Rules for the post of Medical Technologists of different categories came into force on December 28, 2016 in addition to and not in derogation of the provisions of Recruitment Rules of 2009. The gist of submission of Mr. Basu is that the present applicants have fulfilled eligibility criteria in terms of Recruitment Rules of 1960 and they have been working under the Department of Health & Family Welfare, Government of West Bengal and as such they may be permitted to participate in the selection process, though they have not fulfilled eligibility criteria in terms of Recruitment Rules of 2016. Mr. Basu has relied upon the case of “The Hon’ble Chief Justice Hon’ble High Court, Calcutta & Ors. V. Anil Kumar Roy and Ors.” (APOT No. 94 of 2011, GA 640 of 2011 with WP 162 of 2011 disposed of on March 31, 2011) in support of his contention that the applicants are entitled to participate in the selection process for the post of Medical Technologist,</p>	

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	<p>Grade III in terms of the advertisement No. R/MT/Phar./Physio/48/2/2018 on the basis of educational qualifications prescribed in the Recruitment Rules of 1960.</p> <p>Mr. Ghosh, Learned Counsel representing the State respondents submits that the applicants have not fulfilled the eligibility criteria in terms of the advertisement and also in terms of Recruitment Rules of 2016 and as such, they cannot participate in the selection process for recruitment to the post of Medical Technologist, Grade III. He further submits that the decision of the Division Bench of the Hon'ble High Court has no manner of application in the present case.</p> <p>The issue which calls for determination is whether the applicants can participate in the selection process for recruitment to the post of Medical Technologist, Grade III without fulfilling eligibility criteria as laid down in the advertisement and in terms of Recruitment Rules of 2016. Admittedly, the applicants were appointed during the period of almost eight years from 1995 to 2003 as Medical Technologists, Grade III on contractual basis under Department of Health & Family Welfare, Government of West Bengal on fulfilment of educational qualifications laid down in the Recruitment Rules of 1960. The subsequent Recruitment Rules of</p>	

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	<p>2009 was framed under proviso to Article 309 of the Constitution of India in supersession of earlier Rules, though the saving clause of the said Recruitment Rules of 2009 indicates that the said Recruitment Rules of 2009 have been framed not in derogation of the provisions of Recruitment Rules of 1960 in case of the employees who have already been appointed under Recruitment Rules of 1960 for the purpose of promotion. Naturally, the Recruitment Rules of 2009 has repealed earlier Recruitment Rules of 1960 by necessary implication, though provision is made in Recruitment Rules of 2009 for saving the interest of the employees who were appointed under Recruitment Rules of 1960 only for the purpose of promotion. Similarly, Recruitment Rules of 2016 framed under proviso to Article 309 of the Constitution of India has specifically repealed Recruitment Rules of 2009, though the provision has been made to protect the interest of the employees appointed under the provisions of the previous Recruitment Rules of 2009 for the purpose of their promotion. So, the saving clause of the Recruitment Rules of 2009 and the Recruitment Rules of 2016 has protected the interest of the applicants with regard to their promotions. Since the issue involved in the present application is not in connection with promotion of the applicants, the applicants are not entitled to get any protection for participation in the selection process along with fresh</p>	

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	<p>candidates due to repealing of earlier Recruitment Rules of 1960 and Recruitment Rules of 2009. Since the present applicants are not entitled to get any protection for participating in the selection process initiated on the basis of the advertisement No. R/MT/Phar./Physio/48/2/2018 by fulfilling eligibility criteria in terms of Recruitment Rules of 1960, we cannot persuade ourselves to accept the contention made on behalf of the applicants that the applicants are deemed to have fulfilled eligibility criteria as per advertisement and in terms of Recruitment Rules of 2016.</p> <p>In the unreported case of “The Hon’ble Chief Justice Hon’ble High Court, Calcutta & Ors. V. Anil Kumar Roy and Ors.” (Supra) Badli workers (ad hoc employees) of the Hon’ble High Court were granted permission to participate in the selection process along with fresh candidates for regular recruitment to fill up Group ‘D’ posts. In the said unreported case, Badli workers (ad hoc employees) fulfilled eligibility criteria for participating in the selection process along with regular candidates, but they could not participate due to age bar. In the instant case the applicants had not fulfilled educational qualifications in terms of the advertisement and in terms of Recruitment Rules of 2016. Accordingly, the unreported case cited on behalf of the applicants is of no assistance to the applicants.</p>	

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SCN.	<p>In our considered view the applicants cannot be permitted to participate in the selection process for recruitment to the post of Medical Technologist, Grade III unless and until they fulfil the eligibility criteria in terms of advertisement published in terms of Recruitment Rules of 2016. The original application is, thus, dismissed.</p> <p>The urgent xeroxed certified copy of the order, if applied for, be supplied to the parties on priority basis on fulfilment of necessary legal formalities.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(R.K. Bag) MEMBER (J)</p>	