

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. P. Ramesh Kumar (Administrative Member)

Case No – OA 828 OF 2018

SACHINDRA NATH PATRA 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 |
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| <p>1</p> <hr/> <p>30.01.2019</p> | <p>For the Applicant : Mr. S. Bhattacharjya, Advocate</p> <p>For the Respondents: Mr. S. Ghosh, Advocate</p> <p>Affidavit of service filed be kept on record.</p> <p>In this application, the applicant has prayed for several reliefs, the relevant portion of which is as under:</p> <p>“(i) The Respondent authorities be directed to consider the appeal / representation dated 09/01/2018 (Annexure : “P-4”) in view of the judgment and decree dated 27/11/2017 passed in Title Suit No.99 of 2009 upon consideration and compliance with the final decision of the Hon’ble Apex Court in respect of appointment of D.D.T. Spray Workers (Malaria Spray Worker) against permanent Group : “D” employee under the Respondent No.3 (C.M.O.H., Midnapore Paschim) as per order of appointment issued by the Directorate of Health Service Government of West Bengal</p> | |

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| | <p>vide Order No. HIB/M/IC-13-08/522/1(9), dated Kolkata, 29th December, 2008 (Annexure: "P-2") with effect from that date till his actual date of superannuation along with all consequential benefit.</p> <p>(ii) The Respondent authorities be further directed to release all the arrear salary, along with other retirement benefits including consequential and incidental benefits of the Group "D" employee under the C.M.O.H., Midnapore Paschim, Respondent No.3 herein in favour of your applicant with interest and damages for last 9 years due to mental agony and financial loss during his hard days to maintain his family members."</p> <p>It has been stated that the applicant was appointed as a D.D.T. Spray Worker in 1975 under the Chief Medical Officer of Health, Paschim Midnapore and had served for 25 years along with other workers who were similarly situated. During his employment, he was getting salary which was subsequently enhanced to the level which all permanent Group "D" workers were drawing. We find from the application that the applicant had filed Original Application, being O.A. 7024 of 1998, praying for certain reliefs which was dismissed on 29th</p> | |

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| | <p>June, 1999. Dissatisfied, the applicant filed writ petition, being W.P.S.T. No. 453 of 1999, which was also dismissed. Thereafter the applicant moved the Hon'ble Supreme Court. The Supreme Court, in S.L.P. (C) No. 1596 of 2001, issued notice upon the respondents and directed maintenance of status quo which was subsequently extended till the disposal of all similar pending appeals. It has been alleged in the application that the respondents without following the order of the Supreme Court had adopted a pick and choose policy and appointed certain persons except the applicant. Thereafter it appears that the applicant had filed a title suit, being No. T.S. 99 of 2009 @ (CIS. Reg. No. 3613 of 2014) in the year 2009 praying for the following reliefs :</p> <p style="padding-left: 40px;">“(a) That it be declared that the plaintiff will be entitled to join the job as Group “D” Category under the C.M.O.H., Medinipore and further be declared that the plaintiff is below the sixty years of age declaring the date of birth is 11/11/1949.</p> <p style="padding-left: 40px;">(b) That the defendants be restricted by an order of injunction from disturbing the plaintiff from his service as a permanent staff as Group “D” within an order of mandatory injunction directing the defendants to issue the joining letter so the plaintiff to join the service for the post.</p> | |

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| | <p style="text-align: center;">(c) That the plaintiff be entitled to get cost of the suit;</p> <p style="text-align: center;">(d) That the plaintiff be granted such other relief or reliefs as he may in law and equity be entitled to;”</p> <p style="text-align: center;">It appears that the said title suit was disposed of on 27th November, 2017 by passing a judgement and order the relevant portion of which is as under.</p> <p style="text-align: center;">“....that the suit be and the same is decreed contest against the defendants without any cost.</p> <p style="text-align: center;">It is hereby declared that the plaintiffs date of birth is 11-11-1949. And it is further declared that the plaintiff was entitled to join as Group D category under the CMOH, Midnapore.”</p> <p style="text-align: center;">It is submitted by Mr. S. Bhattacharjya, learned advocate for the applicant that since it has been declared by the civil court that the plaintiff’s date of birth is 11th November, 1949, and as it has been declared that the plaintiff was entitled to join in the Group D category, and when other similarly situated persons have got the benefits and as on the date of filing the suit, he was within the age of 60 years, orders be issued for consideration of the</p> | |

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| | <p>representation dated 9th January, 2018 in the light of the judgement and decree.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents submits that in view of the provisions contained in Section 15 of the Administrative Tribunals Act, 1985, civil Court has no jurisdiction to declare that the plaintiff is entitled to be appointed under Group “D” category under the C.M.O.H., Midnapore. Moreover as the cause of action, if at all, arose in the year 2009, it is hit by Section 21 of the 1985 Act.</p> <p>Heard Mr. Bhattacharjya and Mr. Ghosh. Section 15 of the 1985 Act, inter alia, postulates that the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to –recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State. In West Bengal, the West Bengal Administrative Tribunal is functioning since 1995.</p> <p>In the instant case, as the appointment is with regard to a civil post under the State, in our view, the Learned Civil Judge (Jr. Division), 3rd Court, Paschim Medinipore, had no jurisdiction to declare that the plaintiff</p> | |

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| SCN. | <p>is entitled to join as Group D category under the Chief Medical Officer of Health, Midnapore. That apart as the West Bengal State Administrative Tribunal has been exercising its jurisdiction since 1995, and as the cause of action, if any, arose in 2009, it is hit by Section 21 of the 1985 Act which prescribes the period of limitation. In view of the peculiar facts and circumstances of the case, we have dealt not only on the point of limitation, but also on the point whether the Civil Court has the jurisdiction to entertain an application with regard to appointment to a civil post under the State. Hence, for the reasons as aforesaid, the application is dismissed.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p> | |