

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER**

**Case No. – OA 840 of 2022**

**Arnab Roy - Vs - The State of West Bengal & Ors.**

Serial No. and  
Date of order

04  
06.03.2024

For the Applicant : Mr. M.N. Roy,  
Mr. B. Nandi,  
Learned Advocates.

For the State Respondents : Mr. G.P. Banerjee,  
Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the reasoned order passed by the respondent No.2, Secretary, Department of Health and Family Welfare on 11.07.2022. In compliance of the Tribunal's direction in OA-50 of 2020, this reasoned order was passed. The issue relates to allowing private practice to the applicant who is an Ayurvedic Physician and belongs to the cadre of West Bengal Ayurvedic Education Service. The reasoned order states that this Ayurvedic Service is a non-practicing service and only by amendment of the related rule any member of Ayurvedic service can do private practice.

In response to what the Secretary has relied for rejecting the application for private practice, Mr.M.N.Roy, learned counsel for the applicant has drawn my attention to the West Bengal State Ayurvedic Health Service Act, 2002, appearing at page 78 is Section 6. The relevant part of this Section 6 is as under:

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6. (1) *The State Government may, by notification, declare any undergraduate or post-graduate Ayurvedic Medical College or other ayurvedic teaching institution together with the Hospital, if any, attached to such Ayurvedic Medical College or ayurvedic teaching institution to be a non-practising institution with effect from such date as may be specified in the notification.*

(2) *Upon such declaration, no person, holding any post on terms and conditions for practice in such Ayurvedic Medical College or other ayurvedic teaching institution or the Hospital attached thereto, shall be allowed to hold such post on terms and conditions for practice.*

*Provided that any person holding a non-teaching post in such Ayurvedic Medical College or other ayurvedic teaching institution or the Hospital attached thereto on terms and conditions for practice may exercise an option for practice or non-practice without any change of post or designation within a period of ninety days from the date of coming into force of this Act or within such extended period as the State Government may be notification specify.”*

Submission of Mr.Roy is from the foregoing section, it can be understood that an institution has to be first declared as a non-practicing institution. Once such an institution has been declared as “non-practicing”, thereafter, no person will be able to practice in private places. The Institute in reference, J.B.Roy State Ayurvedic Medical College and Hospital has not been declared by the State Government as a non-practicing institution. Therefore, the question of not allowing the

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applicant for private practice does not arise.

In responding on behalf of the state authorities, Mr. Banerjee, learned counsel submits that Rule 9 of the West Bengal State Ayurvedic Health Services Act, 2002 makes it very clear that such a post held by the applicant under West Bengal Ayurvedic Educational Service is a non practising post. Referring to Rule 6 as contested by Mr. Roy which requires a Notification to declare any Ayurvedic Institute to be a non practising institution, Mr. Banerjee submits that it is the discretion of the State Government whether such Notifications will be published or not. In absence of such Notification, it does not mean that Rule 9 is undermined and superseded by Rule 6. Mr. Banerjee also highlights another point that by passing a reasoned order, the Head of the Department, being the Secretary of Department of Health & Family Welfare has clearly spelt out the policy of the department declaring such post as a non practising post. According to his interpretation of the Act, such post is a non practising post and such Rule has not been challenged by the applicant in this application.

For further submissions, Mr. Roy prays for accommodation with liberty to file relevant judgement of the Hon'ble Apex Court.

Let the matter appear under the heading Orders on **31.07.2024.**

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**(SAYEED AHMED BABA)**  
**OFFICIATING CHAIRPERSON AND MEMBER (A)**