

**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 136 OF 2024**

**DR. KUNTAL GHOSH & OTHERS - Vs - THE STATE OF WEST BENGAL & OTHERS.**

Serial No. and

Date of order

05

15.05.2025

For the Applicants

:

Mr. Sankha Ghosh  
Mr. Gourav Haldar  
Advocates

For the State Respondents

:

Mr. Goutam Pathak Banerjee  
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 23<sup>rd</sup> 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 orders passed by the Principal Secretary, Health & Family Welfare Department being No. DAY/638/2023 dated 12<sup>th</sup> July, 2023, DAY/639/2023 dated 12<sup>th</sup> July, 2023 and DAY/577/2022 dated 16.08.2022 in terms of direction of this Tribunal in an earlier application. The Secretary of the Department passed the reasoned orders in the matter relating to absorption of the applicants into permanent establishment as Ayurvedic Medical Officers.

The Petitioners have been performing their duties as Ayurvedic Medical Officers for the last 13 years and still continuing. Extensions to their service on contractual basis have been given by the respondent authorities pointed to the fact that neither these posts were filled through direct recruitment nor the service of the petitioners as Ayurvedic Medical Officers have been found dissatisfactory.

Referring to Uma Devi's judgement, Mr.Roy, learned counsel

points out that their selection was formalised by a high powered Committee comprising Director of Medical Education, Additional Secretary (AYUSH) and Director of Ayurved. The notice for such selection was well covered in the public domain and these petitioners participated in the process and were successful. Therefore, their selection was in terms of Uma Devi's judgement and such irregular appointment can be regularised as distinct from illegal appointment. Further submission is that as evident from Memo. 945/ 2016 dated 30.11.2016, the petitioners were appointed in the post of Senior Ayurvedic Medical Officers against the sanctioned post as certified by the Director of Ayurveda. Therefore, the question of these appointments were not made against sanctioned post is not a valid point. Therefore, being appointed against sanctioned post it is the legitimate right of the petitioners to be absorbed into permanent and regular establishment. It has also been pointed out by the learned counsels that incidence of absorption of similar post on contractual basis can be seen in the order dated 31.03.2008. By this order and by approval of the competent authority, 11 Lecturers who had been working on contractual basis were regularised against permanent vacancy.

Mr.G.P.Banerjee, learned counsel for the State has submitted the following points.

It is not disputed nor denied by the petitioners that they were appointed and their services extended from time to time purely on contractual basis. The petitioners were well aware of this fact and undertakings were also given by them at the time of engagement that they will not claim in future the right to be absorbed into permanent capacity. In terms of such nature of contract, the petitioners willingly

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agreed for extension of their contracts from time to time.

Having heard the submissions and after examination of the records, the Tribunal has come to the conclusion that the applicants, although aware of their nature of service as contractual, but knowingly did not participate in the selection process when vacancies were filled up through the West Bengal Health Recruitment Board. Further, the prayer of these petitioners in the first round of litigation before this Tribunal which was in OA-881 of 2018 and OA-882 of 2018 was also same. In the order dated 21.03.2022, it is pointed out that their prayer (a) was for a direction to the respondent authorities to “*withdraw and cancel the impugned advertisement dated 9-10-2018*”. From this prayer, it becomes clear that these petitioners never ever wanted to participate in the selection process for regular appointment, thus, the opportunity for regular appointment was not consciously availed. Having decided not to participate in the selection process, now the applicants cannot pray for absorption in the same post.

Thus, finding no merit in the prayers, this application is disposed of without passing any orders.

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

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1. VINOD KUMAR V. UNION OF INDIA, reported in (2024) 9 SCC 327.
2. Jaggo v. Union of India reported in 2024 SCC OnLine SC 3826.
3. Shripal and Another v. Nagar Nigam, Ghaziabad reported in 2025 SCC OnLine SC 221.
4. State of Karnataka and Others v. M.L.Kesari and Others reported in (2010) 9 SCC 247.