

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 173 of 2022

Dip Sarkar & Ors. -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order For the Applicants : Mr. G.P. Banerjee, Ld. Advocate.
Ms. A.P. Banerjee, Ld. Advocate.
For the State respondent : Mr. S. Ghosh, Ld. Advocate.

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23.08.2023

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 on 02.03.2022 in terms of the direction of the Tribunal passed in OA 169 of 2021.

Briefly, the applicants moved the Tribunal since the advertisement issued by the respondent to recruit Medical Technologist (Lab) Grade-III did not have a provision of allotting marks for experience in private institutions. Although, the same advertisement allowed upto 10 marks for those applicants having experience in Government organisations. In the reasoned order, the respondent states that it is the “prerogative” of the respondent to determine the qualifying criteria for the applicants. It is also stated that the respondent authorities preferred candidates who have experience working in the Government sector. Thus, the respondent by using its discretionary powers kept a provision of giving 10 marks to those who have Government experience.

Referring to the above submission of the respondent, Mr. Banerjee highlights a fact that for a similar selection conducted in the year 2018, there was a provision of upto 5 marks for those candidates having experience in the private sector. It is submitted that the respondent has violated the general principles of justice by refusing to allow additional marks as being allotted to those from Government sector and thus creating a separate privileged class of applicants.

Mr. Ghosh appearing on behalf of the State respondent submits that the reason why no extra marks provided in the private sector has been clearly expressed in the reasoned order.

After hearing the submissions of the learned counsels and examining the documents, the Tribunal has observed the following :

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- i) For the recruitment to the same post of Medical Technologist (Lab) Grade-III in the year 2018, there was a provision of upto 5 marks against experience in the recognised private institutions. However, in the advertisement floated for the same post in 2020-21, such provision of allotting marks to candidates of having experience in recognised private institutions has been completely removed. Although, provision of allotting 10 marks of having experience in Government sector which was there in the 2018 advertisement has been again provided in the advertisement of 2020-21.
- ii) On closure examination of the advertisement, it appears that the candidates will be assessed and selected on the basis of their Higher Secondary, Diploma/Bachelor Degree and on experience as a Medical Technologist (Lab) Grade-III. A total of 85 marks has been reserved for assessment in these three parameters. Thereafter, the short listed candidates will be interviewed and an additional 15 marks has been kept for such *viva voce*. It is observed that although the post is of a Medical Technologist (Lab) Grade-III, there does not seem to be any hands-on or practical assessment of the candidates in any of the Labs and machines. A total of 75 marks out of 100 reserved for assessment on the basis of the candidates Higher Secondary and Diploma/Bachelor is rather very theoretical and impractical. By the very word 'Technologist', it implies that the candidate has to be conversant with functioning of medical devices and machinery. The selected candidates are supposed to expertly handle and operate these medical machines for which the Board has not set any marks to assess their capability in this regard. Therefore, the Tribunal is forced to view their advertisement sceptically. It would have been more practical and realistic if there was a certain marks allotted for assessing the candidates in operating the medical machineries. Since it is a policy decision of the

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respondents, the Tribunal refrains from making any further comments on the eligibility criteria.

- iii) In terms of the Tribunal's direction in OA 169 of 2021, the Secretary, West Bengal Health Recruitment Board passed a Reasoned Order in which the prayer for allotting 5 marks of experience in private sector has been rejected. Such rejection was supported on the ground that it is the "prerogative of the recruiting authority to set qualifying standard". The Tribunal has not come across any relevant Law or Rule by which such discretionary powers have been given to the Recruitment Board. The prerogative and discretionary powers invoked and exercised by the recruitment authorities cannot be on whims and fancies of the officials. Such discretion has to be within the confines of the law and unless any Law or Rule specifically places such trust upon the officials, the officials cannot take their decisions without such mandate.
- iv) The reasoned order also seems to be clearly prejudiced in favour of the candidates having experience in Government sector as explicit from the following sentence in the Reasoned Order : "As such for the purpose of short listing of better candidates, WBHRD has preferred candidates who are working under the Government sector".

Why would the recruitment agency, a public body recruiting candidates from all sectors including the private sector expressed their prejudice before the commencement of selection process in favour of a particular category of candidates ? The pre-selection conclusion that the Govt. sector candidates are better is not only absurd but appears to be premediated biasness. Such biasness before the selection itself is bound to leave doubts in the minds of candidates about the impartiality of this public institution. The recruitment authority is supposed to be an impartial body without having any preference for any category of

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candidates. In the Reasoned Order, the recruitment authority has not only been prejudiced for a particular category of candidates but has also in the same sentence implied negative attitude towards the private sector. Therefore, the Tribunal finds that the recruitment authority had completely disregarded and rejected any sort of experience a candidate may have gained in the private sector. This is not only arbitrary but against the principles of natural justice.

- v) The recruitment authority speaks of benefit of “standardising the quality of candidates” if 10 marks are allotted to those candidates who have experience in the Government sector. In the opinion of this Tribunal, such statement is not only prejudicial but also smacks of deep-rooted biasness against the private medical infrastructure. It is not understood how the 10 marks given to a set of candidates will help in standardising the quality. Will the candidates coming from the private sector background cannot be standardised ?
- vi) It is a well settled law that any advertisement for recruitment of any post has to be on the basis of the Recruitment Rules framed by the Government. The Notification No. HF/O/MA/2171/2M-2/2014 dated 28.12.2016 is the Recruitment Rule by which such an advertisement was published by the Board. After a careful reading of this Notification relating to the post of Medical Technologist cadre, it is clear that there is no mention about experience, neither in the Government nor in the private sector. The recruitment body cannot base such prerogatives and their decisions on the basis of such Rule. The Rule is completely silent about the experience part.
- vii) Neither in the Recruitment Rule nor the learned counsel appearing on behalf of the respondent authority has shown me any document which could be the resolution of the Recruitment Board in which they have decided not to allot any marks to those candidates

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having experience in the private sector. Therefore, it is the assumption of this Tribunal that such decision to leave out the experience in private sector was neither on the basis of relevant Recruitment Rule nor on the basis of a decision of the recruitment body in any of its meetings. It was a decision taken by the officials themselves.

- viii) The Tribunal has also observed that despite its direction through an order dated 01.02.2023, the respondents have neither initiated the selection process for this post nor allowed the applicants to participate.

In view of the above observations, it is the finding of this Tribunal that the Reasoned Order passed by the Secretary and Controller of Examinations, West Bengal Health Recruitment Board dated 02.03.2022 is not in conformity with any rules and thus, void in law and quashable. Accordingly, the Reasoned Order is quashed and set aside with the following directions to the respondent No. 5,

Secretary and Controller of Examinations, West Bengal Health Recruitment Board :

- 1) Initiate the process of selection for the post of Medical Technologist (Lab) Grade-III within four (4) weeks from the date of communication of this order.
- 2) Allow the applicants to participate in the said selection process if they are found to be otherwise eligible, and
- 3) Allot one mark each year upto maximum 5 marks if the certificates produced by them are found to be from the recognised private sector and are acceptable.

Accordingly, the application is **disposed of**.

CSM/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)