

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 286 of 2023

Madhusudan Dasgupta and Others . - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicants	: Ms. A. P. Banejee, Advocate.
<u>04</u> 20.06.2024.	For the State Respondents	: Mr. G. P. 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 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

In this application the applicants have prayed for a direction to the respondents to allow the contractual employees eligible for benefit of age relaxation in the selection process for recruitment to the post of Assistant Superintendent (Non-Medical) Gr.- II.

Submitting on behalf of the applicants, draws attention to the set of advertisements appearing from page 36 onwards, in particular, reference is made to Note 6 at page 37. The Note mentions that apart from regular government employees, contractual workers are also allowed for age relaxation, provided they submit a certificate from the appropriate authority. Similar advertisement was also released for the same post and on the same day for age relaxation in which the word "Contractual" is not mentioned. Thus, it is implied that age relaxation is admissible only for regular government employees and not for contractual workers. Mr. A. Biswas had submitted during the last occasion is that by releasing the second set of advertisement on the same day for the same post, the authorities have arbitrarily disallowed the contractual workers to avail such age relaxation. Therefore, this being violative of natural justice, the operation of this advertisement be suspended. Submitting on behalf of the respondent authorities, Mr. Banerjee, however, had submitted that, to allow or not to allow

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contractual workers the benefit of age relaxation is the sole prerogative of the Government and this being a policy matter, the Tribunal should not interfere. Reference is also made to the reasoned order passed on 03.01.2023 passed by the Secretary and Controller of Examinations, West Bengal Health Recruitment Board in which particular attention is drawn to 3rd Para of the reasoned order. Appearing at page 73 of the application it is stated that the applicants being contractual employees have themselves admitted that they are not govt. employees and such age relaxation benefit is not available to them.

It appears from the contention of the applicants that by an advertisement quoted on 21st July, 2020, contractual workers were also covered age relaxation. In the reasoned order passed by the Secretary & Controller of Examinations on 03.01.2023 publication of such an advertisement allowing the benefit of age relaxation to contractual workers is denied. The reasoned order mentions that only one Advertisement being No. R/Asstt. Supdt. (NM) / 03(1) / 2020 was issued on 21.07.2020, in which, such age relaxation was not made for applicants working on contractual basis in the government sector. Such age relaxation was available only for government employees. Further, the reasoned order distinguishes between regular government employees and those who have been appointed on contractual basis. Therefore, in the opinion of the respondent authority, the applicants, being contractual employees, were not entitled for any such age relaxation.

The Tribunal would not like to get into the controversy whether two advertisements were issued or not. It would rather rely on the statement of the Secretary & Controller of Examinations, who being a senior and responsible government official has placed in records that only one advertisement was issued, copy of which appears in this

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application at page nos. 36 to 38. In this advertisement, relaxation has been allowed for government employees only on production of certificate from the appropriate authority. With the above observation, the Tribunal comes to the conclusion that it is the prerogative of the State Government whether contractual employees will be extended the benefit of age relaxation or not. Since it is the policy matter, it is best to leave the decision at the discretion of the State Government. Further, the Tribunal also finds that these applicants have been working on contractual basis in the post of Facility Level Quality Manager and Counsellor. The post for which they have applied was the Assistant Superintendent (Non - Medical). Had the present post of the applicants been same, i.e. Assistant Superintendent (Non - Medical), perhaps their claim would have been stronger. A contractual employee working in a completely different sub – sector of Health Department, Facility Level Quality Manager and Counsellor, may not have the requisite experience and thus, the natural claim for being absorbed or being allowed to participate in the recruitment process for the post of Assistant Superintendent (Non - Medical) Gr. II is not a tenable reason.

Having observed the above points, the Tribunal comes to the conclusion that their prayers in this application for a direction to the respondent authority to allow them the benefit of age relaxation have no merit. Therefore, this application is disposed of without passing any orders.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

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