

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Justice Soumitra Pal, Chairman**

**The Hon'ble Sayeed Ahmed Baba, Administrative Member**

**Case No. – OA 354 OF 2022**

**ALOKE KUMAR SARDAR & OTHERS - VERSUS - THE STATE OF WEST BENGAL & OTHERS**

Serial No. and  
Date of order

03  
22.07.2022

For the Applicants : Mrs.Sonali Mitra  
Advocate

For the State Respondent : Mr. Goutam Pathak Banerjee  
Advocate

For the Public Service Commission,  
West Bengal : Mr.Sourav Bhattacharjee  
Advocate

Let affidavit of service filed today be kept on record.

In the application, Alope Kumar Sardar, Pronab Karmakar, Samiran Talukdar and Emdad UI Islam, the applicants have prayed for certain reliefs, the relevant portion of which is as under:

*“a) An appropriate order and/ or direction to the respondent authority to act in accordance with law and forthwith take appropriate steps for issuance of fresh notification and/ or notifications so that your applicants are not debarred from getting government jobs as Compounders -cum- Dressers upon setting aside the impugned notices being Annexure “G” to this application and the Notification no. HF/O/AYUSH/612/3H-84/10(Pt-II) / 1(7) dated 7<sup>th</sup> August, 2018 Annexure “E” to ensure conscionable justice to your applicants;*

*c) Leave may be granted for jointly moving this application.”*

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Leave granted in terms of prayer “c” of the application.

Mrs.S.Mitra, learned advocate for the applicants submits that the applicants earlier had moved an application being OA-100 of 2004 and OA-731 of 2005 which were allowed by judgement delivered on 19<sup>th</sup> February, 2008 by directing the Director of Homeopathy, the State respondent to issue appointment letters to the petitioners on compliance of necessary formalities. Aggrieved the State respondents preferred a writ petition being WPST-568 of 2009, The State of West Bengal & Others Vs. Ratan Chandra Bera & Others which was allowed by the High Court by setting aside the order passed on 19<sup>th</sup> September, 2008. Aggrieved, the original applicants preferred Special Leave Petition being C.C. 16494 (Civil) of 2012 which, by order dated 28<sup>th</sup> September, 2012 was dismissed by the Supreme Court. Submission is as thereafter the Joint Secretary, (Ayush), Government of West Bengal, the respondent no. 4 issued a notification dated 7<sup>th</sup> August, 2018 for creation of 151 posts of Homeopathic Pharmacists by surrendering equal number of posts of Homeopathic Compounder -cum- Dresser (HCCD), this application has been filed ventilating the grievances of the applicants who are Homeopathic Compounder -cum- Dressers. Submission is if the impugned notification dated 7<sup>th</sup> August, 2018 is given effect to it would jeopardise the future of the applicants. Submission is though the applicants have filed this application without filing a representation, however, as by letter, dated 10<sup>th</sup> September, 2021 justice has been sought for before the Director of Homoeopathy, the respondent no. 6 ventilating their grievances, appropriate order may be passed.

Mr.G.P.Banerjee, learned advocate appearing on behalf of the State respondents submits that since the order passed by the Tribunal on 19<sup>th</sup> February, 2008 was set aside by the High Court and SLP filed by the original

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applicant before the Supreme Court was dismissed and as the letter dated 10<sup>th</sup> September, 2021 addressed to the Director of Homeopathy, Department of Health and Family Welfare, the respondent no. 6 is silent about the proceedings before the Tribunal, the High Court and the Supreme Court, no order may be passed.

Mr.S.Bhattacharjee, learned advocate appearing on behalf of the respondent no. 7 submits that the applicants have no grievance against the Public Service Commission, West Bengal.

Heard learned advocates for the parties.

By the judgement delivered on 19<sup>th</sup> February, 2018 in OA-100 of 2004, and in OA-731 of 2005, the Tribunal had allowed the applications directing the Director of Homeopathy, the respondent no. 6 therein to issue appointment letters to the applicants as per panel strictly according to merit after observing necessary formalities and according to the rules. Aggrieved, the State preferred a writ petition being WPST 560 of 2009. The High Court had set aside the order of the Tribunal dated 19<sup>th</sup> February, 2008 and also the order dated 19<sup>th</sup> September, 2008 passed in the review petition being RA-6 of 2008. Aggrieved, the original applicants preferred Special Leave Petition being C.C.16494 (Civil) 16494 of 2012 (Ratan Chandra Bera & Others Vs. State of West Bengal Bengal & Ors.). and the Supreme Court by order dated 28<sup>th</sup> September, 2012 had dismissed the petition. Thereafter, on 7<sup>th</sup> August, 2018, the Joint Secretary, (AYUSH), Government of West Bengal, the respondent no. 4. had issued the impugned notification dated 7<sup>th</sup> August, 2018, the relevant portion of which is as under:

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*“Creation of posts of Homoeopathic Pharmacists was under active consideration of State Government since some time past.*

*Now after careful consideration of the matter the undersigned is directed by the order of the Governor to say that the Governor is pleased to accord approval for creation of 151 (one hundred fifty one) posts of Homoeopathic Pharmacists by surrendering equal no. of posts of Homeopathic Compounder -cum- Dresser (HCCD).*

*2. This order is issued with the concurrence of the Finance Deptt. vide U.O. No. Group P2/2018-2019/0131 dt. 21.05.2018 and with the approval of the cabinet vide their U/O No. CAB(D)-1055 dt. 30.07.2018.”*

Admittedly, judgement was passed by the Tribunal on 19<sup>th</sup> February, 2008 in OA-100 of 2004 and in OA-731 of 2005 allowing the original applications and directions were issued for granting appointment letters to the applicants. Aggrieved, the State respondents preferred a writ petition being WPST-568 of 2009. The said writ petition was allowed by setting aside the order of the Tribunal dated 19<sup>th</sup> February, 2008. Aggrieved, the original applicants preferred SLP before the Supreme Court and the Supreme Court by order dated 28<sup>th</sup> September, 2012 had dismissed the said petition. Now the applicants have challenged the notification dated 7<sup>th</sup> August, 2018. We find that the Government has accorded approval for creation of 151 Homoeopathic Pharmacists by surrendering equal number of posts of Homoeopathic Compounder cum- Dresser. In our view, this is a policy decision of the State.

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On a query, learned advocate for the applicants has submitted that no proper ground has been taken challenging the said notification which is result of the policy decision of the State. Perusing the letter dated 10<sup>th</sup> September, 2021 being Annexure- "F" to the application, we find that it is bereft of any fact as neither it mentions about the filing of the original applications being OA- 100 of 2004 and OA 731 of 2005, nor does it mention that subsequently the High Court in WPST-568 of 2009 had allowed the writ petition filed by the State and the SLP filed by the original applicants before the Supreme Court was dismissed on 20<sup>th</sup> September, 2012. Since no grounds have been taken challenging the policy decision of the State, as in the letter dated 10<sup>th</sup> September, 2021 demanding justice facts have been suppressed and no representation was filed by the applicants ventilating their grievances before the State authorities before moving the application, no order is passed on the application. The application is dismissed.

(SAYEED AHMED BABA)  
MEMBER(A)

(SOUMITRA PAL)  
CHAIRMAN

BLR