

**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 58 OF 2024**

**DR. KRISHNENDU SAHA & ANR. - Vs - THE STATE OF WEST BENGAL & OTHERS**

Serial No. and  
Date of order

For the Applicants : Mr.K.Saha  
(Appears in person)

For the State Respondents : Mr.Sankha Ghosh  
Advocate

06

13.12.2024

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.

The applicant has prayed for a direction to the respondent authorities to “open the website of WBHRB for online registration for recruitment of 33 posts of Homoeopathic Lecturers”.

Mr.S.N.Ray, learned counsel submits that in this regard a representation has been filed before the respondent authorities for consideration of the above prayer.

The Tribunal has noted that the representation mainly agitates about giving them age relaxation. From the representation, it appears that the applicants are well over 40 years old and thus, not entitled to apply for such post. However, the relief sought for as prayers in this application does not mention anything about age relaxation.

The West Bengal Health Recruitment Board published a notice for recruitment to the post of Homoeopathy Lecturer under different fields of specialisation dated 16.10.2023. The applicants though desired, but could not participate due to their overage. The upper age limit being 40 years was exceeded by applicant Dr. Saha who was 57 years and Dr. Verma at 50 years on the day the advertisement was issued.

In a similar case, the Hon'ble High Court in W.P.S.T. 47 of 2024 had refused to pass any interim relief to the applicants and advised the Tribunal to hear the matter expeditiously on merits. The relevant part of the order is as :-

*“In view thereof, the petitioner’s prayer for interim relief is refused. We have been informed that both the petitioners have crossed the age of 50 years and as such, in our opinion, the issue raised by the petitioners before the learned Tribunal should be decided expeditiously. Accordingly, we direct the learned Tribunal to dispose of the original application on merits without being influenced by any of the observation made in the order dated 11th March, 2024 on the returnable date or as expeditiously.”*

The Tribunal has been enlightened by submission from the State respondents that on a similar prayer by another set of applicants, this Tribunal in OA-5811 of 2008 observed that the applicants were not entitled to get any relief. The relevant part of the order is as :-

*“We, however, after going through the parent Rule of 1983 and going through the advertisement of 2008 feel that, there was certainly some omission in the advertisement itself and for this reason to remove all controversy in future, we will direct the appointing authority to make explicit provision for age relaxation for exceptionally qualified candidates as per extant rules.*

*To sum up from our discussion, when we hold that there is nothing to challenge the constitutional validity of the Act of 2007, we observe that the petitioners are not entitled to get any relief regarding continuation of office by the 29 persons and at the same time they cannot call in question the appointment of those persons who were recruited*

*following the advertisement of June 2008”.*

Dr. Saha makes the following submissions.

(i) Though he and his colleague prayed for a direction to the respondent authorities to allow them to apply online by having the Board’s website accessible, but such link has now become inaccessible, therefore, he prays for a direction to allow the applicants to file their applications through the offline mode.

(ii) Though accepting the fact that both the applicants have crossed the maximum age limit of 40 years at the time of apply, Dr.Saha refers to the Tribunal’s order in OA-5811 of 2008. In this matter, the Tribunal had directed the respondent authority to “make explicit provision for age relaxation for exceptionally qualified candidates as per extant rules.

(iii) It has also been submitted that the advertisement did not follow the entire norms as laid down in the 2<sup>nd</sup> Schedule of the Homoeopathic Central Council Act, 1973. When this advertisement was assailed before this Tribunal in OA-5811 of 2008, the Tribunal observed the following and disposed of the application.

*“We, however, after going through the parent Rule of 1983 and going through the advertisement of 2008 feel that, there was certainly some omission in the advertisement itself and for this reason to remove all controversy in future, we will direct the appointing authority to make explicit provision for age relaxation for exceptionally qualified candidates as per extant rules.*

*To sum up from our discussion, when we hold that there is nothing to challenge the constitutional validity of the Act of 2007, we observe that the petitioners are not entitled to get any relief regarding*

*continuation of office by the 29 persons and at the same time they cannot call in question the appointment of those persons who were recruited following the advertisement of June 2008.*

*In view of our discussion, at this stage, we find no merit in the original application as well as in the prayer of the added applicant Mr. Krishnendu Saha and we, therefore, dispose of the original application and the case of added applicant without any order as to cost.”*

The applicants aggrieved by such an order of the Tribunal, two of the petitioners in OA-5811 of 2008, excluding the present applicants Dr. Saha and Dr. Verma prayed for relief, the Hon'ble High Court disposed of the application with the following observations:

**“FOURTH ISSUE**

*“The petitioners have crossed their age in view of the pendency of the 2002 advertisement and the protracted litigations. It is for the State Legislature to consider their fate in a peculiar circumstance as to whether they could be given appropriate age relaxation even beyond forty years. The court of law, however, is not entitled to give any direction on that score. We only observe that the Government should look into the aspect dispassionately.*

*In case the petitioner gets appropriate relaxation of age and if they qualify for the post they should be considered in the next recruitment process for the existing vacancies including those twenty nine vacancies that would be arising in view of the foregoing judgment and order.”*

Flowing from the above order of the Tribunal relating to

**ORDER SHEET**

Form No.

**DR. KRISHNENDU SAHA & ANR.**

Vs.

Case No : **OA 58 OF 2024**

**THE STATE OF WEST BENGAL & OTHERS.**

---

age relaxation, it is clear that the State Government did not make any special provisions for extending the upper age limit beyond 40 years. After the recruitment process of 2008, the State respondents issued two more advertisements in subsequent years 2017 and 2019. Though the applicants were willing to participate, but since their age had crossed the upper age limit and since the State Government had not made any special provisions for relaxation of upper age limit, the applicants could not participate in those two selection processes as well. The applicants again being aggrieved had approached this Tribunal and the Tribunal after hearing the matter OA-173 of 2018 dismissed the application.

Concluding the hearings in this matter, the Tribunal has come to this decision that the applicants are ineligible to apply for participation in the selection process for the post of Homoeopathy Lecturers due to their over-age. Relaxation of their upper age limit, is the sole direction of the Government and no such special relaxation has been made in their favour. Thus, finding no merit in the prayers of the applicants, this application is dismissed.

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

BLR