

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN &**

HON'BLE SAYEED AHMED BABA, **ADMINISTRATIVE MEMBER.**

Case No. – OA 759 of 2019.

DR. DEBAJYOTI MONDAL- VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mrs. Seba Roy, Mr. Sukalpa Seal, Advocates.
<u>13</u> 11.5.2022	For the State respondent No.1 and 2	: Mr. G.P. Banerjee, Advocate.
	For the Health Recruitment Board Respondent no. 3 & 4	: Mr. S. Ghosh, Advocate.

At the very outset, Mrs. Seba Roy, learned advocate for the applicant submits that leave may be granted to add the Chairman of the West Bengal Health Recruitment Board as a party respondent by amending the cause title of the Original application.

Leave granted. Since Mr. S. Ghosh, appearing on behalf of the West Bengal Health Recruitment Board, accepts service of notice, no further copy of the application need be served on the added respondent.

In this application, Dr. Debajyoti Mondal, the applicant has prayed for several reliefs, the relevant portion of which is as under :-

“a).....To declare that the applicant is entitled to be empanelled for being appointed to the post of Dental Surgeon cum clinical Tutor/Demonstrator in West Bengal Dental Education Service under Health and Family Welfare Department, Government of West Bengal;

b) To direct the respondents' No. 1 to 4 to cancel the existing two list of recommendation;

c) To direct the respondents' No. 1 to 4 to include the name of the applicant as a selected candidate after preparing a fresh panel by strictly adhering to the necessary essential qualification as mentioned in the advertisement dated 09-10-2018, being Advertisement No. R/DSTD/54(1)/2018;

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d) To direct the respondents' No. 1 to 4 to appoint the applicant in the post of Dental Surgeon cum Clinical Tutor/Demonstrator in West Bengal Dental Education Service under Health and Family Welfare Department, Government of West Bengal at par with the other recommended candidate...".

The matter was admitted. Directions were issued to file reply and rejoinder. Reply and rejoinder have been filed by the respondent no. 3 and 4. Though Dr. Satyaki Das, the private respondent no. 5 was served with a copy of the application as evident from the affidavit of service affirmed on 20th September, 2019, however, the said private respondent has not appeared at any stage of the proceedings.

The applicant enrolled himself as Bachelor of Dental Surgeon in 2008 and passed the examination in 2012. After completion of one year internship, he was conferred the degree of Bachelor of Dental Surgery in 2013 by the West Bengal University of Health Sciences. He worked at Dr. R. Ahmed Dental College & Hospital, Kolkata for obtaining professional experience for one year and had performed his duty for a continuous period of one year starting from 1st November, 2013. Thereafter, the applicant enrolled himself for Master of Dental Surgery Degree in 2015 and passed the examination and was conferred the degree of Master of Dental Surgery in the year 2018 by the West Bengal University of Health Sciences.

On 9th October, 2018, the West Bengal Health Recruitment Board issued an advertisement for the post of Dental Surgeon cum Clinical Tutor/Demonstrator in West Bengal Dental Education Service under Health and Family Welfare Department, Government of West Bengal. In the said advertisement annexed to the application, it was mentioned that one year professional experience is an

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essential qualification for the post. He appeared in the interview and documents were verified in the office of the respondent no. 4. Thereafter, fifty-one candidates were recommended for the said post. Subsequently, a second list of four recommended candidates was published. However, the name of the applicant did not appear in any of the lists. On 28th June, 2019, the applicant made an application under the Right to Information Act, 2005 before the State Information Officer and Deputy Secretary to the Government of West Bengal, West Bengal Health Recruitment Board. The applicant received the reply dated 19th July, 2019 wherefrom he found that he had obtained 73 marks in the selection process and the last selected candidate had scored 73.5 marks. Though under the advertisement under the heading "Publication" ten marks (maximum) were allotted for two publications and though two publications were submitted by him, he was not awarded any marks for said publications which were published in index journals. It has been stated that one Dr. Reshmi Sen who had applied for the post had been informed that the last selected candidate had scored 73 marks. It has been alleged that on an information received from the official website Dr. Satyaki Das, the private respondent no. 5, who was recommended for the post, did not have one year professional experience as envisaged in the advertisement.

Mrs. Seba Roy, learned advocate for the applicant referring to the advertisement submits though it was essential to have one year professional experience, as Dr. Satyaki Das was not having the said experience, which is evident from paragraph 7 of the reply, appropriate order may be passed cancelling the candidature and appointment of the respondent no.5. Further though two publications of the applicant were published, the respondent no. 3 and 4 erred in not awarding marks for

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two publications, which were published in two index journals – “International Journal of Applied Dental Sciences” and in “Clinical Dentistry” as have been mentioned in the rejoinder. Submission is it is evident from the reply under 2005 Act that candidate having secured 73 per cent marks have been recommended for the post, the applicant having secured 73 per cent ought to have been selected. Referring to the advertisement, it is been submitted that more than nine hundred candidates were called for interview though in the advertisement it has been specifically mentioned that five times the number of declared fifty two vacancies were to be called for interview.

Mr. S. Ghosh, learned advocate appearing on behalf of the State respondent nos. 3 and 4 relying on the reply submits that it has been mentioned clearly in the reply that the last recommended candidate got 73.5 marks and not 73, which was mentioned by mistake. Moreover, more than five times the declared number of vacancies were called for interview so as to accommodate more candidates.

With regard to the appointment of Dr. Satyaki Das relying on the paragraph 7 of the reply, it has been stated that as he was eligible as per advertisement, he was allowed in the interview and as his overall performance in the selection process was good, he secured a place in the merit list.

So far as publication in two journals are concerned, submission is that those publications were not original publications.

Mr. G.P. Banerjee, learned advocate for the respondent nos. 1 and 2 adopts the submission on behalf of respondent no. 3 and 4.

The first issue to be considered is whether the last recommended candidate secured 73 marks. From the reply under 2005 Act, it appears that 73.5 marks was awarded to the last recommended

candidate and the applicant had secured 73 marks. Therefore, he did not come within the zone of consideration. We accept the submission on behalf of the respondent nos. 3 and 4 that there was a mistake in the reply under the 2005 Act wherein it has been wrongly mentioned that the last recommended candidate had secured 73 marks.

With regard to the issue of calling of nine hundred candidates for interview, admittedly there were fifty-two vacancies and according to the advertisement the maximum number of candidates invited for interview should have been 260 which the respondent no. 3 and 4 had crossed. We find it was not wrong in calling nine hundred candidates as it enured to the benefit of large number of candidates.

With regard to the issue of appointment of Dr. Satyaki Das, it is to be noted that in the advertisement it was mentioned under the heading “*Essential*” “*qualification*” that the candidate should have “*at least one year professional experience*”.

The applicant has challenged the appointment of Dr. Satyaki Das alleging he was not having one year professional experience. In this regard it is appropriate to refer to paragraph 7 of the reply filed by the respondent no. 3 and 4 wherein it has been stated as under :-

“.....The State respondents further submit that technical experts engaged by the Board examined the documents submitted by the candidates. Technical experts having found the respondent no. 5, namely Dr. Satyaki Das eligible as per advertisement allowed him for interview. His overall performance in the whole selection process being good he could secure place in the merit list...”

We find from the reply filed by the State that it has not been stated whether Dr. Satyaki Das was having at least “*one year professional experience*”. Rather it appears from the reply that he was

not having at least one year professional experience as stipulated in the advertisement.

Since we find from the reply of the State, which is evasive regarding Dr. Satyaki Das having “*at least one year professional experience*”, the Chairman of the West Bengal Health Recruitment Board, the added party shall himself verify the records of Dr. Satyaki Das, already submitted, whether he was having at least one year professional experience as per advertisement after giving an opportunity of hearing to him and shall pass an order to be communicated to the parties. If it is found that Dr. Satyaki Das was not having the said one year professional experience as stipulated in the advertisement, appropriate steps shall be taken for cancellation of his candidature and appointment.

With regard to publication in two journals, as stipulated in the advertisement under the heading “*Publication*” we find that the applicant had filed an application on 1st August, 2019 before the SPIO and Deputy Secretary, West Bengal Health Recruitment Board, being annexure ‘J’ to the application. The State Public Information Officer, West Bengal Health Recruitment Board by intimation dated 27th August, 2019, appearing at page 65 of the application, had stated that –

“..Ref. : Your letter dated 01.08.2019 received on 01.08.2019

Sir,

In view of your application, relating to the subject as stated above, I would like to furnish necessary point wise reply against the queries as follows :

For the selection process as stated, marks for experience and publications were awarded by the experts. As per the distribution pattern of marks, a candidate is supposed to score maximum ten (10)

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points @ 2/ publications. Some applicants, during document verification, have submitted copies of publications (originals). After having gone through the documents, as per opinion of the expert it appears that none of such publications were eligible for credit as all such publications have been published in non-index journals. Hence, those publications could not be considered for awarding marks/credit of the candidates.

Under such circumstances, the Board has decided not to consider those publications and to award any extra mark/credit for submitting such papers. Needless to mention that for any selection process, West Bengal Health Recruitment Board considers only those original publications, published in Index Journals. Case Records or Publications in non-index Journals have never been considered...”.

During hearing the two journals containing the two publications of the applicant were furnished by the learned advocate for the applicant. They are “International Journal of Applied Dental Sciences” and “Clinical Dentistry”. Perusing the reply filed by the authorities pursuant to the RTI application, it is surprising that though the advertisement does not speak of publication in index journals surprisingly rejection was made on the ground that the publications of the applicant were not original and not published in the index journal, which is unjust and illegal. Consideration should have been simply on the basis of advertisement.

So far as the publications of the applicant in two journals are concerned, the Chairman of the Health Recruitment Board shall give a hearing to the applicant who shall present the said two journals “International Journal of Applied Dental Sciences” and “Clinical Dentistry” and scrutinise whether his publications have been published

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and the Chairman shall pass a reasoned order strictly in consonance with the advertisement wherein there was no mention about publication in the index journals. If it is found that indeed there were two publications by the applicant, the Chairman shall allot marks to the applicant accordingly.

These abovementioned directions regarding the candidature of Dr. Satyaki Das and regarding two publications by the applicant shall be carried out by the Chairman of the West Bengal Health Recruitment Board, the added respondent, within a period of eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal.

The application is allowed in part.

(SAYEED AHMED BABA)
MEMBER(A)

(SOUMITRA PAL)
CHAIRMAN.

Sk.