

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. - OA 87 of 2021

**Soumitra Acharyya - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	: Mr. G.P. Banerjee, Mr. A. Mitra, Advocates.
<u>01</u> 10.02.2021	For the State respondents	: Mr. S. Ghosh, Advocate.

The matter is taken up by the single Bench pursuant to the notification no.949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 issued in exercise of the powers conferred under sub-Section (6) of Section 5 of the Administrative Tribunals Act, 1985.

It is submitted by Mr. G.P. Banerjee, learned advocate for the applicant that since the date for filing online application for the post of Physiotherapist, Grade – III is between 10<sup>th</sup> February, 2021 till 19<sup>th</sup> February, 2021, considering the urgency copies of the application have been served on the respondents and affidavit of service is filed. Prayer is though the matter has appeared under the heading “New Application”, the matter may be taken up for hearing.

Affidavit of service filed today be kept on record.

Perusing the application, since I find that the date for filing online application is between 10<sup>th</sup> February, 2021 to 19<sup>th</sup> February, 2021, the matter is taken up for hearing.

Since despite of service of notice, none appears on behalf the State respondents, Mr. S. Ghosh, learned advocate, who normally appears on behalf of the State respondents, is requested to appear in the matter. The Legal Remembrancer, West Bengal is directed to regularise the appointment of Mr. Ghosh. Let a copy of the application be served on him which is served and accepted.

In this application, the applicant, has prayed for certain reliefs, the relevant

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portion of which is as under :

“ a) A direction do issue upon the concerned respondent authorities, particularly the Secretary and Controller of Examinations, West Bengal Health Recruitment Board, the respondent no.3 herein, to forthwith relaxing the upper age limit allow your applicant to participate in selection process for recruitment to the posts “Physiotherapist, Gr-III” pursuant to Advertisement being No. R/Physio/03/2021 dated 01.02.2021.

(b) Pass an appropriate order or direction commanding the respondents and each of them and/or their competent authorities, more particularly the respondent no. 3 to forthwith.”

It is submitted by Mr. Banerjee, learned advocate appearing on behalf of the applicant, that in view of the law laid down in Gobinda Chandra Mondal Vs. Principal, Rabindra Mahavidyalaya; 2013 (1) CHN (CAL) 9, particularly in paragraph 25 thereof, the applicant is entitled to participate in the selection process after condoning the age bar and interim order may be passed as the last date for filing online application is 19<sup>th</sup> February, 2021.

Mr. Ghosh, learned advocate for the State respondent submits that since the applicant is already over aged and the age may be relaxable by five years for exceptionally qualified candidates which the applicant has not been able to demonstrate in the application, no interim order may be passed. Submission is the issue in Gobinda Chandra Mondal (supra) is different from the question involved in this case. In this regard, he has relied on the judgement passed on 23<sup>rd</sup> July, 2018 in W.P.S.T. No. 53 of 2018; The Chairman, Public Service Commission,

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West Bengal Vs. Palash Kumar Samanta & Ors. wherein it has been held that age bar cannot be condoned.

Heard learned advocates for the parties. In view of the statements made in paragraph 4 (XII) and in ground (IX) of the application and since the last date for submission of online application for the post of Physiotherapist Gr-III in West Bengal Health Service is 19<sup>th</sup> February, 2021, in my view a prima facie case has been made out for passing an interim order. Therefore, let there be an interim order directing the respondents to allow the applicant to submit application for the post of Physiotherapist Gr-III in the West Bengal Health Service in hard copy format without prejudice to the rights and contentions of the parties and subject to the further order that may be passed. If the selection process is undertaken, the applicant will be allowed to participate. However, the mark sheet and answer scripts shall be kept in sealed cover and the result shall not be published without the leave of the Tribunal. It is made clear that this order shall not create equity in favour of the applicant.

The matter is admitted. Let reply be filed by 7<sup>th</sup> May, 2021. Rejoinder, if any, by 19<sup>th</sup> May, 2021. Matter to appear under the heading "Reply, rejoinder and Objection" on 7<sup>th</sup> June, 2021.

(SOUMITRA PAL)  
CHAIRMAN

Rajib.