

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal, Hon'ble Chairman
& The Hon'ble P. Ramesh Kumar, Administrative Member.

Case No –OA-287 of 2019.

Partha Pratim Naskar. –Vs- The State of West Bengal & Others.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>7</p> <hr/> <p>18.12.2019.</p>	<p>For the Applicant : Mr. U.N.Betal, Advocate.</p> <p>For the State Respondent : Mr. G.P.Banerjee, Mr. S. Ghosh, Advocates.</p> <p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>“.....b. Pass and appropriate order setting aside and/or quashing the decision of the concerned respondent authorities regarding cancellation of his candidature conveyed though SMS to the applicant.</i></p> <p><i>c. Pass an appropriate order or direction commanding the respondents and each of them and/or their competent authorities forthwith to accept the candidature of Your applicant and allow him to participate in recruitment process and/or interview for selection to the posts of Medical Technologists (Laboratory) Grade III, initiated</i></p>	

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	<p><i>pursuant to the advertisement being no. R/MT/Phar./Physio./48/2/2018.</i></p> <p><i>d. Pass an appropriate order or direction commanding the respondents and each of them and/or their competent authorities forthwith to issue interview call letter to the applicant for selection to the posts of Medical Technologists (Laboratory) Grade III, initiated pursuant to the advertisement being no. R/MT/Phar./Physio./48/2/2018.</i></p> <p><i>....."</i></p> <p>The matter was taken up for hearing on 10th April, 2019 when on the prayer of the learned advocate for the applicant an interim order was passed allowing the applicant to participate in the selection process for the post of Medical Technologist (Lab) Grade III subject to compliance of other formalities without prejudice to the rights and contentions of the parties and subject to further orders. Directions were issued to keep the mark sheet of the applicant in a sealed cover and the result was directed not to be published without</p>	

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	<p>the leave of the Tribunal. Thereafter, reply and rejoinder were filed and are on record.</p> <p>It is submitted by Mr. U. N. Betal, learned advocate appearing on behalf of the applicant that the orders cancelling the candidature of the applicant is illegal as the University Sam Higginbottom Institute of Agriculture, Technology & Sciences is a deemed university under section 3 of University Grants Commission Act, 1956 wherefrom his client has obtained the degree of Medical Laboratory Technology. In this regard our attention has been drawn to the statements made in Paragraph 6.11 of the Original Application.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents referring to the advertisement submits that since one of the essential qualifications, inter alia, was the candidate should have a two-years Diploma Course in the Laboratory Technologist recognised by the state Medical Faculty of West Bengal under West Bengal Para Medical council, or conducted by any recognised Institution affiliated to any recognised University, or a Bachelor Degree in Laboratory Technology from any</p>	

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	<p>Institution/University recognised by the Government of West Bengal, or one year Diploma Course in Laboratory Technology recognised by the Government of West Bengal, or one year Diploma Course in Laboratory Technology, where basic qualification of undergoing the said course is B.Sc. (Pure/Bio) offered by the West Bengal State Medical Faculty, or by any recognised University and as the Sam Higginbottom University in question is not recognised by the Government of West Bengal, no order may be passed.</p> <p>Heard learned advocates for the parties.</p> <p>In order to appreciate the issue it is appropriate to refer to the paragraph 5 of the reply which is as under:-</p> <p><i>“.....The state respondent states that the applicant applied to the post of Medical Technologist (Lab) Grade III pursuant to the said advertisement. Thereafter, on subsequent verification of his documents before interview, he was found ineligible as per Recruitment Rules as the institution wherefrom he did his three years Bachelor in</i></p>	

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	<p><i>Medical Laboratory Technology is not recognized by the West Bengal Government. Accordingly, his candidature was rejected after consultation with Technical Experts. It is also stated that Allahabad Agricultural Institute is a deemed university, it is not recognized by the Government of West Bengal that is why the name of the Institution was not uploaded in the portal of online application for the post of Medical Technologist (Lab) Grade III. In the said advertisement is has been clearly mentioned that if an aspirant having Bachelor in Laboratory Technology the institution/university wherefrom he has did it must have been recognized by the Government of West Bengal. Allahabad Agricultural Institute is a deemed university, it is not recognized by the Government of West Bengal as the institution is not constituted by any Central</i></p>	

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	<p><i>Legislation or State Legislation. In the portal of online application only the names of those institutes, recognized by State of West Bengal were available. Due to non recognition of the institution i.e. Allahabad Agriculture Institute applicant's candidature was rejected. Respondent authorities are justified in rejecting the candidature of the applicant as they cannot go beyond the Recruitment Rules."</i></p> <p>The said paragraph has been dealt with in paragraph 6 of the rejoinder filed by the applicant, which is as under :-</p> <p><i>".....With reference to paragraph no.5 of the said reply, I deny and dispute each and every statements, allegations, contentions and averments made therein, save and except those are matters of record. I specifically deny that the institute wherefrom I obtained three years' Degree is not recognised by</i></p>	

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	<p><i>the West Bengal Government, inasmuch as, at the cost of repetition, I say that the said institute is not only recognised by the UGC, AICTE and DEC, but also the institute has been given recognition by the Government of West Bengal since the West Bengal University of Health Sciences has recognised the said university and the said BMLT degree. Therefore, the contention of the respondent regarding non-recognition of the said university by the Government of West Bengal is not at all true and for denial of the right of the applicant, the answering respondents did not produce any official Gazette or Notification to that extent. In this connection, it is further stated that since the appropriate authorities of giving recognition of an university, that is, UGC and since the appropriate</i></p>	

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	<p><i>authorities approving the Course of the said University that is, AICTE and DEC had granted approval recognising the said University and the courses offered by the said University, therefore, the Government of West Bengal cannot deny the same, more so, when the University of Health Sciences had recognised the said degree and the said University, therefore, the contention and averments made in the said paragraph number 5 of the said reply denying the right of the applicant regarding non-recognition of the Institute by the Government of West Bengal is totally false and thereby the respondent authorities cannot reject my candidature.</i></p> <p><i>The concerned recruitment Rules and the said Advertisement do not provide the list of institutes recognised by the Government of West Bengal and in the said reply,</i></p>	

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	<p><i>the answering respondents have not come forward any such Gazette and/ or Notification to substantiate their claim. Mere averment, that too not on oath, cannot be taken as evidence or plea to disapprove the right of the applicant. Save and except those are matters of record, the other contentions, allegations and averments made in the referred paragraph no. 5 are, thus, denied specifically by me.</i></p> <p><i>In this context, it is further stated that the answering respondents did not specifically deny the contention of the applicant as made in paragraph 6.11 and 6.14 of the said original application. For that non-denial of such averments and evidences contended therein, the doctrine of non-traverse would come in play and thereby the respondents cannot deny the eligibility of the applicant for selection to the said</i></p>	

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Skg/Sourav	<p style="text-align: center;"><i>post of Medical Technologist (Lab.) Grade-III."</i></p> <p>A reading of the relevant portion of the reply and rejoinder shows that though in the reply it has been stated that Allahabad Agricultural Institute is a deemed university and is not recognised by the Government of West Bengal, that is why the name of the institute was not uploaded in the portal, however, the same has not been dealt with and denied in the rejoinder filed. It appears the applicant had filed the application being aware of the criteria in the advertisement in the portal, where the name of the institute is not reflected.</p> <p>Hence, the application is dismissed. Interim order is vacated.</p> <p style="text-align: center;">(P. RAMESH KUMAR) MEMBER (A)</p> <p style="text-align: center;">(SOUMITRA PAL) CHAIRMAN</p>	