

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

Hon'ble Justice Soumitra Pal.
& The Hon'ble Mr. P. Ramesh Kumar .

Case No. OA 403 of 2018 .

DR. KRISHNENDU SAHA & ANR. – VS- THE STATE OF WEST BENGAL & ORS.

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 style="text-align: center;">3</p> <hr/> <p>01.08.2018.</p>	<p>For the Applicants : Mrs. S. Mitra, Advocate.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Advocate.</p> <p>For the Respondent Nos. 5,7 and 9 : Mr. Nilotpol Chatterjee, Advocate.</p> <p>This application has been filed by two applicants, – Dr. Krishnendu Saha and Dr. Chandrama Prasad Verma,- praying for the certain reliefs, as set out at page 6 ,which are as under :-</p> <p style="text-align: center;"><i>“(a) An order do issue quashing thereby the appointment of the private respondents to the post of Lecturers in Government Homoeopathic Medical College and Hospitals in terms of the advertisement dated 28.06.2008 as they did not fulfil the eligibility criterion laid down therein.</i></p> <p style="text-align: center;"><i>(b) An order do issue directing the concerned respondent authorities to</i></p>	

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	<p><i>give appointment to your applicant to the post of Lecturer Government Homoeopathic Medical College and Hospitals as he fulfilled all the requisite criterion as laid down in the Regulations of 1983.</i></p> <p><i>(c) An order to issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced the entire records relating to the applicant' case and on such production being made, render conscionable justice upon perusing the same.</i></p> <p><i>(d) Leave is craved as per Rule-4(5)(a) of the Tribunal Procedure Rules, 1994 for moving the single application jointly having regards to their common cause of action and same prayer.</i></p> <p><i>(e) To pass such other or further Order or Orders as to this Hon'ble Tribunal</i></p>	

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	<p style="text-align: center;"><i>may deem fit and proper”.</i></p> <p>Mr. Chatterjee, learned advocate appearing on behalf of the Private Respondent Nos. 5,6, 7, 8 & 9 at the very outset submits that this application is not maintainable as issues have already been adjudicated and decided and thus it is hit by the principles of resjudicata.</p> <p>It is submitted by Mrs. S. Mitra, learned advocate for the applicant, that while conducting the selection process for appointment of lecturers in the Government Homoeopathy College and Hospitals in terms of the advertisement dated 28th June, 2008, the State authorities had committed glaring irregularities as evident from the list of the selected candidates to be posted at different hospitals as evident from page 111 of the application. The selection process was challenged before the Tribunal. Thereafter the issue went up to the Hon’ble High Court. Before the High Court, it is evident from the order dated 31st July, 2008 passed in WPST No. 1049 of 2008, the State did not disclose that the selection process was over. Submission is undeserving candidates have been selected and appointed in a malafide and</p>	

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	<p>arbitrary manner.</p> <p>Mr. Banerjee, learned advocate on behalf of the State respondent submits that the application is not maintainable as the petitioners herein did not participate in the selection process. Moreover by order dated 15th July, 2010 passed in OA 5 of 2009 (Dr. D. Kundu & Ors – Vs- The State of West Bengal & Ors) it was held that the petitioners were not entitled to get any relief regarding continuation of office by 29 persons. It was also held that they cannot call in question the appointment of those persons who were recruited following the advertisement in June, 2008. Further, the issue is settled following a judgement of the Hon'ble High Court passed in WPST 246 of 2011 (Dr. Debabrata Kundu & Anr –Vs- The State of West Bengal & Ors) where the 2008 recruitment was questioned. On that issue, the Hon'ble High Court declined to interfere. It was held that the Private respondents herein were duly appointed in a regular manner.</p> <p>It is evident from the submission of Mrs. S. Mitra, learned advocate that the applicants did not participate in the recruitment process. In our view, one can</p>	

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	<p>challenge the selection process only after participating in the said process. As the applicants did not participate in the selection process, they are not eligible to challenge the said process.</p> <p>That apart, it is evident that the issue came up for hearing before this Tribunal in Case No. OA 5 of 2009 (Dr.D. Kundu and Others –Vs- The State of W.B. & Ors) which was disposed of by a judgement delivered on 15th July, 2010, the relevant portion of which is as under :-</p> <p style="text-align: center;"><i>“...To sum up from our discussion, when we hold that there is nothing to challenge the constitutional validity of Act, 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....”.</i></p>	

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	<p>Against the said judgement, a Writ petition – WPST 246 of 2011 was filed before the High Court wherein one of the issues was :-</p> <p><i>“iii).....Fresh batch of appointees as per 2008 advertisement – their fate....”</i></p> <p>On this issue it was held as under :-</p> <p><i>“...As per the provisions of Section 21 the State was also entitled to appoint teachers on regular basis. Hence, the advertisement published on June 28, 2008 does not offend any of the provisions of the said act of 2002 or the Rules framed thereunder. It would have been better, the State would provide appropriate relaxation clause. The Tribunal already directed them to mention such clause in subsequent advertisement on that score. We do not wish to annul the appointment of the fresh batch being the order set of private respondents represented by Mr. Roy. They were considered in a regular recruitment process and were duly appointed through such process. It was not the case of the petitioners that they did not have the requisite qualification or experience or the age eligibility. Hence, we decline to interfere on that score. The third issue is accordingly held against the petitioners....”</i></p>	

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Skg.	<p>The matter was taken up before the Hon'ble Supreme Court of India as evident from pages 80 to 85 of the application. The Supreme Court declined to interfere in the selection process.</p> <p>In our view as evidently the applicants did not participate in the selection process and as the issue was discussed threadbare and adjudicated as evident from the relevant paragraphs of the judgements quoted hereinabove, no order can be passed on this application. The application is dismissed.</p> <p>(P. Ramesh Kumar) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	

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