

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

Hon'ble Justice Ranjit Kumar Bag, Judicial Member.  
& Hon'ble Dr. Subesh Kumar Das, Administrative Member.

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;">1</p> <hr/> <p>5.11.2018.</p>	<p style="text-align: center;"><b><u>OA 881 of 2018.</u></b></p> <p>Dr. Kuntal Ghosh &amp; 8 Ors –Vs- The State of W.B. &amp; Ors.</p> <p>For the Applicant : Mr. M. Bhattacharya, Mr. S. Bhattacharya, Ld. Advs.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Ld. Adv.</p> <p style="text-align: center;"><b><u>OA 882 of 2018.</u></b></p> <p>Dr. Pradip Biswas &amp; 5 Ors –Vs- The State of W.B. &amp; Ors.</p> <p>For the Applicant : Mr. M. Bhattacharya, Mr. S. Bhattacharya, Ld. Advs.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Ld. Adv.</p> <p>The petitioners claim to have been engaged as Senior Ayurvedic Medical Officers on purely contractual basis initially for a period of one year on the basis of order dated June 20, 2012 issued by the Director of Ayurveda, Government of West Bengal, The Secretary and Controller of West Bengal Health Recruitment Board has issued advertisement on October 9, 2018 for direct recruitment of 98 Senior Ayurvedic Medical Officers in</p>	

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	<p>West Bengal Ayurveda Health Service under Directorate of Ayurveda, Department of Health and Family Welfare, Government of West Bengal even when the petitioners have been working in the said posts on contractual basis.</p> <p>Mr. Bhattacharya, learned Senior Counsel appearing on behalf of the petitioners contends that the impugned advertisement dated October 9, 2018 (Annexure "S" to the Original Application) should not be given effect till the disposal of the present application by the Tribunal. He further contends that the petitioners have been recruited against sanctioned posts by following the provisions of the recruitment rules. The specific submission of Mr. Bhattacharya is that the Secretary and Controller of Examinations, has adopted the procedure for recruitment of Senior Ayurvedic Medical Officers on temporary basis by replacing/terminating the service of the petitioners, who have been working in the said posts on contractual basis till date. Mr. Bhattacharya has relied on paragraph 25 of the judgement of the Hon'ble Supreme Court in "State of Haryana –Vs- Piara Singh" reported in AIR 1992 Supreme Court 2130 in support of his contention that a temporary employee cannot be replaced by another temporary</p>	

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	<p>employee.</p> <p>Mr. G.P. Banerjee, learned Counsel representing the State respondents submits that the petitioners have not been recruited by following the provisions of recruitment rules and as such regular appointment can always be made in the said post by following the provisions of the recruitment rules. He further submits that the petitioners have no right to retain the post as they have been appointed on contractual basis in violation of the provisions of the recruitment rules.</p> <p>The only question for determination at this stage is whether the petitioners are entitled to get interim order of stay of operation of the impugned advertisement. On consideration of the materials on record, we find that the petitioners were appointed on contractual basis as Senior Ayurvedic Medical Officers by order dated June 20, 2012 issued by the respondent no.2. The West Bengal Ayurvedic Health Service (Recruitment) Rules, 2009 was in force at the time of appointment of the petitioners as Senior Ayurvedic Medical Officers on contractual basis. It is clearly laid down in Rule 3 of the West Bengal Ayurvedic Health Services (Recruitment)</p>	

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	<p>Rules, 2009 that selection for direct recruitment to the post of Senior Ayurvedic Medical Officers in the cadre of West Bengal Ayurvedic Health Service will be done by the Public Service Commission, West Bengal. Admittedly, the petitioners were recruited by a committee consisting of the Chairman, Additional Secretary (AYUSH) and Director of Ayurveda on the basis of walk –in-interview in violation of the provisions of the Recruitment Rules of 2009, which laid down the procedure for recruitment to the post of Senior Ayurvedic Medical Officer on regular basis. The P.S.C.W.B. was replaced by West Bengal Health Recruitment Board by Notification dated August 01, 2012. The impugned advertisement dated October 9, 2018 for filling up the post of Senior Ayurvedic Medical Officers was done by the West Bengal Health Recruitment Board and as such the present recruitment process initiated by the Secretary and Controller of Examinations of the West Bengal Health Recruitment Board is in accordance with the provisions of the Recruitment Rules. Since the previous recruitment of the petitioners was done in violation of the provisions of the Recruitment Rules, we are of the view that the said recruitment was done purely on contractual basis for</p>	

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	<p>specific period of time and as such the petitioners cannot have the right to claim the posts of senior Ayurvedic Medical Officers on the basis of their contractual appointment.</p> <p>We fully agree with the proposition of law laid down by the Hon'ble Supreme Court in paragraph 25 of "State of Haryana –Vs- Piara Singh" (supra) , wherein it is observed that an adhoc or temporary employee should not be replaced by another temporary or adhoc employee. The petitioners being contractual employee recruited without following the Procedure laid down in the Recruitment Rules can always be replaced by persons, who will be recruited by following the procedure of Recruitment Rules. In view of our above findings, we cannot persuade ourselves to give directions to the respondents for not giving effect to the impugned advertisement dated October 9, 2018 (Annexure "S" to the Original Application) .The interim order is, thus, refused.</p> <p>Since the petitioners have been working as Senior Ayurvedic Medical Officers on contractual basis from June 20, 2012 onwards, the petitioners should get an opportunity to participate in the present selection</p>	

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	<p>process by submitting applications in response to the advertisement dated October 9, 2018 (Annexure S to the Original Application). It may be extremely difficult and inconvenient on part of the petitioners to submit on line application within the last date of submission of application scheduled on November 5, 2018. Accordingly, we direct the Secretary and Controller of Examinations, West Bengal Health Recruitment Board to extend the period of time for submitting application for filling up the post of Senior Ayurvedic Medical Officers in response to the advertisement No. R/Sr-Ayur.MO/55(1)/2018 dated 9.10.2018 till 5 P.M. of November 12, 2018(in view of intervening holidays), so that the petitioners, who are willing to participate in the present selection process, but cannot submit on line application by this day (November 5, 2018) may submit hard copy of the application along with necessary documents before the Secretary and Controller of Examinations, West Bengal Health Recruitment Board within 5 P.M. of November 12, 2018.</p> <p>The respondents, are, directed to file reply within a period of four weeks and rejoinder may be filed by the petitioners within a period of two weeks thereafter. List the matter before the Regular Bench on</p>	

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CSM/SKG	<p>December 10,2018 under the heading "Reply/ Rejoinder".</p> <p>Urgent plain copy may be supplied to both the parties.</p> <p>(Subesh Kumar Das) Member(A).</p> <p>(Ranjit Kumar Bag) Member (J)</p>	

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