

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

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

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;"><u>02</u> 18.06.18</p>	<p>Case No. OA-405 of 2018: Sudip Mukherjee & 4 Ors. Vs. State of West Bengal & Ors.</p> <p>For the Applicant : Mr.G.P.Banerjee Mr.G.Halder Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Case No. OA-407 of 2018: Ram Prosad Banerjee & 3 Ors.. Vs. State of West Bengal & Ors.</p> <p>For the Applicants : Mr.G.P.Banerjee Mr.D.N.Ray Mr.G.Halder Mr.B.Nandi Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Case No. OA-408 of 2018: Mukul Roy. Vs. State of West Bengal & Ors.</p> <p>For the Applicant : Mr.G.P.Banerjee Mr.D.N.Ray Mr.G.Halder Mr.B.Nandi Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p>	

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	<p>Case No. OA-416 of 2018: Pompy Chatterjee Ghosh & Anr.. Vs. State of West Bengal & Ors.</p> <p>For the Applicants : Mr.G.P.Banerjee Learned Advocate</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Case No. OA-432 of 2018: Subhasis Dey . Vs. State of West Bengal & Ors.</p> <p>For the Applicant : Mr.G.P.Banerjee Mr.G.Halder Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Case No. OA-421 of 2018: Pratap Manna Vs. State of West Bengal & Ors.</p> <p>For the Applicant : Mr.G.P.Banerjee Mrs.S.Agarwal Mr.S.Arefin Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Case No. OA-444 of 2018: Soumik Chanda Vs. State of West Bengal & Ors.</p> <p>For the Applicant : Mr.G.P.Banerjee Mr.G.Halder Learned Advocates</p>	

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	<p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>Liberty is given to the applicants of OA-421 of 2018 and OA-444 of 2018 to move the same upon notice to the other side. Let OA-421 of 2018 and OA-444 of 2018 be treated as on day's list with consent of Learned Counsel representing both parties.</p> <p>The common issue involved in all the original applications is whether the applicants can be granted permission to participate in the selection process for recruitment to the post of Medical Technologist of different categories, Grade III under the department of Health & Family Welfare, Government of West Bengal in response to the Advertisement No. R/MT/Phar./Physio./48/2/2018 issued by the Respondent, Secretary and Controller of Examination, West Bengal Health Recruitment Board by way of relaxation of age.</p> <p>The applicants claim to have fulfilled eligibility criteria for participating in the selection process for recruitment to the post of Medical Technologist, Grade III, but they have crossed maximum age limit in terms of</p>	

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	<p>the advertisement and as such they apprehend that their applications may be rejected by the authority concerned. None of these applicants have been working in the post of Medical Technologist either on contractual basis or temporarily under the Department of Health & Family Welfare, Government of West Bengal. While some of the applicants have been working under Private Institutes and some are working under Local Bodies like Kolkata Municipal Corporation. One applicant is working under ICMR, Government of India. The common contention of all the applications is that there is no difference between the duty discharged by the applicants under Local Bodies or Private Institutes or under Government of India and the duty discharged by the Laboratory Technicians under the Department of Health & Family Welfare, Government of West Bengal and as such the applicants should be given the opportunity to participate in the selection process by way of relaxation of age bar, when the same opportunity is given to the employees working on contractual basis in the post of Medical Technologist under Department of Health & Family Welfare, Government of West Bengal by way of relaxation of age bar.</p>	

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	<p>Mr.D.N.Ray, Learned Counsel appearing for some of the applicants contends that the present applicants working as Medical Technologist under Private Institutes or Local Bodies cannot be discriminated with the Medical Technologist working on contractual basis under the Department of Health & Family Welfare, Government of West Bengal. He submits that the age bar prescribed in the advertisement can be relaxed by way of relaxation of recruitment rules when the present applicants are similarly circumstanced with the applicants who have been working under Department of Health & Family Welfare, Government of West Bengal for relaxation of age bar. Mr.Roy has relied on the case of "Ashok Kumar Uppal & Others. V. State of J&K & Others." reported in (1998) 4 Supreme Court Cases 179 and the case of "Union Public Service Commission V. Girish Jayanti Lal Vaghela & Others." reported in (2006) 2 Supreme Court Cases 482 in support of his contention that refusal of the applicants to participate in the selection process due to age bar will violate the principle of equality enshrined in Article 14 of the Constitution of India when age bar has already relaxed by the order of this Tribunal in respect of the</p>	

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	<p>candidates who have already been working on contractual basis in the post of Medical Technologist under the Department of Health & Family Welfare, Government of West Bengal.</p> <p>Mr.Ghosh, Learned Counsel representing the State Respondents contends that age relaxation can be done in respect of only those candidates who have already been working in the same post of Medical Technologist in the same Department of Health & Family Welfare, Government of West Bengal as they could not participate in the selection process along with fresh candidates due to age bar.</p> <p>In "Ashok Kumar Uppal & Ors. V. State of J&K & Ors." (Supra) the Junior Scale Stenographers working in the Secretariat were not considered for promotion to the post of Senior Scale Stenographers by way of relaxation of the rules by which they are governed. The issue of relaxation of rules was dealt with by the Hon'ble Supreme Court in case of the employees who were deprived of the opportunity to be considered for promotion in spite of the fact that they were at top of</p>	

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	<p>merit list. The question of relaxation of the rules arose for giving benefit to the existing Government employees who were working as Junior Scale Stenographers. The facts of this reported case are clearly distinguishable from the facts of the present case where the issue of relaxations of age is in connection with the applicants who are not working under Department of Health and Family Welfare, Government of West Bengal where recruitment is being done. So, the ratio of the reported case has no manner of application in the facts of the present case.</p> <p>In "Union Public Service Commission V. Girish Jayanti Lal Vaghela & Ors." (Supra) the Hon'ble Supreme Court dealt with the case of an employee who was appointed on contractual basis dehors the recruitment rules and was denied the benefit of relaxation of the rules. In our view, the ratio of the decision is that an employee who was appointed without following recruitment rules cannot be given the benefits and privileges of Government employee. The applicants are not Government employees either on contract basis or on temporary basis. The ratio of this decision has no bearing on the facts of the present case.</p>	

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	<p>In “Keshav Naryan Gupta & Ors. V. Jila Parishad, Shivpuri (MP) & Anr.” reported in (1998) 9 SCC 78, the Hon’ble Supreme Court dealt with the case of one person who was working temporarily as Lower Division Clerk for a period of almost twelve (12) years with short period of break. There was some irregularity in the said appointment on temporary basis. The Hon’ble Supreme Court gave direction that when regular appointment to the post of Lower Division Clerk will be made, the case of the concerned applicant must be considered along with other fresh applicants by waving the age bar in case of the concerned applicant, if necessary. Similarly, in “Dipak Saha & Others. V. State of West Bengal & Others” (WPST No. 125 of 2014 with CAN No. 2159 of 2016 decided on March 10, 2016) the Division Bench of the Hon’ble High Court at Calcutta gave direction to the concerned respondents to allow the applicants to participate in the selection process for recruitment to the post of Medical Technologist, Grade III by relaxation of upper age limit, subject to fulfilment of other eligibility criteria for selection to the said post in terms of the advertisement. On analysis of the above</p>	

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	<p>decisions, we are of the view that the candidates who have already been working in the post of Medical Technologist under the Department of Health & Family Welfare, Government of West Bengal either on contractual basis or temporarily, should not be deprived of the opportunity to participate in the selection process along with fresh candidates for recruitment to the post of Medical Technologist. The object of relaxation of age bar is to give opportunity to the candidates who have already been working in the same post under the same employer and the said principle of relaxation of age bar cannot be invoked by the candidates who have been working under different employer like local bodies or Private Institutes or another Government. Since the Government has prescribed the age limit for recruitment to fill up the post of Medical Technologist, the Tribunal should not encroach upon the discretion of the Government for relaxation of age bar even when the candidates working under private employer or under local bodies have crossed maximum age limit for participation in the selection process. The candidates who have been working under private employer or</p>	

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	<p>under local body or under another Government cannot be equated with the candidates who have been working in the same post on contractual basis or temporarily under the same Department where recruitment is done to fill up the post. Accordingly, we do not find any merit in the submission made on behalf of the applicants that refusal to relax age bar of the candidates working under private employer or local body or another Government is discriminatory and violative of Article 14 of the Constitution of India. The principle of relaxation of age bar should be applicable only in case of the candidates who have fulfilled the following criteria: (i) the candidates have fulfilled eligibility criteria with regard to educational qualification and experience, (ii) the candidates have been working under the same employer, (iii) the candidates have been working in the same post either on contractual basis or temporarily for prolonged period of time and thereby they crossed maximum age limit for participating in the recruitment process to fill up the same posts along with fresh candidates.</p> <p>In view of our above findings, we do not find any merit in the present applications. As a result, all the original applications are dismissed.</p>	

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BLR	<p style="text-align: center;">Urgent xerox certified copy of the order, if applied for, be given to the parties on priority basis on compliance of all necessary formalities.</p> <p style="text-align: center;"> (S.K.Das) MEMBER(A) </p> <p style="text-align: center;"> (R.K.Bag) MEMBER (J) </p>	