

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal****&****The Hon'ble P. Ramesh Kumar.****Case No –OA-696 of 2015.****Susanta Kumar Chowdhury & 11 Others. –Vs- The State of West Bengal & Others.**

| Serial No. and Date of order.<br>1                          | Order of the Tribunal with signature<br>2   | Office action with date and dated signature of parties when necessary<br>3 |
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| <p style="text-align: center;"><u>15</u><br/>19.07.2018</p> | <p><b>For the Applicants : Mr. Gourav Haldar,<br/>Advocate.</b></p> <p><b>For the State Respondents : Mr. Soumendra Narayan Ray,<br/>Advocate.</b></p> <p>In this application, the applicants who had applied for appointment in Group-D posts under the Department of Health &amp; Family Welfare, Hooghly, Government of West Bengal, has prayed for a direction upon the respondent authorities, particularly on the Chief Medical Officer of Health, Hooghly, that is the respondent no.-3, to initiate fresh selection process and to allow them to participate as they were enlisted in the previous panel.</p> <p>A prayer has also been made for a direction upon the respondents to complete the selection process immediately in terms of the earlier order passed by the Tribunal.</p> <p>Further, a prayer has been made for a direction upon the concerned respondents to consider the representation submitted by the applicants, being</p> |  |

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|                                       | <p>Annexure-E to the application.</p> <p>The case or the entire issue has a chequered history. It appears that earlier application was moved before the Tribunal being OA-1560 of 2009 Susanta Kumar Chowdhury &amp; 11 Others.-Vs-Secretary, Health and Family Welfare, which was disposed of by passing an order, being annexure 'C' to the application, the relevant portion of which is as under :</p> <p style="text-align: center;"><b>“.....In view of our above observation, we dispose of this application only with a comment following the earlier direction of this Tribunal, that when, the authority shall start the selection process, the petitioner, if really were included in the earlier panel, which was subsequently cancelled, would also be eligible as per order of the Tribunal for consideration for taking part in the new selection process.....”</b></p> |  |

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|                                       | <p>It needs to be also mentioned that on similar issue applications being OA-1294 of 2000, OA-1295 of 2000, OA-1296 of 2000 and OA-808 of 2005 were filed before the Tribunal which were disposed of by an order dated 26<sup>th</sup> June, 2009 passed by this Tribunal.</p> <p>Being aggrieved the applicants had preferred a writ petition before the Hon'ble High Court being W.P.S.T. 79 of 2010 with C.A.N. 6487 of 2013 with C.A.N. 7229 of 2013 (Suman Chatterjee &amp; Ors.-Vs-State of West Bengal &amp; Ors.) which was allowed by the Tribunal by passing an order, the relevant portion of which is as under :</p> <p style="text-align: center;"><b>“The learned Advocate of the State-respondents submitted before the learned Tribunal that the panel in question was not accepted by the concerned authority, as a result whereof, no appointment was given from the aforesaid panel, but from</b></p> |  |

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|                                       | <p>the records we do not find that any decision was taken by the competent authority for not accepting the panel. Since the panel in question was prepared by the members of the Selection Board upon observing the prescribed rules and procedures, the same could not be ignored by the authority concerned.</p> <p>The authority concerned also never cancelled the panel on any ground and the petitioners herein had to wait for a considerable period with the expectation that the vacancies in question would be filled up by the competent authority from the empanelled candidates. After lapse of a considerable</p> |  |

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|                                       | <p>period, the petitioners herein ultimately, applied before the learned Tribunal for issuing appropriate direction for filling up the vacant posts of Group 'D' staff from the panel in question prepared by the duly constituted Selection Board.</p> <p>The objections raised on behalf of the State-respondents before the learned Tribunal cannot be sustained for the reasons discussed hereinabove. Therefore, we are of the opinion that the learned Tribunal had no scope to issue any direction for initiating fresh selection process in order to fill up the vacant Group 'D' posts in question.</p> <p>Most unfortunately,</p> |  |

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|                                       | <p>the panel prepared by the duly constituted Selection Board was ignored by the concerned authority and no appointment was given from the said panel without any valid reason. The reasons furnished before the learned Tribunal on behalf of the State-respondents are factually incorrect and also not tenable in the eye of law.</p> <p>In the aforesaid circumstances, the impugned order passed by the learned Tribunal cannot be sustained and the same is accordingly, set aside.</p> <p>The respondent authorities including the Chief Medical Officer of Health, Hooghly are directed to take immediate necessary steps for filling up the vacant</p> |  |

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|                                       | <p><b>Group 'D' posts for which the selection process was started by constituting the Selection Board for preparation of the panel.</b></p> <p><b>We find that under the misconception, the respondent authorities did not act on the basis of the panel in question for the purpose of filling up the Group 'D' posts. We, therefore, direct the authority concerned namely, the Chief Medical Officer of Health, Hooghly to treat the panel in question prepared by the Selection Board consisting of the Chief Medical Officer of Health, Hooghly as proper and valid one for the purpose of filling up the Group 'D' posts.</b></p> <p><b>Since a</b></p> |  |

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|                                       | <p>considerable time has already passed, we direct the Chief Medical Officer of Health, Hooghly to formally accept the panel in question to which her predecessor-in-office was one of the signatories and fill up the vacant Group 'D' posts by issuing letter of appointments to the successful empanelled candidates without any further delay but positively within a period of four weeks from date.</p> <p>Needless to mention that the appointments of the empanelled candidates by the Chief Medical Officer of Health, Hooghly should also be approved by the Director of Health Services, West</p> |  |



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|                                       | <p><b>Bengal and other superior authorities without any delay but positively within a period of two weeks from the date of receiving the relevant papers from the said Chief Medical Officer of Health, Hooghly so that the empanelled candidates may be appointed to the vacant Group 'D' posts at an early date.</b></p> <p><b>This writ petition thus stands allowed.</b></p> <p><b>In view of the aforesaid order regarding final disposal of the writ petition, no further order should be passed in the other applications being C.A.N. 6487 of 2013 and C.A.N. 7229 of 2013 and the same are therefore, disposed of. "</b></p> |  |

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|                                       | <p>Alleging non-compliance of the directions contained in the said judgment in W.P.S.T. 79 of 2010, a contempt application, being C.P.A.N. 1405 of 2014, was filed before the Hon'ble High Court which was disposed of on 18<sup>th</sup> February, 2015 by passing an order, the relevant portion of which is as under :</p> <p style="text-align: center;"><b>“.....Having heard the learned Advocates of both the parties and considering the averments made in this application, we are of the opinion that the alleged contemnors did not wilfully and deliberately violate any specific direction passed earlier by this Bench.</b></p> <p style="text-align: center;"><b>In the aforesaid circumstances, we are not inclined to pass any further direction in this contempt application to the alleged contemnors.</b></p> <p style="text-align: center;"><b>This contempt</b></p> |  |

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|                                       | <p style="text-align: center;"><b>application, therefore, stands<br/>disposed of.....”</b></p> <p>Learned Advocate appearing on behalf of the applicants submits that as the names of the applicants had figured in the list of candidates appearing in the annexures being marked collectively ‘B’ to this application, they may directed to be appointed.</p> <p>On scrutiny of Annexure-‘B’, we find it is a list of candidates numbering 1600 who were called for interview. It is not a list of successful candidates for Group-D posts which the learned Advocate for the applicants could not disagree. However, it is submitted on behalf of the applicants that in such a case a direction may be issued in terms of the prayer ‘C’ for consideration of the representation, being Annexure-‘E’ to the application. We find from paragraph-4 of the reply filed by the state that as the applicants were not selected for the appointment in the Group-D posts the names of the applicants were not listed in the final selection list for appointment. We find from the rejoinder to the reply, particularly</p> |  |

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| Sourav.                               | <p>paragraph-3 thereof, that such statements have not been denied and disputed.</p> <p>Moreover, we find that the pursuant to the order dated 18<sup>th</sup> February, 2015 passed by the Hon'ble High Court in Contempt proceedings the matter has been set at rest as it was held that there was no wilful violation of the order passed which means selection was already over.</p> <p>Therefore the prayer of the applicants for consideration of the representation cannot be granted. Hence, the application is dismissed.</p> <p>No order as to costs.</p> <p>(P. RAMESH KUMAR)<br/>MEMBER (A)</p> <p>(SOUMITRA PAL)<br/>CHAIRMAN</p> |  |