

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 242 of 2020

RAJKUMAR MONDAL 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>1</p> <hr/> <p>10.08.2020</p>	<p>For the Applicant : Mr. A. Lahiri, Mr. S. Dey Paul, Advocates</p> <p>For the Respondents : Mr. S. Ghosh, Advocate</p> <p>Let affidavit of service filed today be kept on record. As prayed for by Mr. A. Lahiri, learned advocate for the applicant, leave granted to file supplementary affidavit. Let supplementary affidavit filed be kept on record. Let copy of the same be served on Mr. S. Ghosh, learned advocate for the respondents, which is served and accepted.</p> <p>It is submitted on behalf of the applicant though the matter has appeared under the heading “New Application”, in view of urgency it may be taken up for Admission which is not opposed by Mr. S. Ghosh, learned advocate for the respondents.</p> <p>In this application, Rajkumar Mondal, the applicant, 39 years of age, - who is working as Block Data Entry Operator on contractual basis at Garden Reach State General Hospital since 10th June, 2009 - has prayed for certain reliefs, the relevant portion of which is as under:</p>	

ORDER SHEET

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	<p>“8. a. Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to allow the applicant to participate in the recruitment process for filling up the post of Assistant Superintendent (Non Medical) Grade II, initiated pursuant to advertisement No. R/Asstt.Suptd. (NM) / 03(1) / 1/ 2020 dated 21.07.2020.</p> <p>b. Mandatory order do issue commanding the respondents each one of them and their men, agents, assigns and subordinates to produce the records of the case forming the basis of restricting the applicant to participate in the recruitment process initiated for filling up the post of Assistant Superintendent (Non Medical) Grade II, initiated pursuant to advertisement No. R/Asstt.Suptd. (NM) / 03(1) / 1/ 2020 dated 21.07.2020, so that consciable justice may be administered by</p>	

ORDER SHEET

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	<p>quashing the same to the extent of not allowing the applicant to participate in the recruitment process.”</p> <p>It is submitted by Mr. Lahiri that as for participating in the selection process for the post of Assistant Superintendent (Non Medical) Grade II an application has been filed, on the strength of the notification, dated 21st July, 2020, being annexure “A-3”, particularly ‘NOTE’ ‘6’ thereof, the subsequent notification issued on the same date being Annexure “A-4” where the word “contractual” has been omitted may not be taken into consideration and the matter may be heard and appropriate order may be passed.</p> <p>Mr. Ghosh, on behalf of the State respondents submits on instruction that the notification dated 21st July, 2020, being annexure “A-3” to the Original Application for appointment to the post of Assistant Superintendent (Non Medical) Grade II, was issued erroneously. Subsequent notification also dated 21st July, 2020 being annexure “A-4” to the application was issued where necessary correction was made with regard to “NOTE 6” where the word “contractual” has been dropped. It is submitted that since the applicant is working as Block Data Entry Operator on contractual basis and the post of Assistant Superintendent (Non Medical) Grade II is</p>	

ORDER SHEET

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	<p>different in nature and character and as the Recruitment Rules have to be adhered strictly, no order may be passed.</p> <p>On a query Mr. Lahiri submits that the law laid down in judgement dated 23rd July, 2018 passed in W.P.S.T. 53 OF 2018 : The Chairman, Public Service Commission, West Bengal versus Palash Kumar Samanta & Ors. is no longer a good law.</p> <p>Heard learned advocates for the parties. Admittedly the State authorities had issued notification dated 21st July, 2020 inviting applications for the post of Assistant Superintendent (Non Medical) Grade II 'NOTE 6' of which is as under :</p> <p style="text-align: center;">“NOTE :6) The claim of candidates for relaxation of age as a regular / contractual Govt. employee should be proved by a certificate from the appropriate authority showing the period of candidate's continuous service under the Government of West Bengal and the same should be furnished when called for.”</p> <p>It appears that on the same day subsequently another notification, being Annexure “A-4” was issued wherein the word “contractual” was dropped.</p> <p>It is an admitted position that the applicant is working as Block Data Entry Operator on contractual basis at Garden Reach State General Hospital. It is not</p>	

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SCN.	<p>connected with the post of Assistant Superintendent (Non Medical) Grade II which has been advertised. Further the Tribunal cannot interfere into the Recruitment Rules and allow a candidate to participate in the selection process in violation of the norms laid down in the advertisement. The submission the applicant be allowed to participate in the selection process as he has filed an application pursuant to the advertisement being "A-3" to the application cannot be accepted as the Government has the jurisdiction to correct an error in an advertisement which has been done in the instant case. Therefore, no order is passed on this application. The application is disposed of.</p> <p>Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	