

14th July, 2025

Item no. DL 76
Court No. 4

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Case No. **WP.ST 21 of 2025**
with
CAN 1 of 2025

In the matter of :

**The Secretary and Controller of Examination,
West Bengal Health Recruitment Board**
.... Petitioner
VS.

DR. AMIT KUMAR BERA & ORS.
....Respondents

For the Petitioner / State :
Mr. Somnath Ganguli, Sr. Advocate
....Addl. Govt. Pleader
Mr. Bikash Goswami
....Advocates

For the Respondent no.1 :
Mr. Subrata Bhattacharya
Mr. Indranuj Datta
....Advocates

1. Heard the learned Senior Counsel for the writ petitioner and the learned counsel for the respondent no.1.
2. The respondent no.1 participated in the process of recruitment for 52 officers to the post of Dental Surgeon cum Clinical Tutor / Demonstrator in the West Bengal Dental Education Service under Health & Family Welfare Department, Government of West Bengal. He was amongst the unsuccessful candidates. He filed an application under Right to Information Act from which he came to learn that

the publications submitted by him were not considered and, therefore, he was awarded zero out of ten marks earmarked for publications leading to his unsuccessful result. He has obtained marks much below the zone of consideration in his category (OBC).

3. It was the applicant's case before the Tribunal that there was only a stipulation in the advertisement as regards distribution of marks for recruitment, wherein 10 (maximum) marks have been specified for publications. He has been deprived of the marks for the publications submitted by him because a new criteria has been inserted in the interview letter issued on 1st January, 2019, clause 9 whereof is as follows :-

"9. Front Page Of Publication;(Note:Only Publication of Index Journal by 1st or Corresponding Author will be considered)"

4. There was no such stipulation in the advertisement and, therefore, insertion of such a requirement in the interview letter is unsustainable.
5. The learned Senior Counsel for the writ petitioner, however, submits that the advertisement contained stipulations regarding the distribution

of marks wherein 10 marks was earmarked for publication which has not been changed.

6. According to him, this requirement in the interview call letter, of the publication being published in any Index Journal was a requirement which was made known to the candidate(s) at the time of interview. The respondent however has not questioned such requirement in the interview letter and has participated in the interview having knowledge and notice of such requirement, since before the interview.
7. Even after the interview, he has not raised any grievance in this regard. Nearly 8 months after the interview; and after the result was declared wherein he emerged unsuccessful he has initiated the steps for filing the application before the Tribunal by seeking information under the Right to Information Act. He submits that a pretext has been created by the respondent no.1 only for the purpose of assailing the result, and the case of the respondent is untenable.
8. We find that another candidate similarly circumstanced, namely, Dr. Debajyoti Mondal had also approached the Tribunal being aggrieved by the same clause '9' in the interview. Considering the fact that the advertisement did not speak of

such requirement of publication in Index Journal, the Tribunal directed the respondents in the following terms in the order dated 11th May, 2022 passed in OA 759 of 2019 :-

“....During hearing the two journals containing the two publications of the applicant were furnished by the learned advocate for the applicant. They are “International Journal of Applied Dental Sciences” and “Clinical Dentistry”. Perusing the reply filed by the authorities pursuant to the RTI application, it is surprising that though the advertisement does not speak of publication in index journals surprisingly rejection was made on the ground that the publications of the applicant were not original and not published in the index journal, which is unjust and illegal. Consideration should have been simply on the basis of advertisement.”

9. WP.ST 108 of 2023 was filed by the present writ petitioner wherein the Division Bench of this Court has taken note of one compliance report showing compliance of the order passed by the Tribunal in the case of Dr. Debajyoti Mondal.
10. It is the case of the applicant / respondent that the authorities cannot be permitted to discriminate against the petitioner, since they have complied with the order in the case of Dr. Debajyoti Mondal.

They cannot deprive the petitioner of similar consideration.

11. Learned counsel for the respondent no.1 points out that Dr. Debajyoti Mondal was declared marks for his publication and emerged successful because the authorities found that the publication was published in an Index Journal. The same is apparent from the order dated 16.11.2020 passed after review of his case by one Prof. Dr. Sandip Kumar Mondal.

12. A specific averment has been made in the writ petition to this effect that “upon re-verification / review of the case of Dr. Debajyoti Mondal it was found that he had submitted the publications which were in two Index Journals.”

13. Having considered the rival submissions of the parties, we are in agreement with the submissions made by the writ petitioners, that since the requirement of the publication being in an Index Journal was clearly stipulated in the interview letter issued in January, 2019, the respondent had the opportunity to object to such requirement, which he has not done. Even after the interview, no such objection has been raised. Only when the respondent emerged unsuccessful, he has sought information under RTI and filed the OA before the

Tribunal raising an issue that the requirement in the interview letter was at variance with the advertisement and introduced a change in the midst of the recruitment process which is impermissible. The respondent's candidature could not be considered on the parameter newly introduced at clause 9 of the interview letter.

14. The law in this regard is settled that since the respondent had knowledge of clause 9 of the interview letter before the interview, requiring publication in an Index Journal, and he had participated in the interview without any objection in this regard, he cannot be permitted to turn around and assail this requirement, on being declared unsuccessful in the recruitment process. In this connection we take into consideration decision of the Apex Court in the case of *Anupal Singh & Ors. VS. The State of Uttar Pradesh* reported in (2020) 2 SCC 173.

15. Another aspect of the matter is the respondent's claim for parity with Dr. Debajyoti Mondal. There is sufficient material on record to show that the case of Dr. Debajyoti Mondal was reviewed as per Tribunal's order passed in his OA and it was found upon review that his publication complied with clause '9' of the interview letter.

16. The said Dr. Debajyoti Mondal with whom the applicant was claiming parity has thus not been awarded marks in respect of the publication submitted by him *de hors* the requirement contained in Clause 9 of the interview letter. Such claim of the writ petitioner, therefore, does not stand on the ground of parity with Dr. Debajyoti Mondal.
17. However, since a reconsideration of the case of Dr. Debajyoti Mondal has resulted in a positive change in his result, we do not find any reason to deprive the petitioners of such review / reconsideration.
18. We, therefore, find no infirmity in the order passed by the Tribunal requiring a review / reconsideration of the respondent's claim. However, having regard to the findings recorded above, we hold that reconsideration of the respondent's candidature in terms of the order dated 11.09.2024 passed by the Tribunal in O.A. no.252 of 2024 would be observing the requirement contained in Clause 9 of the interview letter dated 01.01.2019.
19. The writ petition being **WP.ST 21 of 2025** is accordingly **disposed of**.
20. Applications, if any, connected thereto also stands disposed of.

21. Parties to act on the basis of server copy of this order duly downloaded from the official website of this Hon'ble High Court.
22. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)