

27th October, 2025
(D/L No.8)
Ct. No.4
(SKB)

W.P.S.T.188 of 2024

Madhusudan Dasgupta and another
Versus
The State of West Bengal and others

Mr. Sudipta Dasgupta,
Mr. Sutirtha Nayek,
Ms. Suryatapa Das
....for the petitioners.

Mr. Tapan Kumar Mukherjee, Id. AGP,
Ms. Sangeeta Roy
... for the State.

1. Heard learned advocate for the writ petitioners as well as the learned advocate for the State.
2. The petitioners were the applicants before the West Bengal Administrative Tribunal (in short 'Tribunal') seeking quashing of the speaking order dated 03.01.2023, passed in compliance with the order dated 18.11.2022 passed in the Original Application filed by the petitioners bearing O.A. No.435 of 2020. By the speaking order, the petitioners' representation for relaxation of the upper age criteria was rejected.
3. The Tribunal did not entertain the petitioners' challenge to the speaking order and found the petitioners' original application bearing O.A. No.286 of 2023 to be devoid of any merit and

disposed of the O.A. by an order dated 20.06.2024. This order of the Tribunal is the subject matter of the present writ petition.

4. The brief factual background is that the writ petitioners applied for being considered for recruitment to the post of Assistant Superintendent (Non-Medical), Grade-II in the West Bengal General Service under the Department of Health and Family Welfare, Government of West Bengal. The candidatures of the petitioners were rejected on the ground of being over-age, i.e. more than 36 years of age as on 1st January, 2020.
5. The learned advocate for the writ petitioners submits that the authorities have discriminated against the writ petitioners in the process of recruitment. They were working as contractual government employees and were entitled to age relaxation in recognition of their services rendered as contractual employees. The petitioners however, were denied any relaxation in this regard. He submits that the authorities granted such relaxation to regular government employees and, therefore, the petitioners have been discriminated against.

6. It is the case of the writ petitioners that two advertisements were issued in PDF form and uploaded on the website for the same recruitment process. Note 6 of the first advertisement stated as follows:

“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.”

7. Note 6 of the second advertisement stated as follows:

“NOTE:

6) The claim of candidates for relaxation of age as a regular 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.”

8. It is submitted that since the two advertisements were governing the same recruitment process, the petitioners were entitled to relaxation of age criteria by virtue of their work rendered as contractual employees in the West Bengal Health Services. It is submitted that since the second advertisement which excluded the contractual employee from the benefit of age relaxation was issued without any corrigendum, the petitioners’ entitlement to age relaxation is required to be considered

based on a composite consideration of both the advertisements dated 21.07.2020.

9. The learned State counsel, on the other hand, submits that the writ petitioners had applied in response to the second advertisement. Since they did not raise any objection regarding taking down of the first PDF advertisement from the website; and posting of the second advertisement, there is no scope for the petitioners to contend that their candidatures have to be considered with reference to both the advertisements.

10. She submits that the writ petitioners without any objection to taking down of the first advertisement, submitted application form in respect of the second advertisement. Therefore, they cannot be permitted now to claim any benefit of the first advertisement *de hors* the second advertisement.

11. A further submission advanced on behalf of the state is that in the column in the application form meant for disclosing whether they are in Government service, they have claimed to be in service as "*Government contractual*". In the next column meant for extra age relaxation, they have claimed "yes".

However, in the column meant for disclosing the reason for claiming age relaxation, they have mentioned "*as a regular Government employee should be proved by a certificate from the appropriate authority*". Therefore, the claim of the writ petitioners to the contrary' that they ought to be granted relaxation for services rendered by them in contractual status, that also for work performed on a post other than for which the recruitment was being conducted is unsustainable in the eyes of law.

12. Upon consideration of the rival submissions and the averments/material on record in the O.A. and the present proceedings, we find that the admitted factual position which emerges is that the first PDF advertisement file was uploaded on the website sometime at around 11-35 a.m. on 21.07.2020. The second PDF advertisement file wherein "Note 6" had been altered, as extracted above, was created about three and a half hours thereafter, at 15-03 hours on the same date and uploaded on the website. The first PDF was simultaneously removed from the website. At this juncture, the petitioners did not raise any objection regarding taking down of the first advertisement. On the

contrary, they proceeded to make applications in response to the second advertisement, note 6 of which contemplated relaxation of age criteria only for regular Government employee, and not for contractual Government employee.

13. Though the writ petitioners had the opportunity of making an objection to taking down of the first advertisement from the website, they have chosen not to do so. On the contrary, they have applied in response to the second advertisement; and after making an application filed an original application bearing O.A. No.435 of 2020 wherein they sought disposal of a representation dated 27.09.2022 filed on their behalf seeking relaxation of age criteria.

14. Upon consideration of the representation, the impugned reasoned order dated 03.01.2023 was passed by the Secretary and Controller of Examinations, West Bengal Health Recruitment Board. Since the representation was not placed on record by the writ petitioners before the Tribunal or this court, the case of the petitioners in the representation, as noted in the reasoned speaking order, is being relied upon to appreciate the grievance raised by the

petitioners in their representation. The petitioners' grievance has been noted in the following terms:

“Moreover, applicant stated that there were two Advertisement for the post of Assistant Superintendent (Non-Medical) on the same date i.e. 21.07.2020 and in the first advertisement age relaxation was given to both category of employees’ i.e. “Government Employee” and also “Contractual Employee”. However, in subsequent Advertisement, the benefit of age relaxation was only given to the “Government Employee”.

Therefore according to the applicant, extension of benefit of age relaxation to the “Government Employee” and not to the “Contractual Employee” working under same Government is a discriminatory one and the same should not be done in terms of Article 14 of the Constitution of India.”

15. A bare reading of the grievance raised by the writ petitioners shows that the petitioners were seeking consideration of their claim with reference to both the advertisements, knowing fully well that the first advertisement had been taken down from the website within three hours of which posing/uploading.

16. The fact of the advertisement being taken down being not in dispute and there being no objection made in respect thereof, the relief claimed by the writ petitioners relying upon both the advertisements is factually and legally unsustainable.

17. Our conclusion is fortified by the decision of the Apex Court in the case of **Anupal Singh & Ors. Vs. State of Uttar Pradesh** reported in **(2020)2 SCC page 173**. In that case after publication of vacancies, error appeared in calculation of the vacancies reserved for OBC was discovered. It also found that total number of general-category-candidates was wrong due to wrong calculation of the quota. Vacancies under the various categories were re-worked and revised on the basis of revised regulations.

18. In that case, result of the written examination was published on 15.09.2014. Before the candidates were called for interview, an Office Memorandum dated 12.10.2014 was issued by the Commission revising number of vacancies for different categories. The writ petitioners herein having full knowledge of revision in the category of their vacancies consciously participated in the interview. Under the circumstances, the Apex Court held in para 55 of the Anupal Singh (supra) as under:

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification date 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and

finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12.10.2014 and the private respondents are stopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.”

19. We, therefore, find no infirmity in rejection of the petitioners’ claim for relaxation by the speaking order dated 03.01.2023. The claimed relaxation could not be granted to them in view of Note 6 of the existing (second) advertisement under which the recruitment process was being conducted. The Note 6 clearly contemplates a claim of candidates for relaxation of age, only if they are regular government employees, which the petitioners admittedly, are not.

20. While assailing the speaking order before the Tribunal also, the petitioners have sought the following relief:

“b. To issue a declaration that the Advt. No. R/Asstt. Suptd. (NM)/03(1)/2020 is bad in law to the extent of such and should not be proceeded with.

c. To issue a declaration that the contractual employees including the applicants are eligible for benefit of age relaxation under the Department in the selection process for recruitment to the post of Assistant Superintendent (Non Medical), Grade Ii.

d. An order declaration that the action of the concerned respondents in not extending benefit of age relaxation to contractual employees is discriminatory and hence bad in law.

e. An order declaring that the applicants are eligible to participate in the selection process for

recruitment to the post of Assistant Superintendent (Non Medical), Grade II.

f. A direction directing the concerned respondents to set aside/quash/cancel/rescind the order dated 03.01.2023.

g. A direction directing/calling the concerned respondent authorities and each one of them to transmit the records of the case to this Hon'ble Tribunal so that this Hon'ble Tribunal may on perusal of the same do conscionable justice to this case.

h. To pass suitable such other and/or further order(s)/direction(s) as may seem fit and proper."

21. A bare reading of the reliefs claimed for, makes it abundantly clear that no relief has been claimed under, or in respect of first advertisement, which was taken down within three and a half hours of its uploading. In fact, the relief is claimed only in respect of the second advertisement by contending that the same is discriminatory. Such claim is raised by the petitioners in the application filed before the Tribunal (O.A.286 of 2023), after their participation in the recruitment process based on the second advertisement; and being found unsuitable therein, as being over-age.

22. We have also considered submission of the learned State Counsel, with reference to the application/(s) submitted by the writ petitioners. We find from perusal of the print out of the petitioners' application form that there is a

column for disclosing whether the applicants are in government service. In the said column they have claimed to be in service as "*Govt. Contractual*". The next column meant for claiming extra age relaxation has also been filled up by the writ petitioners, wherein they have explicitly claimed age relaxation by mentioning "yes". We find further that in the column meant for disclosing the reason for claiming age relaxation, writ petitioners have mentioned "*as regular government employee should be proved by a certificate from the appropriate authority*". The writ petitioners have not made any claim in the application form filled up and submitted by them for age relaxation, as "*Govt. Contractual employee*" since they were conscious of the fact that the second advertisement did not contemplate grant of age relaxation to contractual government employee.

23. It is not the petitioners' case that they are regular government employees. Therefore, they are not entitled to any relaxation by considering them as a regular Government employee. Thus, they have rightly not been granted any relaxation of the upper age criteria in the process of recruitment.

24. We further find that the petitioners have applied in response of the second advertisement without any demurer in respect of Note 6 thereof. The policy to restrict age relaxation to candidates who are existing regular Government employees was not objected to by the writ petitioners while they made their applications or even before filing of the first OA. It is apparent from the record that taking down of the first PDF advertisement default file was also never objected to by the writ petitioners. Under the circumstances the writ petitioners are estopped from assailing the second advertisement long after the recruitment process was carried out wherein the writ petitioners were rejected as being over-age. Having participated in the recruitment process based on second advertisement containing modified note 6, the writ petitioners cannot be permitted to turn around and challenge note 6 of the second advertisement.

25. Even otherwise the restriction in grant of benefit of age relaxation to the Government employees, who form a class distinct from contractual employees, in our opinion, cannot be said to a classification resulting in any

discrimination. The law in this regard is settled that the courts should eschew interference in such policy matters, unless on well recognized, limited grounds for interference in exercise of judicial review, for example in a case where policy results in discrimination. When a policy seeks to grant benefit to a group while depriving another group and the distinction in is not founded on any intelligible differentia, for the purpose of achieving any objective, then the Court in exercise of judicial review may be required to interfere with such policy decision; and normally not otherwise.

26. It is under such circumstances that the Tribunal has considered the petitioners' claim with reference to the second advertisement and rightly concluded that the grant of relaxation to regular government employees and not to contractual employees is based on a policy decision of the authorities, which requires no interference. The Tribunal has also taken note of the fact that the petitioners were working not only as contractual employees but in a completely different sub-sector of Health Department as ASHA Facilitator and HIV Coordinator. Their experience, therefore, also

cannot be taken for the purposes of granting any benefit of age relaxation.

27. We find that the order of the Tribunal does not require any interference. The petitioners have never objected to taking down of the first advertisement either in the first O.A., in their representation filed thereafter, or in the O.A., order of which is impugned in the present writ petition.

28. The petitioners, therefore, cannot be allowed to contend that the candidature was required to be considered with reference to both advertisements.

29. The writ petition is, accordingly, dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)