

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 227 of 2025

**STATE OF WEST BENGAL
Vs
MD. HAFIZUR RAHAMAN AND OTHERS**

For the State : Mr. Swapan Banerjee,
Mr. Bikash Goswami.

For the Respondent : Mr. Biswarup Nandy.

Judgment on : December 09, 2025

Madhuresh Prasad, J.:

1. Heard the learned advocate for the writ petitioner as well as the learned advocate representing the applicants/respondents.
2. The State Government is the writ petitioner challenging the order of the West Bengal State Administrative Tribunal (hereinafter in short referred to as the Tribunal) in OA 840 of 2023, filed by the applicant/respondent.
3. The respondent participated in a direct recruitment process for selection to the post of Homoeopathic Medical Officer under West Bengal Homoeopathic Health Services under the Department of the Health and family Welfare, Government of West Bengal. The respondent did not emerge successful in the recruitment process which was concluded by publication of the result on 31.12.2021. He

sought certain information under the Right to Information Act which was supplied to him on 08.03.2022. On perusing the information supplied under the Right to Information Act, he approached the authorities seeking the benefit of marks as communicated to him under the Right to Information Act (In short 'RTI').

4. The information was supplied under RTI Act in response to his query regarding award of marks under three headings separately, i.e., "Interview", "Experience" and "Academic Score". Accordingly, marks have been specified as 6(Six), 5(Five) and 69.5(Sixty Five point Five) respectively. The respondent, based on simple addition of the marks awarded under the above three components, made a self-assessment of 80.5 marks.
5. The authorities have taken a stand that the applicant/respondent was assessed by them to be having 69.5 marks under the heading "Academic Score" which was inclusive of marks for experience. Therefore, based on such marks, even after adding 6 marks for interview, his total marks comes to 75.5 and he was not found to be within the cut off marks for being offered the appointment.
6. It was urged by the learned advocate for the applicant/respondent, that the method of calculation of total marks adopted by the authority in the reasoned order dated 23.11.2023, is contrary to the procedure established in the advertisement and rules of recruitment for assessing/totaling the marks obtained by a candidate.
7. A third submission was advanced that such system of evaluation of marks was resorted to by the authorities based on a decision taken at the Board meeting of the West Bengal Health Recruitment Board, after the process of recruitment had

commenced. Relying upon decision of the Apex Court in the case of ***Tej Prakash Pathak & Ors -Vs.- Rajasthan High Court & Ors.*** reported in ***(2025) 2 SCC 1 (Civil Appeal No. 2634 of 2013)*** he submits that that this resolution of the board dated 10.08.2021 cannot be relied upon as the same seeks to introduce a system of assessment which was not there in the advertisement. The resolution in effect changes the rule of the recruitment process mid way, which is impermissible in law.

8. Considering such case of the applicant the Tribunal allowed the original application and recorded a finding based on the opinion supplied under RTI to the applicant that he had secured qualifying marks and was entitled to be placed in the merit panel prepared on 31.12.2021. The reasoned order dated 23.11.2023 was set aside by the Tribunal with a specific positive direction to issue appointment letter in favour of the applicant.
9. The learned Advocate for the State writ petitioner submits that finding and directions issued by the Tribunal are unsustainable since the petitioner failed to secure qualifying marks above cut off for appointment, in the recruitment process. The directions of the Tribunal based on self-serving assessment made by the applicant are unsustainable.
10. The learned advocate for the writ petitioner submits that submission of the applicant/respondent are wholly unfounded. The Board resolution dated 10.08.2021 was in fact for the benefit of the applicant/respondent. The Board took such a decision since the initial advertisement contemplated an eligibility requirement of BHMS (4 years degree). The applicant/respondent did not have a 4 years BHMS degree. In fact he had completed a 2 years of diploma (DHMS) and thereafter 2 years of BHMS. He thus completed 4 years combining the first 2

years course studied under the diploma course; and remaining 2 years course studied under the degree course. This is known as graded BHMS. To facilitate the participation of candidates having a Graded BHMS, such as the applicant/respondent, the Board took a resolution dated 10.08.2021. The applicant/respondent has benefited from such decision, otherwise he would have been ineligible, and, therefore, he cannot be permitted to turn around and raise an issue regarding the Board resolution.

11. Another submission advanced on behalf of the State is that the reasoned order clearly specified that the marks obtained by the applicant/respondent was in accordance with the Board resolution. Therefore, his grievance is unsustainable. The reasoned order dated 23.11.2023 reads:

"As the applicant completed his graded B.H.M.S. and appeared before the Interview Board in the selection process in terms of the aforesaid Advertisement, his marks to be calculated in terms of aforesaid Board Resolution as stated above and the same shall be as follows:

$$[(1347+1202/2100+2000) \times 100] = 2549/4100 \times 100 = 62.17\%$$

As a consequence, the applicant placed himself in the range of Total:[56.00%-65.99] = 65, as mentioned in the distribution of marks pattern as stated in the aforesaid advertisement. Hence, the applicant is entitled to have 65 marks for his graded B.H.M.S. degree.

Moreover, it appears from the candidate files of the applicant that he obtained 5(five marks in experience category in accordance with the distribution of marks pattern as mentioned in the advertisement as stated above. Therefore, his academic score, which is inclusive of marks plus experience, is to be altogether (65+5) = 70 marks. But his academic score is altogether (70-0.5) = 69.5 as he has completed his D.H.M.S. course with one supplementary in each subject/chance lost for which point five marks have to be deducted. The same is evident from the mark sheet of the first D.H.M.S Examination held on Feb, 1999 of the applicant.

Furthermore, he obtained 6(six) marks in interview as evident from the office records. Hence, the total marks obtained by the applicant is 69.5+6 = 75.5 marks."

12. Upon consideration of the rival submissions and records we find that the

summation of marks done in the reasoned order is not at all at variance with the information supplied under RTI Act. Whereas the information supplied under R.T.I contains the marks under the respective heads namely, “Interview”, “Experience” and “Academic Score” separately as per applicant’s/respondent’s query; the reasoned order contains the consideration of the marks under the various heads, for the purposes of assessing his performance, in accordance with the advertisement and the Board Resolution dated 10.08.2021 which calculation is uniformly applied to all graded BHMS qualified candidates in the recruitment process.

13. The three components have been stated separately under the RTI information, since the information was sought in that way. The information cannot lead to an inference that all the three components must be added for arriving at the total marks. The advertisement contemplated calculation and award of marks as follows:

SL. No.	QUALIFICATION	MAXIMUM MARKS	REMARKS	
1	<i>Bachelor of Homoeopathic Medicine and Surgery (B.H.M.S.) from a recognized University or Institution.</i>	75 (Max)	<i>Marks obtained in Aggregate, (1st BHMS to 4th BHMS all together) [(0.5) mark will be deducted for supplementary in each subject or chance lost]</i>	<i>For e.g.- A student obtained 64% in aggregate, with supplementary in two subjects, the Scoring will be 65-(0.5*2)=65-1=64</i>
			Total: 50.00%-55.99%=60	
			Total: 56.00%-65.99%=65	
			Total: 66.00%-75.99%=70	

			Total: 76.00%- 99.99%=75	
2	House staff ship	5 (Max)	For 6 months – 2.5 marks For 1 year – 5.0 marks	
3	Other experiences in Homoeopathy from any Government Institution or Government affiliated organization	5 (Max)	1 mark for each completed year, Maximum 5 marks	Other experience should include Clinical, Teaching, Research and other experiences in Homoeopathy from any Government Institute or Government affiliated Organization excluding M.O. AYUSH under RBSK.
4	INTERVIEW	15 (Max)		
	TOTAL	100		

14. The advertisement contemplated participation of only BHMS 4 year degree qualified candidates. The applicant/respondent admittedly is not a BHMS degree holder. He acquired the Diploma (DHMS) in the year 2002 wherein he obtained 1202 marks out of 2100. He thereafter completed his Graded BHMS (a two year course) in the year 2014, wherein he obtained 1347 marks out of 2000. Thus, as per advertisement the applicant/respondent did not possess the requisite qualification of BHMS degree.

15. To enable participation of such candidates having graded BHMS, the Board at its meeting held on 10.08.2021, resolved to consider award of marks for assessment of graded BHMS degree holders. Therefore, it was also not possible to assess his academic score as per the advertisement, extracted above, which required an assessment, keeping in view distribution of marks in the 4 year of the BHMS

degree course. Accordingly, a distribution of marks was specified by the Board for assessing the graded BHMS degree holders, like the applicant/respondent as follows:

"If any candidate has completed Graded HBMS, after completion of Diploma/DHMS, marks obtained by such candidates in both the Diploma and Graded BHMS to be considered for evaluation of marks obtained in the equivalent BHMS.

If any candidate appears to have not submitted DHMS marks sheets, his/her candidature to be cancelled."

16. The applicant's/respondent's marks were accordingly assessed. His academic score thus, emerged as 65 marks for qualification. Thereafter 5 marks for experience were added to 65 which came to total 70 marks. Having completed his DHMS Course with one supplementary in each subject/chance lost, 0.05 marks were required to be deducted as per the system of calculation of mark specified in the advertisement, extracted above, bringing his academic score to 69.5 marks. Thereafter, 6 marks obtained in interview was added to 69.5 (69.5+6) which comes to a total of 75.5 marks. We find such calculation is in accordance with the advertisement, read with the Board resolution dated 10.08.2021.

17. In view of discussion above we find no infirmity. In the reasoned order dated 23.11.2023 issued by the Secretary and Controller of Examinations West Bengal, Health Recruitment Board. The Tribunal has clearly misdirected itself by concluding that the Board Resolution dated 10.08.2021 was to the detriment of the applicant/respondent. We have already considered this aspect that the applicant/respondent became eligible for participation in the recruitment process by virtue of the Board Resolution dated 10.08.2021. In fact he derived a

benefit of participation by virtue of the Board resolution dated 10.08.2021. Thus, such conclusion of the Tribunal is unsustainable. Thus, there is no scope for the applicant/respondent to contend that Rules of the game have been changed to his disadvantage or prejudice, after initiation of the recruitment process by the advertisement.

18. We find no force in the allegation of the respondent that award of marks suffers from any miscalculation, or that it is otherwise unsustainable. The reasoned order dated 23.11.2023 clearly specified the assessment of marks with reference to the uniform method for such assessment as per the advertisement read with the Board resolution dated 10.08.2021. The assessment is as per the distribution of marks prescribed in the advertisement read with the resolution dated 10.08.2021 and required no interference.

19. We therefore, find that the Tribunal has fallen in error by going into a reassessment of the marks awarded to the applicant/respondent.

20. At this juncture we consider it apposite to note that normally a court exercising judicial review is not expected to enter into a re-evaluation or reassessment of the candidate's marks. The assessments were clearly made in the reasoned order with reference to the advertisement and Board resolution dated 10.08.2021. Thus, there was no occasion for the Tribunal to sit in judgment over such assessment and substitute its own view/calculation with reference to the marks obtained under the individual heads, supplied to the applicant/respondent by the petitioner under RTI. There being no allegation of mala fide/extraneous consideration or discrimination; and when assessment of the advertisement Board is founded on a uniform criteria based on the advertisement, read with the Board resolution dated 10.08.2021, there was no occasion for the Tribunal to

undertake a reassessment of the marks awarded to the petitioner while exercising judicial review.

21. We therefore, are of the considered opinion that the positive direction issued by the Tribunal upon the Board, founded on such unsustainable and illegal reassessment of the petitioners' marks, dehors assessment methodology prescribed in the advertisement read with the Board resolution dated 10.08.2021 cannot be sustained.

22. The Order of the Tribunal dated 07.08.2025 passed in OA No.840 of 2023 deserves to be, and is hereby set aside.

23. The writ petition is allowed.

24. As a result, the original application stands dismissed.

25. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)