

**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. 218 of 2025

Koushik Chatterjee & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners. : Mr. Partha Sarathi Bhattacharya, Ld. Sr.Adv.
Mr. Kallol Basu,
Mr. Suman Banerjee,
Ms. Shreejita Sen,

For the P.S.C.W.B : Ms. Shraboni Sarkar,
Mr. Umme Habiba Khatun,

Judgment on : 27.07.2026

Madhuresh Prasad, J.:

1. The writ petitioners were the applicants before the West Bengal State Administrative Tribunal (hereinafter referred to as the Tribunal in Short) in OA No. 1088 of 2017. They were applicants in response to an Employment Notice bearing Advertisement No. 5 of 2016, issued by the Public Service Commission, West Bengal (hereinafter referred to as the Commission in short) for filling up the posts of Junior Engineers (Civil) in West Bengal Subordinate Service of Engineers under the various departments, directorates and offices. They emerged

unsuccessful in the selection process and therefore, approached the Tribunal for the following reliefs:

“(a) An order directing the respondents, their agents, subordinates and successors particularly the respondent No. 2 and 3 to include the vacancies of all the departments which were reported to the PSC and to fill the posts in question of Junior Engineers Civil .

(b) An order directing the respondents, their agents, subordinates and successors to produce all records and proceedings so that conscionable justice may be administered by granting the relief for hereinabove ;

(c) To pass such other or further orders or orders as to Hon’ble Tribunal may deem fit and proper.”

2. Thereafter the case has a chequered progress leading to rejection of the petitioners’ claim by an order dated 04.09.2025, passed by the Tribunal. The Order dated 04.09.2025 was put to challenge in the present writ proceeding.
3. The learned Senior advocate for the petitioners and the learned advocate for the Commission made submissions.
4. The learned Senior advocate appearing for the writ petitioners took us through the various stages of the recruitment process starting from the advertisement dated 01.03.2016.
5. The recruitment process comprised of two stages; a written test and personality test, which were conducted on 19.06.2016 and 19.09.2016 respectively.
6. The result thereafter was declared on 16.12.2016, filling up 1387 vacancies.

7. The first recommendation made from the merit list is dated 20.01.2017, whereby and whereunder 1082 candidates were recommended against the subsisting vacancies.
8. The learned Senior advocate submitted that the petitioners thereafter filed an application seeking information under the Right to Information Act, 2005 (for short "RTI"). From the information dated 11.09.2017 made available to the candidates, it was revealed that the recruitment process did not take into consideration the existing vacancies of some departments, namely; (i) Development and Planning Department, (ii) Micro and Small-Scale Enterprise and Textile Department and (iii) Sundarban Affairs Department. The information dated 11.09.2017 supplied under the RTI further revealed that the merit list was valid till 07.12.2017.
9. The authorities/respondents, however, have stretched the merit list beyond its originally intended currency and made 55 recommendations on 09.10.2018, against the posts remaining unfilled due to non-joining of the earlier recommended candidates.
10. It is further submitted that though the panel was kept alive till 09.10.2018, the authorities did not take into consideration the vacancies which were available in the three departments, noted above. Had the department taken into consideration such vacancies, the petitioners would have been appointed.
11. Under the circumstances, they approached the Tribunal by filing the present O.A No. 1088 of 2017. The same was disposed of, which brought the petitioners to this Court earlier in WPST 109 of 2020.

12. The Division Bench passed an order on 17.08.2021 in WPST 109 of 2020 in the following terms:

“On such consideration, we are of the view that the matter requires reconsideration by the tribunal. The West Bengal Public Service Commission is directed to produce all records relating to the said selection process and to offer an explanation for not recommending the names of the writ petitioners, if required, by way of an affidavit before the tribunal. The order impugned dated September 26, 2019 passed by the West Bengal Administrative Tribunal is, therefore, set aside. We request the tribunal to dispose of Original Application No. 1088 of 2017 afresh as expeditiously as possible, preferably within a period of six months from the date of communication of this order. Any vacancy filled up during the pendency of the proceeding before the tribunal shall abide by the result of the original application. We make it clear that this order is restricted only to the writ petitioners before us. The writ petition is, thus, disposed of without any order as to costs. Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date putting in the requisites.”

13. It is further submitted that thereafter, during the pendency of the proceedings before the Tribunal, the Secretary of the Respondents/Commission submitted a report. The respondents/Commission also produced the records relating to the process. Upon inspection of the records shocking a state of affairs was revealed which was articulated by the petitioners in the M.A. 36 of 2025 filed in the pending O.A proceedings. It was observed in the inspection that the candidates in the reserved category, whose marks in the personality test was awarded as per the relaxed standard were wrongly placed in the general standard merit list. A few of the pages

were also found to be missing from the record. The writ petitioners, based on the observed illegality sought the following relief in the pending O.A. 1088 of 2017, by way of M.A. 36 of 2025:

“Under the aforesaid circumstances, Your Honour may graciously be pleased to pass an order may be pleased to take note of the subsequent events and pass an appropriate order setting aside the General Standard Merit List of the Junior Engineers (Civil/Mechanical/Electrical) Recruitment Examination, 2016 and treat the candidates at Serial No. 2, 21, 37, 57, 66, 70, 84, 87, 100, 107, 110, 114, 115, 118, 128, 136, 148, 153, 155, 158, 162, 165, 168, 180, 188, 192, 210, 217, 226, 227, 243, 246, 250, 251, 253, 263, 265, 273, 276, 279, 280, 286, 298, 307, 308, 320, 327,336, 337, 339, 343, 346, 351, 355, 356, 358, 359, 368, 371, 374, 386, 387, 403, 405, 407, 409, 410, 412, 413, 419, 421, 422, 425, 428, 434, 439, 450, 451, 455, 456, 458, 461, 463, 465, 475, 495, 498, 501, 506, 507, 513, 517, 519, 523,527, 528, 536, 546,548, 550, 562, 567, 570, 571, 575, 579, 582, 585, 589, 594, 595, 598, 602, 605, 609, 630, 631, 632, 636, 640, 641, 645, 649, 652, 653, 659, 665, 671, 679, 682, 683, 690, 699, 705, 706, 709, 716, 717, 721, 722, 725, 726, 901, 902, 904, 911, 915, 917, 919, 929, 930, 931, 934, 940, 946, 948, 953, 956, 963,964,967, 968, 970, 971, 973, 975, 976, 980, 982,991, 998, 999, 1000, 1002, 1008, 1017, 1020, 1021, 1022, 1025, 1031, 1040, 1045, 1048, 1053, 1057, 1058, 1062, 1068, 1075, 1076 of such General Standard Merit List as Reserved Category Candidates and to be recommended and appointed against reserved vacancies and appoint the applicants against such arising vacancies with effect from the date the above referred candidates joined and grant the applicants all consequential benefits;”

14. The Tribunal finally disposed of the original application No. 1088 of 2017 by the impugned order dated 04.09.2025, but without granting any relief to the writ petitioners.

15. The M.A. No. 36 of 2025 and M.A. No. 109 of 2024 was also disposed of in terms of the order passed in O.A. No. 1088 of 2017. It is therefore, submitted by the learned Senior advocate that the Tribunal has failed to take into consideration the illegality highlighted by the writ petitioners after the opportunity was granted to them by this court, in terms of the order passed in earlier writ proceeding.
16. The writ petitioners made out a specific case of the undue benefit being granted to reserve category candidates against the vacancies meant for general category candidates, even though they had secured a qualifying position based on relaxed standard. The Tribunal, therefore, should have given a direction in terms of the prayer made in the M.A. cancelling such recommendation and directing for placing the beneficiaries of such recommendation in the reserved category, so as to make way and place for the writ petitioners who are candidates under the unreserved/general category.
17. The specific averments made by the writ petitioner in the M.A. in this regard was met with evasive reply.
18. It is further submitted that the admitted position that emerges from the reply filed by the commission is that the allegation made by the writ petitioners in the Miscellaneous Application was not in dispute. In so many words the respondents have stated the qualifying marks (38) based on which the 55 candidates of reserved category were recommended. The writ petitioners, who are general category were assessed on a higher qualifying mark of 40, being the qualifying marks fixed for general category candidates, in the personality test.

19. It is submitted that once the candidate was given a relaxation in assessment of his merit, there was no question of placing the same candidate against unreserved/general category candidate.
20. In support of such submission the learned Senior Counsel relied on a judgment of a co-ordinate Bench of this Court delivered in the case of ***Sahim Hossain and Others vs. State of West Bengal and Others*** reported in ***2023 SCC OnLine Cal 2751***. The learned Senior Advocate also relied upon copy of an unreported judgment dated 06.01.2026 of the Hon'ble Supreme Court of India in the case of ***Union of India vs. G. Kiran and Others*** reported in ***SLP (c) No. 4743 of 2020***.
21. The learned Senior advocate further submitted an alternative argument that even if taking the line of least resistance, the petitioners do not seek cancellation of the recommendation made in favour of the 55 candidates after December 2017, then in view of the hardship suffered by the present petitioners, a direction may be issued to ensure their consideration and appointment on merit against the other vacancies under the unreserved category which are existing in the department, without disturbing the 55 candidates.
22. The learned advocate for the respondents/ Commission, on the other hand, submits that the order of the Tribunal in the present writ proceeding does not require any interference.
23. The Commission in its report filed before the Tribunal referred to above has clarified that the petitioners could not be recommended since the aggregate of their marks was lower than the aggregate marks obtained by the last recommended candidates of their category.

24. Insofar as the allegation regarding the beneficiaries of a relaxed assessment belonging to reserve category being recommended against general/unreserved posts, the Commission has explained the situation with reference to the “SCHEME AND SYLLABUS (for short “Scheme”) which was published on the website along with the advertisement, based on which the recruitment process was initiated. The same contemplated:

“The examination will comprise two successive parts as follows:-

*a) **Written Examination – Full Marks-200, Time -2 hours:***

The written examination will consist of one paper covering Engineering subjects (Multiple Choice Objective Type Questions) for each of the three branches. There will be 100 questions carrying 2 marks each. The standard and syllabus of the written examination are mentioned in the appendix (Appendix ‘A’, ‘B’ & ‘C’).

*b) **Personality Test - Full Marks - 100:** A limited number of candidates, selected on the results of the written examination, will be called to Personality Test carrying 100 marks. Final merit list will be prepared on the basis of the total marks obtained in the Written Examination and the Personality Test.”*

25. It is the specific stand of the Commission that the final merit list was prepared accordingly on an aggregate of the marks obtained by the candidates in the written test as well as personality test. Difference in qualifying marks for personality test was not relevant. The final merit list was prepared as per merit based on aggregate of the marks.

26. The writ petitioners, being lower in merit, could not find place above the 55 subsequently recommended candidates. In support of her submission she has also placed reliance on the “MINUTES OF THE

FULL COMMISSION MEETING HELD IN THE CHAMBER OF THE HON'BLE CHAIRMAN, PUBLIC SERVICE COMMISSION, WEST BENGAL ON 19-09-2014 AT 1-00 P.M.”(for short “Minutes”), copy of which was also handed over to the learned advocate for the writ petitioner. As per the minutes, qualifying marks for General Category candidates in the interview was 40; whereas for OBC, SC and ST candidates the qualifying marks in interview/personality list was lower.

27. Insofar as the submission on behalf of the petitioners regarding non-consideration of vacancies in the three departments she submitted that the same is devoid of any substance. There is no question of non-consideration since these departments did not report any vacancies for being included in the recruitment process in question.

ANALYSIS:

28. Upon consideration of the submissions noted above, perusal of the record and on going through the decisions relied upon, we find that substantially two issues were raised. **Firstly**, it was urged that migration of the reserved category candidates in the unreserved merit list is unsustainable as the reserved category candidates have availed relaxation. On consideration of the stand taken by the parties in this regard, we find that the selection process comprised of written examination and personality test. The written was comprising of full marks- 200. The personality test was comprising of full marks- 100. The final merit list was prepared on the basis of total marks obtained in the written examination and personality test. The aggregate, therefore, formed the basis of consideration. Therefore, prescription of

a lower qualifying marks in the personality test for reserved category candidates vis-à-vis the unreserved candidates *ipso facto* would not attract the legal proposition canvased by the learned Senior Advocate relying upon the two decisions in the case of **Sahim Hossain** (*supra*) and **G. Kiran** (*supra*). These two judgments do not support the contention on behalf of the writ petitioners. Judgment of the co-ordinate bench in the case of **Sahim Hossain** (*Supra*) considered an issue whether reserve category candidate can compete in unreserved category even after obtaining statutory concessions in light of the policy decision of the State of West Bengal falling for consideration therein. Accordingly, the Co-ordinate Bench held:

“49. In such circumstances, we are of the view that, since the reserved category candidates should have been placed in the unreserved category having taken no benefit in the selection process excepting those which have been extended to them under the statute and since, there being no prohibition for the reserved category candidates being considered meritwise in the unreserved category, after they take the statutory relaxation that they are entitled to, the Tribunal erred in upsetting the plausible view taken by the Public Service Commission. Tribunal had read a prohibition akin to one obtaining in the State of Gujarat when for this State no such prohibition exists”.

29. In the case of **G. Kiran** (*supra*) also the apex court proceeded to consider such issue with reference to the rules and policy under which the recruitment was being conducted. The apex court found no such bar under the existing rules and policy. Thus, the apex court held:

“24. Upon conjoint reading of the Rules quoted above in juxtaposition to Clause 9 of the Policy, it is clear that a reserved category candidate selected applying ‘General Standard’ has eligibility for allocation on unreserved vacancy as per his merit and preference if he is not lower in rank from other General category candidates, otherwise he shall be considered for allocation as per his merit and preference against the available vacancy of his category. In the said context, it is clear that for allocation of unreserved vacancy to a candidate of reserved category, the selection must be on ‘General Standard’ without availing any ‘Relaxed Standard’ in either eligibility or selection criteria. In case any ‘Relaxed Standard’ has been availed by him, his allocation of cadre would be as per his merit and preference against vacancy of his category.

...

28. On appreciation of the rules referred above, it is clear that any relaxation or concession in eligibility or in selection criteria, if taken at any stage of examination by such candidate of SC, ST and OBC, they may not get any benefit to claim the vacancy of unreserved category, in particular, in the context of Rule 17(1) of the Exam Rule, 2013 seeking allocation of General Insider vacancy in home State cadre as it would be contrary to paragraph 9 of the Policy.”

30. Neither of the two judgments relied upon, laid down a universal proposition that in every case where any relaxation was availed by a reserve category candidate, such candidate would be barred for consideration against unreserved vacancy, even if he obtained marks equal to; or higher than the last selected candidate in the unreserved category. In both the judgments the Co-ordinate Bench, and the apex

court respectively considered such claim with reference to the policy/rule/provision governing the recruitment in the question.

31. Therefore, we also proceeded to consider such claim of the petitioners based on a conjoint reading of the *Scheme* with the *Minutes* applicable herein.

32. The scheme governing the recruitment process contemplated assessment of all candidates of all categories based on the aggregate marks obtained in written as well as personality test. Therefore, the respondents were bound by such prescription, and therefore conducted the recruitment process accordingly. No such provision was brought to our notice, wherein there is any bar to consider a reserve category candidate against unreserved vacancy if she/he availed a benefit of relaxed standard in the personality test. Therefore, there is no scope for the writ petitioner to raise a grievance that the 55 candidates from the reserved category could not be placed in unreserved category by virtue of their merit based on their aggregate marks. Thus, there was no occasion for the Tribunal to conclude that the said 55 candidates had availed any relaxation, which would disentitle them from claiming a position by virtue of their merit, based on aggregate marks, in the unreserved category.

33. We further find that the allegations regarding the 55 candidates has been made by the writ petitioners/ applicants without impleading the 55 candidates either in the O.A. or in the present writ proceeding. Still they have sought the relief that the 55 persons may be moved out of

the unreserved category so as to make way for the petitioner's selection. Such relief cannot be considered in absence of the 55 persons, and behind their back. Such relief if considered would also have a cascading consequence of pushing out another 55 candidates already declared successful under the reserved category, without giving them also an opportunity of hearing. The relief sought for would thus have the effect of upsetting and reworking of the entire result. Thus, we find that no case is made out for removing the reserve category candidates from unreserved vacancy which they came to occupy by virtue of their high aggregate marks/merit.

34. The **second** submission advanced by the learned Advocate for the writ petitioner was that existing vacancies in the three departments of (i) Development and Planning Department, (ii) Micro and Small-Scale Enterprise and Textile Department and (iii) Sundarban Affairs Department were not included despite the fact that the currency of panel was extended till 09.10.2018. The respondent Commission clarified this aspect with reference to the contemporaneous records to show that at the time the filling up of the vacancies was initiated no vacancies were reported in respect of these three departments. Since vacancy of these three departments were not reported, there was no occasion for the respondents to take into consideration vacancies, even if existing in these departments. The Commission proceeds to advertise selection process only in respect of vacancies reported by the Government department/s.

35. It was for the Government to consider which vacancies were to be reported for filling up based on administrative exigencies and various other factors including infrastructure, finance etc. Since Government had not reported vacancy in these three departments, there was no scope for the Commission to advertise these vacancies or to work down the merit list further for filling up of these unadvertised vacancies. The writ petitioners cannot claim any right in this regard capable of enforcement by an order of the Tribunal or the writ Court.

36. The **last** and alternate submission of the learned Senior Advocate that since the petitioners suffered a hardship, a direction be issued for consideration of their appointment on merit against other vacancies existing in the departments, without disturbing the 55 candidates, in our opinion, cannot be acceded to. The petitioners based on their performance/ merit position have not made out a case that any of them were next in merit after the last selected candidate. Even if some vacancies were to be made available, there is no certainty that all the writ petitioners would by virtue of their merit position would come to occupy these vacancies.

37. Another aspect of the matter we have already considered above that the petitioners have not suffered any hardship as the 55 persons against whom allegations were made have occupied unreserved category based on their merit as per the *Scheme* and *Minutes*. Also, there is no vacancy left.

38. Admittedly, the last recommendations in the recruitment process were made on 09.10.2018. Considering these facts and

circumstances, we find no scope for entertaining the alternate submissions/ relief.

39. Therefore, the Tribunal, in our considered opinion rightly refused to embark on a re-assessment of the entire recruitment process.

40. We, therefore, find no infirmity in the order of the Tribunal rejecting the original application and miscellaneous applications.

41. The writ petition is dismissed.

42. There shall be no order as to costs.

43. Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)