courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2023) 09 CAL CK 0103

In the Calcutta High Court

Case No : WP.ST No. 9, 12, 30, 31 Of 2022, IA NO: CAN/1, 2, 12/2022, 2, 3, 4/2023

Akash Bhunia And Ors. — APPELLANT

Vs

State Of West Bengal And Ors. — RESPONDENT

Date of Decision : 27-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 15(4), 16(1), 16(4)
West Bengal Police (Recruitment of Constables and Lady Constables) Rules, 2017 — Rule 4(d)
West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 — Section 4, 4(2)
West Bengal Backward Classes (other than Scheduled Castes and Scheduled Tribes) Reservation of Vacancies in Service and Posts) Act, 2012 — Section 5
UP Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(6), 8
West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of vacancies in services and posts) Act, 2012 — Section 5, 5(b)

Citation : (2023) 09 CAL CK 0103

Hon'ble Judges : T. S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, Subir Sanyal, Dibyendu Chatterjee, Pritam Majumder, Reshmi Ghosh, Soumya Sankar Chini, Mainak Singha Barman, Arunava Ghosh, Anindya Lahiri, Mainak Ganguly, Samrat Dey Paul, S.N. Mookherjee, Tapan Kumar Mukherjee, Pinaki Dhole, Somnath Naskar, Tapan Kumar Mukherjee, Sangeeta Roy, Shaktinath Mukherjee, Kamalesh Bhattacharya, Aninda Bhattacharya

Final Decision : Disposed Of

Judgement

Hiranmay Bhattacharyya, J

1. The original applicants before the West Bengal Administrative Tribunal (for short "the Tribunal") have assailed the judgment and order dated 28.01.2022 passed in OA 430 of 2020 which was heard analogously with OA 479 of 2020 and OA 210 of 2021 by filing WPST 9 of 2022 and WPST 12 of 2022.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has...

2. By the judgment and order impugned herein, the West Bengal Police Recruitment Board was directed to prepare a panel afresh for recommendation to the post of constables in West Bengal Police.

3. WPST 30 of 2022 and WPST 31 of 2022 are at the instance of reserved category candidates whose names were excluded in the revised merit list published pursuant to the impugned judgment and order.

4. Since the issues involved in these writ petitions are similar, all the writ petitions were heard analogously and are decided by this judgment and order.

5. Facts giving rise to the aforesaid writ petitions in a nutshell are as follows:-

West Bengal Police Recruitment Board (hereinafter referred to as "the Board") had published a notification inviting applications for recruitment to 8419 vacancies to the post of Constables (male) in West Bengal Police 2019. The original applicants filed their applications. They were called upon to appear in the Preliminary Written Test. All of them succeeded in the said test. They were called for Physical Measurement Test (for short "PMT") and Physical Efficiency Test (for short "PET") in which they appeared and came out successful. Thereafter, the respondents issued admit cards for final written test which was held on 16th February, 2020 in which the original applicants appeared. The original applicants alleged that no result of the final written test was published by the Board and as a result, the applicants were not aware of the marks secured by them in the final written test. According to them no qualifying / cut off marks was declared by the Board and instead the Board published a notification in its website calling upon the applicants and / or candidates to take print out of their respective admit cards for interview by putting their roll numbers. The original applicants after having obtained their respective admit cards for interview, came to know that they were eligible for interview as they got the necessary cut off marks. They participated in the interview which was held on and from 12th August, 2020 under different ranges of the Board. It was further alleged that prior to the interview, on 5th August, 2020 some of the applicants got messages from the West Bengal Police regarding constitution of the nine range recruitment boards for interview and the names of its members. It is the case of the original applicants that the names of the members of the interview board were disclosed prior to interview to their favourite candidates to enable them to get in touch with them and to get appointment which is unfair and leaves room for corrupt practice making the entire process for recruitment void. All the original applicants appeared before the respective range recruitment board for interview on their respective dates with the belief that their names would figure in the final merit list on the basis of their performance in the recruitment process and would be selected. However on 15th October, 2020 they were astonished to find that their names did not figure in the merit list. The merit list, according to the original applicants, did not contain the details of breakup of marks in the final written examination, interview and the category of candidates. The Board, however, published a notice intimating that the final result has been uploaded on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

website of the Board and the candidates were advised to search for the result in the website by keying in their serial number of the application and the date of birth. The list of provisionally selected candidates would also be on the notice board. The applicants visited the official website of the Board to know their individual marks. However they came to know only their individual total marks without any breakup of the marks obtained in the final written test and interview. As a result, none of the applicants could compare their marks with the marks of the selected candidates. They also could not find out the merit list of the provisionally selected candidates in the website of the Board. According to the original applicants, there was clear violation of the reservation policy as reserved candidates were selected in the unreserved category without disclosing the particulars and details with regard to the merit of the candidate which revealed that there was lack of transparency in the process of public recruitment. It has been alleged that no categorywise merit list with breakup of marks of the provisionally selected candidates was published by the Board which revealed that there was nepotism and favouritism in the process of selection as well as violation of the reservation policy.

6. Pursuant to the direction of the Tribunal, the Board published the results.

7. Thereafter, the original applicants had filed a supplementary affidavit on 24th December, 2020 to bring certain facts, documents and subsequent events on record in terms of the direction dated 22nd December, 2020 passed in WPST 101 of 2020 by the High Court. In the said supplementary affidavit, it was stated that no result for final written test had been published by the Police Recruitment Board at any stage and as a result the applicants were not aware of the marks secured by them and other candidates in the final written test and no qualifying / cut off marks after the final written test was declared by the Board. It has been alleged that at least ninety-seven candidates were favoured by the Recruitment Board by empanelling them in the merit list though they failed to secure minimum qualifying height of 167 cms. It has been alleged that the State respondents did not provide information pursuant to the application under the Right to Information Act, 2005. It was also alleged that the panel containing the list of successful candidates which has been prepared district wise instead of State wise, is illegal, arbitrary and discriminatory and violative of Article 14 of the Constitution of India.

8. Thereafter, the original applicants had filed a second supplementary affidavit on 20th April, 2021, wherein the applicants have alleged that they have found favouritism shown to certain candidates by the Board. Submission was 401 candidates belonging to reserved category - Scheduled Caste, Scheduled Tribe, OBC-A and OBC-B, having availed themselves of the benefit of age relaxation, have been kept in the merit list of the unreserved category and recommended, which is illegal. It has been stated in the said affidavit that candidates in the reserved category having availed the benefits of the reserved category once they come within the zone of consideration of selection, cannot be appointed in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

unreserved vacancy. It has also been alleged that it transpired that the Board favoured the candidates in the reserved category by allotting them increased and /or adjustable marks in the interview intentionally so that they could be appointed by superseding the meritorious candidates. It was further alleged that sixty-seven candidates, whose names appeared in the merit list, are not conversant in Bengali language. It is the further allegation that some candidates have been favoured by allotting them adjustable marks in interview compared to the marks obtained by the general candidates so that they can get a chance to be recommended. It has been alleged that it appears from the merit list that a majority of the candidates got marks in fraction which is not permissible in the eye of law.

9. The learned Tribunal held that there has been a breach of the policy of reservation in the State while conducting the recruitment process. The panel of recommended candidates published on 26.03.2021 was set aside and quashed by the learned tribunal and a direction was passed to prepare a panel afresh.

10. By the impugned judgment and order, the West Bengal Police Recruitment Board (for short "the Board") was directed to prepare a panel afresh for recommendation to the post of constables in West Bengal Police in respect of:

i) The unreserved category, that is open category on merits excluding the candidates who have availed age relaxation, and

ii) The reserved categories in accordance with the prevailing laws in force.

11. Mr. Bikash Ranjan Bhattacharya, learned Senior advocate appearing for the original applicants attacked the impugned order by contending that the learned Tribunal erred in law by not directing exclusion of the reserved category candidates, who availed the benefit of age relaxation, against general/unreserved vacancies right from the stage of Preliminary Written Examination. In other words, according to Mr. Bhattacharya, the reserved category candidates who have availed the age relaxation and were called for interview ought to have been considered only against the vacancies of their respective categories and not against the unreserved/general category vacancies from the stage of PMT/PET. In support of such contention, he placed reliance upon a judgment of the Hon'ble Supreme Court of India in the case of Niravkumar Dilipbhai Makwana vs. Gujarat Public Service Commission and Ors. reported at (2019) 7 SCC 383. He further contended that a large number of candidates who got higher marks in the final written examination were deliberately and in a mala fide manner given lesser marks in the interview. He submitted that several candidates were selected and appointed in spite of the fact that they did not study Bengali or Nepali as language paper in Madhyamik or its equivalent level.

12. Mr. Arunava Ghosh, learned advocate assisted by Mr. Anindya Lahiri appeared for the petitioners in WPST 30 of 2022 and WPST 31 of 2022, whose names featured in the original merit list dated 26.03.2021 but were excluded in the revised merit list published on 24.02.2022. He contended that Article 15(4) read

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

with Article 16(4) of the Constitution of India empowers the State Government to make special provisions for advancement of social and educationally backward classes of citizens and to make provisions for reservation while making appointments in posts in favour of such class of citizens which in the opinion of the State is not adequately represented in the services under the State. By placing reliance upon the provisions laid down under Section 4 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (for short "the 1976 Act") and Section 5 of the West Bengal Backward Classes (other than Scheduled Castes and Scheduled Tribes) Reservation of Vacancies in Service and Posts) Act 2012 (for short "the 2012 Act") it was submitted that the reserved category candidates are entitled to simultaneously avail age relaxation and be accommodated against unreserved vacancies.

13. He contended that the original applicants appeared in the interview and being unsuccessful have thereafter challenged the selection process. The judgments of the Hon'ble Supreme Court in the case of Anupal Singh & ors. vs. State of Uttar Pradesh reported at (2020) 2 SCC 173 and Union of India & ors. vs. S. Vinodh Kumar and other reported at (2007) 8 SCC 100 were relied upon to support the contention that a person having consciously participated in the selection process cannot turn around and challenge the selection process. The judgments in the case of Chandra Kishore Jha vs. Mahavir Prasad & Ors. reported at (1999) 8 SCC 266; Nazir Ahmed vs. King Emperor reported at 1936 Privy Council 583 and Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal & ors. reported at (2020) 13 SCC 234 were referred to in support of the contention that if a statute provides a thing to be done in a particular manner, then it has to be done in that manner only.

14. Learned Advocate General appearing for the State of West Bengal contended that the original applicants participated in the interview process without any protest or demurer. They were also aware of the names of the interviewers prior to appearing for the interview and participated in the interview without any protest. The original applicants, according to the learned Advocate General, cannot be permitted to assail the selection process after having participated in the interview and being unsuccessful at that stage. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of Anupal Singh & ors. vs. State of Uttar Pradesh & ors. reported at 2020(2) SCC 173 Ashok Kumar & Anr. vs State of Bihar & Ors. reported at (2017) 4 SCC 357. He further contended that merely because of the fact that lower marks have been assigned in the interview to candidates who had secured higher marks in the written examination does not necessarily mean that the authority had adopted unfair practice. He contended that judging the performance of the candidates and awarding marks are the functions of the competent authority and the courts should be slow in exercising its powers of judicial review in that regard. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of Madan Lal & Ors. vs. State of Jammu &

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

Kashmir & Ors. reported at (1995) 3 SCC 486. He further contended that weightage of 15% of the total marks for the interview is inconsonance with the decision of the Hon'ble Supreme Court in the case of Ajay Hasia & Ors. vs. Khalid Mujib Sehravardi & Ors. reported at (1981) 1 SCC 722. Awarding fractional marks in the interview was sought to be justified by the learned Advocate General by contending that the average of marks given by each member of the Range Recruitment Board in the interview was calculated for preparation of the merit list which resulted in the marks in the interview in fractions/decimals. The learned Advocate General further contended that the recruitment notification dated 03.02.2019 do not state that a candidate is required to have studied Bengali or Nepali as a language at Madhyamik level or its equivalent. He also contended that allegation of the original applicants that several candidates who have been selected are not able to speak, read and write Bengali language or Nepali language is without any foundation.

15. Mr. Kamalesh Bhattacharya, learned advocate representing the private respondents in the original applications before the learned Tribunal adopted the submissions advanced by the learned Advocate General.

16. Heard the learned advocates for the parties and perused the materials placed.

17. Record reveals that pursuant to the advertisement for recruitment, 4,42,218 applicants had applied for the posts. 3,22,275 applicants appeared in the Preliminary Written Test and 86, 738 were successful. Thereafter, 63,820 appeared in the Physical Measurement Test and Physical Efficiency Test of which 28,529 were successful. In the final written test 28,265 candidates appeared and 12,786 passed the examination and 12,694 appeared in the interview. Thereafter, final selection was made with regard to 8419 vacancies.

18. The original applicants have not challenged the relaxations given to the Reserved category candidates in the Recruitment Notification. The principal ground of attack of the original applicants is that the authorities have acted against the Reservation Policy of the State of West Bengal by preparing a panel wherein the unreserved vacancies were sought to be filled up by Reserved category candidates who have availed the relaxations in age etc.

19. From the pleadings of the respective parties and upon hearing the submissions of the learned advocates for the rival parties the following issues arise for consideration in these writ petitions.

i) Whether disclosure of names of the members of the Interview Board prior to interview amounted to lack of transparency and nepotism?

ii) Whether candidates who have failed in Physical Measurement Test and Physical Efficiency Test was recommended?

iii) Whether fixation of cut off marks was arbitrary?

iv) Whether awarding fractional marks in the interview is impermissible in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

eye of law?

v) Whether candidates who were not conversant with the Bengali language was recommended?

vi) Whether there has been manipulation in the marks at the interview?

vii) Whether non-publication of key answers was proper?

viii) Whether migration of the candidates of the reserved categories to the unreserved posts despite availing age relaxation was proper.

20. This Court shall now proceed to deal with the aforesaid issues in seriation.

21. Issue No.- (i) Whether disclosure of names of the members of the Interview Board prior to interview amounted to lack of transparency and nepotism?

22. The learned Tribunal observed that apart from making general allegations of favoritism there was no specific pleading as to any fault being committed by the members of the interview board which caused prejudice to them. The learned Tribunal noted that the members of the interview board were also not made parties and also that there was no specific pleading as to which of the candidates have been favoured with by the members of the interview board. When an allegation of bias has been made in the original application, the members of the Interview Board ought to have been made parties. In their absence, the learned Tribunal was right in not entertaining such general allegations.

23. The original applicants have failed to plead and prove as to how their rights in the selection process got affected due to disclosure of names of the members of the Interview Board. This Court, therefore, holds that mere disclosure of names of the members of the Interview Board prior to the date of interview do not amount to lack of transparency in the Interview and/or that the process got vitiated by nepotism.

24. Accordingly, the issue no. (i) is answered in the negative and against the original applicants.

25. Issue No.- (ii) Whether candidates who have failed in Physical Measurement Test and Physical Efficiency Test was recommended?

26. The learned Tribunal after going through the pleadings of the respective parties and the materials produced by the rival parties rightly held that the allegation of the original applicants that some candidates have been recommended though they have failed in the PMT and PET is without any foundation.

27. After going through the materials on record, this Court is of the considered view that the original applicants have miserably failed to prove that the candidates who have failed in PMT and PET have been recommended.

28. The issue no. (ii) is answered in the negative and against the original

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

applicants.

29. Issue No.- (iii) Whether fixation of cut off marks was arbitrary?

30. The learned advocate for the original applicants would strenuously contend that the cut off marks should have been fixed prior to written test and interview. The learned Tribunal after taking note of the fact that the number of candidates participating in the selection process was very high observed that pre-fixation of cut off marks would have resulted in anomalies. The Learned Tribunal after noting that lakhs of candidates participated in the recruitment process observed that fixation of cut-off marks is to be left to the discretion of the Board.

31. The power of the Board to fix the cut-off marks is not disputed by the learned Senior Advocate of the original applicants. After considering the fact that a large number of candidates participated in the selection process, this Court is of the considered view that the manner in which the cut-off marks were fixed cannot be said to be violative of the principles of equality enshrined in Article 14 of the Constitution of India. The fixation of cut-off marks cannot thus be said to be arbitrary. The finding of the learned Tribunal is also supported by reasons.

32. Issue no. (iii) is answered in the negative and against the original applicants.

33. Issue No.- (iv) Whether awarding fractional marks in the interview is impermissible in the eye of law?

34. The learned Senior Advocate contended that awarding marks in the interview in fraction/decimals is impermissible in the eye of law. The learned Tribunal rightly noted that the original applicants have not cited any provision of law which prohibits award of marks on a fractional basis particularly in a selection process of the instant nature. That apart the interview Board consisted of more than one member and while calculating the average marks given by each member in the interview for preparation of merit list, it is possible that the score of a particular candidate in an interview calculated as an average of marks awarded by the members of the interview Board are in fraction/ decimals. Therefore, this Court is of the considered view that awarding of fractional marks cannot be said to be impermissible in law.

35. Issue no. (iv) is answered in the negative and against the original applicants.

36. Issue No.- (v) Whether candidates who were not conversant with the Bengali language was recommended?

37. The learned Senior Counsel of the original applicants would contend that several candidates have been recommended who were not conversant with the Bengali language. The learned Tribunal returned a factual finding that the original applicants have not disclosed their basis of information regarding candidates alleged to be not conversant with the Bengali language.

38. Rule 4(d) of the West Bengal Police (Recruitment of Constables and Lady Constables) Rules 2017 states that the candidates must be able to speak, read

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

and write in Bengali language, or the Nepali language, as the case may be. Clause 3 of the recruitment notification deals with eligibility. Sub-clause (d) of Clause 3 states that the applicant must be able to speak, read and write the Bengali language Therefore, a candidate who is able to speak, read and write Bengali language is eligible to apply for the post in question. The recruitment notification further states that the question paper for preliminary written test will be set in two languages i.e., Bengali and Nepali. It further states that the question paper for the final written examination will be set in two languages namely Bengali and Nepali except questions on English language. It is not the case of the original applicants that several candidates have been selected and recommended for appointment without participating in the preliminary written test and the final written examination. Since the question papers of the aforesaid examinations were set in two languages namely Bengali and Nepali except questions on English language, the allegation of the original applicants that candidates who were recommended and selected were not conversant with Bengali language is without any foundation.

39. In CAN 3 of 2023 filed in WPST 9 of 2022 it has been alleged that in the recruitment notification dated 21.01.2019 it was expressly stated that in order to be eligible a candidate must have passed Bengali or Nepali as a language paper at the Madhyamik level. The said recruitment notification dated 21.01.2019 was issued for the purpose of recruitment for the post of Excise Constables and Lady Excise Constables. The original applicants failed to satisfy that such recruitment is governed by 2017 Rules. Therefore, the eligibility criteria fixed in the said recruitment cannot be the determining factor for deciding this issue. That apart 2017 Rules do not stipulate that a candidate in order to be eligible for appointment to the post of constable in West Bengal Police has to pass Bengali as a language paper at the Madhyamik level.

40. This Court, therefore, holds that the original applicants have miserably failed to demonstrate before this Court that candidates who were recommended and selected were not conversant with the Bengali language.

41. Issue no. (v) is answered in the negative and against the original applicants.

42. Issue No.- (vi) Whether there has been manipulation in the marks at the interview?

43. Mr. Bhattacharya would contend that the interview process lacks transparency as many candidates who secured less marks in the final written examination obtained more marks in the interview than those who obtained higher marks in the written test. A similar issue fell for consideration before the Hon’ble Supreme Court in Ajay Hasia (supra). The Hon’ble Supreme Court after taking note of the fact that the marks awarded at the interview are by and large in inverse proportion to the marks obtained in the qualifying examination and also not commensurate with the marks obtained in written test observed that such fact though created a strong suspicion in the mind of the Court but refused

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

to interfere reiterating the proposition that suspicion cannot take the place of proof. The Original Applicants failed to produce cogent materials for this Court to accept the contention of Mr. Bhattacharya that the Interview Board deliberately manipulated the marks in the interview with a view to favour some candidates. The Hon'ble Supreme Court in Ajay Hasia (supra), however, observed that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable. In the case on hand the marks allocated for the interview was within the permissible limit as observed in Ajay Hasia (supra).

44. In view of insufficient materials, this Court is not inclined to hold that marks have been manipulated in the interview in order to favour some candidates.

45. Issue no. (vi) is answered in the negative and against the original applicants.

46. Issue No.- (vii) Whether non-publication of key answers was proper?

47. The learned Senior Advocate for the original applicants would contend that non-publication of key answers as well as non-invitation of objection to the key answers before the final selection and preparation of merit list on the part of the respondent authorities were illegal, arbitrary and mala fide. In reply to such submission, the learned Advocate General contended that such allegation was never raised before the learned Tribunal. It does not appear from the impugned judgment and order that such issue was at all pressed before the learned Tribunal. In view thereof this court is not inclined to entertain such plea at this stage for the first time which is purely factual.

48. Issue no. (vii) being purely factual cannot be allowed to be raised for the first time before this Court.

49. This takes this Court to the principal issue which is extracted hereinafter.

50. Issue No.- (viii) Whether migration of the candidates of the reserved categories to the unreserved posts despite availing age relaxation was proper?

51. The issue whether relaxation in age and fee would deprive reserved category candidates from competing against an unreserved seat in an open competition with general candidates fell for consideration before the Hon'ble Supreme Court in the case of Jitendra Kumar Singh (supra). In the said reported decision the Hon'ble Supreme Court after considering the Section 3(6) and Section 8 of the UP Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994 and a government instruction issued immediately after the enactment of the said Act held that the concessions falling within Section 8 of the 1994 Act cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. It was further held that such relaxation were merely to enable the reserved category candidate to compete with the general category candidate.

52. By drawing inspiration from the decision in the case of Nirav Kumar Dilipbhai (supra), Mr. Bhattacharya would contend that the reserved category candidates

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

who availed benefits of age relaxations etc. ought to have been considered against the vacancies of their respective categories from the stage of PMT/PET.

53. At this stage, it would be relevant to consider the policy decision which fell for interpretation in Nirav Kumar Dilipbhai (supra).

54. In the said reported decision the State of Gujarat issued a circular clarifying that a Reserved category candidate, if has not availed of any relaxation namely age limit, experience, qualification, number of chances to appear in the examinations, the said candidate will be adjusted in the open category and in case the candidate has availed any of the aforesaid relaxations he/ she will have to be adjusted against the Reserved category. The State Government issued a further qualification stating that candidates belonging to Scheduled Caste/ Scheduled Tribe/ socially and economically backward classes who got selected by availing relaxation in qualifying marks in competitive written examination and personal interview shall be counted against the reserved posts. In the backdrop of the aforesaid circulars the Hon'ble Supreme Court held that a candidate who has availed of age relaxation in the selection process as a result of belonging to a reserved category cannot, thereafter, seek to be accommodated in or migrated to the General category seats.

55. The State of Gujarat took policy decision prohibiting migration of the reserved category candidates to the general / open category if such reserved category candidates have availed relaxation in age etc. or those who have got selected by availing relaxation in qualifying marks in competitive examination.

56. In the case on hand no policy decision of the State of West Bengal has been pointed out to this Court to the effect that a Reserved category candidate having availed of the age relaxation as a Reserved category candidate cannot be accommodated to the General category seats. On the contrary the 1976 Act and the 2012 Act allows meritorious Reserved category candidates to be accommodated in General category vacancies irrespective of the fact that they have availed of the age relaxation.

57. As would be evident from the aforesaid decision that the policy decision in the State of Gujarat as regards migration of meritorious candidates availing relaxations from reserved categories to unreserved vacancies is different from the statutory provisions prevailing in the State of West Bengal. The aforesaid distinction appears to have escaped the notice of the learned Tribunal. Therefore, the ultimate conclusion arrived at by the learned Tribunal by placing reliance on Nirav Kumar Dilipbhai (supra) calls for interference by this Court. For such reason, this Court is unable to accept the contention of Mr. Bhattacharya as regards applicability of the said reported decision to the case on hand.

58. The Hon'ble Supreme Court in the case of Ajithkumar P. and ors. vs. Remin K.R. and others reported at (2015) 16 SCC 778 reiterated the proposition laid down in R.K. Sabharwal vs. State of Punjab reported at (1995) 2 SCC 745 that where certain number of posts are reserved in favour of candidates belonging to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

socially and economically backward classes, meritorious candidates belonging to those classes should not be appointed to such reserved posts but shall be appointed to posts falling in the open category. In Ajithkumar P. (supra) the Hon'ble Supreme Court held that a relaxation or concession given at a preliminary stage cannot have any relevance in determining the merit of a candidate.

59. The Learned Tribunal distinguished the decision in the case of Jitendra Kumar Singh (supra) on the ground that the State of Uttar Pradesh has issued a Government Order which states that relaxation of age has no role to play in allowing the reserved candidates to compete in the unreserved category on the basis of merit but in the State of West Bengal there is no such policy decision to make the reserved candidates having availed age relaxation eligible in securing their place under unreserved category.

60. In Niravkumar Dilipbhai (supra), the Hon'ble Supreme Court noted the observations made in the case of Gaurav Pradhan vs. State of Rajasthan reported at (2018) 11 SCC 352 that the judgment in the case of Jitendra Kumar Singh which was based on a statutory scheme and a Circular has to be confined to the scheme which was under consideration and the statutory scheme and intention of the State Government as indicated from the scheme cannot be extended to a State where the State circulars are to the contrary.

61. From the aforesaid discussion it follows that whether an unreserved post can be filled up by meritorious reserved category candidates would depend upon the provisions incorporated in the relevant statute. Therefore, before coming to the final decision as to whether an unreserved vacancy can be filled up by a meritorious Reserved Category candidate in the State of West Bengal this Court has to consider the relevant provisions of the 1976 Act of the 2012 Act.

62. The West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act 1976 (for short the 1976 Act) was enacted to provide for the reservation of vacancies in services and posts for the members of Scheduled Castes and Scheduled Tribes. In order to decide the aforesaid issue it would be relevant to take note of the provisions laid down in Section 4 of the 1976 Act which reads as under –

"4. (1) After the commencement of this Act all appointments to services and posts in an establishment which are to be filled up by direct recruitment shall be regulated in the following manner, namely, --

5 (a) subject to the other provisions of this Act twenty-two per cent of the vacancies shall be reserved for candidates belonging to Scheduled Castes and six per cent for candidates belonging to Scheduled Tribes, in the manner set out in Schedule I

Provided that the State Government may, from time to time, by notification in the Official Gazette, increase the percentage so, however, that the reservation

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

shall not exceed twenty-five per cent in the case of Scheduled Castes and ten per cent in the case of Scheduled Tribes:

Provided further that different percentages may be fixed by the State Government for different districts in accordance with the percentages of population of Scheduled Castes and Scheduled Castes and Scheduled Tribes in such districts:

Provided also that in respect of the West Bengal Civil Service (Judicial), the percentage shall be ten for Scheduled Castes and five for Scheduled Tribes;

(b) fees, if any, prescribed for any examination for selection to any service or post shall not be charged in the case of candidates belonging to the Scheduled Castes or the Scheduled Tribes;

(c) the members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of five years over the prescribed maximum age limit for appointment to any service or post.

(2) The member of any Scheduled Caste or Scheduled Tribe candidate qualifying on merit for appointment to any unreserved vacancy in a service or post in any establishment to be filled up by direct recruitment shall not be deducted from the quota reserved in such service or post for such candidate under sub-section (1).”

63. The West Bengal Backward Classes (Other than Scheduled Castes and Scheduled Tribes) (Reservation of vacancies in services and posts) Act 2012 (for short “the 2012 Act”) was enacted to provide for the reservation of vacancies in services and posts for the backward classes of citizen other than the Scheduled Castes and Scheduled Tribes. Section 5 of the 2012 Act would be relevant and, therefore, the same is extracted hereinbelow-

“5. Reservation for Other Backward Classes in vacancies to be filled up by direct recruitment. - After the commencement of this Act, all appointments to services and posts in establishments which are to be filled up by direct recruitment shall be regulated in the following manner, namely, -

(a) subject to the other provisions of this Act, ten per cent of the vacancies shall be reserved for candidates belonging to the Other Backward Classes denoted as "Other Backward Classes Category A" category and seven per cent of the vacancies shall be reserved for candidates belonging to the "Other Backward Classes Category B" category of the Other Backward Classes in the manner set out in Schedule III:

Provided that the State Government may, from time to time, by notification in the Official Gazette, increase the percentage in the manner that the overall reservation for the Scheduled Castes, the Scheduled Tribes and Other Backward Classes shall not exceed fifty per cent,

(b) the members of the Other Backward Classes qualifying on merit in an open competition on the same standard as of the unreserved candidates for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

appointment to any unreserved post in a service or post in an establishment to be filled up by direct recruitment shall not be adjusted against the quota reserved in such service or post for such candidate under sub-section (a).”

64. The recruitment notification specifically stipulated the eligibility criteria. The eligibility criteria with regard to age of the candidates as stipulated in the recruitment notification is extracted hereinbelow-

“3.b. Age:- The applicant must not be less than 18 (eighteen) years old and must not be more than 27 (twenty seven) years old as on 01.01.2019. The Upper-age limit shall be relaxed for the SC/ST applicants of West Bengal only by 05(five) years and OBC applicants of West Bengal only by 03 (three) years. The upper age limit is also relaxable for NVF and Home Guards Personnel (serving in West Bengal Police only) as per existing Government Rules. However Age relaxation is NOT available to Civic Volunteers.”

65. It is evident from the eligibility criteria in the recruitment notification that the upper age limit shall be relaxed for Scheduled Castes/ Scheduled Tribes applicants of West Bengal only by five years and Other Backward Class applicants of West Bengal only by three years.

66. The learned senior advocate appearing for the original applicants would contend that the candidates belonging to reserved categories after availing of the age relaxation as stipulated in the recruitment notification cannot be considered for selection against the vacancies of General Category/Unreserved Category at any stage of the selection process. According to him, a reserved category candidates availing age relaxation cannot be said to be of the “same standard” as that of unreserved candidates.

67. Recruitment notification states that the applicants provisionally considered eligible will have to appear in a MCQ based preliminary written test. The physical standards of those candidates who qualify in the preliminary written test will be tested and the candidates who qualify in PMT will be allowed to take part in PET. As per the recruitment notification the Preliminary Written Test , PMT and PET are qualifying in nature.

68. All the candidates who qualifies in PMT and PET will be called to appear in the final written examination to be conducted by the Board. Such final written examination will be of 85 marks. The recruitment notification further states that a limited number of candidates will be called for interview in accordance with merit and on the basis of marks obtained in the final written examination and the interview, a merit list of the provisionally selected candidates will be prepared by the Board.

69. After going through the recruitment notification this Court finds that the selection of the candidates has to be made on the basis of merit of the candidates in the final written examination which is followed by an interview. The relaxation in the upper age limit in case of Reserved Category candidates is only

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

to enable such candidates to come within the zone of consideration for the purpose of competing with the General/ Unreserved category candidates. The relative merits of the candidate are considered only when all the candidates who fulfill the eligibility conditions namely educational qualifications, age and after qualifying in the preliminary written test, PMT and PET are permitted to appear in the final written examination.

70. Mr. Bhattacharya, learned Senior advocate would contend that relaxations in age etc. given to the reserved category candidates puts such candidates in an advantageous position over the general category candidates and as a result the level playing field is upset. The issue whether relaxation in age can upset the "level playing field" was considered by the Hon'ble Supreme Court in Jitendra Kumar Singh (supra).

71. The Hon'ble Supreme Court in the case of Jitendra Kumar Singh (supra) held that relaxation in age does not in any manner upset the "level playing field". The Hon'ble Supreme Court held thus-

"In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the Preliminary Test as also in the Physical Test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

72. The relaxations given to the reserved category candidates as per the Recruitment Notification are prior to the participation in the open competition. Such relaxations, in the considered view of this Court, pertain to the eligibility of a candidate to appear in the open competition. The relaxations in the Recruitment Notification are given at the preliminary stage and therefore, cannot have any relevance in determining the merit of the candidates participating in the open completion.

73. In the case on hand, the relaxations in age etc. were availed by the Reserved Category candidates at the stage prior to the holding of the Final Written Test and Interview. Such relaxations do not have any relevance while determining the merits of the candidates in the Final Written Test and the Interview. By applying

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

the proposition laid down in Jitendra Kumar Singh (supra), this Court holds that the open competition commenced only when all the candidates after qualifying in the preliminary written test, PMT and PET were permitted to appear in the Final Written Test.

74. The expression "same standard" used in subsection (b) of Section 5 of the 2012 Act qualifies the expression "open competition". To the mind of this Court the words "open competition of the same standard" implies that the open competition where candidates participate shall be of same standard. In other words, all the candidates participating in the open competition irrespective of categories they belong will be assessed on the same standard. This Court, therefore, holds that a candidate availing relaxation in age etc. cannot be said to have violated the parameter "same standard" used in Section 5(b) of 2012 Act. The interpretation of the expression, "same standard" given by the learned Tribunal is not acceptable for the aforesaid reasons. It would be relevant to point out at this stage that it is not the case of the original applicants that the standard of Final Written Test and the Interview was different depending upon the category of the candidates.

75. Section 4(2) of the 1976 Act states that any member of any Scheduled Caste or Scheduled Tribe candidate qualifying on merit to any unreserved vacancy in a service or post in any establishment to be filled up by direct recruitment shall not be deducted from the quota reserved in such service or post for candidates belonging to scheduled castes and scheduled tribes. It, therefore, follows that the statute permits an unreserved vacancy in a service or post in any establishment to be filled up by a meritorious scheduled caste or scheduled tribe candidate in direct recruitment for which there shall be no deduction from the quota reserved in such service or post for candidates belonging to scheduled caste or scheduled tribe.

76. Similarly Section 5(b) of the 2012 Act permits any unreserved post in a service or post in an establishment to be filled up by a meritorious other backward class candidates shall not be adjusted from the quota reserved for OBC category.

77. Once a reserved category candidate participates in the final written examination and interview and is found to have secured more marks than that scored by the last candidate selected and recommended from the General/ Unreserved category, it is immaterial as to which category such candidate belongs. In such case the Unreserved vacancies can be filled up by direct recruitment by candidates belonging to Reserved Category and such vacancy filled up by Reserved Category candidates shall not be deducted/ adjusted from the quota reserved for Scheduled Castes, Scheduled Tribes and Other Backward Class categories. This Court, therefore, is of the considered view that the authorities could not have been faulted for placing the 401 reserved category candidates who had availed age relaxation in the Unreserved category.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

78. State of West Bengal enacted the 1976 Act and the 2012 Act in order to provide for the reservation of vacancies in services and posts for the members of Scheduled Castes and Scheduled Tribes and other backward classes respectively. The provisions with regard to filling up of an Unreserved vacancy by a more meritorious Reserved category candidates under the aforesaid enactments are clear and unambiguous.

79. There is no prohibition in the 1976 and 2012 Acts for filling up the unreserved posts by meritorious reserved category candidates who have availed the benefits of relaxation in age etc. On the contrary the aforesaid statutes permit filling up the unreserved posts by meritorious candidates. If the argument of Mr. Bhattacharya is to be accepted then a prohibition to such effect as observed hereinbefore is to be read into the 1976 and 2012 Acts. It is well settled that while interpreting a provision, Courts should refrain from adding to or subtracting words therefrom.

80. 1976 Act and 2012 Act do not contain any express prohibition for filling up the unreserved posts by meritorious reserved category candidates, who have availed relaxation in age etc. This Court is, therefore, of the considered view that absence of a policy decision taken by the State of West Bengal as in the case of Jitendra Kumar Singh (supra) cannot be a fetter on the power of the authorities to fill up the unreserved posts by meritorious reserved candidates who have availed relaxation in age etc. as the provisions of 1976 Act and 2012 Act are clear and unambiguous in this regard.

81. This Court, therefore, holds that relaxations given to the reserved category candidates in age etc. as per the Recruitment Notification are at the preliminary/ qualifying stage before commencement of open competition. A Reserved category candidate availing such relaxations prior to participating in the open competition can be considered for filling up the unreserved vacancies in accordance with merit. The authorities were thus justified in allowing migration of the candidates of the reserved categories to the unreserved posts despite such candidates availing relaxation in age etc.

82. The issue no. (viii) is therefore, answered in the affirmative and against the original applicants.

83. On 26.09.2023 Mr. Kamalesh Bhattacharya, learned advocate mentioned this matter at the first sitting of the Court and submitted that a co-ordinate bench has delivered a judgment on 13.09.2023 on identical issues. He filed a photocopy of the judgment dated 13.09.2023 in a batch of writ petitions, the lead case being WPST 34 of 2022 in the case of Sahim Hossain and ors. vs. The State of West Bengal and ors. The co-ordinate bench in paragraph 46 of the judgment observed that relaxation in age and fees for reserved category candidate does not mean that any advantage has been granted to the reserved category candidates so as to disentitle them to be considered in reserved category in accordance with the merit, particularly when this State did no prohibit the same.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

The aforesaid decision also supports the view taken by this Court.

84. It is well settled that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner [See Abhilash Lal (supra), Chandra Kishore Jha (supra) and Nazir Ahmed (supra)].

85. In the case on hand the authorities prepared the original merit list/panel dated 26.03.2021 by placing the meritorious reserved category candidate in the unreserved category irrespective of the fact that they had availed the relaxation in age etc. Such action, to the mind of this Court, was in accordance with the provisions of the 1976 and 2012 Acts. The provisions of the aforesaid statutes cannot be said to have been violated in any manner whatsoever by the concerned authority while conducting the recruitment process by issuing the advertisement published on 26.03.2021 for the posts of Constables in West Bengal Police 2019. The direction of the learned Tribunal in the impugned judgment to prepare a panel afresh is in effect directing an authority to act dehors the statutory provisions which is not permissible.

86. The original applicants participated in the interview without any protest. After participating in the interview and having failed in the final selection the original applicants are estopped from challenging the selection process. [See Anupal Singh(supra) and S.Vinod Kumar(supra)]. However, since the Tribunal entertained the challenge to the selection process at the instance of unsuccessful candidates, this Court had to enter into the merits of the claim of the original applicants.

87. The names of several candidates of the reserved category which found place in the original merit list, however, got excluded in the revised merit list/panel published pursuant to the impugned judgment and order of the learned Tribunal. This Court has already held that the aforesaid direction passed by the learned Tribunal is impermissible in law. Therefore, the revised list/panel dated 24.02.2022 prepared pursuant to the direction of the learned Tribunal is liable to be set aside and quashed.

88. Since candidates from the revised merit list have been appointed in place of the aforesaid reserved category candidates, it is evident that the State requires persons in the said posts.

89. The co-ordinate bench in the order dated 02.03.2022 took note of the fact that the revised panel was published on 24.02.2022 and also that steps have been taken towards the process of appointments of constables and also having regard to the fact that there was a direction upon the State by the Hon’ble Supreme Court on 11.03.2019 in Manish Kumar vs. Union of India and ors. (writ petition (c) no. 183 of 2013) to fill up the vacancies as early as possible and was pleased to observe that there is an overwhelming need to fill up the vacancies of constables in the State of West Bengal. The co-ordinate bench was not inclined to grant any interim order at that stage. The co-ordinate bench however, made it clear that all appointment letters issued by the State shall specifically mention

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

that such appointments shall not create any equity in favour of the individual candidate and will be subject to the final result of the appeal.

90. Several candidates have got appointment pursuant to their names being included in the revised merit list though their names did not feature in the original merit list. This Court has already held that the revised merit list is liable to be set aside and quashed.

91. The appointment of the candidates in terms of the revised merit list dated 24.02.2022 was made subject to the final result of these petitions. Therefore, the appointment of the candidates whose names did not feature in the original merit list but were appointed on the basis of the revised list is liable to be cancelled and accordingly the posts against which they were appointed shall be deemed to be vacant and in their place the candidates of the reserved category whose names got excluded in the revised merit list are to be appointed in such posts.

92. However, such reserved category candidates whose names got excluded in the revised merit list should not be made to suffer for the delay in appointment as they were not at fault. Therefore, such reserved category candidates have to be given notional appointment from the date when other candidates in the original merit list were appointed and while doing so the seniority in the said panel should not be violated. However, such reserved category candidates shall not be entitled to salary and other financial/monetary benefits for the period from the notional date of appointment till such candidates actually joins in terms of this order.

93. In so far as the candidates who were appointed pursuant to their names been included in the revised merit list it is observed that since such candidates participated in the recruitment process and were appointed pursuant to the order of the learned Tribunal, their appointments cannot be said to be backdoor appointments. Taking note of the peculiar facts of this case, this Court is of the considered view that the concerned authority should be directed to consider the case of such candidates for absorption and/or regularisation, as the case may be, in available vacancies.

94. For all the reasons as aforesaid the impugned judgment and order calls for interference. Accordingly the impugned judgment and order stands set aside and quashed. Consequently, the panel prepared afresh on 24.02.2022 for recommendation to the post of constables in West Bengal Police pursuant to the impugned judgment and order of the Tribunal also stands set aside and quashed. The panel of the recommended candidates published on 26.03.2021 for the post of constable in the West Bengal Police 2019 stands restored. Accordingly, the following directions are passed by this Court upon the respondent authorities.

(i) The posts against which the candidates whose names were not in the original merit list dated 26.03.2021 were appointed shall be treated to be vacant upon passing of this judgment to be filled up by reserved category candidates whose

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…

names were left out in the revised merit list dated 24.02.2022.

(ii) The reserved category candidates whose names featured in the original merit list dated 26.03.2021 and who were excluded in the revised merit list published on 24.02.2022 shall be given appointment after completion of all formalities in this regard against the vacancies that were sought to be filled up by the present Recruitment Notification and which fell vacant pursuant to this judgment and order.

(iii) The notional date of appointment of such reserved category candidates shall be the date when other candidates in the original merit list were appointed strictly maintaining the seniority as per the said list. Pay scales as well as other benefits of such candidates are to be fixed on the basis of the notional date of appointment as aforesaid.

(iv) It is, however, made clear that such reserved category candidates shall not be entitled to salaries and other monetary or financial benefits from the notional date of appointment till the actual date of joining.

(v) The concerned authorities are directed to complete the aforesaid exercise within a period of four weeks from the date of receipt of the server copy of this order.

(vi) The appointment of the candidates whose names did not feature in the original list dated 26.03.2021 but was included in the revised merit list dated 24.02.2022 shall stand cancelled with effect from the passing of this judgment. However, having regard to the observations made in the preceding paragraphs the concerned authorities are directed to consider such candidates for absorption and/or regularisation as the case may be against vacancies, if any, available.

95. WPST No. 30 of 2022 and WPST No. 31 of 2022 stand allowed. WPST No. 9 of 2022 and WPST No. 12 of 2022 are disposed of with the aforesaid directions. All pending connected applications are disposed of accordingly. No costs.

96. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/akash-bhunia-and-ors-appellant-has…