

53.
4.5.2023
S.D.

W.P.A. 1816 of 2023

**Anup Bhowmik & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Apurba Kumar Ghosh
Ms. Rudranil Ghosh
..For the petitioners

Mr. Nilotpall Chatterjee
Mr. Ram Mohan Pal
..For the Respondent No. 2

Mr. Tapabrata Bhattacharya
..For the Respondent No. 8

Ms. Chaitali Bhattacharya
Mr. Mrinal Kanti Ghosh
...For the State

Mr. Sourav Mondal
..For the Respondent No. 5

Report on affidavit and the exception thereto as filed in
Court today are retained with the records.

The petitioner nos. 1 to 3 are working as Serestadars
attached to the Civil Court under the District Court of
Howrah. The petitioner no. 4 is working as a Bench Clerk,
Junior Division in the District Judgeship at Howrah. A final
gradation list of promotion to the post of Clerks was
published on March 10, 2022. The petitioners' names
appeared at serial nos. 23, 29, 31 and 32 of the said gradation
list. Admittedly, the petitioners were given an opportunity

to challenge the said gradation list, which the petitioners have not done.

Mr. Ghosh, learned counsel appearing on behalf of the petitioners submits that the West Bengal District Court (Constitution of Services, Recruitment, Appointment, Probation and Discipline of Employees Rules) 2015, came into force on July 6, 2021. Under Rule 25 of the 2015 Rules, there was no provision for reserving vacancies for the reserved category candidates who were to be considered for promotion. Only in case of making appointments, such vacancies should be reserved. Rule 25 of the 2015 Rules is reproduced hereinafter:-

“25. Provision for reservation in making appointment.-
The vacancies shall be reserved for the members of the Scheduled Castes, Scheduled Tribes, Other Backward Classes (Group A and Group B) and others to such extent and in such manner as may be specified by the State Government from time to time.”

Mr. Chatterjee, learned counsel appearing on behalf of the District Judge, Howrah/respondent no. 2 submits that under Section 5 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies of Services and Posts) Act, 1976, mandatory reservation was required to be made for Scheduled Castes and Scheduled Tribes candidates for filling up of vacancies by way of promotion. In the event,

such vacancies were not reserved and the appointing authority made an appointment in contravention of the provision of Section 5 or failed to maintain records or furnish annual return, the offence committed by him would be punishable with imprisonment for a term of 5 years. Therefore, the *authorities* had, not acted arbitrarily or capriciously in *reserving* the vacancies and *appointing* by promotion the private respondent nos. 10, 11 and 12 to the post of Clerks.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the 2015 Rules, for Recruitment, Appointment, Probation and Discipline of the Employees employed in the West Bengal District Judiciary will have to comply with the provisions of the 1976 Act. The said Rules have to be read in consonance and not in contravention to the provisions of the Act.

Even though in Rule 25, it has not been clearly stated that provisions for *reservation* will be made for *appointment* by way of direct recruitment and promotion, still the said rule has to be interpreted/read in a way to mean that vacancies for the reserved category candidates, as may be specified by the State Governments, have to be *reserved* for granting

appointment either by way of direct recruitment or by way of promotion.

The second limb of the argument with regard to the arbitrariness of the District Judge in clubbing the vacancies together also cannot be considered as on date since the final gradation list was admittedly circulated amongst the parties and the petitioners had an opportunity to challenge the same. Without challenging the said final gradation list, the petitioners cannot now seek to challenge the arbitrariness in clubbing the promotional vacancies. Had the petitioners wanted to urge that their seniority was getting affected by clubbing the vacancies together they should have urged the same when the final gradation list was circulated. The petitioners have waived their rights and now estopped by their conduct. This Court relies on a Judgment reported in (2019) 15 SCC633 (**Union of India and Anr vs. C. Girija & Ors.**) for coming to this finding.

In the light of the discussions above, **W.P.A. 1816 of 2023 is dismissed.**

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

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

(Lapita Banerji, J.)