

**27.03.
2023**

Ct. No. 04

Ab

WP.ST 14 of 2022

Amit Kotal and others

Vs.

State of West Bengal and others.

**Mr. Ashis Kumar Chowdhury,
Mr. Avijit Kar.**

... for the petitioners.

**Mr. Raja Saha,
Mr. Biswabrata Basu Mullick,
Mr. Avisek Prasad.**

... for the State.

Mr. Souvik Nandy.

... for the PSC.

Pursuant to the advertisement and notification no. 11 of 2016 for selection of the candidates in recruitment to the post of Assistant Engineer (Civil) in different engineering departments under the State of West Bengal, the petitioners applied for such posts and the examination was conducted in the year 2015. The merit list of the successful candidates was published on 5th January 2017 and the petitioners found their names at serial no. 85, 92, 93 and 98 thereof. The said merit list was published for 208 listed candidates for the posts, which were advertised in the said publication.

According to the petitioners, the advertisement indicates for filling up 179 posts, but in fact, the authorities filled up 150 posts and, therefore, depriving the petitioners to the appointment despite having been shown in the merit list.

Our attention is drawn to the notification no. 524 PSC/Con.11A dated 5th January 2017 wherein vacancies in the respective categories are earmarked and it appears therefrom that 69 posts were reserved for unreserved categories. The list of 208 candidates includes the merit

position of all the participating candidates irrespective of the category in which they offered their candidature. Subsequently, the Public Service Commission recommended 150 candidates to be appointed to the post of Assistant Engineer (Civil) in various departments of the Government under the respective categories.

Obviously, the moment the unreserved seats were declared as 69 and all the petitioners offered their candidature in such category, it is unacceptable that the petitioners occupying the position at 85, 92, 93 and 98 would be regarded as eligible candidates for appointment against the aforesaid 69 vacancies. We further find that the candidates, who offered their candidature in a respective reserved category were found more meritorious to the several candidates and placed at the higher pedestal than that of the other candidates under the unreserved category.

It is no longer *res integra* that the object and purpose underlying the incorporation of the provisions of the Constitution relating to reserved category should not be disturbed and the persons belonging to such category if found more meritorious may be placed in an unreserved category. Obviously, the second list indicates such course of action to be adopted and, therefore, we do not find any justification in the stand of the petitioners that they ought to have been offered appointment having been found placed in the merit list published by the competent authority.

So far as the filling up of 150 posts out of 179 posts so advertised, it is contended by the respondent that 29 posts could not be filled up belonging to a particular reserved category where a suitable candidate was not found. According to him, the vacancy in such category cannot be diverted to the unreserved category in view of the embargo in the relevant Rules and, therefore, the

contention of the petitioners that those have been filled up is unsustainable.

From whatever angle this Court look at does not find any merit in the instant writ petition and the same is hereby dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)