

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

RVW 21 of 2024

CAN 1 of 2024

CAN 2 of 2024

Sayan Sutradhar

Vs.

The State of West Bengal & Ors.

In

WPA 21631 of 2022

CAN 1 of 2023

CAN 2 of 2023

CAN 3 of 2023

Pradip Prasad

Vs.

The State of West Bengal & Ors.

For the applicant : Mr. Ramesh Dhara,
Mr. Gourav Banerji
....Advocates

**For the writ
petitioner/respondent** : Mr. Debabrata Saha Roy, Sr.Adv.,
Mr. Pingal Bhattacharyya,
Mr. Neil Basu.
.....Advocates

For the State : Mr. Sirsanya Bandopadhyay Id.SSC
.....Advocate

Heard lastly on : 28.07.2025

Judgment on : 29.10.2025

Jay Sengupta, J:

1. This is an application for review and recall of the judgement and order dated 19.04.2023 passed by this Court in WPA 21631 of 2022 (Pradip Prasad vs State of West Bengal & Ors.).

2. Learned counsel appearing on behalf of the applicant has submitted as follows. The above writ petition has been filed by the petitioner challenging the vacancy notification dated 27.04.2022. The State respondents filed opposition to the writ petition, but writ petitioner did not filed any reply to the said opposition. Vacancy notification dated 27.04.2022 was challenged by the petitioner only on the ground that said notification was not published in the Gazette Notification. At the time of the hearing of the writ petition, the petitioner relied on the un-amended provision of Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, but did not place amended provision of Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 before this Court. This Court, upon considering the un-amended Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, set aside the vacancy notice dated 27.04.2022. By a Gazette Notification dated 11-04-2022, the respondent authority substituted Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order,

2013 and in terms of said amended Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, issued the vacancy notice in question dated 27-04-2022. The applicant above named submitted his application against the said vacancy notice dated 27-04-2022. The respondents authority upon considering the application of the applicant and after enquiry at the godown and shop of the applicant, recommended the candidature of the applicant for being appointed as a MR dealer against the vacancy in question. The applicant downloaded a copy of the said recommendation from the official website of the respondent. The Shop Selection Committee also issued letter for interview to the applicant in terms of Control Order, 2013, but did not proceed with the matter because the vacancy notice in question was sub-judice before this Hon'ble Court. The applicant upon having knowledge of setting aside of the vacancy notice dated 27-04-2022 filed the present Review Application for review of the Judgment dated 19-04-2023 since the applicant had an accrued right to be consider for being appointed against the vacancy dated 27-04-2022. The writ petitioner submitted that since the writ petition had been disposed of and therefore, writ petition could not be re-opened and the applicant could not be added as a respondent in the writ petition. The writ petitioner also relied the authority to support the above submissions, but did not make any submission with regard to review of the Judgment dated 19-04-2023. It is submitted on behalf of the applicant above named that since the writ petition was disposed of without considering the amended provision of clause 20 of Control Order, 2013 and the fact stated above, therefore, the applicant being aggrieved

person has every right to file review petition to review the judgment dated 19-04-2023. The applicant had accrued right in terms of vacancy notice dated 27-04-2022, but could not get the license because of setting aside of the vacancy notice dated 27-04-2022 by this Court. The provision clause 20 of Control Order, 2013 was substituted by a Gazette Notification dated 11.04.2022. Therefore, vacancy notice dated 27.04.2022 was not required to be published in Gazette in terms of Control Order, 2013. It is settled proposition of law that any person aggrieved by any decision of the Court, which deprived him from getting anything, had a legal right to file review application for review of the said decision. Even, a third party has legal right to file review application against the decision, if aggrieved by the said decision. Reliance is placed on the question of persons aggrieved on (1980) 4 SCC 62, on third party review on (2019) 18 SCC 586, and on scope of review on (2024) 2 SCC 362.

3. Learned senior counsel appearing on behalf of the writ petitioner has submitted as follows. Applicant not being a selected candidate, rather only having been called for interview along with other eligible candidates, is not a person aggrieved. As such, he cannot pray for review of the order. Writ petition has been disposed of on 19.04.2023, whereas, review petition being RVW 21 of 2024 has been filed on 14.01.2024 i.e., after near about 9 months without any valid explanation of such inordinate delay. On that sole ground of unexplained inordinate delay, review application deserves dismissal. Writ Petitioner submitted application enclosing all required documents. On 04.03.2022 the District Magistrate gave approval for re-notification. On

11.04.2022 the amendment came into force. On 27.04.2022 pursuant to the approval of the District Magistrate dated 04.03.2022, vacancy was re-notified by the Sub-Divisional Controller (F & S), Dakshin Dinajpur. This time there was no gazette notification. The writ petitioner could not apply since he had no information, despite having all eligibility criteria. Being eligible candidate in respect of previous vacancy notice, the petitioner should have been at least intimated about such re-notification. On 28.10.2022 the District Level Shop Selection Committee (DLSSC) called all eligible candidates including applicant to participate in the interview. On 01.12.2022 status quo order was passed by this Court in the writ petition. By virtue of the status quo order, the District Level Shop Selection Committee could not prepare the panel. As such, no panel could be forwarded to the Directorate DDP & S for obtaining approval and Directorate also could not forward the panel to the Government, F & S Department for obtaining final approval. On 11.04.2023 on an application dated 11.04.2023, filed by the applicant under RTI Act, 2005, the District Controller (F&S) Dakshin Dinajpur intimated the applicant that the vacancy pursuant to the re-notification dated 27.04.2022 was under process which were annexed by the applicant in his application being CAN No. 3 of 2023. On 19.04.2023 Judgment delivered by the Hon'ble Court, allowing the writ petition by quashing and setting aside re-notification dated 27.04.2022. The applicant being a mere candidate but not selected does not accrue any right against the vacancy. There is inordinate unexplained delay to file the application. Re-notification of vacancy is a continuing process. No amendment can be taken note of which has been notified subsequent to

initiation of selection process. District Magistrate gave approval for re-notification on 04.03.2022, however, Sub-Divisional Controller (F & S) Gangarampur instead of re-notifying the vacancy, kept the file pending for more than one and half months. During this period after more than one month from the date of publication of re-notification amendment came into picture. So amendment dated 11.04.2022 cannot be taken note of for re-notification of vacancy by the Sub-Divisional Controller, F &S, Gangarampur; e) Sub-Divisional Controller, F &S, Gangarampur being mere implementing authority had no power to re-notify the vacancy following the Amendment; f) Judgement dated 19.04.2023, passed in the writ petition has elaborately dealt with the meaning of "Public Notification" and came to a conclusion relying on a number of judgements that it is the mandate upon the state authority to notify the vacancy in the Official Gazette while grant of State Largesse is involved. Judgments relied on are i) 2003 (11) S.C.C. 768 (Union of India & Ors. Vs. Tarun K. Singh & Ors); ii) Judgement dated 28.03.2011, passed in W.P. No. 25304(W) of 2010; iii) Judgement dated 19.07.2011, passed by the Hon'ble Division Bench in M.A.T. No. 676 of 2011; iv) Judgement dated 01.09.2011, passed in A.P.O.T. 261 of 2011.

4. Learned counsel appearing on behalf of the respondent nos. 1 to 5 has submitted as follows. The Sub-Divisional Controller (Food and Supplies), Gangarampur vide notification No. 97/MR/SCFS/GMP dated 11.03.2020 declared the vacancy for Fair Price Shop at Sahapara, (Barabazar), Ward No. 7, Gangarampur, District – Dakshin Dinajpur (hereinafter referred to as said vacancy). Subsequently, the said vacancy was renotified for the want of

suitable candidates. The approval for the renotification of the said vacancy was issued by the District Magistrate, Dakshin Dinajpur on 04.03.2022 and on 27.04.2022 vide Memo No. 275/MR/SCFS/GMP the said vacancy was renotified in pursuance of the approval of the District Magistrate, Dakshin Dinajpur. In the interregnum and before the renotification of the said vacancy. On 11.04.2022, one Notification was published in the Kolkata, Gazette indicating the amendment of the Sub Clause (iia) of Clause 20 of the West Bengal Public Distribution (Maintenance & Control) Order 2013 (hereinafter referred to as WBPDSM&C Order 2013). By virtue of the said amendment dated 11.04.2022, the requirement of publishing a vacancy in the Official Gazette was done away with and the concerned Sub-Divisional Controller of Food and Supplies was now required to publish the new vacancies in the Official Websites of the Department of Food and Supplies, Government of West Bengal. Thus, the renotified vacancy dated 27.04.2022 was published on the official website of the Department of Food and Supplies in accordance with the amended provisions of the WBPDSM&C Order 2013. It is stated that one Sayan Sutradhar, being the review Applicant herein, applied against the said vacancy dated 27.04.2022. The Writ Petitioner did not make any application in respect of the said vacancy. After completion of the physical enquiry, the said Sayan Sutradhar herein scored the highest marks amongst all the candidates as per the score sheet prepared by the concerned Sub-Divisional Controller of Food and Supplies. The Writ Petitioner filed the instant Writ Petition being WPA No. 21631 of 2022 on 16.09.2022. In the said Writ Petition, the Writ Petitioner

challenged the vacancy notification dated 27.04.2022 on the ground that the same was not published in the Official Gazette as per the mandatory requirement of the provisions of WBPDSM&C Order 2013. The Writ Petitioner suppressed the amended provision of Clause 20(iia) in the said Writ Petition. The said Writ Petition was taken up for consideration by the Hon'ble Justice Jay Sengupta on 19.04.2023 when neither the Writ Petitioner nor the State Respondents pointed out the amended provisions of Clause 20(iia) of the WBPDSM&C Order 2013 before the Hon'ble Court. Learned Advocate appearing on behalf of the State of West Bengal however informed this Hon'ble Court that the said vacancy was published in the Bengali Newspaper "Aajkal" and also in the English Newspaper "The Telegraph" on 28.05.2022. However, since the amended provisions of Clause 20(iia) was not pointed out before this Court, it was held that the State Respondents failed to adhere to the mandatory requirements of the WBPDSM&C Order 2013 and hence the vacancy notification dated 27.04.2022 was quashed by this Court. As a result of the judgment and order dated 19.04.2023 passed in the said Writ Petition, the said vacancy dated 27.04.2022 was quashed and hence the Review Applicant i.e., Sayan Sutradhar who scored the highest marks after the physical enquiry stage was adversely affected by the operation of the judgment and order dated 19.04.2023. Thus, feeling aggrieved by the judgment and order dated 19.04.2023, the review applicant has filed an application for review being CAN No. 03 of 2023 in WPA 21631 of 2022. The Review Applicant was being considered against the vacancy dated 27.04.2022 and he scored the highest

marks after the physical enquiry. However, due to the quashing of the vacancy notification dated 27.04.2022 the right of the Review Applicant to be considered for the said vacancy was extinguished and hence the Review Applicant was most aggrieved by the judgment and order dated 11.04.2023. The review applicant can be considered as a "Person aggrieved" as per the provisions of Section 114 as well as Order 47 Rule 1 of the Civil Procedure Code, 1908; ii) As per Section 114 of the Code of Civil Procedure any person' considering himself to be aggrieved by the judgment or order may apply for a review of the said judgment and order to the Court. Thus, not only parties to a proceeding but even third parties can file an application for review of a judgment provided the said third party considers himself aggrieved by the judgement. So, there is no such bar on the applicant to proceed with instant application, even if the applicant was not a party to the Writ Petition being WPA No. 21631 of 2022; iii) Similarly, as per Order 47 Rule 1 of the Code of Civil Procedure, any person considering himself aggrieved by a decree or order or any decision can prefer an application for review; iv) The Applicant herein preferred a Review application being CAN No. 03 of 2024 on the ground that amended notification dated 11.04.2022 was not brought to the notice of the Court either by the Writ Petitioner or by the Advocate representing the State Respondents at the time of the hearing of the Writ Petition; v) The Hon'ble Supreme Court of India in the case of Union of India v. Nareshkumar Badrikumar Jagad and Others reported in (2019) 18 SCC 586, analysed the statutory provisions of the Code of Civil Procedure on the issue of locus of a review applicant and held that any person considering

himself aggrieved has a locus to file a review Petition. It was also observed by the Hon'ble Supreme Court that Order 47 of CPC does not limit the remedy of the review only to the parties to the judgment under the review. Thus, it is submitted that the review applicant herein has the locus to pray for a review of the judgment and order dated 19.04.2023 as the review applicant is aggrieved from quashing the FPS vacancy notification dated 27.04.2022. 1) The FPS vacancy Notification dated 27.04.2022 has been notified in compliance with the amended notification dated 11.04.2022 which was not brought to the notice of this Court either of the parties at the time of the hearing; ii) The respondent was duty bound to notify the FPS vacancy notification dated 27.04.2022 as per the amended notification dated 11.04.2022 as the said amended notification dated 11.04.2022 was in vogue at the time of the re-notification of the vacancy dated 27.04.2022; iii) Had the amended provisions of the WBPDSM&C Order 2013 been brought to the attention of this Court, this Court would in all probability not have passed the judgment and order dated 11.04.2023. Un-amended Clause 20(iia) of the WBPDS [M&C) Order 2013 - In clause 20- "(iia) After obtaining the approval of the State Government, the Sub Sub Divisional Controller. Food & Supplies shall declare such vacancy stating the eligibility criteria through notice in the office notice board and publish the same in the Official Gazette. The Sub-divisional Controller, Food and Supplies shall simultaneously publish an indicative advertisement of the said vacancy for information to the general public in at least one Bengali newspaper and one English newspaper having State-wise circulation. Provided that in case of re-

notification of any vacancy on account of non-availability of suitable candidates against such vacancy, the concerned SCF& S shall publish the same with the approval of the concerned District Magistrate under intimate to the State Government." After the amendment notification dated 11.04.2022 the Clause 20(iia) of WBPDS(M&C) Order 2013 was amended. Amended Clause 20(iia) of the WBPDS (M&C) Order 2013 – "After obtaining the approval of the State Government, the Sub Sub-Divisional Controller, Food & Supplies shall declare such vacancy stating the eligibility criteria through notice in the office notice board and also publish the same on the official website of the Department The Sub-divisional Controller, Food and Supplies shall simultaneously publish an indicative advertisement of the said vacancy for information to the General Public in at least one Bengali newspaper and one English newspaper having State-wise circulation. Provided that in case of re-notification of any vacancy on account of non-availability of suitable candidates against such vacancy, the concerned SCF& S shall publish the same with the approval of the concerned District Magistrate under intimate to the State Government." Thus, by dint of the amendment dated 11.04.2022, in Clause 20 the said Control Order, in Sub-Section (iia), for the words "and published the same in the official Gazette", was substituted by the words "and also publish the same on the official website of the Department". Reliance was placed on - i) State of M.P. and Another v. Jaswant Puri and Others- (1988 SCC Online MP 10); ii) M/s Northern India Caterers (India) Ltd. v. LT. Governor of Delhi. (1980) 2 SCC 167. The decisions relied upon by the writ petitioner were distinguished as

follows. i) *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465, In the instant case, the review applicant was being considered against the vacancy dated 27.04.2022 and the scored the highest marks after the physical enquiry. However, due to the quashing of the vacancy notification dated 27.04.2022 the right of the review applicant to be considered for the said vacancy was extinguished and hence the review applicant was most aggrieved by the judgement and order dated 11.04.2023. The review applicant can be considered as a “Person aggrieved” as per the provisions of Section 114 as well as Order 47 Rule 1 of the Civil Procedure Code, 1908. Moreover, the selection process in the instant case commenced from the date of notification of the instant vacancy on 27.04.2022 and not on the date of the approval of such vacancy on 04.03.2022. It is a settled law that the process of recruitment begins with the issuance of an advertisement and ends with the filing up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for an interview or viva voce and preparation of a list of successful candidates for appointment. [*Tej Prakash Pathak v. High Court of Rajasthan*, (2025) 2 SCC 1]; ii) Thus, the Rules and laws that are prevalent on the date of Advertisement and/or notification of the selection process would govern the selection process; iii) The arguments advanced by the writ petitioners that the Rules prevalent on the date of approval of a vacancy would govern the selection process are fallacious inasmuch as a selection process usually has multiple vacancies which are declared vacant

and are approved to be earmarked for selection on multiple dates. Thus, treating rules prevalent on the dates of approval of such vacancies would create a situation of chaos in the selection process. Furthermore, the dates of approval of vacancies in a selection process are not always disclosed in a recruitment notification. Thus, the candidates do not have knowledge as to when such approval was granted; iv) However, all the vacancies are notified for selection on a common date, which is within the knowledge of the intending candidates. Thus, these candidates can submit their application as per the rules prevalent on the date of notification of the vacancies.

Commencement of selection process and relevant rules – The selection process in the instant case commenced from the date of notification of the instant vacancy on 27.04.2022 and not on the date of the approval of such vacancy on 04.03.2022. It is a settled law that the process of recruitment begins with the issuance of an advertisement and ends with the filing up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for an interview or viva voce and preparation of a list of successful candidates for appointment. *Tej Prakash Pathak v. High Court of Rajasthan*, (2025) 2 SCC 1. Thus, the Rules and laws that are prevalent on the date of Advertisement and/or notification of the selection process would govern the selection process. The arguments advanced by the writ petitioners that the Rules prevalent on the date of approval of a vacancy would govern the selection process are fallacious inasmuch as a selection process usually has multiple vacancies

which are declared vacant and are approved to be earmarked for selection on multiple dates. Thus, treating rules prevalent on the dates of approval of such vacancies would create a situation of chaos in the selection process. Furthermore, the dates of approval of vacancies in a selection process are not always disclosed in a recruitment notification. Thus, the candidates do not have knowledge as to when such approval was granted. However, all the vacancies are notified for selection on a common date, which is within the knowledge of the intending candidates. Thus, these candidates can submit their application as per the rules prevalent on the date of notification of the vacancies.

5. I heard the learned counsels for the parties, perused the application, the affidavits and the respective written notes of submissions.

6. Review has been sought of an order that was passed by this Court on 19.04.2023. By such order, the vacancy declaration notice dated 27.04.2022 issued by the Sub-Divisional Controller (F & S), Gangarampur for Sahapara (Barabazar), Ward No. 7, Post office and Police Station – Gangarampur, District – Dakhsin Dinajpur and steps taken in this regard by the respondent authorities were quashed and set aside. The respondent authorities were granted liberty to re-notify the vacancy in accordance with law.

7. The present applicant was not a party in the writ petition. However, the applicant claims to have submitted an application online for appointment as FPS dealer at Gangarampur, District - Dakshin Dinajpur,

Ward No. 7 at Gangarampur Municipality. After the enquiry, the applicant was recommended for selection for appointment against the vacancy. According to the applicant, although he attended the office of the ADM on the scheduled day, the hearing could not take place. In the meantime, the writ petitioner challenged the notification finally leading to the order of which review has been sought.

8. According to the review applicant, a vital amendment of Maintenance and Control Order, 2013 dated 11.04.2022 was not brought to the notice of this Court for consideration by the petitioner or even by State respondents. The applicant was not even made a party to the writ petition. The State amendment had done away with the requirements of publication of vacancy for appointment of FPS Dealer in the Official Gazette. It was sufficient if the publication was done in the officer website of the Department.

9. First, it appears that the review applicant has been adversely affected by the order in question passed by this Court. Although the review applicant may not have been a necessary party at the time of filing of the writ petition, a review application is quite maintainable at the behest of the present applicant. In this regard, principles of the Code of Civil Procedure would very much apply. Reliance is placed on the decision of the Hon'ble Apex Court in NareshKumar BadriKumar Jagad (supra).

10. It is very unfortunate indeed that a vital notification having a direct bearing on the litigation at hand was not placed before this Court during hearing of the writ petition on behalf of the petitioner. It is even more

surprising that the State also failed to place the said notification at the time of hearing.

11. The said notification dated 11.04.2022 makes it abundantly clear that publication of the vacancy in the Official Gazette was being substituted by publication of the same on the official website of the Department. This appears to be the position prevailing on the relevant date i.e., the date of notification (27.04.2022).

12. The requirement of such publication in the official website of the Department had reportedly been complied with the petitioner in the instant case.

13. Therefore, there can be no case for quashing or setting aside the vacancy notification on the ground of violation of the relevant unamended provisions of law.

14. Moreover, the question of alleged delay in filing the review application has been well explained by the applicant. In any event, this Court does not consider such delay to be fatal for entertaining of an application for review on the ground that a vital fact was suppressed and/or not placed before this Court in obtaining an order.

15. In view of the above, this Court deems it fit to review its earlier order dated 19.04.2023 which was passed without the relevant amended provisions being placed or pointed out before the Court by either of the counsels representing the petitioner and the State. Accordingly, the judgement and order dated 19.04.2023 is reviewed and recalled.

16. With these observations and directions, the review application is disposed of.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

18. Parties shall act on a sever copy downloaded from the official website of this Court.

(Jay Sengupta, J.)