

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 27 of 2025

With

I.A. No: CAN 1 of 2025

Shahir Nadim & Ors.

Versus

The State of West Bengal & Ors.

With

W.P.S.T. 28 of 2025

Pranab Mondal and Ors.

Vs

State of West Bengal and Ors.

With

W.P.S.T. 33 of 2025

Ankita Goswami and Anr.

Vs

State of West Bengal and Ors.

For the Petitioner	: Mr. Subir Sanyal, Sr. Adv., Mr. Dibyendu Chatterjee, Mr. Pritam Majumdar, Mr. Rahul Deb Goenka, Mr. Mainak Singha Barma, Ms. Ananya Chakraborty.
For the Respondents	: Mr. Tapan Kumar Mukherjee, Id. AGP, Ms. Sangeeta Roy.
Judgment on	: May 21, 2025.

Madhuresh Prasad, J.:

1. Common submissions have been advanced by Mr. Sanyal in support of the three writ petitions disposed of by the West Bengal Administrative Tribunal ("SAT" for short) by a common order made. Such being the circumstances we dispose of all the three writ petitions by this common order.

**Re: CAN 1 of 2025
in W.P.S.T. No. 27 of 2025**

2. CAN 1 has been filed by the applicants in W.P.S.T. No. 27 of 2025 praying for being added as party writ petitioners in the present proceedings so that they may pray for the same relief prayed by the writ petitioners. In paragraph 11 of the application it is specifically averred by the applicants that they were not parties to the O.A. before the West Bengal Administrative Tribunal ("SAT" for short), order of which is impugned in the present proceedings claiming parity with the writ petitioners. They want to join in the present proceedings before the High Court under Article 226 directly, even though they were not parties in the proceedings before the Tribunal in O.A. No. 639 of 2023.
3. The law in this regard is clear from decision of the Apex Court in the case of ***L.Chandra Kumar vs. Union of India and Others*** reported in ***(1997) 3 SCC 261*** that the Tribunal shall continue to be the Court of first instance. Relying upon this decision, the Apex Court in a subsequent decision in the case of ***Rajeev Kumar and Another vs. Hemraj Singh Chauhan and Others*** reported in ***(2010) 4 SCC 554***

dealing with the similar claim of the writ petitioners to join directly in the writ proceedings, though they were not parties before the Tribunal, held that the petitioners cannot approach the High Court as the Court of first instance overlooking the jurisdiction of the Tribunal.

4. The application, therefore, is unsustainable and is dismissed.

W.P.S.T. 27 of 2025

W.P.S.T. 28 of 2025

W.P.S.T. 33 of 2025

5. The petitioners were the applicants before the SAT.
6. The Original Application No. 639 of 2023 was filed by the writ petitioners of W.P.S.T. No. 27 of 2025. Original Application No. 414 of 2024 and Original Application No. 640 of 2023 were filed by writ petitioners in W.P.S.T. No. 28 of 2025 and W.P.S.T. No. 33 of 2025 respectively.
7. The three Original Applications were filed with identical prayer and the self-same cause of action arising out of a common recruitment process. The three Original Applications were thus considered analogous and disposed of by the SAT by a common order dated 29.01.2025, which is the subject matter of the present three writ petitions.
8. The brief factual background which is not in dispute is that an advertisement was issued by the West Bengal Police Recruitment Board ("Board" for short) for appointment of Constables and Lady

Constables in West Bengal Police. The recruitment process was conducted as per the West Bengal Police (Recruitment of Constables and Lady Constables) Rules, 2017 (“2017 Rules” for short).

9. The writ petitioners participated in the recruitment process wherein the preliminary written test was held on 26.09.2021. The petitioners emerged successful and were thus called for Physical Measurement Test (PMT) and Physical Efficiency Test (PET). They appeared at both PMT and PET on their allotted dates and emerged successful therein. The petitioners thereafter appeared for the final written test held on 22.05.2022. They also claim to have participated in the interview.
10. Pursuant to the recruitment process the Board published a provisional list of recommended 8624 candidates. Out of these recommended candidates only 7077 completed their Verification Roll (VR) and Medical Examination (ME).
11. The writ petitioners thus approached the Tribunal seeking a direction upon the Board that the resultant vacancies 1547 be filled up by the candidates in order of merit as per their performance in the recruitment process below the last of the 8624 recommended candidates. The prayer of the applicants was rejected.
12. Learned Counsel Mr. Sanyal would submit on behalf of the petitioners that the recruitment process starts from issuance of the advertisement and ends with filling up of all vacancies. Since all the vacancies have not been filled up, the recruitment process was incomplete. In the present case it is an admitted position that 1547

posts remained vacant and, therefore, the same should have been filled up from the remaining eligible candidates as per merit.

13. He submits that a vacancy can be considered vacant for the purpose of being carried forward to the next recruitment process in terms of the rule only after an appointment letter has been issued against all the post for which the recruitment process was undertaken. If after issuance of appointment letters, the posts remain vacant due to non-joining or any other circumstance then only the recruitment process can be considered completed and the remaining vacancies be carried forward to the next recruitment process. In the present case since 1547 candidates did not appear for the VR and ME, no appointment letter was issued to them and, therefore, these vacancies ought not to have been carried forward, rather the same were required to be filled up by the remaining candidates as per merit.

14. According to Mr. Sanyal the petitioners are required to be considered against the remaining vacancies because they emerged successful in the recruitment process up to the stage of interview. Since the petitioners had emerged successful in the interview carrying over the unfilled vacancies to the next recruitment process was not only to the prejudice to the petitioners, but impermissible since the recruitment process had not been completed.

15. Mr. Sanyal has relied upon the following decisions:

- ***Rakhi Ray & Ors. Vs. The High Court of Delhi & Ors.*** reported in **(2010) 2 SCC 637**,
- ***Srikant Roy & Ors. Vs. State of Jharkhand & Ors.*** reported in **(2017) 1 SCC 457**, and

- **Munja Praveen & Ors. Vs. State of Telengana & Ors.** reported in **(2017) 14 SCC 797.**

16. Mr. Mukherjee, learned AGP appeared on behalf of the State. He submits that the Tribunal has rightly dismissed the O.A. According to him, the notification advertising the recruitment process contains stipulation that the number of provisionally selected candidates would be equal to the number of total vacancies. Such procedure has strictly been followed by the State respondents. It is under this stipulation in the advertisement that the merit list of the provisionally selected candidates was prepared by the Board. From this merit list vacancies have been filled up and remaining have been carried forward to the next recruitment process.

17. The petitioners admittedly have not been placed in the merit list of provisionally selected candidates. The petitioners, therefore, are in no position to claim the relief prayed for in the present writ petition. Mr. Mukherjee has relied upon the decision in the case of **State of Orissa and Anr. vs. Rajkishore Nanda & Ors.** reported in **(2010) 6 SCC 777**, in the case of **Vallampati Sathish Babu vs. State of Andhra Pradesh and Ors.** reported in **(2022) 13 SCC 193** and recent decision of a co-ordinate Bench of this Court in the case of **Anirban Roy Chowdhuri & Ors. vs. State of West Bengal and Ors.** passed on 21.08.2023 in **WPST No. 115 of 2023.**

18. We have considered the rival submissions. The sum and substance of the relief claimed by the appellants is that the unfilled vacancies should be filled up by the remaining candidates. Such relief

is being claimed by the petitioners even though it is not in dispute that their names do not figure in the merit list. It is also not their case that by virtue of their merit performance they are placed first below the last candidate of the provisionally selected candidate and that if the vacancies remaining 1547 unfilled were to be filled up then they would come within the zone of consideration. The learned Counsel for the petitioner has also not pointed out any provision in the 2017 Rules or advertisement that after preparation of the merit list if any advertised vacancy remains vacant then the same are required to be filled up with the remaining candidates in order of merit; or for creation of any wait list for any such purpose.

19. The submission advanced on behalf of the petitioners regarding the recruitment process being inconclusive since appointment letters were not issued in respect of all the notified vacancies, in the circumstances does not in any way help the petitioners.

20. Insofar as the decision of the Apex Court in the case of **Rakhi Ray** (Supra), the issue arising for consideration in the said case was whether appointments can be made beyond the number of vacancies advertised, or not. We do not find the decision in the case of **Rakhi Ray** (Supra) supporting the claim of the petitioners that in absence of any such stipulation in the Rule or Advertisement, the unfilled vacancies be filled up by the remaining candidates from the recruitment process, whose names do not even figure in the merit list.

21. The Apex Court decision in the case of **Srikant Roy** (Supra) relied upon by the learned Counsel for petitioner also in our opinion

does not support such claim of the writ petitioners. In this report all together four cases were disposed of by the Apex Court. One writ petitioner had challenged the selection process for filling up the post of Additional District Judge through limited competitive examination and also 18 posts of ADJs from promote officers on the basis of merit-cum-seniority.

22. The other writ petitioners were candidates in the process for direct recruitment initiated vide advertisement No. 1 of 2010. Altogether thirty seven (37) candidates qualified the main examination and out of those candidates 15 including the petitioner were declared successful and placed in the selection list. The petitioners however, were placed at serial number 9 onwards, whereas appointment was made only of 8 candidates placed above the petitioners, against the 8 notified vacancies. The Apex Court in such facts and circumstances held that even if the petitioner's names figured in the selection list they do not acquire any indefeasible right in getting appointed. The Apex Court held that once the names of the candidates from the select list are recommended to the Government proportionate to the vacancies available for appointment; and recommended candidates are so appointed, or on expiry of 1 year from the date of select list, whichever is earlier, the select list would become ineffective *qua* the selection process.

23. The learned Counsel for the petitioner submits that in view of such findings of the Apex Court it is obvious that a selection process is complete only with filling up of vacancies. In the present case since

all the vacancies are not filled up the process was not completed and thus the 1547 vacancies remaining were required to be filled up from the remaining candidates.

24. We do not find force in such submission. The facts of the present case are different from the facts and circumstances arising for consideration before the Apex Court in the case of **Srikant Roy** (Supra). The writ petitioners therein had already been placed in the selection list. The petitioners in the present writ proceedings, on the other hand, have no idea as to their merit position. It is not their case that they are even first/ next after the last candidate provisionally recommended in the merit list. Reliance placed on this decision in our opinion is totally misplaced. The learned Counsel is relying more on an adverse inference arising from the observations in the judgment regarding conclusion of the recruitment process. He submits that only after vacancies are exhausted by issuance of appointment letters it can be said that the recruitment process is complete. In the present case, the posts were never exhausted as 1547 candidates never turned up for VR and ME and, therefore, it was obligatory upon the respondents to proceed to fill up these vacancies. It is not his case that the case of the present petitioners is in any way covered by the decision of the Apex Court. In the case of **Srikant Roy** (Supra), we find as extracted above that in respect of the petitioners therein the Apex Court found that even though their name was included in the select list they had no indefeasible right to claim appointment against any further vacancies.

25. In the present case the terms of the advertisement are also required to be considered. Clause 6 of the advertisement contains the relevant provision, in so many words:-

“On the basis of the marks obtained in the Final Written Examination and the Interview, a merit list (emphasis ours) of the provisionally selected candidates will be prepared by the West Bengal Police Recruitment Board.”

26. The advertisement is clear in its intent regarding preparation of a merit list of the provisionally selected candidates. Accordingly 8624 candidates, being equal to the number of total vacancies were declared provisionally selected. There is no stipulation in the advertisement for creation of a waiting list or for including persons other than those “provisionally selected”. It is an admitted position that the petitioners are not provisionally selected and that they are not claiming to be first/ next after the last selected candidate in order of merit. We thus find the decision in the case of **Srikant Roy** (Supra) does not in any way help the petitioner’s case.

27. Insofar as the decision in the case of **Munja Praveen** (Supra) is concerned the reliance placed by petitioners’ counsel on the said judgment in our opinion does not merit any consideration. In the case of **Munja Praveen** (Supra) a clarification was issued by the State Government on 01.06.2016 that the Corporations were free to fill up the left-over notified vacancies by operating the merit list downward for each category. In the present case there is no such policy decision and the recruitment process has ended by preparation of a merit list of provisionally selected candidates.

28. In the circumstances, we find force in the submission of Mr. Mukherjee, learned AGP relying upon the decisions in the case of **Rajkishore Nanda** (supra), **Vallampati Sathish Babu** (Supra), **Anirban Roy Chowdhuri** (Supra). As per the reports relied upon by Mr. Mukherjee the settled legal position that emerges is that the recruitment process is required to be conducted in terms of the Rules and the stipulations contained in the advertisements. Unless the rule contemplates preparation of a waiting list or to fill up the vacancies remaining unfilled, the petitioners cannot claim any consideration against the post that may remain unfilled.
29. In the instant case the Rules and the advertisement contemplated the recruitment process to culminate in publication of a merit list of provisionally selected candidates equivalent to the number of posts for which advertisement was issued. Once, the same has been published, there is no question of going below the merit list. The merit (marks) of the last provisionally selected candidate in the merit list being the cut off, there is no scope for any claim made by those left out of the merit list that left-over vacancies, if any, be considered by going below the cut off. In absence of any specific provision to the contrary, the writ petitioners cannot claim any such consideration against the remaining vacancies. There was no option open or available to the respondents to offer appointment to anyone else.
30. Insofar as submission of Mr. Sanyal that the recruitment process in the present case was incomplete since all the provisionally

selected candidates did not participate in the VR and ME, giving rise to a right in favour of the petitioners and other candidates for being considered for selection against these posts, the decision of the Apex Court in the case of **Vallampati Sathish Babu** (supra) relied upon by Mr. Mukherjee, Learned AGP is required to be considered. The petitioners before the Apex Court in the said case raised the same plea. The petitioners therein also contended that they had participated in the selection process. In that case the petitioner was better placed than the present petitioners in the sense that he was placed at 34th position based on his merit performance whereas candidates up to serial No. 33, just above the petitioner therein found place in the selection list. The other facts of that case are similar to the facts and circumstances of the present case. Therein also the selection list was to be prepared as per the norms, not more than number of vacancies notified, as in the present case. In that case also one post remained vacant since the candidate who had secured 18th rank did not turn up for counselling.

31. Thus under similar facts and circumstances a submission was made on behalf of those petitioner that until 33 posts are filled it cannot be said that the selection process is complete, as is contended on behalf of the petitioners in the present case. Considering such submission, the Apex Court in **Vallampati Sathish Babu** (supra) held as follows:

“18. In the present case, the first provisional list was published on 1-12-2012. Thereafter, a revised provisional list was published on 12-12-2012 and subsequently a final

selection list was published on 25-12-2012 of 33 selected candidates and the candidate, who did not appear for counselling was one of the candidates in the final selection list dated 25-12-2012. Therefore, once there was no provision for waiting list, the post, which remained unfilled due to one of the candidates in the final selection list not appearing for counselling will have to be carried forward to the next recruitment as per sub-rule (5) of Rule 16.”

32. The facts and circumstances of the present case and the submissions advanced on behalf of the petitioners herein are squarely covered by **Vallampati Sathish Babu** (supra) judgment.
33. The writ petitioner has not been able to make out a case where the decision of the Tribunal can be said to be causing any injustice to the petitioners requiring any interference in exercise of jurisdiction under Article 228 of the Constitution of India.
34. We thus find no reason to interfere with the decision of the Tribunal rejecting the claim of the petitioners.
35. We find no merit in the writ petition.
36. The order of the SAT requires no interference.
37. The writ petition/s are dismissed.
38. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)