

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 6663 of 2018

Ajit Kumar Gond

-Vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Sanjib Bandyopadhyay
For the State	: Mr. Jahar Lal De, Ld. AGP Mr. Debarati Sen (Bose)
For the Respondent No.5	: Mr. Pinaki Ranjan Chakraborti
Heard on	: 10.07.2025
Judgment on	: 24.10.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has approached this Hon'ble Court invoking its extraordinary constitutional writ jurisdiction, seeking issuance of a writ in the nature of Mandamus commanding the respondents to set aside and/or quash the impugned order no. 201 dated 27.04.2018 passed by the Learned District Judge, Nadia, whereby the junior-most Grade-I Bench Clerk, Shri Asim Kumar Mallack, was promoted to the post of District Sheristadar, thereby superseding the legitimate claim of the petitioner, who stood senior in gradation and had an unblemished service record spanning over three decades.

2. The factual substratum of the case reveals that the petitioner, after undergoing a due process of selection, joined the establishment of the District Judge's Court, Krishnanagar, as Lower Division Clerk (LDC) on 09.01.1984. By virtue of consistent diligence and merit, he ascended the hierarchical ladder—first as Upper Division Clerk (UDC) in 1989, then as Bench Clerk Grade-II, and subsequently as Bench Clerk Grade-I vide office order no. 87 dated 18.06.2012. At the material time, the petitioner was serving under the disposal of the Learned Additional District Judge, 5th Court, Nadia, having been transferred to that post on 27.08.2015.
3. A Draft Gradation List published on 02.01.2016 by the Learned District Judge, Nadia, categorically reflected the petitioner as the second senior-most Grade-I Bench Clerk, next only to Shri Gairik Halder. The said Shri Halder, being the senior-most, was promoted to the post of District Sheristadar upon the retirement of his predecessor in the year 2017. Consequently, upon the retirement of Shri Halder on 31.07.2017, the petitioner became the senior-most Grade-I Bench Clerk, thereby fostering a legitimate expectation of promotion to the said post, consistent with the longstanding convention prevailing in the judgeship of Nadia.
4. The petitioner asserts that there existed a well-established administrative practice and convention that the post of District Sheristadar was invariably filled up on the principle of seniority from amongst the Grade-I Bench Clerks, in the absence of any statutory rule framed to the contrary. The petitioner's expectation of promotion was thus founded upon not only seniority but also a reasonable belief in the uniform application of the settled practice of the establishment.

5. However, to the petitioner's shock and dismay, the Learned District Judge, Nadia, vide office order no. 141 dated 02.04.2018, constituted a Selection Committee purportedly to judge the "suitability" of candidates for the post of District Sheristadar. Pursuant to memo no. 728(5)/II-10 dated 05.04.2018, all Grade-I Bench Clerks were directed to submit their willingness along with a prescribed proforma. The petitioner duly complied and submitted the same on 09.04.2018, confident that his seniority and record of service would be duly recognized.
6. Nevertheless, the petitioner's hopes were dashed when, following an interview conducted on 26.04.2018, the impugned order no. 201 dated 27.04.2018 was issued, promoting the junior-most Grade-I Bench Clerk, Shri Asim Kumar Mallack, to the post of District Sheristadar. The said order, it appears, was premised on a resolution adopted by the Selection Committee on 17.04.2018, whereby certain "units" were arbitrarily allotted to candidates to assess their suitability. The criteria for awarding such units were neither disclosed nor communicated to the candidates, rendering the process opaque and violative of the fundamental principles of transparency and fairness.
7. The petitioner contends that the constitution of such a committee and the adoption of a merit-based evaluation process for promotion to the post of District Sheristadar are without authority of law, as the service conditions of the staff of the District Judiciary are governed by rules framed under the proviso to Article 309 of the Constitution of India, in consultation with the Hon'ble High Court, and subject to its control under Article 235. Any departure from such prescribed conditions without concurrence of the

Government of West Bengal and the Hon'ble High Court is thus *ultra vires* and void.

8. To fortify his claim, the petitioner places reliance upon the recommendations of the Shetty Commission, which were directed to be implemented by the Hon'ble Supreme Court of India by order dated 07.10.2009, with effect from 01.04.2003. The Shetty Commission, upon an exhaustive examination of the service conditions of court staff across the country, recommended a clear hierarchical and promotional structure for Bench Clerks and Sheristadars. For the State of West Bengal, Chapter XVIII of the Commission's Report prescribes three distinct grades of Bench Clerks, with the District Sheristadar being a promotional post to be filled from amongst the senior-most Grade-I Bench Clerks, thereby underscoring seniority-cum-fitness as the governing principle.
9. The petitioner further asserts that the Shetty Commission's recommendations, having been approved by the Hon'ble Supreme Court, possess binding effect upon all judicial establishments, and any deviation therefrom constitutes not merely administrative impropriety but a constitutional infraction of Articles 14 and 16, amounting to hostile discrimination and arbitrariness.
10. It is evident from the record that the Learned District Judge, in purported exercise of administrative discretion, devised an evaluation process alien to the established norms, introducing parameters such as "unit marking" and "personality tests" in a promotional exercise where seniority alone was the criterion. Such unilateral deviation from an established process of promotion smacks of arbitrariness and renders the entire selection vitiated by bias, non-transparency, and procedural impropriety.

11. The petitioner contends that promotion is not a fundamental right, yet the right to fair consideration for promotion, in accordance with settled principles and norms, is a constitutional right protected under Articles 14 and 16 of the Constitution of India. The denial of such fair consideration by adopting a process unknown to law not only prejudices the petitioner's legitimate expectation but also shakes the confidence of subordinate judicial staff in the impartiality of the administrative hierarchy.
12. It further emerges that the evaluation parameters and the resolution of the Selection Committee dated 17.04.2018 were not disclosed either prior to or after the selection process, thereby violating the doctrine of procedural fairness and transparency, which are the cornerstones of administrative justice.
13. The petitioner therefore contends that the impugned order dated 27.04.2018, being arbitrary, unreasonable, and violative of the settled service jurisprudence, deserves to be quashed and set aside. The same, having been issued in derogation of the Shetty Commission's binding recommendations and contrary to the long-established principle of promotion by seniority, is unsustainable in law.
14. The Learned Advocate representing the petitioner submitted as follows:-
 - i. The actions and decisions of the respondent authorities, particularly the Learned District Judge, Nadia, are manifestly arbitrary, patently unjust, and bereft of legal or factual foundation. The impugned order, Order No. 201 dated 27.04.2018, which purportedly promotes a junior-most Grade-I Bench Clerk to the post of District Sheristadar, demonstrates a wholesale departure from established conventions, statutory norms, and judicially

sanctioned recommendations, and, as such, is vitiated by illegality and non-application of mind.

- ii. It is pertinent to note that the Shetty Commission, constituted pursuant to the directions of the Hon'ble Supreme Court, after meticulous examination of the service conditions of subordinate court staff across various States, had unequivocally recommended that promotion to the post of District Sheristadar must be governed solely by seniority among Grade-I Bench Clerks. These recommendations, having been endorsed by the Hon'ble Supreme Court in its order dated 07.10.2009, acquired the force of law and became binding on the High Courts and subordinate courts. The Supreme Court, not only approved the recommendations but also directed that its implementation be uniform and timely, thereby ensuring that seniority and established norms govern promotions, except where duly framed rules permit otherwise.
- iii. Despite this clear legal mandate, the Learned District Judge, Nadia, in an arbitrary exercise of discretion, formed a selection committee to evaluate candidates for promotion, in complete contravention of the Shetty Commission's recommendations. The committee was vested with the power to assess "suitability" and conduct interviews, even though no rule, regulation, or executive instruction authorized such a process. By creating an artificial and opaque mechanism, the respondent authorities sought to displace the petitioner's seniority-based entitlement, thereby undermining his legitimate expectation and civil rights.

- iv. Furthermore, the resolution dated 17.04.2018, which purportedly recorded the basis of evaluation and award of units to candidates, was never disclosed to the petitioner or other candidates. The petitioner was thus deprived of the fundamental right to know the criteria for assessment, and the opportunity to seek clarification or redress. The secrecy and non-transparency inherent in the selection process violated the principles of natural justice, which mandate that an affected employee must be fully informed of the criteria, evaluation, and findings before adverse consequences are imposed.
- v. The promotion order, being based on unknown and undisclosed units awarded by a committee lacking statutory authority, was therefore unsustainable in law. It constituted a gross abuse of power, a breach of fair administrative procedure, and a violation of the petitioner's constitutional rights under Articles 14 and 16. While it is true that promotion is not a fundamental right, it is a civil right conferred upon an employee by virtue of seniority, convention, and sanctioned recommendations. Denial of such a right, except in accordance with duly framed rules, is impermissible and must receive strict judicial scrutiny.
- vi. The principle of seniority is not a mere administrative convenience but a recognized legal right, forming the bedrock of service jurisprudence. Seniority dictates the trajectory of an employee's career, influencing not only promotion but also remuneration, benefits, and professional standing. The arbitrary promotion of a junior employee over a senior, in disregard of established norms,

inflicts irreparable harm, creates an atmosphere of discrimination, uncertainty, and inequity, and erodes the rule of law within the service. Such conduct, if sanctioned, sets a dangerous precedent, effectively rendering seniority and merit-based entitlement subservient to the discretion of individual officers, contrary to law and justice.

- vii. The selection mechanism adopted by the Learned District Judge, Nadia, suffers from fundamental flaws – There was no statutory or regulatory authority permitting the exercise of discretion to evaluate merit where seniority was determinative, the evaluation criteria, scoring methodology, and deliberations of the committee were neither transparent nor disclosed, thereby vitiating the very essence of a fair and open selection process, the petitioner, being the senior-most eligible candidate, was entitled to promotion by convention, practice, and judicially sanctioned recommendations, and any deviation from this principle is unreasonable, arbitrary, and violative of Article 14, which guarantees equality before law and prohibits discrimination, by promoting the junior-most candidate, the respondent authorities effectively nullified the petitioner's seniority right, infringing on his civil and legitimate expectations, which enjoy judicial protection in service matters.
- viii. It was well-settled that seniority confers a valuable right on an employee, and its disregard is permissible only in the presence of validly framed and reasonable rules, which must be construed strictly and not expansively to defeat existing rights. In the absence of such rules, the arbitrary selection process cannot be

sustained, and any resultant order of promotion is liable to be quashed.

- ix. Conclusively it was submitted the order of promotion dated 27.04.2018 is ex facie illegal, procedurally infirm, and substantively unjust, being in direct violation of the Shetty Commission recommendations, the principle of seniority, and constitutional guarantees. It is an exercise of power without authority, transparency, or rational basis, and is therefore liable to be set aside and quashed in the interest of justice, equity, and the rule of law.

15. The Learned Advocate representing the respondent no.2 and 3 submitted the petitioner to have been initially promoted in reserved quota and subsequently promoted on the basis of consequential seniority. It was further submitted in absence of statutory provisions mere seniority did not confer any legal right to promotion even though a seniority list had been prepared. Moreover, the District Judge being the Appointing Authority was competent to rectify an erroneous order if at all issued in terms of Judicial Department Order No.675-JD dated 02.12.2014.

16. It was further submitted that the promotional orders of the petitioners had been erroneous and was liable to be cancelled and his position in the gradation list was to be refixed in view of Paragraph 2(c) of Memorandum No.3741-F dated 18.07.1964 which stated the orders or notifications of promotion for appointment of Government servant should be cancelled as soon as it is brought to the notice of the Appointing Authority that such promotion or appointment resulted from the factual error and the Government servant concerned should immediately on such cancellation

be reverted to the earlier position without conferring promotion. In the instant case the concerned Department did not frame any rule to fill up the vacancy of District Sheristadar similar to the direction for filling up of post of Nazir, Accountant, Head Clerk as directed by the High Court at Calcutta wherein it had been specifically stated that the vacancy should be filled up on merit and not on seniority.

17. It was further submitted that Shetty Commission did not recommend the criteria for promotion to the post of Sheristadar to be exclusively on the basis of seniority apart from mentioning to pay fixation as per the revised ROPA-1998 and the appointment to the post of District Sheristadar to be accomplished from the candidates belonging to the post of Bench Clerk Grade-I without any benefit of pay fixation.
18. It was further stated the Hon'ble Supreme Court in the decision of Indra Sawhney Vs. Union of India stated there should be no reservation for promotion. Accordingly, the position in seniority list of the SC/ST employees in respect of lower feeder cadre will not change in promotion as observed by the Hon'ble Supreme Court in the case of Union of India Vs. Virpal Singh Chauhan which subsequently notified by the Office Memo No.36012/37/93 Estt (SCT) and 20011/1/96 Estt(D).
19. The committee constituted by the District Judge was not violative of any rights to have accrued in favour of the petitioner on the contrary ensure transparency in the process.
20. The Learned Advocate representing the State submitted that the Government servant did not acquire a right to promotion though he has a right to be considered for promotion.

21. It was further emphasized that the District Judge, Nadia, had complied with the notification issued by the Hon'ble High Court at Calcutta being No.8262/A dated 12.08.1988 which categorically stated that the post of Sheristadar, Accountant, Head Clerk should be filled up on merit and not on seniority.
22. It was further submitted by the Learned Advocate representing the State that the petitioner already retired from the service and the prayer in the writ petition had accordingly become infructuous.
23. The Learned Advocate representing the respondent no.5 being the private respondent, *inter alia*, submitted the petitioner appeared before the Committee for interview on 26.04.2018 prior to which the petitioner did not raise any objection on the alleged ground that the petitioner was not being promoted on the sole ground of seniority. The petitioner was aware that the selection of aforesaid Gairik Halder was on the basis of seniority-cum-merit and not exclusively on the ground of seniority.
24. It was further stressed that the recruitment process did not exhibit any kind of biasedness or discrimination and notice was issued to five senior most eligible candidates through a mode of selection based on personality test. The petitioner refrained from appearing in the personality test on the conviction being the senior most candidate he was to be promoted.
25. The Learned Advocate representing the respondent no.5 submitted the instant writ petition to be misconceived with *mala fide* intention since the report of the Shetty Commission did not recommend that promotion to the post of Sheristadar was to be accorded solely on consideration of seniority in isolation of consideration of merit of the candidates. It was

further contended that the recommendation of the report of Shetty Commission was not violated.

26. Office Memorandum No.36012/37/93-Estt. (SCT) dated New Delhi, the 19th August, 1993 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, *inter alia*, stated as follows:-

“

Subject :- Reservation for SC/ST in promotion

The undersigned is directed to say that consequent on the judgment of the Supreme Court in Indra Sawhney and Others Vs. Union of India and Others, doubts have been expressed in some quarters whether the existing provisions of reservation for SC/ST in the matter of promotion are to be continued. In para 107 of their judgement in the above said case delivered on 16-11-92, the Supreme Court has given the following direction:

It is further directed that wherever reservations are already provided in the matter of promotion – be it Central Services or State Services or for that matter services under any Corporation, authority or body falling under the definition of “State” in Article 12 – such reservations shall continue in operation for a period of five years from this day (16-11-1992).

2. In view of this direction of the Supreme Court, the existing provisions of reservation for SC/ST in the matter of promotion are required to be continued.

3. The above said position is brought to the notice of all Ministries/Departments for information and for ensuring that the existing provisions of reservation for SC/ST in the matter promotion are implemented, without fail.

(Hindi version will follow)

Sd/-

(M. VENKATARAMAN)

Under Secretary to the Govt. of India

.....”

27. Office Memorandum being No.20011/1/96-Estt.(D) dated New Delhi, the 30th January, 1997 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India is replicated as follows:-

“.....

2. *The Supreme Court has in its judgment date 10.10.95 in the case of Union of India Vs. Virpal Singh Chauhan etc. (JT 1995 (7) SC 231) held as follows:-*

‘Even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate and the senior general candidate is promoted later to the said higher grade, the general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe candidate. The earlier promotion of the Scheduled Case/Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category.’

3. *Having regard to the above judgment of the Supreme Court, it has been decided to modify the existing policy of fixing seniority on promotion on the lines mentioned in para 2 above. Accordingly, it has been decided to add the following proviso to general principle 5(i) contained in MHA (now DOPT) OM No.9/11/55-RPS dated 22.12.59 and para 2.2 of this Department OM No.22011/7/86-Estt.(D) dated 3.7.1986:-*

‘Provided that if a candidate belonging to the Scheduled Caste or the Scheduled Tribe is promoted to an immediate higher post/grade against a reserved vacancy earlier than his senior general/OBC candidate who is promoted later to the said immediate higher post/grade, the general/OBC candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste and the Scheduled Tribe in the immediate higher post/grade.’

4. *These orders shall take effect from the date of issue of this Office Memorandum.*

Sd/-
(K. K. JHA)
Director(E)

.....”

28. The resolution of the meeting in respect of appointment of District Sheristadar held on 26.04.2018 at 04:30 P.M., *inter alia*, stated as follows:-

“.....

The meeting is held at the Chamber of learned District Judge, Nadia, today i.e. on 26.4.2018.

Before commencement of the meeting, all the four candidates within the zone of consideration for the post of District Sheristader have been interviewed and awarded units by the respective members of the Committee. The mark-sheet and the final mark-sheet, containing the units obtained by the respective candidates are attached with this resolution.

It is worth mentioning that on the earlier occasion at the meeting held on 17.4.2018, the Committee decided that Sheristader shall be selected on the basis of merit -cum-seniority and devised certain process of awarding units.

*The decision of the Committee, as above, was based on the citation **Biplab Bhusan Majumder -vs- State of West Bengal (1982 (1) CLJ 77)** and another citation in **Jai Narayan Mitra-vs-State of Bihar (1971 (1) SCC 30)** that in case of promotion of Government servant to the selection post be made on the basis of merit and not on the basis of seniority except that in the case where two or more candidates for promotion are found to be of equal merit then only seniority would prevail.*

It is worth mentioning here that two letters have been received during the process, one being No. 182 dated 17th April, 2018 of learned Additional District Judge, 5th Court, Krishnagar, Nadia, forwarding thereby the application of Sri Ajit Kumar Gond

and another letter is on behalf of the Coordination Committee, Judge's Court Sector. Both the letters be made part of the resolution.

So far the first letter, forwarded by learned Additional District Judge, 5th Court, Krishnagar, Nadia, annexing therein the application of Sri Ajit Kumar Gond is concerned, consideration of the points taken up by Sri Ajit Kumar Gond in his letter are beyond the points of reference of this Committee. Hence, those are not considered.

In the letter dated 24.4.2018 the said Coordination Committee, Judge's Court Sector has pleaded for appointment of the person in the senior most position of the "Gradation List" as District Sheristadar.

However, in this meeting it is held that being senior most position of the "Gradation List" is not only the criteria for selection of the District Sheristadar and instead it is well settled that the incumbent may be selected on merit-cum-seniority basis, in view of the above-mentioned citations.

It is worth mentioning that the opinion expressed therein in respect of the caste or creed of any employee was unwarranted on the part of the Coordination Committee, Court Sector.

The Committee discourages and deprecates such opinion in a representation of this kind.

Committee finds that as per report of the Presiding Officers, all the incumbents are placed at the similar standard in the opinion of the respective Presiding Officer.

Member of the Committee has duly assessed all the incumbents during personality test and have awarded their respective units.

After calculation of the units in the manner adopted by the Committee, vide resolution dated 17.4.2018, the incumbents getting highest position/average units in ranking is Sri Ashim Mallick. The entire calculation sheet be made part of this resolution.

Accordingly, it is unanimously resolved that having been qualified in the test on the basis of merit-cum-seniority Sri Ashim Mallick is selected as District Sheristader.

It is resolved that the appointment shall take effect from 1.5.2018.

Office is directed to issue order accordingly.”

29. The Office Order being No.8262/A dated 12.08.1988 of the Registrar, High Court, Appellate Side, Calcutta stated as follows:-

“

Subject : Creation of posts of more stenographers and filling up of the posts of Nazir, Sheristadar, Accountant and Head Clerk – Resolution adopted in the conference of District Judges held on 19.12.87.

Sir,

I am directed to request that you will be so good as to submit a proposal, as early as possible, for creation of posts of more stenographers to be required in your Judgeship, so that the matter may be taken up with the Government.

I am also to say that the posts of Nazir, Sheristadar, Accountant and Head Clerk in your Judgeship should be filled up on merit and not on seniority.

*Yours faithfully,
Registrar.”*

30. The petitioner being aware of the recommendation of the Shetty Commission could not claim promotion on the basis of seniority having appeared in the Personality Test. The petitioner being unsuccessful in the personality test filed the instant writ petition being aggrieved by such disqualification and a grudge against respondent no.5. The District Judiciary of Nadia in compliance with the Notification No.8262/A dated 12.08.1988 had issued notice for filling up the post of Sheristadar from

the eligible candidates obtaining the direction that the post of Sheristadar should be filled upon merit and not on seniority.

31. The District Judiciary at Nadia could not have violated the aforesaid notification which had been binding upon all the districts. The petitioner having competed in the personality test could not confront or contradict the veracity of the same upon being unsuccessful. The entire process of selection by the respondent no.2 and 3 had been in conformity with the direction of the Hon'ble High Court at Calcutta and the same could not have been considered by violative of the legal principles to the breach of the petitioner. Moreover, the petitioner had already superannuated on 31st of July, 2023 without any possibility to have been reinstated in the service in whatsoever manner though the same would have been contrary to the principles of law.

32. In view of the above discussions, the instant writ petition being WPA 6663 of 2018 is dismissed.

33. There is no order as to costs.

34. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)