

25.07.2025
Court No.13
Item No.1
AP

**MAT 982 of 2025
With
CAN 1 of 2025**

**Pritam Das and Ors.
Vs.
State of West Bengal and Ors.**

Mr. Biswaroop Bhattacharya
Mr. Ayan Chakraborty
Ms. Pramiti Bandyopadhyay
Ms. Sohini Mukherjee

... For the Appellants.

Mr. Rajarshi Basu
Mr. Abdus Salam

... For the State.

Mr. Alok Kumar Ghosh
Mr. Atis Biswas

... For the KMC.

Mr. Amal Kumar Ganguly, Senior Advocate
Mr. Bikash Ranjan Neogi
Ms. Ananya Neogi
Ms. Anushka Ghosh

... For the Respondent Nos.10, 13, 22 & 24.

1. The appeal is directed against an order dated 25th June, 2025 passed by a Single Bench of this Court. By the said order, the writ petition was dismissed since an Office Order dated 7th April, 2025 containing a gradation list was issued based on a decision of another Division Bench of this Court dated 25th February, 2025 passed in APO 59 of 2024. The said order of the Division Bench was carried to the Supreme Court and was not interfered with.

2. The issue before the Division Bench was whether persons who entered into the cadre of Assistant

Engineers in supernumerary posts created in the said cadre, on promotion from the post of Sub-Assistant Engineers, would be treated as having entered into the cadre of Assistant Engineer from the date of their appointment in the supernumerary post or from the day they were actually absorbed into the regular cadre of Assistant Engineers.

3. The Division Bench had held that the Sub-Assistant Engineers appointed in supernumerary posts of Assistant Engineers, would take birth in the regular post of Assistant Engineers only on the date of their appointment in the regular cadre of Assistant Engineers.

4. The writ petitioners had already filed writ petition on 15th July, 2021 when the earlier writ petition being WPO 1248 of 2022 was pending. They were at all material times since 2022 aware of the writ petition being WPO 1248 of 2022 and the order of the Single Bench dated 12th March, 2024 from which the aforesaid APO 59 of 2024 was carried. They chose not to enlist their writ petition along with WPO 1248 of 2022 or implead themselves in the APO 59 of 2024. They were, therefore, fence sitters.

5. This Court holds as such since the writ petitioners could have easily participated and have had their writ petition also decided in terms of the aforesaid judgement of the coordinate Bench dated 25th February, 2025.

6. The KMC is in a quandary. Based on the order of the Single Bench dated 12th March, 2024 (Supra), an earlier gradation list of the post of Assistant Engineers was recast. The said recasting was abandoned and the original position prevailing prior to the judgement dated 12th March, 2024 was restored by reason of the Division Bench judgement dated 25th February, 2025.

7. The writ petitioners featured in all the three gradation lists prepared by the KMC i.e. first one 5th July, 2021, that was framed before the judgement dated 12th March, 2024, the second gradation list dated 24th May, 2024 based on the judgment of the Single Bench dated 12th March, 2024 (supra) and the impugned gradation list dated 7th April, 2025 which restored the original gradation list dated 5th July, 2021.

8. For the KMC now to recast the gradation list of 2025 at the instance of the writ petitioners would seriously upset the promotion process and rights already created in favour of the persons, who have been placed over the writ petitioners.

9. A fence sitter, who is watching the result of a proceeding, to jump in and take advantage thereof as and when necessary or independently pursues his proceeding, is a speculator. Decisions of Court cannot be altered and the gradation lists prepared by an employer cannot be upset and treated as a tennis ball at the instance of a speculator.

10. The last gradation list prepared on 7th April, 2025 was based on the judgement of a coordinate Bench dated 25th February, 2025 (Supra) and the same has been confirmed by the Supreme Court.

11. For the reasons stated above, the writ petitioners cannot be given any relief by this Court.

12. Hence, MAT 982 of 2025 is disposed of without any orders. Consequently, all connected pending applications, if any, are also disposed of.

13. The writ petitioners may pursue any other remedies that may be open to them in accordance with law.

14. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)