

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 147 of 2025

Suman Chattopadhyay

Vs.

The State of West Bengal and Others

For the Petitioner	: Mr. Gangadhar Das, Mr. Tanmay Chattopadhyay.
For the State	: Mr. Swapan Banerjee, Ms. Sumita Shaw, Mr. Suman Chatterjee.
Judgment on	: December 09, 2025

Madhuresh Prasad, J.:

1. Heard the learned advocate for the writ petitioner and the learned advocate representing the State respondents.
2. The West Bengal Administrative Tribunal (in short '*Tribunal*') rejected the Original Application (O.A.474 of 2020) filed by the writ petitioner.
3. The brief facts leading to filing of the original application arises out of a process of recruitment for the post of Librarian under the Health and Family Welfare Department, Government of West Bengal.
4. An advertisement was issued on 12.09.2019. It is the petitioner's case that the

petitioner was a candidate entitled to benefit of reservation for the category “*Economically Weaker Section*” (in short ‘EWS’). On 09.07.2019 the State Government had issued an office memorandum under the signature of the Principal Secretary, Personnel and Administrative Reforms Department, Government of West Bengal regarding reservation for EWS in direct recruitment in Civil Post and Services and admission in educational institutions in the State of West Bengal. Despite such office memorandum preceding the issuance of advertisement by about two months, the advertisement dated 12.09.2019 did not contemplate reservation for EWS.

5. The learned advocate for the writ petitioner submits that it was specific case of the writ petitioner before the Tribunal that the petitioner applied in response to the advertisement and also raised an objection regarding there being no provision of reservation for the EWS. Despite such objection, the authorities proceeded with the recruitment process under the advertisement dated 12.09.2019 without redressing the petitioner’s grievance.
6. The petitioner, in these circumstances, filed the Original Application being O.A.474 of 2020 before the Tribunal seeking a relief in the following terms:

“(a) An order setting aside the selection process completed vide Advertisement no. R/Lid.-20/72(1)/2019 dated 12.09.2019 and quashing the appointment of the respondent nos. (vi) to (xxv) which made in violation of the Office Memorandum no. 325-PAR(AR)/3P-1/2019 dated 09.07.2019 by not keeping 10% reservation for the Economically Weaker Sections (EWSs) in civil posts and services in the Govt. of West Bengal.”

7. The Tribunal has rejected the original application filed by the writ petitioner. Considering the application to be not maintainable for the reason that the same was filed much after declaration of result and selection of candidates. The factual position is not in dispute that the petitioner filed an application before

the Tribunal only after he emerged unsuccessful in the recruitment process. The Tribunal has also taken into consideration the facts brought to its notice by the State that the recruitment process was initiated much prior to issuance of the office memorandum. The office memorandum dated 9th July, 2019, upon which the petitioner was placing reliance, contemplated taking of several steps such as fixing of roster point and issuance of guidelines to enable implementation of the policy. The Tribunal also took into consideration the fact that the policy for EWS reservation was implemented later by the Government notification dated 18.05.2023.

8. The learned advocate for the writ petitioner submits that the petitioner's claim to reservation was arising out of a constitutional right of the writ petitioner. The Tribunal did not consider this aspect of the matter. Referring to a decision of the Apex Court, in the case of ***Pradeep Kumar Rai and Others vs. Dinesh Kumar Pandey and Others***, reported in ***(2015) 11 SCC 493***, considered by a co-ordinate Bench of this court in the case of ***Mohd. Zakir Hossain v. State of West Bengal***, reported in **2019 SCC Online Cal 9250**, he submits that normally such challenge to recruitment process after publication of result is not entertained by the forum exercising judicial review, but subject to exceptions. The nature of Constitutional right being claimed in the present proceedings would come within such exception. The Tribunal, therefore, erred in not entertaining the application filed by the writ petitioner on the grounds stated therein.
9. The learned advocate for the State, on the other hand, reiterated his submissions recorded in the Tribunal's order. He submits that the office memorandum did not create any right for grant of benefit of reservation as an exercise still remained to be taken, by issuance of guidelines in terms of the office

memorandum dated 09.07.2019, before the reservation could be implemented.

He submits that implementation was made possible only after issuance of guidelines in Notification dated 18.05.2023 issued by the Government. He submits that the primary issue which is required to be considered is whether the petitioner is in a position to claim the relief in view of the fact that he has taken no steps after submitting an objection in 2019, for redressal of his grievance before any forum. The petitioner did not challenge the advertisement, till publication of the final result of the said recruitment process.

10. It is further pointed out that he unsuccessfully participated in the recruitment process, as a general category candidate. In these circumstances, this court should not entertain the writ petition at the behest of the writ petitioner, more so, in view of the fact that the recruitment process is over long back and appointment has also been made.

11. Upon consideration of the submission of the parties and the records we find that it is obvious from a plain reading of the office memorandum dated 09.07.2019 (OM for short) that the same was issued with an object of extending reservation for EWS in direct recruitment against civil posts and services and admission in educational institutions in the State of West Bengal. The office memorandum was issued pursuant to adoption of a policy on such reservation by the State Cabinet in its meeting dated 02.07.2019. This OM acknowledged the requirement of recasting group wise post-based reservation roster for direct recruitment. A single, post-based reservation roster was required to be prepared to give effect to the 10% reservation for EWS interpolating it with SC, ST and OBC roster points. The OM, therefore, contemplated bringing out of necessary guidelines in this regard.

12. About two months after issuance of the OM an advertisement was issued initiating a process of recruitment to the post of Librarian under the Health and Family Welfare Department. Admitted position is that the same did not contemplate any reservation for EWS candidates. It is also not in dispute that the petitioner participated in the process of recruitment as a general category candidate against unreserved vacancy. The petitioner claims that he had obtained an EWS certificate and that he had raised an objection before the authority regarding the advertisement being brought out without providing for EWS reservation.
13. We find that thereafter he participated in the recruitment process. Final result of the process of recruitment was published and appointment was also made pursuant to the recruitment process. The petitioner even after raising his objection appeared for the interview on 17.02.2020. It is an admitted position that merit list of 20 candidates selected for the post of Librarian was published by the Director of Health Services on 14.09.2020. The petitioner filed the original application before the Tribunal only after he emerged unsuccessful.
14. From a bare perusal of the OM it is apparent that the reservation policy was not brought into implementation owing to certain indispensable formalities which remained to be completed to give effect to reservation, such as determination of roster point etc. for the various posts. We also take note of the fact that though the advertisement was issued after the OM, but requisition for recruitment against the vacancy on the post of Librarian was forwarded by the Government before issuance of the OM. The reservation policy had not been giving effect to till such time the advertisement was issued. In fact, it was impossible to provide for EWS reservation till such time. The above noted formalities were completed,

guidelines issued and EWS reservation implemented much later, i.e. on 18.05.2023 pursuant to the Notification dated 18.05.2023, for effective implementation of the reservation. We have also taken note of a submission advanced by the learned State Counsel that in the integrum several litigations were generated challenging the validity of EWS reservation, as a result implementation of reservation took some time.

15. In view of the above facts we find that it was not possible for making provision for EWS reservation in the advertisement, based on a policy to introduce such reservation, since the Government was still in the process of issuing guidelines for preparation of roster point for EWS category, which required a meticulous exercise after ascertaining the number of posts and interpolating EWS category in the other reserved categories, namely OBC, SC and ST.

16. Thus, seen we ventured to consider whether the conduct of the applicant writ petitioner in not challenging the advertisement and rather participating in the same; and whether under such circumstances he can be permitted to challenge the advertisement and appointments made thereunder, after accrual of 3rd party rights. The learned Advocate for the applicant writ petitioner relied upon decision of the Apex Court in the case of ***Union of India vs. Vinod Kumar*** reported in ***(2007) 8 SCC 102*** to contend that the general principle that an unsuccessful candidate has no right to challenge a selection process on finding the result not palatable is subject to certain exceptions. The present case would fall in such exception since the petitioner's grievance is in respect of a fundamental right which could not be waived. It is submitted that the coordinate Bench in the case of ***Mohd. Zakir Hossain*** (Supra) has laid down the law to this effect considering the decision of the Apex Court in the case of ***Vinod Kumar***

(Supra) and the case of **Pradeep Kumar Rai** (*supra*).

17. On consideration of the judgments cited at the bar we find that in the case of **Mohd. Zakir Hossain** (Supra) the facts were distinguishable from the facts of the present case. In the case of **Mohd. Zakir Hossain** (Supra) the petitioners raised a grievance regarding breach of the reservation policy, already in existence. It is in this context that the co-ordinate Bench took note of the fact that the State is mandated not to fill up a “*reserved vacancy*” by a general candidate. Thus, the co-ordinate Bench held that mere participation in the exercise pursuant to the notice notifying application may not be a basis to assert that the candidate has waived his right to challenge the notice. This judgment is factually distinguishable. The petitioners therein claimed a right founded on an existing reservation. In the instant case EWS reservation had not been implemented at the time of issuance of the advertisement.
18. The judgment is distinguishable also for the reason that the petitioners therein had moved the Tribunal before declaration of results which is apparent from a bare perusal of the paragraph 24 of the co-ordinate judgment in the case of **Mohd. Zakir Hossain** (Supra). The co-ordinate Bench has relied upon the two Apex Court judgments in the case of **Vinod Kumar** (Supra) and **Pradeep Kumar Rai** (Supra) in the factual context taken note of above. We reiterate that in the present case the alleged illegality being non-observations of EWS reservation is non-est since the Government had not implemented EWS reservation, till such time the advertisement was issued. Therefore, there is no question of agitating a fundamental right as claimed by the applicant/ writ petitioner. The judgments relied upon are therefore not applicable to the facts and circumstances of the present case.

19. We have noticed that EWS reservation was implemented by the State Government by issuance of a notification on 18.05.2023, much after the advertisement was issued and appointments were made. In the above facts and circumstances, we find no reason to interfere with the order dated 15.05.2025 passed by the Tribunal in OA 474 of 2020.

20. The writ petition is dismissed.

21. 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.

(Prasenjit Biswas, J.)